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Underinsured Motorist Coverage Imputed for Property Damage in Absence of Signed Rejection

The New Mexico Court of Appeals addressed the issue of uninsured/underinsured motorists insurance once again in *Gulbransen v. Progressive Halcyon Insurance*. The case is unique in that it addressed uninsured/underinsured (UM/UIM) coverage for property damage. Past cases on the matter have limited the discussion to personal injuries.

There is no shortage of case law on the issue UM/UIM coverage and the requirements for waiver of such coverage. The bottom line under the law is in order for an insured driver to waive UM/UIM coverage, the insurance company must obtain a written rejection of the UM/UIM coverage. In the absence of a written rejection, the auto insurance policy will be found to carry UM/UIM coverage equal to the liability policy limits.

Though the Court in *Gulbransen* dealt with property damage coverage, the outcome is much the same. In the absence of a written rejection of UM/UIM property damage coverage, the UM/UIM coverage will be imputed to be the same as the liability coverage.

The Court references the strong public policy in the provision of UM/UIM coverage. The Court cites *Arias v. Phoenix Indemnity* stating that it is statutorily mandated that UM/UIM coverage be offered. The Court rejected Progressive's argument that this requirement was meant only to cover bodily injuries. In response, the Court stated that there was an underlying legislative intent to protect drivers from uninsured and underinsured motorists. This goal is particularly important in New Mexico which has the nation's highest percentage of uninsured motorists.

Interestingly, the Court noted that there were a number of cases up on cert to the New Mexico Supreme Court addressing the issue of UM/UIM waivers of coverage. The Court noted that they were relying on those cases (*Romero, Chen and Jordan*) until such time that they are reversed. This qualifying statement may or may not bode well for insured drivers in the future.

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