



ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY



STATE FARM AUTOMOBILE INSURANCE COMPANY V.
JACEY LEE ORLANDO
CV-23-0228-PR

PARTIES:

Petitioner: State Farm Automobile Insurance Company (“State Farm”)

Respondent: Jacey Lee Orlando (“Orlando”)

FACTS:

In February 2018, Orlando was injured while riding as a passenger in a 2014 Polaris RZR 1000 ATV (the “Polaris”) at the Imperial Sand Dunes in California. The accident did not occur on a public road. The Polaris driver’s insurance company paid Orlando \$50,000. Orlando also submitted an underinsured motorist (“UIM”) claim under her own State Farm automobile policy, which insured her Honda Accord.

Orlando’s State Farm policy (the “Policy”) provides up to \$50,000 for UIM coverage per accident. The Policy contains the following relevant provisions:

UNDERINSURED MOTOR VEHICLE COVERAGE

* * *

Underinsured Motor Vehicle does not include a land motor vehicle: . . .

2. designed for use primarily off public roads except while on public roads;

* * *

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *underinsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and

2. caused by an accident that involves the operation, maintenance, or use of an *underinsured motor vehicle* as a motor vehicle.

Based on this language, State Farm determined that the Policy does not provide UIM coverage for the accident because the Polaris, the “underinsured motor vehicle” at issue, is designed for use

primarily off public roads and because the accident and resulting injuries did not occur on a public road as required by the Policy.

State Farm subsequently initiated this action and sought a judicial declaration on Orlando's UIM coverage claim; Orlando counterclaimed for breach of contract and bad faith. State Farm filed a motion for summary judgment, which the trial court granted in State Farm's favor on all claims. The court reasoned that: (1) the Polaris is not an underinsured motor vehicle under the Policy because the accident did not occur on a public road and because the Polaris was designed for use primarily off public roads; and (2) the Policy's "underinsured motor vehicle" definition is valid because it does not conflict with Arizona's Uninsured/Underinsured Motorist Act, A.R.S. § 20-259.01.

The court of appeals reversed the trial court decision on Orlando's breach of contract claim and held that the Policy's underinsured motor vehicle definition cannot limit or bar UIM coverage based on the type of vehicle involved. In doing so, it recognized that previous Arizona appellate cases held that insurers could exclude off-road vehicles being used off-road from uninsured motorist ("UM") coverage. *See W. Am. Ins. Co. v. Pirro*, 167 Ariz. 437, 438 (App. 1990); *Chase v. State Farm Mut. Auto. Ins. Co.*, 131 Ariz. 461, 468 (App. 1982). The court reasoned that these cases do not apply here because: (1) UM and UIM coverages are distinct and apply to different accident situations; and (2) although A.R.S. § 20-259.01(E) states that UM coverage is "subject to the terms and conditions of that coverage," A.R.S. § 20-259.01(G)'s definition of UIM coverage does not include that language.

ISSUE: Is an insurer required to offer underinsured motorist coverage under A.R.S. § 20-259.01 for accidents that do not occur on a public road and involve a vehicle designed primarily for off-road use?

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. . . .

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. . . .

* * *

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. . . .

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. . . .

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