



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



LUIS BALLESTEROS v. AMERICAN STANDARD
CV-10-0026-PR

PARTIES:

Petitioners/Cross Respondents:

Luis and Alma Ballesteros; Guadalupe Portillo; Gerardo Portillo; Ricardo Portillo; Ruben Portillo; Guadalupe Portillo Jr.; and Patricia Yerena (collectively, “Ballesteros”).

Respondents/Cross-Petitioners:

American Standard Insurance Co. of Wisconsin and American Family Mutual Insurance Co. (collectively “American Standard”).

Amici Curiae:

(1) National Association of Mutual Insurance Companies (“NAMIC”) and Property Casualty Insurers (“PCI”). (2) Progressive Casualty Insurance Co. (“Progressive”). (3) The Independent Insurance Agents and Brokers of Arizona (“IIABAZ”). (4) The Arizona Trial Lawyers Association/Arizona Association for Justice. (5) Farmers Insurance Company of Arizona (“Farmers”).

FACTS:

American Standard issued an automobile insurance policy to Luis Ballesteros through its agent. The agent gave Luis, whose primary language is Spanish, a form in English to select or reject Uninsured Motorist/Underinsured Motorist (“UM/UIM”) coverage. Luis signed the form to reject coverage. His mother-in-law, Manuela Portillo, another insured under the policy, was killed in a collision with an uninsured driver. Ballesteros filed a UM/UIM claim. The insurer denied the claim.

Ballesteros sued for breach of contract, bad faith, consumer fraud and breach of fiduciary duty. He claimed that by not providing a written offer in Spanish, American Standard effectively failed to offer UM/UIM coverage. The trial court denied American Standard’s motion for partial summary judgment and motion for reconsideration and denied Ballesteros’ request that a class be certified for a class action. It granted partial summary judgment to Ballesteros on whether American Standard violated Arizona Revised Statutes (“A.R.S.”) section 20-259.01 by presenting a non-Spanish UM/UIM offer form. It found American Standard had not established that the offer was “reasonably calculated to bring to [Ballesteros’] attention to that which was being offered” because it was not written in Spanish. American Standard did provide the court with an affidavit from an employee of the insurance agent that it was office policy and usual practice to explain the coverage in Spanish to clients who speak Spanish. The trial court entered judgment for breach of contract and

certified it as appealable. Appeal followed.

The court of appeals affirmed the trial court's denial of American Standard's motions for partial summary judgment, but reversed entry of partial summary judgment for Ballesteros and remanded (sent the case back) to the trial court for trial. American Standard petitioned for review and Ballesteros cross-petitioned for review.

ISSUES:

Petition:

Whether the court of appeals erred in ruling that an insurer who presents an English-language form to an applicant who is literate only in Spanish complies with the statutory requirement of a written offer by orally explaining the offer.

Cross-Petition:

(1) Whether a statute that requires UM/UIM insurance to be offered to customers on a written form, but which is silent with respect to language, implicitly also requires verbal explanations (or "something more") in languages other than English.

(2) Whether use of a form approved by the DOI, pursuant to the safe harbor provision, establishes American Standard's compliance with the statute.

DEFINITIONS:

Amici Curiae:

Latin phrase meaning "friends of the court." These are people or organizations that are *not* parties to this case, but either (a) will be affected indirectly by its outcome or (b) have special knowledge or insights into the topic of the case that can help the Court anticipate possible results of its decision in the case.

Summary judgment:

Case decided on undisputed facts by a trial court without trial. It can resolve the entire case, or it can resolve only part of the dispute, in which case it is designated as "partial summary judgment."

Uninsured Motorist/Underinsured Motorist ("UM/UIM") coverage:

Insurance coverage someone who will be insuring his or her car can buy that will cover losses arising from harm caused by another driver who has either too little insurance or none at all. It is insurance that covers the person who buys it (called "the insured") from the risk of having someone else who is underinsured or not insured to pay for losses.

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