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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: March 23, 2026

4 **No. A-1-CA-42510**

5 **CLAY P. LINDSTROM,**

6 Plaintiff-Appellee,

7 v.

8 **PROGRESSIVE DIRECT**
9 **INSURANCE COMPANY,**

10 Defendant-Appellant,

11 and

12 **JOHN DOE,**

13 Defendant.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

15 **Daniel E. Ramczyk, District Court Judge**

16 Valle, O’Cleireachain, Zamora & Harris

17 Andrea D. Harris

18 Albuquerque, NM

19 Romero, Harada & Winters, LLC

20 Geoffrey R. Romero

21 Nikko Harada

22 Christopher P. Winters

23 Albuquerque, NM

24 for Appellee

1 Cuddy & McCarthy, LLP
2 Scott P. Hatcher
3 Robert A. Corchine
4 Santa Fe, NM
5 for Appellant

1 **OPINION**

2 **MEDINA, Chief Judge.**

3 {1} In this interlocutory appeal, Appellee Clay Lindstrom and Appellant
4 Progressive Direct Insurance Company (Progressive) ask us to resolve whether
5 Appellee is entitled to recover punitive damages under his uninsured and
6 underinsured (UM/UIM) policy when the tortfeasor is unknown. Determining that
7 Appellee is not entitled to recover punitive damages, we reverse.

8 **BACKGROUND**

9 {2} Appellee was the victim of a hit-and-run while operating his vehicle. Appellee
10 alleges that Defendant John Doe violently collided with his vehicle, but instead of
11 remaining at the scene and identifying himself, Defendant Doe fled. Appellee
12 brought negligence and negligence per se claims against Defendant Doe, seeking to
13 recover compensatory and punitive damages. At the time of the accident, Appellee
14 had UM/UIM coverage through Progressive. Appellee argued entitlement to
15 compensatory and punitive damages from Progressive based on Defendant Doe’s
16 conduct. Progressive paid Appellee’s compensatory property damages claim but
17 denied his punitive damages claim.

18 {3} During motions practice, the parties litigated whether Appellee was entitled
19 to recover punitive damages from Progressive based on Defendant Doe’s conduct.
20 The district court—having already determined Defendant Doe’s liability for the

1 damage to Appellee’s property—granted Appellee’s motion for partial summary
2 judgment as to Progressive’s punitive damages liability, and denied Progressive’s
3 opposing motion for summary judgment. In its order, the district court determined
4 that Progressive owes “a contractual duty to pay damages that the insured is legally
5 entitled to recover against Defendant . . . Doe, including any award of punitive
6 damages that may be entered against Defendant . . . Doe.” The district court certified
7 for interlocutory appeal the questions of “whether punitive damages can be awarded
8 against an unknown driver, and whether an insurer is obligated to cover punitive
9 damages awarded against an unknown tortfeasor.” The parties filed a joint
10 interlocutory appeal application, which this Court granted.

11 **DISCUSSION**

12 {4} Interpretation of New Mexico’s UM/UIM statute, NMSA 1978, § 66-5-301
13 (1983), in order to determine whether punitive damages can be awarded against an
14 unknown driver, and whether an insurer is obligated to cover punitive damages
15 awarded against an unknown tortfeasor, is a question of law subject to de novo
16 review. *See Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 14, 149 N.M. 162, 245
17 P.3d 1214. We also review a district court’s grant of summary judgment de novo.
18 *Kileen v. Didio*, 2025-NMSC-038, ¶ 9, 578 P.3d 1180.

19 {5} Progressive argues that the district court erred in ruling that punitive damages
20 may be recovered under a UM policy where the tortfeasor is unknown. In support of

1 its position, Progressive contends that such an award undermines the rationale for
2 punitive damages, frustrates the limited purpose of punitive damages, and would
3 contravene existing New Mexico precedent. Appellee disagrees and argues that he
4 is legally entitled to punitive damages under Section 66-5-301, New Mexico’s
5 UM/UIM statute, and that the absence of a known tortfeasor cannot abridge the
6 availability of any category of damages codified by the UM/UIM statute.

7 {6} The purpose of New Mexico’s UM/UIM statute is “to encourage insureds to
8 purchase such coverage,” *Kileen*, 2025-NMSC-038, ¶ 12 (internal quotation marks
9 and citation omitted), and to “place the insured in the same position as to the
10 recovery of damages that [they] would have been in had the tort[]feisor had liability
11 insurance.” *State Farm Mut. Auto. Ins. Co. v. Maidment*, 1988-NMCA-060, ¶ 18,
12 107 N.M. 568, 761 P.2d 446 (citing *Wood v. Millers Nat’l Ins. Co.*, 1981-NMSC-
13 086, ¶ 10, 96 N.M. 525, 632 P.2d 1163; *Gantt v. L & G Air Conditioning*, 1983-
14 NMCA-083, ¶ 20, 101 N.M. 208, 680 P.2d 348 (same), *superseded by statute as*
15 *stated in Mountain States Mut. Cas. Co. v. Vigil*, 1996-NMCA-062, ¶ 11, 121 N.M.
16 812, 918 P.2d 728. This is achieved by requiring insurers to offer UM coverage so
17 that “an injured insured is compensated for injuries even when the tortfeasor is
18 financially irresponsible.” *Jaramillo v. Providence Wash. Ins. Co.*, 1994-NMSC-
19 018, ¶ 24, 117 N.M. 337, 871 P.2d 1343. This coverage includes coverage for
20 punitive damages. *See Stewart v. State Farm Mut. Auto. Ins. Co.*, 1986-NMSC-073,

1 ¶ 9, 104 N.M. 744, 726 P.2d 1374. Indeed, “punitive damages are as much a part of
2 the potential award under the uninsured motorist statute as damages for bodily
3 injury.” *Stinbrink v. Farmers Ins. Co. of Ariz.*, 1990-NMSC-108, ¶ 5, 111 N.M. 179,
4 803 P.2d 664. As Appellee acknowledges, however, recovery of punitive damages
5 is not absolute.

6 {7} Relevant to this appeal, and heavily relied on by Progressive, our Supreme
7 Court has barred recovery of punitive damages against a deceased tortfeasor’s estate,
8 despite the UM/UIM statute’s purpose of placing an insured in the same position as
9 to the recovery of damages that they would have been in had the tortfeasor had
10 liability insurance. *See Jaramillo*, 1994-NMSC-018, ¶¶ 24-26; *see also Maidment*,
11 1988-NMCA-060, ¶ 18 (noting that the UM/UIM statute’s purpose is to “place the
12 insured in the same position as to the recovery of damages that [they] would have
13 been in had the tort[]feasor had liability insurance”). *Maidment* held both that
14 “punitive damages may not be awarded against the estate of a deceased tort[]feasor,”
15 1988-NMCA-060, ¶ 14, and that “the insurer may assert the death of the uninsured
16 motorist as a bar to recovery of punitive damages,” *id.* ¶ 25.

17 {8} In *Jaramillo*, our Supreme Court indicated that an insurer’s ability to
18 subrogate was an important factor in determining that insurance policies may cover
19 punitive damages; otherwise, the purpose of punitive damages would be “diluted.”
20 1994-NMSC-018, ¶ 24. The Court also reasoned that the purpose of awarding

1 punitive damages—to punish and deter—is not achieved when the tortfeasor has
2 died. *Id.* ¶ 26. This is because, “[w]hen the tortfeasor cannot be punished for [their]
3 culpable behavior, punitive damages no longer have the desired effect and, therefore,
4 the victim loses the legal entitlement to recover those damages.” *Id.* ¶ 24.

5 {9} Appellee contends that *Jaramillo* is readily distinguishable from this case.
6 Appellee argues that he is legally entitled to recover punitive damages because a
7 deceased tortfeasor is unlike an unknown tortfeasor because an unknown tortfeasor
8 may be discovered. An unknown tortfeasor could therefore be punished if they are
9 later identified, which may deter others from engaging in similar conduct. As such,
10 the purpose of punitive damages can be accomplished by awarding punitive damages
11 against an unknown tortfeasor. *Progressive*, on the other hand, cites cases to support
12 its argument that punitive damages should be unavailable against an unknown
13 tortfeasor.

14 {10} Appellee cites no controlling authority from any jurisdiction, without
15 statutory authority or a more expansive view of the role of punitive damages, holding
16 that punitive damages are available against an unknown tortfeasor, nor have we
17 found any such cases in our own research.¹ Instead, Appellee contends that he is

¹Appellee relies on four New Mexico state district court cases to support his claim that punitive damages are recoverable against an unknown tortfeasor. Plaintiff, however, ignores that our district courts also reach the opposite conclusion. *See, e.g.*, Order on Defendants’ Motion for Partial Summary Judgment at 1, *Luchini v. Braswell*, No. D-202-CV-2019-09476 (2d Jud. Dist. Ct. June 23, 2020) (determining

1 | legally entitled to recover punitive damages in this case because punitive damages
2 | are only barred in cases brought against the government and those brought against a
3 | deceased tortfeasor. Appellee argues that it “makes sense” that punitive damages
4 | cannot be recovered against the government and a deceased tortfeasor because their
5 | status is not subject to change. This is unlike an unknown tortfeasor whose status
6 | would change if they are later identified. We are unpersuaded that the unchanging
7 | status of the tortfeasor is dispositive in determining whether a plaintiff is legally
8 | entitled to recover punitive damages. As our Supreme Court has acknowledged,
9 | “The phrase ‘legally entitled to recover’ seems something of a chameleon, varying
10 | with the facts and procedural context in which the need to define the phrase arises.”
11 | *Boradiansky v. State Farm Mut. Auto. Ins. Co.*, 2007-NMSC-015, ¶ 13, 141 N.M.
12 | 387, 156 P.3d 25. Indeed, our courts have been inconsistent and unclear in how to
13 | define this phrase. *Id.* ¶ 12. What is clear, however, is that punitive damages are
14 | unavailable against the government because they penalize the innocent taxpayers,
15 | *see, e.g., Faber v. King*, 2015-NMSC-015, ¶¶ 22-26, 348 P.3d 173, and, are
16 | unavailable against a deceased tortfeasor because they fail to accomplish the purpose
17 | of punitive damages, *Jaramillo*, 1994-NMSC-018, ¶ 26. Given our Supreme Court’s
18 | reasoning in these cases, we conclude that Appellee is not legally entitled to recover

that “[u]nder the current state of the law in New Mexico, [the p]laintiff is not legally entitled to recover punitive damages for actions of an unknown tortfeasor under the uninsured motorist coverage of [their insurance] policy”).

1 punitive damages because the purpose of punitive damages would not be
2 accomplished and the insureds would likely incur increased premiums.²

3 {11} Moreover, although there is a dearth of case law directly on point, we are
4 persuaded by the cases that preclude punitive damages against an unknown
5 tortfeasor. In *State Farm Mutual Insurance Co. v. Kuharik*, the Georgia Court of
6 Appeals reversed a district court’s decision allowing for punitive damages against
7 an unknown tortfeasor who allegedly drove in a reckless and wanton manner in
8 causing a collision before unlawfully leaving the scene.³ 347 S.E.2d 281, 282
9 (Ga. Ct. App. 1986). The court explained that “to award punitive damages against
10 an unknown tortfeasor for the purpose of deterring [them] from repeating [their]
11 alleged misconduct would be nonsensical.” *Kuharik*, 347 S.E.2d at 282. In coming
12 to this conclusion, the Court of Appeals for Georgia analogized allowing a punitive

²Increased premiums would likely discourage the purchase of UM coverage, contrary to the purpose of the UM/UIM statute. *See Kileen*, 2025-NMSC-038, ¶ 12 (stating that the purpose of the UM/UIM statute is to encourage insureds to purchase UM coverage).

³When the Georgia Court of Appeals decided *Kuharik*, it was unsettled whether Georgia’s UM/UIM statute allowed for punitive damages—regardless of whether the tortfeasor was known or not. *See, e.g., Roman v. Terrell*, 393 S.E.2d 83, 84 (Ga. Ct. App. 1990). In 1990, however, the Supreme Court of Georgia determined that “an insurance company is not liable to its insureds for punitive damages under uninsured motorist coverage.” *State Farm Mut. Auto Ins. Co. v. Weathers*, 392 S.E.2d 1 (Ga. 1990).

1 damages award against an unknown tortfeasor to that of a deceased tortfeasor—
2 which, like New Mexico, Georgia prohibits.⁴ See *Kuharik*, 347 S.E.2d at 282.

3 {12} There are also at least three published New Mexico federal district court cases
4 reaching the same conclusion. See *Ammons v. Sentry Ins. Co.*, 431 F. Supp. 3d 1280
5 (D.N.M. 2019); *Dockery v. Allstate Ins. Co.*, 491 F. Supp. 3d 980 (D.N.M. 2020);
6 *Padilla v. Doe*, 781 F. Supp. 3d 1205 (D.N.M. 2025). And while “we are not bound
7 by federal court decisions purporting to interpret New Mexico state common or
8 statutory law,” *Hovey-Jaramillo v. Liberty Mut. Ins.*, 2023-NMCA-068, ¶ 18, 535
9 P.3d 747, such opinions, “particularly of courts of our own [c]ircuit, are entitled to
10 special consideration.” *Sanchez v. Cont. Trucking Co.*, 1941-NMSC-049, ¶ 8, 45
11 N.M. 506, 117 P.2d 815. In doing so, “we accord them the deference they merit
12 based on our view of the correctness of their analysis of our law.” *Hovey-Jaramillo*,
13 2023-NMCA-068, ¶ 18.

⁴We also note that Georgia’s UM/UIM statute shares a similar purpose to New Mexico’s UM/UIM statute: to expand insurance coverage to protect the public from irresponsible uninsured motorists. Compare *Progressive Nw. Ins. Co. v. Weed Warrior Servs.*, 2010-NMSC-050, ¶ 5, 149 N.M. 157, 245 P.3d 1209 (“The UM/UIM statute is intended to expand insurance coverage and to protect individual members of the public against the hazard of culpable uninsured motorists.” (internal quotation marks and citation omitted)), with *Smith v. Com. Union Assurance Co.*, 268 S.E.2d 632, 634 (Ga. 1980) (“The purpose of uninsured motorist legislation is . . . to facilitate indemnification for injuries to a person who is legally entitled to recover damages from an uninsured motorist, and thereby to protect innocent victims from the negligence of irresponsible drivers.” (internal quotation marks and citation omitted)).

1 {13} In both *Ammons* and *Dockery*, plaintiffs sought punitive damages under their
2 UM policy based on their vehicle being stolen and damaged by unknown tortfeasors.
3 See *Ammons*, 431 F. Supp. 3d at 1284; *Dockery*, 491 F. Supp. 3d at 983. In *Padilla*,
4 a plaintiff sought punitive damages under her UM policy based on an automobile
5 accident with an unknown tortfeasor. 781 F. Supp. 3d at 1206-07. Because both
6 *Dockery* and *Padilla* applied the reasoning articulated in *Ammons* to preclude a
7 punitive damages award against an unknown tortfeasor, see *Dockery*, 491
8 F. Supp. 3d at 988-89; *Padilla*, 781 F. Supp. 3d at 1210-13, our discussion will focus
9 on the analysis presented in *Ammons*.

10 {14} In *Ammons*, the district court applied *Jaramillo*'s reasoning to conclude that
11 punitive damages were unavailable against an unknown tortfeasor. *Ammons*, 431
12 F. Supp. 3d at 1296-98. The court arrived at this conclusion despite acknowledging
13 that ““punitive damages are as much a part of the potential award under the uninsured
14 motorist statute as damages for bodily injury.”” *Id.* at 1297 (quoting *Stinbrink*, 1990-
15 NMSC-108, ¶ 5. This is because the district court found that under *Jaramillo*'s
16 reasoning, the purpose of punitive damages would not be achieved by allowing such
17 an award against an unknown tortfeasor. See *Ammons*, 431 F. Supp. 3d at 1296-97
18 (“Such additional damages are awarded for the *limited purposes* of punishment and
19 to deter others from the commission of like offenses.” (quoting *Jaramillo*, 1994-
20 NMSC-018, ¶ 26)).

1 {15} The court in *Ammons* also determined that a punitive damages award would
2 not further the UM/UIM statute’s goal of “covering the gap in compensation caused
3 by an irresponsible tortfeasor who does not have legally mandated liability
4 insurance.” *Id.* at 1297. As the court noted, “The purpose of requiring an insurer to
5 provide UM coverage is to be sure that an injured insured is *compensated* for injuries
6 even when the tortfeasor is financially irresponsible.” *Id.* at 1296 (emphasis added)
7 (quoting *Jaramillo*, 1994-NMSC-018, ¶ 24). And the “goal of punitive damages is
8 *not* compensation.” *Id.* at 1297 (citing *Madrid v. Marquez*, 2001-NMCA-087, ¶ 4,
9 131 N.M. 132, 33 P.3d 683). We find this analysis persuasive.

10 {16} In keeping with *Jaramillo*, we are convinced that the purpose of punitive
11 damages would not be fulfilled by allowing such an award against an unknown
12 tortfeasor in hit-and-run accidents. *See Jaramillo*, 1994-NMSC-018, ¶ 26. The
13 punishment an unknown tortfeasor might face is far too attenuated to hold otherwise.
14 We also doubt that any hit-and-run driver would be deterred from fleeing the scene
15 if an insurance company was responsible for paying punitive damages. *See, e.g.*,
16 *Bralely v. Berkshire Mut. Ins. Co.*, 440 A.2d 359, 363 (Me. 1982) (“[N]o deterrent
17 effect can be anticipated from an award of punitive damages against an insurance
18 company under an uninsured motorist provision.”). And although not dispositive,
19 allowing for punitive damages in a situation where the tortfeasor is unknown would

1 undoubtedly “dilute” the purpose of punitive damages because an insurer would be
2 unable to subrogate.⁵ See *Jaramillo*, 1994-NMSC-018, ¶ 24.

3 {17} Our holding is also guided by common sense. A contrary conclusion would
4 almost certainly result in increased litigation. Instead of incentivizing speedy
5 settlements on compensatory damages claims, individuals who suffer hit-and-run
6 injuries might be more likely to litigate their claims in hope of a punitive damages
7 award. Furthermore, determining a punitive damages award is often a fact-intensive
8 inquiry based on reason and justice. Our jury instructions state that the “amount of
9 punitive damages must be based on reason and justice taking into account all the
10 circumstances, including the nature and enormity of the wrong and such aggravating
11 and mitigating circumstances.” UJI 13-1827 NMRA. Additionally, the “property or
12 wealth of the defendant is a legitimate factor” to consider. *Id.* As a result, we
13 question the prudence or possibility of appropriately assessing reasonable and just
14 punitive damages against an unknown tortfeasor.

15 {18} To be clear, we sympathize with Appellee—and all the victims of hit-and-run
16 collisions—and acknowledge that important policy objectives might be furthered by
17 allowing an injured insured to recover punitive damages in such situations. Indeed,

⁵We also question what would happen in those cases where punitive damages were awarded against an unknown tortfeasor that is later identified but has since died. Under our case law, an insurer would undoubtedly be barred from recovering these damages against the decedent’s estate.

1 there is great public benefit in incentivizing individuals who cause an accident to
2 remain at the scene, it is not at all clear that this policy would provide such an
3 incentive. And while awarding punitive damages in these situations would likely
4 provide additional incentive for insurers to locate the responsible driver, that is not
5 the purpose of punitive damages in New Mexico.

6 {19} As Appellee notes, the Legislature has already conferred a duty upon insurers
7 to investigate claims. Specifically, insurers must “adopt and implement reasonable
8 standards for the prompt investigation and processing of insureds’ claims.” NMSA
9 1978, § 59A-16-20(C) (1997, amended 2025). Appellee cites no authority to suggest
10 that an insurer must identify an unknown tortfeasor or face the threat of paying a
11 punitive damages award. Of course, insurers cannot avoid their statutory obligation
12 to reasonably and promptly investigate claims. *See id.* But appropriate remedies
13 already exist for such a violation. *See, e.g.*, NMSA 1978, § 59A-16-30 (1990).

14 {20} Finally, we arrive at our conclusion that punitive damages are unavailable
15 against an unknown tortfeasor with full acknowledgment that the UM/UIM statute
16 is a remedial statute. *See Progressive Nw. Ins. Co.*, 2010-NMSC-050, ¶ 14.
17 Consequently, we interpret the UM/UIM statute liberally “to implement the purpose
18 of *compensating* those injured through no fault of their own,” and strictly construe
19 any exceptions. *Kileen*, 2025-NMSC-038, ¶ 12 (emphasis added) (alteration,
20 internal quotation marks, and citation omitted). We are unpersuaded, however, that

1 a liberal interpretation of the statute directs us to a different conclusion. We are also
2 unpersuaded that our determination conflicts with the remedial nature of the statute.
3 {21} Our holding aligns with the UM/UIM statute’s remedial purpose to
4 compensate injured insureds when the tortfeasor is underinsured, uninsured, or
5 unknown because compensatory and punitive damages are distinct. Punitive
6 damages are intended to punish wrongdoers and deter others from engaging in
7 similar conduct. *Jaramillo*, 1994-NMSC-018, ¶ 26. They are not intended to
8 compensate an individual insured who suffers an injury. *See Madrid*, 2001-NMCA-
9 087, ¶ 4; *see also Manzanares v. Allstate Ins. Co.*, 2006-NMCA-104, ¶ 10, 140 N.M.
10 227, 141 P.3d 1281 (noting that “while under our case law punitive damages are a
11 part of UIM coverage, we have also recognized that punitive damages generally
12 evoke less compelling concerns”); *State ex rel. N.M. State Highway & Transp. Dep’t*
13 *v. Baca*, 1995-NMSC-033, ¶ 22, 120 N.M. 1, 896 P.2d 1148 (“By their nature,
14 punitive damages confer a windfall upon an otherwise fully-compensated
15 plaintiff.”). Because neither punishment nor deterrence would be achieved by
16 making punitive damages available against an unknown tortfeasor, we do not believe
17 that a punitive award would protect the car-owning, insured public in a case such as
18 this. And, as we have noted, our conclusion is consistent with the heavy balance of
19 authority on this issue.

1 **CONCLUSION**

2 {22} For the foregoing reasons, we conclude that punitive damages, in a case such
3 as this, are unavailable against an unknown tortfeasor. As a result, Appellee may not
4 recover punitive damages from Progressive, his insurer, under his UM policy. We
5 therefore reverse the district court’s grant of Appellee’s motion for partial summary
6 as to Progressive’s punitive damages liability, and reverse the district court’s denial
7 of Progressive’s motion for summary judgment as to punitive damages liability. We
8 remand the case to the district court for further proceedings consistent with this
9 opinion.

10 {23} **IT IS SO ORDERED.**

11
12

JACQUELINE R. MEDINA, Chief Judge

13 **I CONCUR:**

14
15

J. MILES HANISEE, Judge

16 **JANE B. YOHALEM, Judge (dissenting).**

1 **YOHALEM, Judge (dissenting).**

2 {24} I respectfully dissent from the majority’s conclusion that an insured motorist
3 is not entitled to recover punitive damages from their insurance company under the
4 UM/UIM statute when the tortfeasor is an unknown motorist. I believe that the
5 answer to the question before this Court about UM/UIM coverage for punitive
6 damages is controlled by the plain language of the UM/UIM statute and by existing
7 precedent in this Court and in our Supreme Court construing the UM/UIM statute. I
8 agree with the district court’s conclusion that under New Mexico’s UM/UIM statute,
9 Progressive owes “a contractual duty to pay damages that the insured is *legally*
10 *entitled to recover* against Defendant . . . Doe, including any award of punitive
11 damages that may be entered against Defendant . . . Doe.”

12 {25} The UM/UIM statute requires, in relevant part, that insurance coverage be
13 provided “for the protection of persons insured thereunder who are legally entitled
14 to recover damages from owners or operators of uninsured motor vehicles.” Section
15 66-5-301(A). The title of the UM/UIM statute is “Insurance against *uninsured and*
16 *unknown motorists.*” (Emphasis added.) The title of the statute has assisted both the
17 public and the courts, including the parties in this case, in uniformly construing the
18 statutory phrase “owners or operators of uninsured motor vehicles,” *see id.*, as used
19 in the UM/UIM statute as a reference to both uninsured and unknown motorists. *See*
20 *Lerma v. State*, 2025-NMSC-033, ¶ 29, 578 P.3d 1111 (concluding that in discerning

1 legislative intent, “we must construe the parts of [a statute] harmoniously, including
2 the [statute’s] title . . . if [it is] necessary to its construction” (internal quotation
3 marks and citation omitted)).⁶ By discussing these two types of motorists together,
4 without any distinction between them in the statutory language, the plain language
5 of the UM/UIM statute suggests that our Legislature intended to treat uninsured and
6 unknown motorists identically. Finding no authority to the contrary, I begin by
7 assuming that the construction given the UM/UIM statute by our appellate courts is
8 intended to apply equally to uninsured and unknown motorists alike, absent some
9 compelling reason to treat them differently. *See Sandoval v. Valdez*, 1978-NMCA-
10 016, ¶ 16, 91 N.M. 705, 580 P.2d 131 (concluding that the Legislature’s intent is the
11 same whether the motorist is uninsured or unknown).

12 {26} This construction of the plain language of the UM/UIM statute informs my
13 reading of the precedent from our Supreme Court and from this Court relevant to an
14 insured’s entitlement to punitive damages under the UM/UIM statute. In *Stewart*,
15 our Supreme Court examined the language of the UM/UIM statute and held that “an

⁶Although the UM/UIM statute was enacted before the effective date of NMSA 1978, Section 12-2A-13 (1997), we note that reliance on the title of the UM/UIM statute in its construction complies with that section, which states, “Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted.” House Bill 112, 33d Leg., 2nd Reg. Sess., and Chapter 35, Section 325 of New Mexico Laws of 1978, adopting that bill, include the title, “Insurance Against Uninsured and Unknown Motorists.”

1 insured may recover punitive damages from [an] insurer if [they] would be legally
2 entitled to recover [punitive damages] from the uninsured tortfeasor.” 1986-NMSC-
3 073, ¶ 13. *See* § 66-5-301(A) (mandating insurance coverage for bodily injury or
4 destruction of property “for the protection of persons insured thereunder who are
5 legally entitled to recover damages from owners or operators of uninsured motor
6 vehicles”). In addition to relying on the plain language of the UM/UIM statute in
7 concluding that uninsured motorist coverage includes punitive damages, our
8 Supreme Court in *Stewart* relied on the legislative purpose, explaining that the
9 UM/UIM statute is intended “to protect the insured against the financially
10 irresponsible motorist, not to protect the insurance company.” 1986-NMSC-073,
11 ¶ 9 (internal quotation marks and citation omitted); *see Stinbrink*, 1990-NMSC-108,
12 ¶ 5 (“[P]unitive damages are as much a part of the potential award under the
13 uninsured motorist statute as damages for bodily injury.”).

14 {27} The controversy in this appeal focuses on *Stewart*’s holding that “under our
15 uninsured motorist law, an insured may recover punitive damages from [their]
16 insurer *if [they] would be legally entitled to recover them from the uninsured*
17 *tortfeasor.*” 1986-NMSC-073, ¶ 13 (emphasis added). Progressive argues that when
18 its insured is injured by an unknown motorist, rather than by an uninsured motorist,
19 the insured is not “legally entitled to recover [punitive damages]” from the unknown
20 tortfeasor. *See id.* Progressive claims that our Supreme Court’s holding in *Stewart*

1 as to an injury caused by an *uninsured* motorist is not controlling when the injury is
2 caused by an *unknown* motorist. Progressive’s argument turns on its contention that
3 an *unknown* tortfeasor is the same, under the law, as a *deceased* tortfeasor, pointing
4 to our Supreme Court’s holding in *Jaramillo* that punitive damages are not
5 recoverable under the UM/UIM statute from a deceased tortfeasor as the controlling
6 authority. *See* 1994-NMSC-018, ¶ 21. Progressive argues that an unknown tortfeasor
7 must be treated the same as a deceased tortfeasor for purposes of a punitive damages
8 award under the UM/UIM statute. According to Progressive, even when an insured
9 is entitled to punitive damages under tort law principles, if the tortfeasor is unknown,
10 punitive damages are not recoverable because their purpose—punishment and
11 deterrence—cannot be served. Progressive equates this policy argument with a lack
12 of a “legal entitlement” to punitive damages.

13 {28} In my view, the distinction argued by Progressive, and adopted by the
14 majority, between unknown motorists and uninsured motorists as to recovery of
15 punitive damages under the UM/UIM statute is not supported by analogizing an
16 unknown tortfeasor to a tortfeasor who dies prior to payment. Our Supreme Court’s
17 decision in *Jaramillo* and this Court’s decision in *Maidment*, which *Jaramillo*
18 approved, *see* 1994-NMSC-018, ¶ 26 (adopting *Maidment*), apply the principle
19 taken directly from the plain language of the UM/UIM statute that “an insured may
20 recover punitive damages . . . if [they] would be *legally entitled to recover them from*

1 *the uninsured tortfeasor.*” *Jaramillo*, 1994-NMSC-018, ¶ 23 (emphasis added)
2 (internal quotation marks and citation omitted). *Maidment* explains that the phrase
3 “legally entitled to recover damages” in the UM/UIM statute “requires that the
4 injured person prove the elements necessary to establish an action in negligence:
5 duty, breach, proximate cause, and loss or damages” that entitle them under the
6 common law of torts to recover either compensatory damages, or both compensatory
7 and punitive damages. 1988-NMCA-060, ¶ 19 (internal quotation marks omitted).
8 Where the conduct of the tortfeasor supports an award of punitive damages under
9 the common law, *Jaramillo* and *Maidment* agree that punitive damages are damages
10 that the insured is “legally entitled to recover” absent some other traditional common
11 law defense that would be available to the tortfeasor. *See Maidment*, 1988-NMCA-
12 060, ¶¶ 21-23, 25 (internal quotation marks and citation omitted).

13 {29} *Jaramillo* and *Maidment* both examine whether an injured motorist would be
14 “legally entitled to recover [punitive damages] from the uninsured tortfeasor” when
15 the tortfeasor is deceased. *Maidment*, 1988-NMCA-060, ¶ 7; *Jaramillo*, 1994-
16 NMSC-018, ¶ 23. They conclude that the death of the tortfeasor before payment of
17 the punitive damages is a common law defense to punitive damages. The common
18 law prohibits recovery of punitive damages from the estate of a deceased tortfeasor.
19 *Maidment*, 1988-NMCA-060, ¶ 7; *Jaramillo*, 1994-NMSC-018, ¶ 23. Because an
20 insured motorist cannot obtain damages from their insurer that they are not “legally

1 entitled to recover” from the uninsured tortfeasor, both courts hold that punitive
2 damages cannot be recovered when the uninsured motorist is deceased. *Maidment*,
3 1988-NMCA-060, ¶ 7; *Jaramillo*, 1994-NMSC-018, ¶ 23.

4 {30} Although both *Jaramillo* and *Maidment* discuss the policy behind the
5 common law rule that recovery cannot be had from the estate of a deceased
6 tortfeasor, noting that neither punishment nor deterrence are able to be achieved
7 when the tortfeasor is dead, the basis of both decisions is not the policy, but the
8 statutory language limiting recovery to damages that the insured is “legally entitled
9 to recover from owners or operators of uninsured motor vehicles because of bodily
10 injury, . . . and for injury to or destruction of property.” NMSA 1978, § 66-5-301(A).

11 {31} I am not persuaded by Progressive’s argument that an unknown motorist is
12 the same as a deceased motorist under the law. Nor am I persuaded by its policy
13 argument that allowing recovery from an unknown motorist would subvert the
14 purposes of punitive damages. Our Supreme Court rejected this policy argument in
15 *Stewart* as to uninsured motorists, holding that its decision did not subvert the policy
16 behind punitive damages because punitive damages were still the responsibility of
17 the uninsured motorist: the Court stated that it was merely shifting the burden of
18 recovering from the insured to the insurer.

19 {32} I do not find Progressive’s arguments that it is as impossible for an insurer to
20 recover in subrogation from an unknown motorist as it is to recover from a deceased

1 motorist, and that requiring an insurance company to pay punitive damages to its
2 insured under these circumstances subverts the policy of punishment and deterrence
3 served by punitive damages, persuasive. Our Supreme Court considered and rejected
4 these arguments in *Stewart*, noting (in the context of an uninsured motorist) that
5 because the insurance company could seek subrogation from the tortfeasor, the
6 Court's holding "merely shifts the burden of filing suit against an uninsured
7 tortfeasor for the payment of punitive damages from the insured to the insurer."
8 *Stewart*, 1986-NMSC-073, ¶ 14. I see no reason to assume a different legislative
9 intent concerning placing the burden on the insurance company of investigating a
10 hit-and-run injury, finding the motorist, and seeking subrogation. Merely hiding
11 one's identity at the time of the tort does not have the finality of death.

12 {33} Finally, contrary to the majority, I do not see a danger of spiraling insurance
13 premiums from allowing recovery for punitive damages against both unknown and
14 uninsured motorists. Payment under an uninsured motorist policy cannot exceed the
15 policy limit set by the insurance contract. *See id.* ¶ 18 ("[T]he total amount of
16 damages for which [the insurer] can be held liable should not exceed the policy
17 limits."). There is no statutory requirement to pay the insured the full amount of
18 compensatory damages incurred by the insured, let alone the full amount of punitive
19 damages awarded, if that amount exceeds the policy limits. The liability of the
20 insurance company is thus controlled by its contract.

1 {34} Though the majority ably presents a policy argument to the contrary, I believe
2 that the plain language of the UM/UIM statute and the decisions of our Supreme
3 Court construing that language require Progressive to pay the punitive damages its
4 insured is legally entitled to receive from the tortfeasor, despite the status of the
5 tortfeasor as an unknown motorist. The majority having concluded otherwise, I
6 respectfully dissent.

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8

JANE B. YOHALEM, Judge, dissenting