SUPREME COURT
STATE OF ARIZONA

STATE FARM AUTOMOBILE INSURANCE COMPANY, Plaintiff/Appellee, v. JACEY LEE ORLANDO, Defendants/Appellee.	**Case No. CV-23-0228-PR** Arizona Court of Appeals Case No. 1 CA-CV 22-0447 Maricopa County Superior Court Case No. CV 2020-006088 **AMICUS CURIAE BRIEF OF ARIZONA ASSOCIATION FOR JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION**

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This is a tale of two statutes. In a helpful table in its Opinion, the Court of Appeals lined them up for comparison:

Uninsured Motorist Coverage	**Underinsured Motorist Coverage**
"Uninsured motorist coverage," *subject to the terms and conditions of that coverage*, means coverage for damages due to bodily injury or death if the *motor vehicle* that caused the bodily injury or death is not insured by a motor vehicle liability policy that contains at least the limits prescribed in § 28-4009. For the purposes of uninsured motorist coverage, an uninsured motorist does not include a person who is insured under a motor vehicle liability policy that complies with § 28-4009. **A.R.S. § 20-259.01(E)** (emphasis as it appears in Op. ¶ 10)	"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. **A.R.S. § 20-259.01(G)** (emphasis as it appears in Op. ¶ 10

State Farm Mut. Auto. Ins. Co. v. Orlando, 256 Ariz. 55, 61 ¶ 10 (App. 2023).

1. The plain statutory words tell us when underinsured motorist coverage exists.

The analysis that Amicus proposes is in line with the analysis that the insured person (Jacey Lee Orlando) proposes and that the Court of Appeals applied with deft strokes and great clarity. Amicus agrees that the best way to view these

statutes is through the prism of the statutory words. Those plain words control.

The statutes both deal with insurance. One statute defines uninsured motorist coverage. A.R.S. § 20-259.01(E). The other statute defines underinsured motorist coverage. A.R.S. § 20-259.01(G). But the words differ. That difference in words spells the difference between coverage and non-coverage.

Every Arizona insurer must make available and offer to insureds "uninsured motorist coverage," A.R.S. § 20-259.01(A), and "underinsured motorist coverage," A.R.S. § 20-259.01(B).

But under the definition of "uninsured motorist coverage" in A.R.S. § 20-259.01(E), the insurer need only provide uninsured motorist coverage for bodily injury or death if the motor vehicle that caused the bodily injury or death was not insured by a motor-vehicle liability policy that has the mandatory limits that A.R.S. § 28-4009 imposes. That is, the anchor for the definition of uninsured motorist coverage is the existence of a bodily-injury-causing or death-causing motor vehicle that lacks the mandatory uninsured motorist limits that A.R.S. § 28-4009 imposes.

On the other hand, under the definition of "underinsured motorist coverage" in A.R.S. § 20-259.01(E), underinsured motorist coverage has no anchor in any particular automobile, motor vehicle, or type of motor vehicle. For A.R.S. § 20-259.01(E), the anchor for underinsured motorist coverage is the existence of a injured "person" when the "sum" of the liability limits under all bodily-injury or

death-liability bonds and liability insurance policies that apply at the time of the accident is a "sum" that is less than the total damages for bodily injury or death resulting from the accident.

Every insurer that writes automobile-liability or motor-vehicle liability policies in Arizona must make available and offer underinsured motorist coverage. A.R.S. § 20-259.01(B). The underinsured motorist coverage applies to "a person"—not to a particular automobile or motor vehicle or to any particular kind of automobile or motor vehicle. A.R.S. § 20-259.01(G).

As long as the "sum" of all of the applicable bodily-injury-liability bonds, death-liability bonds, and liability-insurance policies that apply at the time of the accident is a "sum" that is less than the toral damages for bodily injury or death resulting from the accident, the "person" has underinsured motorist coverage for the difference under A.R.S. § 20-259.01(B).

There still has to be an insured "automobile" or "motor vehicle." A.R.S. § 20-259.01(B). That statute specifies that the "person" must be covered by "automobile liability or motor vehicle liability policies" that the insurer has written and made available to the named insured. A.R.S. § 20-259.01(B). There are an immense variety of automobiles and motor vehicles. That does not matter. In this case, in particular, it does not matter that a motor vehicle was involved that was primarily used off road or that was designed for off-road use. That is irrelevant.

2. No foray into legislative history or legislative intent is needed. Because there is no ambiguity, the plain statutory words control.

The petition for review expends considerable effort discussing how the "Uninsured/Underinsured Motorist Act" ("UMA"), codified as A.R.S. § 20-259.01, works in harmony with the "Financial Responsibility Act" ("FRA"), codified as A.R.S. §§ 28-4135; 28-4001 to 28-4153. The discussion does help in understanding the plain words of the relevant subsections of A.R.S. § 20-259.01, which are "(A)," "(B)," "(E)," and "(G)."

That is, whether and how the Legislature intended for the FRA and the UMA to work together does not matter. Searching for legislative intent anywhere but in the plain statutory words is an invitation to confusion. As a result, this Court will "review issues of statutory interpretation de novo" and "apply the plain text of the provision if it is unambiguous." *State v. Agundez-Martinez*, 256 Ariz. 391, 393 ¶ 10 (2024). The judicial "role in statutory interpretation is to give effect, whenever possible, to the plain meaning of the words chosen by the legislature." *Avitia v. Crisis Preparation and Recovery Inc.*, 256 Ariz. 198, 202 ¶ 16 (2023).

"When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut National Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). Thus, whenever "a statute's 'language is clear and unequivocal, it is determinative of the statute's construction.'" *Wallace v. Smith*, 255 Ariz. 377, 379

¶ 5 (2023) (quoting *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296 ¶ 8 (2007)). "Our task in statutory construction is to effectuate the text if it is clear and unambiguous." *BSI Holdings, LLC v. Ariz. Dept. of Transp*., 244 Ariz. 17, 19 ¶ 9 (2018)).

This Court has followed the plain-meaning rule since at least 1908. In that year, the Supreme Court of the Territory of Arizona warned against the use of legislative intent to construe statutes since "it is the duty of all courts to confine themselves to the words of the Legislature—nothing adding thereto; nothing demitting." *Flowing Wells Co. v. Culin*, 11 Ariz. 425, 429 (Terr. 1908). "The court has no authority to extend a law beyond the fair and reasonable meaning of its terms, because of some supposed policy of the law, or because the Legislature did not use proper words to express its meaning." *Id*.

In 1916, this Court emphasized that, if a law's "language is plain, it is the duty of the court to give it effect by following it." *Wuicich v. Solomon-Wickersham Co*., 18 Ariz. 164, 166 (1916). In 1923, this Court added that "courts cannot go outside of the plain, unambiguous language of a statute or Constitution to determine its meaning." *Fairfield v. Foster*, 24 Ariz. 146, 151 (1923).

That tradition has continued unbroken. Thus, this Court will still interpret "statutory provisions as they are written, and we are constrained from rewriting the law under the guise of interpreting it even if we divine a more desirable intended

outcome than the text allows." *Arizona Free Enterprise Club v. Hobbs*, 253 Ariz. 478, 489 ¶ 38 (2022). Indeed, the Arizona Legislature has itself directed that words and phrases in a statute "shall be construed according to the common and approved use of the language." A.R.S. § 1-213. That is all that is needed here.

DATED this 11th day of June, 2024.

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