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4 deviations from the official paper version filed by the Court of Appeals and does not include the
5 filing date.

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

7 **CONSUELO LUCERO,**

8 Plaintiff-Appellant,

9 v.

NO. 29,859

10 **DAVID TRUJILLO, SAFECO INSURANCE**
11 **COMPANY OF AMERICA, and PROGRESSIVE**
12 **HALCYON INSURANCE COMPANY,**

13 Defendants-Appellees.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
15 **Ted Baca, District Judge**

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1 | Albuquerque, NM

2 | for Appellees

1 **MEMORANDUM OPINION**

2 **BUSTAMANTE, Judge.**

3 Insured appeals the grant of summary judgment in favor of Insurer. We
4 proposed to reverse based on our recent decision in *Romero v. Progressive*
5 *Northwestern Ins. Co.*, No. 28,720, slip op. (N.M. Ct. App. Oct. 26, 2009). In
6 response, Insurer asks that we stay the case until the petition for writ of certiorari filed
7 in *Romero* is decided by our Supreme Court. We point out, however, that *Romero* is
8 the latest pronouncement from this Court, and although certiorari has been filed and
9 may be granted, the Supreme Court has not reversed or overruled this Court's decision
10 in *Romero*. Until the Supreme Court does so, *Romero* remains controlling precedent
11 on which our courts are entitled to rely. See *Arco Materials, Inc. v. Taxation &*
12 *Revenue Dep't*, 118 N.M. 12, 14, 878 P.2d 330, 332 (Ct. App. 1994), *rev'd on other*
13 *grounds by Blaze Constr. Co. v. Taxation & Revenue Dep't*, 118 N.M. 647, 884 P.2d
14 803 (Ct. App. 1994).

15 For the reasons explained in our calendar notice, we reverse the district court's
16 order granting summary judgment in favor of Insurer, and remand for further
17 proceedings.

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IT IS SO ORDERED.

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MICHAEL D. BUSTAMANTE, Judge

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WE CONCUR:

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6

JAMES J. WECHSLER, Judge

7

8

JONATHAN B. SUTIN, Judge