

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Recovery of Punitive Damages Under Uninsured/Underinsured Motorists Coverage**

Punitive damages are awarded in limited cases for the purposes of punishment of the defendant. Punitive damages also serve to deter similar such behavior by the defendant and others similarly situated. In New Mexico personal injury cases, punitive damages are awarded only when a defendant's behavior is found to be malicious, willful, reckless or wanton.

Many New Mexico personal injury claims assert a claim for punitive damages but the "malicious, willful, reckless or wanton" standard is pretty difficult to meet. In essence, the defendant's behavior must be pretty outrageous in nature to justify a punitive damages jury instruction from the court.

In auto accident cases, the question then arises whether insurance will cover the punitive damages awards. This question actually involves two separate elements. First, will the negligent driver's auto insurance liability limits cover a punitive damage award? Second, assuming that the negligent driver's insurance is inadequate to cover the total damages award, will the innocent driver's uninsured/underinsured motorist coverage cover any part of the punitive damages award? These same issues would arise in a pre-trial or pre-litigation settlement. On the other hand, it is a rare and generous insurance company on either side of the claim that would admit the propriety of punitive damages prior to litigation.

The answer to both questions is yes. Insurance coverage, both liability and uninsured/underinsured motorist coverage, provides coverage for punitive damage awards in a New Mexico auto accidents. The innocent injured driver is entitled to recover for all allowable damages under the New Mexico personal injury law.

The issue will generally not arise in the case of liability coverage since liability coverage in New Mexico auto accidents is generally grossly inadequate. New Mexico carries the highest percentage of uninsured drivers in the nation with many more severely underinsured. Thus, the liability coverage limits will typically not even cover the compensatory damages, much less the punitive damages.

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Instead, the issue will more often arise when the innocent driver makes a claim on his or her uninsured/underinsured motorist policy. Some insurance companies will attempt to deny these legal claims. However, the law is clear and has been clear for quite some time since the 1991 New Mexico Supreme Court case of *Stinbrink v. Farmers Insurance Company of America*. The Court in *Stinbrink* made clear that uninsured/underinsured coverage does provide coverage for punitive damages.

Even here, however, policy limits often become an issue. New Mexico drivers typically carry inadequate liability limits to cover the harm that they do. Likewise, they generally carry woefully inadequate uninsured/underinsured coverage as well. As such, the findings in *Stinbrink* are purely academic in most cases as the insurance policy limits will always dictate the coverage in any particular auto accident case.

Insurance issues are confusing. The policies themselves typically provide very little illumination and may leave some even more confused after reading. Thus, it is important to consult with a **New Mexico attorney** to address the many coverage issues related to a New Mexico personal injury claim.

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