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INSURERS NEED NOT HAVE A SPANISH LANGUAGE FORM TO "MAKE AVAILABLE" UNINSURED AND UNDERINSURED COVERAGE

Ballesteros v. Am. Standard Ins. Co. of Wis. (Arizona Supreme Court, January 20, 2011)

A.R.S. § 20-259.01 requires insurers to "make available" and offer "by written notice" uninsured and underinsured (UM/UIM) motorist coverage. This does not require translation of the offer into Spanish so that a Spanish speaker understands the terms of the offer, but rather "requires only that the insurer make an offer that, if accepted, would bind the insurer to provide the offered coverage." The plain language of the statute does not require a Spanish form, whereas other statutes explicitly require Spanish translations. In addition, in 1997 the statute was amended to require forms in both Spanish and English, but in 1998 the requirement was removed, confirming that the legislature did not intend to impose a Spanish translation requirement.

In 1992, A.R.S. § 20-259.01 was amended to state that the selection or rejection of UM/UIM coverage on a "form approved by the director [of the Department of Insurance] shall be valid." Because Ballesteros was offered UM/UIM coverage on a Department of Insurance-approved form, the insurer was held to have complied with the statute.

NO PERSONAL JURISDICTION OVER MISSOURI RESIDENT WHOSE SPOUSE HAS ARIZONA BUSINESS DEALINGS

Sigmund v. Rea (Ct. Appeals, Div. One, February 1, 2011)

To determine whether the husband's unilateral business dealings in Arizona also conferred personal jurisdiction over his wife, the court of appeals looked to the law of the couple's matrimonial domicile - Missouri. Unlike Arizona, Missouri does not recognize the "marital community," and does not allow the unilateral actions of one spouse to create a community obligation. Thus, contrary to Plaintiff's argument that the husband's business dealings conferred a benefit on the "marital community," including the wife, no such "marital community" existed. The court therefore held that the wife did not have minimal contacts in Arizona to confer personal jurisdiction over her. The court limited its holding to the application of Missouri law, noting that it was not drawing "a bright line distinction between community property states and all other states."

The court distinguished this case from *Rollins v. Vidmar*, (App. 1985), which had held that the individual actions of one spouse were sufficient to establish minimum contacts for the other because the couple resided in a community property state and the community was liable for the contracts of either spouse.

PARTICIPANTS IN BRAWL CAN BE HELD JOINTLY AND SEVERALLY LIABLE

Chappell v. Wenholz (Ct. Appeals, Div. One, February 8, 2011)

Defendants, a group of friends, were drinking at a hotel bar. They encountered plaintiffs standing outside. An argument ensued, plaintiffs were "sucker punched," and fell to the ground. Without exchanging any words, defendants proceeded to hit and kick the plaintiffs after

plaintiffs were on the ground. The trial court granted summary judgment for defendants.

The court of appeals reversed, finding sufficient evidence that defendants acted in concert to inflict injuries on the plaintiffs. Under Arizona law, liability is several only and not joint, unless both tortfeasors were acting in concert. Acting in concert means "entering into a conscious agreement to pursue a common plan or design to commit an intentional tort and actively taking part in that intentional tort." One must act intentionally to act in concert with another. In addition, one who provides substantial assistance to another committing an intentional tort does not act in concert unless he consciously agrees with the other to commit the intentional tort.

Here, there was evidence from which a jury could conclude that defendants implicitly formed a conscious agreement to commit battery on plaintiffs when they collectively joined in the fight in full sight of each other.

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