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New Mexico Laws on Rejection of Uninsured/Underinsured Motorist Coverage are Retroactive

The New Mexico Supreme Court in Progressive v. Weed Warriors established clearly that acceptance of uninsured/underinsured motorist coverage (UM/UIM) at levels below insurance liability limits constitutes a rejection of coverage. As such, the Court held that a written rejection attached to the policy was required for the rejection of coverage to be binding on the insured driver.

Several auto accident cases involving varying UM/UIM issues were basically on hold awaiting the ruling in *Weed Warriors*. These cases could not be decided without first having the ruling in *Weed Warriors*. The New Mexico Supreme Court case of Jordan v. Allstate consolidated these three cases (*Jordan v. Allstate*, *Romero v. Progressive* and *Lucero v. Trujillo*) to address a number of questions left remaining following *Weed Warriors*.

There were a number of very important issues raised in these cases. As a rejection of coverage per *Weed Warriors*, the first issue that arises is what form the rejection must take to be valid. Clearly under New Mexico law, a rejection of coverage must be in writing and attached to the policy. *Jordan* went further to state that the for this requirement to have any meaning insurers must provide premium charges for each level of UM/UIM so that an insured can make an informed decision. Remarkably, this was not the case in the past and insurers had little incentive to quantify the meager savings associated with rejections of UM/UIM coverage.

Though this may seem like little, it is a large stride forward in consumer protection. The insurance companies argued this was a violation of freedom of contract. The Court countered, essentially stating that the essence of freedom of contract is full disclosure. This would of course include pricing.

Perhaps most remarkable in the *Jordan* case is the fact that the holding was made retroactive. This means that all those rejections of UM/UIM coverage below liability limits back to the date of the statute are invalid in the absence of written waiver, attached to the policy, under full disclosure of UM/UIM costs terms.

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It is safe to say that many such rejections were invalid. The insurers argued that this was unfair and would result in unexpected costs to the insurers. The Court responded that the statute requiring written waivers of UM/UIM was clear as to its requirements so that there was no unfairness to the insurance companies. Moreover, the Court stated that the insurance companies should be held to bear the burden of their own misinterpretations of the statute, not the innocent and far less knowledgeable and legally sophisticated insured.

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