

## COURT OF APPEALS ADDRESSES INSURANCE AGENT NEGLIGENCE CLAIM; PLAINTIFF MAY CLAIM EMOTIONAL DAMAGES

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*Murray v. Farmers Ins. Co.*

Arizona Court of Appeals, Division Two, January 19, 2016

For years, the Murrays bought minimum limits vehicle insurance, including minimum UM/UIM from agent Jones. Then they gradually began increasing their limits. They testified that when they discussed UM/UIM coverage with Jones, he advised them they did not need increased UM/UIM limits because their family had health insurance through Mr. Murray's employer. Jones, however, denied telling the Murrays "that if they had health insurance they d[id]n't need to buy any UM/UIM or as much UM/UIM insurance. "

The Murrays' daughter suffered a traumatic brain injury in a crash with an uninsured and an underinsured driver. The parents sued Jones and Farmers and Foremost based on vicarious liability for Jones. After a four day trial, the jury returned a seven to one verdict of \$180,000 in favor of the Murrays. The trial court granted a new trial.

The court of appeals first affirmed the new trial. The trial court was within its discretion in finding that the verdict was either an improper compromise verdict or the result of sympathy or prejudice. A compromise verdict is one in which some jurors believe there is no liability at all, but consent to a smaller verdict than the others voting for liability wanted, in order to reach a verdict. In such cases, liability and damages are not separable.

The appellate court then made three important legal rulings. First, it held that plaintiffs could claim emotional damages due to the agent's negligent failure to sell UM/UIM, because his conduct allegedly caused not just a financial loss, but an emotional one too. Previously, Arizona law held that emotional distress damages were allowed only where the tortious act directly harmed a plaintiff and burdened a personal, as opposed to an economic interest. For example, in a prior legal malpractice action, a plaintiff was not allowed to claim emotional damages for her allegations that her attorneys had failed to adequately secure a promissory note given to her by her former husband in connection with their divorce, which put her financial security at risk and consequently caused her emotional distress. But the *Murray* court said because "[t]he insured receives intangible benefits from the relationship, such as peace of mind, the negligent failure to sell uninsured and underinsured coverage implicates the insured's well-being and "is the appropriate case for the "evolution of the law." So it reversed summary judgment for defendants on that claim.

Second, the court held that the injured daughter, though not a party to the insurance transaction, had standing to claim a violation of the Arizona Consumer Fraud Act. "The broad language of the act would appear only to require that a consumer have a relationship to the transaction." It therefore reversed summary judgment for the defense on that issue as well.

The court's third legal issue related to the agent's cross-appeal. The agent argued that because he complied with Arizona's "safe harbor" statute requiring the insured to accept/decline UM/UIM in writing, and the Murrays had repeatedly declined to increase their UM/UIM limits to match their liability limits on forms approved by the DOI, he was entitled to summary judgment on the entire case. The court rejected that argument stating, "Here there is no dispute that the Murrays were offered UM and

UIM coverage on a DOI approved form, which they signed; the issue is whether they were affirmatively misled into signing it. The statute would work an inequity if the DOI-approved form could shield an agent from liability for having misled an insured to sign it, assuming arguendo that the statute applies to agents under the facts here." So, the trial court correctly denied the agent summary judgment on that argument.

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