

**JARAMILLO V. UNITRIN AUTO AND HOME INSURANCE CO.**

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**LARRY JARAMILLO, as Personal  
Representative of the Estate of  
Jude Jaramillo, Deceased,**  
Plaintiff-Appellee,  
**v.**  
**UNITRIN AUTO AND HOME  
INSURANCE COMPANY,**  
Defendant-Appellant,  
**and**  
**PROGRESSIVE NORTHERN  
INSURANCE COMPANY and  
JERRY McCOY,**  
Defendants.

No. 33,712

COURT OF APPEALS OF NEW MEXICO

December 10, 2014

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, John M. Paternoster,  
District Judge

**COUNSEL**

Anthony G. Lopez, Taos, NM, for Appellee

Allen, Shepherd, Lewis & Syra, P.A., Daniel W. Lewis, Brant L. Lillywhite, Of Counsel,  
Albuquerque, NM, for Appellant

Simone, Roberts & Weiss, P.A., Meena Allen, Albuquerque, NM, for Defendants

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,  
MICHAEL D. BUSTAMANTE, Judge

**AUTHOR: JONATHAN B. SUTIN**

## **MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant-Appellant Unitrin Auto and Home Insurance Company (Unitrin) seeks to appeal from an award of partial summary judgment against it. We previously issued a notice of proposed summary disposition, proposing to dismiss the appeal on grounds that the district court's order is not final. Unitrin has filed a memorandum in opposition, which we have duly considered. Because we remain unpersuaded that this matter is properly before us, we dismiss the appeal.

{2} We previously expressed our reservations about the finality of the underlying judgment on two grounds. First, we questioned whether the judgment could properly be said to resolve all claims against any single party, insofar as the complaint might be read to assert more than one count against Unitrin. In its memorandum in opposition, Unitrin clarifies that only one count has been asserted against it, which the district court's order fully resolves. We are therefore satisfied that there are no outstanding claims against Unitrin.

{3} Second, we expressed concern that the issues resolved by the district court's order might be intertwined with matters that remain unresolved, such that the order should not be deemed final. We have previously observed that in situations like this, where all claims have been resolved against one or more parties but outstanding matters remain to be decided relative to other parties, the finality of the judgment is to be determined by reference to the nature of the claims; if the judgment "will *or may* affect" the liability of the remaining defendants, the judgment will not be deemed final. *McKee v. United Salt Corp.*, 1980-NMCA-175, ¶ 4, 96 N.M. 382, 630 P.2d 1237 (emphasis added) (internal quotation marks omitted), *aff'd in part, rev'd in part on other grounds by United Salt Corp. v. McKee*, 1981-NMSC-052, 96 N.M. 65, 628 P.2d 310. In this case, we perceive that the judgment from which this appeal has been taken *may* affect the liability of one of the remaining defendants. We therefore remain unpersuaded that the district court's order should be regarded as final.

{4} In its memorandum in opposition, Unitrin asserts that its claim of entitlement to a contractual offset is analytically separate from Progressive Northern Insurance Company's (Progressive) entitlement to a statutory offset, and as such, the issues resolved in the partial award of summary judgment should not be regarded as intertwined with unresolved matters. [MIO 6-12] Although we acknowledge that contractual and statutory offsets are distinct in nature, we note that the offsets claimed by both co-defendants are based on a single \$100,000 payment (by Unitrin) of liability benefits. [MIO 6] Whether multiple parties may properly take offsets for the full value of such a payment is unclear; we are unaware of authority directly on point. We further note that the computational portion of the district court's order suggests that the district court may have determined that Progressive is only responsible for \$100,000 in

underinsured motorist (UIM) coverage as a consequence of Unitrin's inability to claim the contractual offset.<sup>1</sup> [RP 502 (¶ 7)] Insofar as \$200,000 in stacked UIM coverage is theoretically available from Progressive [RP 502 (¶ 4)], if Unitrin was able to take the contractual offset Progressive might conceivably be responsible for the full \$200,000 in UIM coverage which is available under its policies. We therefore conclude that the liabilities may be intertwined, such that the order should not be regarded as final.

**{5}** Accordingly, for the reasons stated in this Opinion and in the notice of proposed summary disposition, we conclude that the district court's order is not immediately reviewable. The appeal is therefore summarily dismissed.

**{6} IT IS SO ORDERED.**

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**MICHAEL D. BUSTAMANTE, Judge**

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<sup>1</sup> We express no opinion as to the correctness of the district court's calculations.