

ARIZONA SUPREME COURT: AUTO POLICIES COVERING MULTIPLE VEHICLES PROVIDE MULTIPLE UIM COVERAGES

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Franklin v. CSAA General Ins. Co. Arizona Supreme Court

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The Arizona Supreme Court today held that under A.R.S. § 20-259.01, auto policies insuring multiple vehicles provide separate underinsured motorist (UIM) coverages for each vehicle rather than a single UIM coverage that applies to multiple vehicles. The Court also held that an insured can receive UIM coverage from the policy in an amount greater than the bodily injury limits of the policy when stacking those multiple UIM coverages.

Plaintiff's mother died in an auto accident caused by a underinsured negligent driver. Her auto policy, which provided \$50,000 of UIM coverage, covered two vehicles. Ms. Franklin sued CSAA, arguing she was entitled to stack the two \$50,000 coverages for \$100,000 in total coverage, even though the policy said the limit of liability shown on the declarations page was the most the company would pay regardless of the number of covered cars.

A.R.S. § 20-259.01(H) allows an insurer to limit coverage to only one policy or coverage "if multiple policies or coverages purchased by one insured on different vehicles apply to an accident or claim." The court found the "coverages purchased" language ambiguous—it could broadly mean whenever an insured pays multiple premiums for each vehicle under one policy (regardless of "technical policy language defining 'UIM coverage' to be a single coverage"); or it could mean only when the insurer defines "coverages" purchased in the policy to be a single coverage. Reviewing the statute's history and purpose, the court adopted the broad interpretation of "coverages purchased," which recognizes a separate UIM purchased for each vehicle in a multi-vehicle policy, and held that insurers cannot limit stacking (thus rendering subsection (H) meaningless) by defining UIM coverages in the policy as the sole coverage. Opinion, ¶ 23.

Subsection (H) also states that "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." Despite the "thirty days" language, the court rejected CSSA's argument that this sentence allows insurers to unilaterally limit coverage within thirty days after the accident, regardless of the policy's language. Reading the statute this way, said the court, would violate basic principles of contract law that require additional consideration and mutual assent for changes to an existing contract. Opinion, ¶ 11. The only way to prevent stacking is to "include in the policy unambiguous language plainly disavowing the possibility of stacking." *Id.*

The court also held, after reading the statute's subsections together, that A.R.S. § 20-259.01(B) did not set a ceiling on UIM coverage an insured can receive based on the policy's bodily injury or death liability limits. That subsection requires auto insurers to offer UIM coverage to the insured "in limits not less than" the policy's bodily injury or death limits. Rather than setting a ceiling on the UIM coverage insureds may buy, subsection (B) simply refers to per-vehicle coverage insurers must offer, as distinct from total UIM coverage an insured could receive in a stacked scenario. Opinion, ¶ 28. The "up to" language, said the court, merely obligates insurers to sell coverage in any amount the insured authorizes up to the liability amounts. The obligation to sell UIM coverage up to those limits does not prohibit the insured from receiving stacked UIM coverage in excess of those limits. *Id.*, ¶¶ 28-30.

[Eileen GilBride](#) focuses her practice on representing clients in federal and state appellate matters and dispositive motions. She also counsels and assists trial lawyers in the substantive areas of their practices, from the answer stage through the post-trial motion stage. Eileen has handled over 500 appeals at every level of the state and federal courts, in Arizona and other states, which have resulted in more than 80 published decisions.

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