



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**KAY FRANKLIN v. CSAA GENERAL INSURANCE COMPANY
CV-22-0266-CQ**

PARTIES:

Plaintiff: Kay Franklin, on behalf of herself and all others similarly situated

Defendant: CSAA General Insurance Company

FACTS:

Plaintiff Kay Franklin’s mother was killed in an auto accident with a tortfeasor who held an insurance policy with a \$25,000 per-person liability limit. After Franklin collected \$25,000 on a liability claim under the tortfeasor’s policy, she made an underinsured motorist (“UIM”) claim to Defendant CSAA General Insurance Company (“CSAA”). CSAA had issued a policy to Franklin’s mother (the “Policy”), which provided \$50,000 of UIM coverage per person. After CSAA paid \$50,000 under the policy, Franklin sought an additional \$50,000 under the theory that her mother had insured a second vehicle under the Policy and that the Policy provides a separate, second UIM coverage for the second vehicle that Franklin can “stack.” By doing so, Franklin would be able to collect UIM coverage for both vehicles under the policy pursuant to A.R.S. § 20-259.01(H). CSAA disputed the claim for additional coverage.

On April 4, 2022, Franklin sued CSAA in the Federal District Court for the District of Arizona. Franklin alleged that, under Arizona law, auto insurers must permit their customers to stack policies or coverages for uninsured and underinsured (“UM/UIM”) motor vehicle accident claims unless the insurer employs one of two methods to avoid stacking, either: (1) including a statement in the policy “inform[ing]” the insured of her “right to select one policy or coverage” as “applicable to any one accident” or (2) sending the insured, within thirty days of being notified of the accident, written notice of her “right to select one policy or coverage.” Franklin alleged that CSAA did neither in this case and that CSAA breached its contractual and legal duties to Franklin because it applied a single UM/UIM coverage limit to her claim. Franklin therefore brought claims for declaratory judgment, breach of contract, and bad faith.

On April 21, 2022, Franklin filed a First Amended Complaint that brought the above claims as a class action, with Franklin being the named plaintiff on behalf of herself and all other CSAA insureds with multiple covered vehicles and UM/UIM claims. On May 16, 2022, CSAA answered, denying that the UIM coverages should be stacked, denying that class certification was appropriate, and denying all liability.

On August 15, 2022, CSAA filed a motion to certify the below questions to this Court. On November 2, 2022, the district court granted the motion to certify questions, reasoning that interpretation of A.R.S. § 20-259.01 determines the outcome of the case, that no controlling precedent exists, that resolution of the questions is dispositive to the case, and that the questions are of significant magnitude based on the number of disputes involving the questions. This Court

accepted the certification.

CERTIFIED QUESTIONS:

1. Does A.R.S. § 20-259.01 mandate that a single policy insuring multiple vehicles provides different UIM coverages for each vehicle, or a single UIM coverage that applies to multiple vehicles?
2. Does A.R.S. § 20-259.01(B) bar an insured from receiving UIM coverage from the policy in an amount greater than the bodily injury liability limits of the policy?

STATUTE:

A.R.S. § 20-259.01 provides, in relevant part:

A. Every insurer writing automobile liability or motor vehicle liability policies shall make available to the named insured thereunder and by written notice offer the named insured and at the request of the named insured shall include within the policy uninsured motorist coverage that extends to and covers all persons insured under the policy, in limits not less than the liability limits for bodily injury or death contained within the policy. The offer of limits to a named insured or applicant shall be made on a form approved by the director. An insurance producer that uses such a form in offering uninsured motorist coverage satisfies the insurance producer's standard of care in offering and explaining the nature and applicability of uninsured motorist coverage. The policy declarations page must be sent to the named insured, constitutes the final expression of the named insured's decision to purchase or reject uninsured motorist coverage and is valid for, extends to and covers all persons insured under the policy. An offer form is not required where the named insured purchases such coverage in an amount equal to the limits for bodily injury or death contained in the policy. The offer need not be made in the event of the reinstatement of a lapsed policy or the transfer, substitution, modification or renewal of an existing policy or as a result of a change to the minimum liability limits for bodily injury or death prescribed in § 28-4009. At the request of the named insured, the named insured may purchase and the insurer shall then include within the policy uninsured motorist coverage that extends to and covers all persons insured under the policy in any amount up to the liability limits for bodily injury or death contained within the policy but not less than the limits prescribed in § 28-4009.

B. Every insurer writing automobile liability or motor vehicle liability policies shall also make available to the named insured thereunder and shall by written notice offer the named insured and at the request of the named insured shall include within the policy underinsured motorist coverage that extends to and covers all persons insured under the policy, in limits not less than the liability limits for bodily injury or death contained within the policy. The offer of limits to a named insured or applicant shall be made on a form approved by the director. An insurance producer that uses such a form in offering underinsured motorist coverage satisfies the insurance producer's standard of care in offering and explaining the nature and applicability of underinsured motorist coverage. The policy declarations page must be sent to the

named insured, constitutes the final expression of the named insured's decision to purchase or reject underinsured motorist coverage and is valid for, extends to and covers all persons insured under the policy. An offer form is not required where the named insured purchases such coverage in an amount equal to the limits for bodily injury or death contained in the policy. The offer need not be made in the event of the reinstatement of a lapsed policy or the transfer, substitution, modification or renewal of an existing policy or as a result of a change to the minimum liability limits for bodily injury or death prescribed in § 28-4009. At the request of the named insured, the named insured may purchase and the insurer shall then include within the policy underinsured motorist coverage that extends to and covers all persons insured under the policy in any amount authorized by the insured up to the liability limits for bodily injury or death contained within the policy.

* * *

D. "Uninsured motor vehicles", subject to the terms and conditions of that coverage, includes any insured motor vehicle if the liability insurer of the vehicle is unable to make payment on the liability of its insured, within the limits of the coverage, because of insolvency.

E. "Uninsured motorist coverage", subject to the terms and conditions of that coverage, means coverage for damages due to bodily injury or death if the motor vehicle that caused the bodily injury or death is not insured by a motor vehicle liability policy that contains at least the limits prescribed in § 28-4009. For the purposes of uninsured motorist coverage, an uninsured motorist does not include a person who is insured under a motor vehicle liability policy that complies with § 28-4009.

F. Any payment made under the bodily injury liability portion of a motor vehicle liability policy insuring the motor vehicle that caused the bodily injury or death in an amount equal to or less than the per person or per occurrence bodily injury limits of that policy, regardless of the number of persons receiving payments, precludes any payment under the uninsured motorist coverage based on the fault of the person who is insured under the motor vehicle liability policy.

G. "Underinsured motorist coverage" includes coverage for a person if the sum of the limits of liability under all bodily injury or death liability bonds and liability insurance policies applicable at the time of the accident is less than the total damages for bodily injury or death resulting from the accident. To the extent that the total damages exceed the total applicable liability limits, the underinsured motorist coverage provided in subsection B of this section is applicable to the difference.

H. Uninsured and underinsured motorist coverages are separate and distinct and apply to different accident situations. Underinsured motorist coverage shall not provide coverage for a claim against an uninsured motorist in addition to any applicable uninsured motorist coverage. If multiple policies or coverages purchased by one insured on different vehicles apply to an accident or claim, the insurer may limit the coverage so that only one policy or coverage, selected by the insured, shall

be applicable to any one accident. If the policy does not contain a statement that informs the insured of the insured's right to select one policy or coverage as required by this subsection, within thirty days after the insurer receives notice of an accident, the insurer shall notify the insured in writing of the insured's right to select one policy or coverage. For the purposes of this subsection, "insurer" includes every insurer within a group of insurers under a common management.

* * *

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.