

1 **ARIZONA SUPREME COURT**

2 State Farm Mutual Automobile Insurance  
3 Company, an Illinois corporation;

4 Plaintiff/Appellee,

5 v.

6 Jacey Lee Orlando, an individual;

7 Defendant/Appellant.

Arizona Supreme Court  
No. CV-23-0228-PR

Court of Appeals - Division One  
No. 1 CA-CV 22-0447

8  
9 **ORLANDO’S RESPONSE TO STATE**

10 **FARM’S PETITION FOR REVIEW**

11  
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## INTRODUCTION

The Arizona Supreme Court should deny the Petition for Review as the Arizona Court of Appeals' decision properly addressed the issue raised by the parties in light of both the Arizona Legislature's well-drafted statute and this Court's well-reasoned precedent.

Uninsured motorist ("UM") and underinsured motorist ("UIM") coverages are separate and distinct and apply to different accident situations. A.R.S. § 20-259.01(H). UM motor vehicles are defined by the Legislature as being "subject to the terms and conditions of that coverage" as is UM coverage. A.R.S. § 20-259.01(D) and (E). UIM coverage, however, is defined by the Legislature as including "coverage for a person". A.R.S. § 20-259.01(G). The UIM statute does not contain the phrase "motor vehicle" or the phrase "subject to the terms of that coverage" anywhere within it.

The language the Legislature chose to utilize when enacting UM and UIM coverage has purpose and meaning. "[E]ach word or phrase of a statute must be given meaning so that no part is rendered void, superfluous, contradictory or insignificant." *Pinal Vista Prop., L.L.C. v. Turnbull*, 208 Ariz. 188, 190 (App. 2004). "If the language [of the statute] is clear and unambiguous," one follows the text as written and "need not resort to other methods of statutory construction." *Indus. Comm'n of Ariz. v. Old Republic Ins. Co.*, 233 Ariz. 75, 77 (App. 2009);

1 *Hughes v. Jorgenson*, 203 Ariz. 71, ¶ 11 (2002) (quoting *UNUM Life Ins. Co. of*  
2 *Am. V. Craig*, 200 Ariz. 327, ¶ 12 (2001).

3 While the Court of Appeals’ decision does provide for a disparate  
4 application of UM and UIM coverages in the context of offroad vehicles, this  
5 Court and others have found that disparate treatment of UM from UIM coverages  
6 is appropriate considering the language the Legislature chose to utilize. *Compare*  
7 *Terry v. Auto-Owners*, 184 Ariz. 246 (App. 1995) (permitting a UM policy offset  
8 for worker’s compensation payments) with *Cundiff v. State Farm Mut. Auto. Ins.*  
9 *Co.*, 217 Ariz 358 (2008) (not allowing a UIM policy offset for worker’s  
10 compensation payments); *see also Schultz v. Farmers*, 167 Ariz. 148 (1991)  
11 (permitting a UM policy offset for medical payments paid under the same policy)  
12 with *Miller v. American Standard*, 759 F.Supp.2d 1144 (D.Ariz. 2010) (not  
13 permitting a UIM policy offset for medical payments paid under the same policy).

14 “[T]he legislature intended a broad application of UIM coverage to provide  
15 benefits up to the policy limits whenever the insured is not indemnified fully by the  
16 available policy limits.” *Taylor v. Travelers Indem. Co. of Am.*, 198 Ariz. 310, ¶ 15  
17 (2000). “[A]ny exceptions to UIM coverage not permitted by the [UIM statute] are  
18 void.” *Am. Family Mut. Ins. Co. v. Sharp*, 229 Ariz. 487, ¶ 1 (2012). Orlando  
19 believes that the Court of Appeals was correct when it stated “[w]hen the  
20 legislature includes language allowing conditions for one type of coverage and  
21 does not include such language for another type of coverage, ‘it does so with the



1 Jacey. IR 39, ¶5. Mr. Berns’ insurance paid the full value of Mr. Berns’ liability  
2 policy limits to Jacey. IR 39, ¶8.

3 Jacey was insured through a policy of insurance with State Farm Insurance  
4 (“State Farm”), policy number 249 8980-B15-03 (hereinafter referred to as “the  
5 Policy”). IR 39, ¶6. Jacey opted to purchase Underinsured Motorist (“UIM”)  
6 coverage with State Farm as part of her Policy. IR 39, ¶7. Since the liability limit  
7 of Mr. Berns’ policy was insufficient to fully compensate Jacey, Jacey pursued an  
8 Underinsured Motorist Claim, pursuant to the Policy, with State Farm. IR 39, ¶9.

9 The Policy contained the following language:

10 **UNDERINSURED MOTOR VEHICLE COVERAGE**

11 ...

11 *Underinsured Motor Vehicle* does not include a land  
12 motor vehicle:

12 ...

13 2. designed for use primarily off public roads except  
14 while on public roads;

14 ...

14 **Insuring Agreement**

15 *We* will pay compensatory damages for *bodily injury* an  
16 *insured* is legally entitled to recover from the owner or  
17 driver of an *underinsured motor vehicle*. The *bodily*  
18 *injury* must be:

- 17 1. sustained by an *insured*; and
- 18 2. caused by an accident that involves the operation,  
19 maintenance, or use of an *underinsured motor*  
20 *vehicle* as a motor vehicle.

19 IR 27.

20 State Farm sued Jacey Orlando seeking a declaration that the incident was  
21 not covered by the Policy. IR 1. Jacey Orlando filed an amended answer and

1 counterclaim alleging breach of contract, among other causes of action. IR 8. State  
2 Farm filed a Motion for Summary Judgment which was ultimately granted. IR 64.  
3 The Court of Appeals reversed, in relevant part, on the issue of UIM coverage.

4 **THE PETITION FOR REVIEW SHOULD BE DENIED**

5 A.R.S. § 20-259.01 states, in relevant part, as follows:

- 6 D. **“Uninsured motor vehicles”**, **subject to the terms**  
7 **and conditions of that coverage**, includes any  
8 insured motor vehicle if the liability insurer of the  
9 vehicle is unable to make payment on the liability  
10 of its insured, within the limits of the coverage,  
11 because of insolvency.
- 12 E. **“Uninsured motorist coverage”**, **subject to the**  
13 **terms and conditions of that coverage**, means  
14 coverage for damages due to bodily injury or death  
15 if the **motor vehicle** that caused the bodily injury  
16 or death is not insured by a motor vehicle liability  
17 policy that contains at least the limits prescribed in  
18 section 28-4009. For the purposes of uninsured  
19 motorist coverage, an uninsured motorist does not  
20 include a person who is insured under a motor  
21 vehicle liability policy that complies with section  
28-4009.
- F. **Any payment made under the bodily injury**  
**liability portion of a motor vehicle liability**  
**policy insuring the motor vehicle that caused**  
**the bodily injury** or death in an amount equal to  
or less than the per person or per occurrence bodily  
injury limits of that policy, regardless of the  
number of persons receiving payments, **precludes**  
**any payment under the uninsured motorist**  
**coverage** based on the fault of the person who is  
insured under the motor vehicle liability policy.

1 G. **“Underinsured** motorist coverage” includes  
2 coverage for **a person** if the sum of the limits of  
3 liability under all bodily injury or death liability  
4 bonds and liability insurance policies applicable at  
5 the time of the accident is less than the total  
6 damages for bodily injury or death resulting from  
7 the accident. To the extent that the total damages  
8 exceed the total applicable liability limits, the  
9 underinsured motorist coverage provided in  
10 subsection B of this section is applicable to the  
11 difference.

12 H. **Uninsured and underinsured motorist coverages are**  
13 **separate and distinct and apply to different accident**  
14 **situations.** ...  
15 (emphasis added)

16 This Court has long held that “...any exceptions to UIM coverage not  
17 permitted by the [UIM statute] are void.” *Am. Family Mut. Ins. Co. v. Sharp*, 229  
18 Ariz. 487, ¶ 1 (2012). “[T]he exceptions permitted are those allowed by the  
19 statutes, not those insurers may put in the policy.” *Rashid v. State Farm*, 163 Ariz.  
20 270, 275 (1990).

21 **1. THE FRA AND UMA SHOULD NOT BE READ IN PARI  
MATERIA.**

State Farm asserts that the FRA and the UMA are designed to work together,  
however, this Court has previously indicated otherwise. *See Employers Mut. Cas.*  
*Co. v. McKeon*, 159 Ariz. 111 (1988) which stated:

[W]hile both [the FRA] and [the UMA] deal with aspects of  
Arizona motor vehicle liability policies, the statutes approach  
the subject from different perspectives. The 1951 law centers on  
liability coverage protection of those injured by the insured’s  
negligence; the later statute concerns uninsured law and now,

1 also, underinsured benefits protection of the insured. The laws  
2 were enacted at different times to protect different interests.  
3 Thus, an exclusion under liability protection does not require a  
4 similar result for uninsured motorist protection.

5 Therefore, *in pari materia* does not fit the statutory framework  
6 here... There being no statutory conflict or ambiguity,  
7 application of the *in pari materia* doctrine to two statutes  
8 enacted at different times to deal with different problems,  
9 brings more confusion than enlightenment. [citation omitted].

10 *See also St. Paul Fire and Marine Ins. Co. v. Gilmore*, 168 Ariz. 159, fn. 6  
11 (1991) (“We have previously warned against reading [the FRA and the UMA] *in*  
12 *pari materia*... Our warning, though not always heeded, *West American Ins. Co. v.*  
13 *Pirro*, 167 Ariz. 437, 808 P.2d 322 (Ct.App. 1990) remains in effect.”).

14 While State Farm cites *Chase* and *Pirro* for the proposition that the SRA and  
15 the UMA should be read together, this Court has on two occasions clearly  
16 indicated that they should not. As such, contrary to State Farm’s insistence, the  
17 FRA and the UMA are not designed to “work together” nor should they be  
18 interpreted that way.

19 **2. THE DEFINITION OF A “MOTOR VEHICLE” IS**  
20 **IMMATERIAL.**

21 State Farm asserts that an offroad vehicle is not a “motor vehicle” under  
Arizona’s automobile insurance statutes. Assuming that to be true, it is not material  
to an analysis of the application of the UIM statute.

A.R.S. § 20-259.01(G) indicates that “underinsured motorist coverage”  
includes coverage for “a person”. The phrase “motor vehicle” does not appear

1 anywhere within the definition of the coverage that must be offered to insureds.  
2 See A.R.S. § 20-259.01(B) (requiring “[e]very insurer writing automobile liability  
3 or motor vehicle liability policies” to “also make available to the named insured  
4 thereunder... underinsured motorist coverage that extends to and covers all  
5 persons insured under the policy.”) (emphasis added).

6 If the Legislature intended for UIM coverage to apply to “motor vehicles”  
7 rather than to “a person”, then the Legislature could have clearly and distinctly said  
8 so as they did with the UM statute. *See State Farm Mut. Auto. Ins. Co. v. White*,  
9 231 Ariz. 337, ¶ 14 (App. 2013) (“We will not read into a statute something which  
10 is not within the manifest intent of the legislature as indicated by the statute  
11 itself.”) (citations omitted). Here, the Legislature indicated that UM coverage  
12 applied to motor vehicles and was subject to the terms of the policy, but did not say  
13 that UIM coverage applied to motor vehicles or was subject to the terms of the  
14 policy. The principle of *expressio unius est exclusion alterius* applies here to bar  
15 State Farm’s desire to read into the UIM statute something that clearly is not there.  
16 *See Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, 255 Ariz. 382, ¶ 16 (2023)  
17 (“The expression of one item implies the exclusion of others”).

18 Whether Orlando was in a “motor vehicle” is immaterial to the issue before  
19 the Court – and, clearly, she is a person. “The insured... [is] covered not only  
20 when occupying an insured vehicle, but also when in another automobile, when on  
21 foot, when on a bicycle or when sitting on a porch.” *Calvert v. Farmer’s Ins. Co.*,

1 144 Ariz. 291, 296 (1985) (addressing UM coverage); *but see also Higgins v.*  
2 *Fireman’s Fund Ins. Co.*, 160 Ariz. 20, 21-22 (1989) (extending the reasoning in  
3 *Calvert* to UIM coverage). As such, UIM coverage applies to Orlando.

4 **3. THE RESULT IS NOT “IRRATIONAL” OR ABSURD**

5 State Farm argues that the result the Court of Appeals reached is irrational or  
6 absurd because it sets one standard for UM coverage and another for UIM  
7 coverage. But, as the UMA indicates, UM and UIM coverages “are separate and  
8 distinct and apply to different accident situations.” A.R.S. § 20-259.01(H). The  
9 Legislature could not have formulated a clearer expression that UM and UIM are  
10 not to be treated the same.

11 This Court recognized the difference between UM and UIM coverages in  
12 *Cundiff* when it said “[d]istinct statutory provisions, however, define UM and UIM  
13 coverage. The statutory provision defining UM coverage expressly provides that  
14 such coverage is subject to the terms and conditions of that coverage, while the  
15 provisions defining UIM coverage does not provide a similar limitation.” *Cundiff*  
16 at ¶ 14. (citations and quotes omitted). This Court went on to say that “[w]e cannot  
17 disregard the unambiguous language of the statute. State Farm should direct its  
18 policy arguments to the legislature rather than to the courts.” *Id.* at ¶ 16.

19 If State Farm wishes not to provide UIM coverage to those injured by  
20 underinsured drivers of offroad vehicles and have UIM coverage “subject to the  
21 terms of the policy”, State Farm can address the issue with the Legislature. The

1 Legislature can insert the language into the UIM statute that State Farm wishes for  
2 this Court to insert for it. But such policy decisions should be made by the people  
3 or their representatives rather than this Court. It is the role of the Legislature, not  
4 the Court, to clarify or change a statute, even if the statute creates unintended or  
5 unfair results in some cases. *Bridgestone/Firestone N. Am. Tire, L.L.C. v. A.P.S.*  
6 *Rent-A-Car & Leasing, Inc.*, 207 Ariz. 502, ¶ 51 (App. 2004).

7 **CONCLUSION**

8 Orlando respectfully requests that the Court deny the Petition for Review as  
9 the matter was rightly decided in accordance with a well-drafted statute and well-  
10 reasoned prior precedent from this Court.

11 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of February, 2024

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