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Don't Get Lured Into Waiver of Uninsured/Underinsured Motorist Coverage

Once again, the New Mexico Court of Appeals has reinforced the public policy of making uninsured/underinsured motorist (UM/UIM) coverage a part of every automobile insurance policy issued in New Mexico. *Farmers v. Xian Chen* stated just that in its ruling further reiterating that alleged waivers of uninsured/underinsured coverage are to be strictly construed against the insurer.

In *Xian Chen*, the Chens obtained liability coverage in the amount of \$100,000 per person, \$300,000 per occurrence. Farmers also had the Chens sign an Uninsured Motorist Election in the amount of \$30,000 per person and \$60,000 per occurrence. The Election stated that the Chens had the option of purchasing greater UM/UIM coverage but the Election was not attached to the policy and was not clear as to the amount of the coverage that the Chens were giving up. Ms. Chen was involved in an accident that killed her and injured her son. The accident was caused by the negligence of an underinsured driver.

Farmers denied the underinsured coverage claims over the reduced \$30,000/\$60,000 limits. The court in *Xian Chen* called upon several prior cases in the area in refuting Farmers' position. The court first cited *Romero v. Progressive* to state that insurers have a duty to offer UM/UIM coverage up to the liability limits of the policy. An election to carry less than liability limits constitutes a rejection of UM/UIM coverage. The court then cited *Romero v. Dairyland* for the rule that a valid rejection of UM/UIM coverage must clearly and unambiguously alert the insured to the rejection of UM/UIM coverage. The court then moved on to the recent case of *Marckstadt v. Lockheed Martin* where two essential requirements were set forth for the rejection of UM/UIM coverage; 1) there must be a written rejection of UM/UIM and rejection to be valid must be made knowingly and intelligently, 2) evidence of the rejection must be attached to the policy, and consistent with *Romero v. Dairyland*, must "clearly and unambiguously call to the attention of the insured that fact that such coverage has been waived."

The Court in *Xian Chen* found that the Chens had not knowingly and intelligently waived UM/UIM coverage because no single document in the transaction contained all the information necessary for a "knowing and intelligent" waiver. Instead, the waiver language, the liability limits, the UM/UIM limits and the amounts rejected were scattered across several documents. For the same reason, the notification requirement in *Marckstadt* was not met. Due to the deficiencies in the waiver, the Chens were entitled to the full amount of UM/UIM coverage.

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There are a couple of lessons to be learned from this case. First and most important, it is extremely unwise to waive UM/UIM coverage. This case perfectly illustrates the dangers of uninsured/underinsured motorist in New Mexico which has the highest rate of uninsured drivers in the nation. Driving without UM/UIM coverage is often devastating. Realistically, even the higher limits of \$100,000/\$300,000 did not come close to compensating Mr. Chen and his son for the loss of a wife and mother. Which brings us to the second lesson, get as much UM/UIM as you can. Related to the first two lessons, there are insurers that will do whatever they can to get you to waive UM/UIM coverage completely or take reduced UM/UIM coverage. They may do this by either by hiding the ball as was done in the *Xian Chen* case or they may take the more common route of just flat out convincing drivers that UM/UIM coverage is a waste of money.

Any driver facing this situation should ask themselves why the state would go through so much trouble to force UM/UIM coverage and more importantly why some insurers go to such lengths to avoid it. This should be a rather quick analytical process. Upon completion, the driver should promptly find a new agent and a new insurance company that is equally concerned with the driver's welfare as it is for its own profits.

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