

INSURERS ARE NOT AUTOMATICALLY PROTECTED WHEN USING DOI APPROVED FORM TO OFFER UNINSURED MOTORIST COVERAGE

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Ballesteros, et. al v. American Standard Insurance Co. of Wisconsin
Ct. Appeals, Div. Two, December 23, 2009

Authored By The [JSH Appellate Team](#)

Plaintiff Mr. Ballesteros, whose primary language is Spanish, purchased an auto policy from American Family through its agent, Shawn Morris. Morris provided Ballesteros a form written in English for the selection or rejection of UM/UIM coverage. Ballesteros signed the form indicating he declined coverage. Ballesteros's mother-in-law, an insured under the policy, was killed in a collision with an uninsured driver. Ballesteros filed a claim for UM/UIM benefits under the policy, which American Family denied due to Ballesteros having signed the form.

Ballesteros sued alleging breach of contract, bad faith, consumer fraud, and breach of fiduciary duty, and sought a ruling that A.R.S. § 20-259.01 did not automatically protect American Family from suit because it presented him with an English-language form offering UM/UIM coverage when he did not understand it. American Family argued the statute provides a safe harbor for insurers, insulating them from litigation when a customer declines an offer of UM/UIM coverage by signing a Department of Insurance approved form. The trial court agreed with Ballesteros, and American Family appealed. The court of appeals affirmed. The statute requires more than the provision of "a form." Insurers must provide the information in a manner "reasonably calculated to being the insured's attention to that which is being offered." In most instances, obtaining the insured's signature on a DOI-approved form would be sufficient to meet that standard. However, when the insurer "knows or should have reason to know" that the offer form by itself will be insufficient to convey the offer in a manner the insured will understand, then the insurer must take additional steps reasonably calculated to ensure the offer is communicated effectively to the insured. In this case, there were questions of fact on whether the offer was communicated in a way calculated to make the insured understand.