

MEDIA BACKGROUNDER

Re: Argument on January 12, 2011 before the New Mexico Supreme Court in Santa Fe
KIM RIVERA v. AMERICAN GENERAL FINANCIAL SERVICES

HOW IT STARTED

Ten years ago, Bernalillo, New Mexico resident Kim Rivera surrendered the title to her 1995 GMC Sierra pickup truck in order to secure a small loan from American General Financial Services. Her computer, bicycle, and some camping equipment provided the rest of the collateral. As part of the loan contract, Ms. Rivera was required to pay an additional \$2,000 for insurance on the truck. In case the truck was damaged or destroyed, American General's insurance company would be obligated to pay off the loan.

After Ms. Rivera signed the loan and surrendered her truck's title, the GMC was totaled in a crash caused by an uninsured driver. Although she had already paid American General for insurance, American General's insurance company didn't take any steps to adjust or reevaluate the claim.

Over a period of four years, Ms. Rivera repeatedly asked American General to accept payment from the insurance company on the balance of the loan. But the claim was never paid. Instead, American General continued to bill her, continued to charge interest, fees and penalties, and even encouraged her to borrow more money. Unable to find reliable transportation to work, Ms. Rivera lost her job. When she could no longer make payments on the loan, American General went so far as to report a negative rating to the credit rating agencies, the first black mark on Ms. Rivera's otherwise flawless credit report.

Around that same time, American General hit \$25 billion in assets and announced the second major expansion of its 160,000-square-foot Evansville, Indiana headquarters.

THE CASE GOES TO THE NEW MEXICO SUPREME COURT

In the small print of American General's loan contract, the company had inserted a provision that forbid Ms. Rivera from taking any dispute she might have before a judge or jury. Instead, the contract required arbitration before one—and only one—arbitration forum, the National Arbitration Forum (NAF). Ms. Rivera sued American General based on its outrageous conduct, but the trial court ruled that she had to pursue her claim in arbitration before the NAF.

The New Mexico Court of Appeals affirmed this decision and refused to reconsider even after the NAF stopped conducting consumer arbitrations. (The NAF did so after a law enforcement action filed by the Minnesota Attorney General detailed how the NAF was financially connected to a major debt collection law firm which regularly appeared before the NAF. The structure was akin to corporations paying the salaries of the judges before whom they appeared.)

Ms. Rivera has now appealed this issue to the New Mexico Supreme Court. In the appeal, attorney Bruce Thompson of the Albuquerque firm Martinez, Hart & Thompson, and Public Justice, a national public interest law firm, argue that American General's arbitration clause is unenforceable because it requires arbitration before the NAF, with no provision to allow arbitration by any other forum. The NAF cannot handle the arbitration since it stopped doing so after the conflict-of-interest scandal was unearthed.

PROTECTING THE PUBLIC FROM UNFAIR CONTRACT CLAUSES

The *Rivera* case marks the first opportunity for a state supreme court to address a critical and timely consumer rights issue: what to do with arbitration clauses that provide for arbitration *solely* before the now-discredited NAF. The NAF was one of the forums most used by corporations that regularly pursued claims against consumers; indeed, millions of consumer contracts still in effect name the NAF as the sole arbitrator.

Thompson and Public Justice maintain that the court should not simply select another arbitrator as American General requests. American General and its sophisticated lawyers had to be aware of the controversy surrounding the NAF's cozy relationship with lenders. It selected the NAF regardless.