

# NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

April 23, 2010

## Rejection of UM/UIM Coverage Must be in Writing but Need Not be Signed by Insured??

The law in New Mexico regarding the rejection of uninsured/underinsured motorist coverage seems to be turned on its head in the recent New Mexico Supreme Court case of *Marckstadt v. Lockheed Martin*, consolidated with the 10th Circuit Court of Appeals case of *Federated Insurance v. Martinez*.

The case involved the purchase automobile insurance for company vehicles. An employee was injured in an auto accident and made a claim against the uninsured/underinsured coverage on the policy. There was no written rejection of the coverage and the rejection was not attached to the policy. However, the employer indicated that it was understood that the coverage was waived. The Court made no indication that its opinion was fact specific. The case should raise concerns for every purchases of insured. I will not even begin to address the problems with the possible complicity between the insurance company and the employer who no doubt saved a few bucks in the denial of its employee's rightful recovery of damages for his injuries.

The law seemed to be well established requiring a written rejection of uninsured/underinsured motorist coverage under New Mexico law to be both signed by the insured and attached to the policy. The case of *Arias v. Phoenix Indemnity* issued just in July 2009 said as much. So it is surprising that *Marckstadt* would come so quickly on its heels setting aside what seemed to be both good law and sound public policy.

Instead *Marckstadt* takes the rather perplexing position that rejection of uninsured/underinsured motorist converge must be written but need neither be signed nor attached to the policy. The court then stated that there should be some evidence that the insured's rejection was "made part of the policy by endorsement, attachment, or some other means that calls the insured's attention to the fact that coverage has been waived."

What in the world does this mean? Can the language be hidden in small print? Can it be written on the hand of the insurance agent? Could it be whispered in the agent's office with failure to acknowledge taken as acquiescence? In fact, it means nothing other than the insurance companies will be allowed every possible avenue for denying coverage to unwary customers. It is just one more accommodation to the insurance industry who will used every advantage to avoid payment of claims to preserve profits.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

In the past, I would usually end by saying that when faced with an accident that calls your uninsured/underinsured motorist coverage into question, you would be well advised to seek the advice of a New Mexico Attorney. As the law now stands, you would be well advised to seek that attention when reviewing the insurance policy coverage limits. As a practical matter, since it seems clear that the rejection could be hidden in the vast array of documents involved in the auto insurance policy process, and therefore will be hidden, you would be well advised to write on the face of the application that you are not rejecting uninsured/underinsured coverage which may be the only possible means of recovery for your injuries. Then have your friendly insurance agent initial the statement next to your own.

**Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>