

ARIZONA COURT OF APPEALS HOLDS THAT UIM STATUTE DOES NOT ALLOW OFF-HIGHWAY VEHICLE EXCLUSION

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State Farm V. Orlando

Arizona Court of Appeals, Division 1

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In a published opinion this week, the Court of Appeals held that Arizona’s underinsured motorist (“UIM”) statute does not allow an off-highway vehicle exclusion that would otherwise be valid under Arizona’s uninsured motorist statute (“UM”). In so doing, it rejected an argument that that it was bound to follow cases interpreting the UM statute when deciding UIM cases.

The case involved a rollover accident on an ATV. The passenger, Orlando, received policy limits from the driver and then made a UIM claim on her own State Farm policy. State Farm wrote to her counsel and said that the vehicle was not an “underinsured motor vehicle” because it was an off-road vehicle. Orlando did not respond to the letter or State Farm’s follow up. State Farm then sued, seeking a declaratory judgment that the policy did not provide UIM coverage for the accident. Orlando counterclaimed and alleged a breach of the policy and bad faith.

State Farm moved for summary judgment and the trial court granted the motion. It agreed with State Farm’s reading of the policy and concluded that the ATV was not an “underinsured motor vehicle,” in part because the accident did not occur on a public road and in part because the definition was similar to previously decided UM cases. It also found that State Farm acted reasonably in handling Orlando’s claim. Orlando moved for new trial and argued that the previous cases had involved UM but not UIM policies and that the outcome should be different for UIM policies. The trial court denied the motion and Orlando appealed.

The Court of Appeals began its discussion by comparing the language of the UIM and the UM statutes and found that there were “notable differences” in the subsections governing coverage. It explained that UM coverage subsection could be limited by the terms and conditions of the policy, but that the UIM coverage subsection had no such limitation. It also cited case law explaining the broad applicability of UIM coverage and discussed the public policy differences between UIM and UM coverage, including the lack of express limitations on UIM coverage.

The Court then reviewed the UM cases cited by State Farm and compared the language in those cases with the definition of “uninsured motor vehicle,” and the Arizona Financial Responsibility Act’s definition of “motor vehicle” which had been updated since those cases came out. It concluded that even under the new definitions, an UM policy would not have to cover an off road vehicle. But it also agreed that UM coverage is not the same as UIM coverage.

Accordingly, the Court found that the off-highway provision was void and enforceable and vacated the trial court’s grant of summary judgment.

Finally, the Court addressed Orlando’s bad faith claim. It concluded that Orlando did not provide specific evidence showing that State Farm acted in bad faith because Orlando offered only a declaration from an expert witness that contained only conclusory allegations and no evidence for support. The Court also concluded that Orlando waived an argument that State Farm failed to make a prompt determination of her claim.

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Justin Ackerman represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Following his clerkship, Justin has handled over 75 appeals, successfully arguing before the Arizona Court of Appeals, Arizona Supreme Court, and U.S. Court of Appeals for the Ninth Circuit. Justin has spoken at many seminars on appellate preservation topics and is recognized as a *Southwest Super Lawyers* Rising Star and Best Lawyers Ones to Watch in the area of Appellate Practice. He currently serves as the Chair of the Appellate Group at JSH.

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