

SURVIVING MOTHER MAY RECOVER UIM BENEFITS FOR WRONGFUL DEATH OF SON

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State Farm Mutual Automobile Insurance Co. v. White
Ct. Appeals, Division One, January 3, 2013

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Plaintiff White sought underinsured motorist benefits under the decedent's grandparents' State Farm policy for her son's death, which occurred while he was a passenger in a rental vehicle driven by his grandmother. The son was an "insured" under the policy. Plaintiff White, however, did not live with the grandparents and therefore was not considered a "relative" under the policy's definition of "insured." State Farm argued that only the decedent, not his mother, was entitled to underinsured motorist benefits.

A.R.S. § 20-259.03 provides: "Notwithstanding any other law, in the case of the death of an insured who is covered under the uninsured and underinsured motorist coverages of a motor vehicle liability policy, recovery for wrongful death is limited to any party who is qualified to bring a wrongful death action pursuant to § 12-612 and who is also a surviving insured under the same coverages of the policy."

State Farm conceded that if A.R.S. § 20-259.03 did not exist, the mother would be entitled to recover underinsured motorist benefits under the policy because she was a "statutory" beneficiary under Arizona's wrongful death statute (A.R.S. § 12-612), and the policy allowed benefits to a "person entitled to recover damages because of bodily injury to an insured." State Farm maintained, however, that the legislature intended A.R.S. § 20-259.03 to prohibit the mother's recovery since she was not a "surviving insured" under the policy. State Farm contended only named insureds and their spouses would qualify as "surviving insureds" under the statute.

The court of appeals disagreed. The plain language of § 20-259.03 allows an insurer to pay wrongful death UIM benefits to any eligible claimants that the insurer has chosen to define as "a surviving insured under the same coverages of the policy." State Farm's definition of an "insured" included persons entitled to recover damages because of bodily injury. Thus, the mother was an "insured" under State Farm's policy and could receive UIM benefits for her son's wrongful death.

State Farm also argued that public policy prevented Plaintiff White from receiving UIM benefits because she had temporarily relinquished custody of her son to the grandparents. The court determined that fact could be considered by the trier of fact in determining the amount of damages, but that her status as a non-custodial parent did not bar her recovery of UIM benefits for the wrongful death of her son.