



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**AMERICAN FAMILY MUTUAL INSURANCE CO. v.
SABINE SHARP
CV-11-0324-CQ**

PARTIES:

Petitioner: American Family Mutual Insurance Co.

Respondent: Sabine Sharp

FACTS:

Sabine Sharp was injured in a single-vehicle accident while riding as a passenger on a motorcycle operated by her husband James Sharp. Sabine was seriously injured. Sabine and James maintained separate insurance policies through American Family: one policy insured the motorcycle, with James listed as the sole insured; the other policy covered Sabine's vehicle, a 2002 Ford Escape, and listed Sabine as the sole insured. Sabine's policy included underinsured motorist coverage. After the accident, the Sharps filed claims on both policies, as Sabine's damages clearly exceeded the \$100,000 limit on her husband's motorcycle policy. American Family advised Sharp that it would pay out under one policy or the other, but not both, citing a provision in the policy that stated:

If two or more policies are issued to you by us and any other member company of the American Family Insurance Group of companies, apply to the same accident, only one of the policies will apply, you will select the one policy that will apply.

Although the policies were separate and paid for separately, under the definitions in the policies, each spouse was included under the other's policy.

Litigation over the extent of coverage is pending in Federal District Court. The Federal Court has certified the following question to the Arizona Supreme Court.

ISSUE:

Does A.R.S. § 20-259.01(G) require an auto insurer to provide underinsured motorist coverage for the named insured under the auto policy, who was injured while a passenger on a motorcycle driven by her husband (the named insured on a separate motorcycle policy issued by the same insurer), where the injured insured's total damages exceed the amount of her tort recovery from her husband under the husband's motorcycle policy? Or, does A.R.S. § 20-259.01(H) permit American

Family to refuse to provide its named insured with underinsured motorist coverage under her auto policy, because she was partially indemnified as a claimant under the liability coverage of the separate motorcycle policy issued to her husband by American Family, whose negligence contributed to her injuries? If A.R.S. § 20-259.01(H) allows American Family to exclude underinsured motorist coverage, does American Family’s “other insurance” exclusion do so in compliance with subsection H?

RELEVANT STATUTES:

A.R.S. § 20-259.01 provides, in pertinent part:

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. (Emphasis added.)

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. 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. For the purposes of this subsection, “insurer” includes every insurer within a group of insurers under a common management. (Emphasis added.)

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