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2015 BULLETINS

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Bulletin # 10

DATE: March 2015

TO: IIB of Arizona Members & Associate Members

FROM: Lanny L. Hair, CIC, RPLU, ARM, AAI - Executive Vice President

RE: UM/UIM Newman v. Cornerstone Arizona Supreme Court Case Decision

NOTICE: Effective Immediately Every UM/UIM Acceptance/Rejection Form in Your Files Must Be Reissued and Signed by the Policyholder (NOT) - *Thankfully this headline is not true despite a 50% chance of this happening.*

Thankfully we avoided the above headline. That scenario had a 50% chance of being true but after waiting months for an Arizona Supreme Court Decision, we can now relax and advise you that you need not worry about that nightmare scenario becoming a reality.

One of the most frustrating errors and omissions claims made against an insurance agent can be the result of a policyholder refusing to purchase coverage despite your advice and recommendation to the contrary only to have them come back after an uncovered claim and blame you for the lack of coverage.

This happens in all lines of coverage, however, because of the high dollar amounts involved in uninsured and underinsured claims it is very common for such claims to be made in instances where the policyholder elected to save some dollars by rejecting to purchase the maximum amount of these coverages available.

Prior to the implementation of the Uninsured and/or Underinsured Motorist Coverage Selection Form we experienced several instances where despite the agent's best attempt to document their "offer" and recommendation to purchase coverage it was not uncommon for a policyholder to claim that the agent did not adequately describe the benefits provided under these coverages and then argue that obviously had the agent described the coverage in a manner that would include the insured's current loss they would certainly have purchased coverage. After an uncovered loss all coverages look attractive.

Agents were in the impossible position of not being able to know "what is an adequate explanation?" How can you prove that you truly offered the coverages? Since Uninsured and Underinsured Motorist Coverages are unique in that they are the only two automobile coverages that MUST be offered by law it was important that we obtain a method of "proof" that the agent complied with the necessary requirement when making the offer for these two coverages.

That is why this Association sought a legislative solution with the "Acceptance and/or Rejection Form". It was our objective to eliminate any question regarding the understandability of the form by having the form written by the Arizona Department of Insurance. This ensured that the description of coverages were consumer friendly.

Since the Legislatures establishment of the Acceptance and/or Rejection Form there have been many challenges by Plaintiffs arguing that the "forms" were not valid for an array of reasons. **Two of those cases have made their way to the Arizona Supreme Court and both of those cases could have a profound impact on how both insurance companies and agencies do business in Arizona.**

Your Association has recognized the importance of maintaining the purpose and intent of the "forms" and has participated in both cases before the Arizona Supreme Court as a "Friend of the Court".

After receiving authority by the Supreme Court to file our opinions on why the integrity of the Acceptance and/or Rejection Form should be maintained, we retained legal counsel for BOTH cases and have presented our position or argument before the Supreme Court based largely on the historical and legislative intent. After all, it was this Association that recommended legislation to establish this method of proof that the policyholder was truly offered increased limits of these two coverages. That effort resulted in Arizona

Revised Statute 20-259.01 which created the Acceptance or Rejection form.

One of the two Supreme Court Decisions was rendered last week. In the case *Katelin Newman versus Cornerstone National Insurance Company DBA Freedom National Insurance Services* the policyholder argued that because the agent did not show the premiums on the form for the “rejected” coverages that the form was not valid and therefor the policyholder was technically not offered Uninsured and/or Underinsured Motorist Coverage as required by Arizona statute.

Although the agent argues that the policyholder was provided with the premium amounts during the quotation only the premium for the selected limits was included on the form.

The Supreme Court ruled that it is not necessary for the premiums for the rejected limits or coverages to appear on the “UM/UIM Acceptance and/or Rejection Form” for the form to be valid and in compliance of the statutory requirements.

The frightening aspect of this argument is that MANY insurance companies and/or producers do NOT include the premiums on the form for the coverages the policyholder/applicant has elected NOT to purchase. Some have informed me that it is more commonplace to NOT show the premiums for the rejected coverages than to show the premium amounts.

Had the Court ruled that “all” premiums must be shown on the form that would open the door to the possibility that the hundreds of thousands of Selection Forms dating back decades would instantly be ruled “invalid”. If that had been the decision of the Court an industry wide effort to replace many hundreds of thousands of forms overnight would have created chaos and cost millions of dollars, not to mention the liability exposure for thousands of errors and omissions claims.

Yes, there was an ENORMOUS amount riding on this decision for everyone. Without considering the impact the elimination of the protection provided to the agent and insurer by this form would have on FUTURE cases the costs and energy required to obtain an updated selection form could possibly require some agencies to cease doing business.

For a copy of the Arizona Supreme Court ruling in the Newman v Cornerstone case, please go to www.iiabaz.com under Resources—Technical Issues—UM/UIM Forms. You must be signed in to view the page. If you do not know your log-in credentials please contact Terri Edwards at terri@iiabaz.com.

ANOTHER ARIZONA SUPREME COURT DECISION PENDING

This decision was a real “nail bitter” and the Court’s decision had an enormous impact on agents, producers, and companies alike. There is yet another case addressing Uninsured and/or Underinsured Motorist Coverage offers which is still before the Arizona Supreme Court. Among several issues being addressed is the question if the Statutory protection provided by the compliance of the completion of the form applies ONLY to the insurance company, or does it apply to BOTH the insurance company and the agent. The Court is addressing the argument that because the Statute (Arizona Revised Statute 20-259.01) contains the protection for an “insurer” it does not also provide the same protection for the insurer’s agent.

This is a rather confusing argument considering that the Statute was created at the request of agents to help both agents and policyholders with establishing what everyone agreed was an easy to understand form to accomplish a task most commonly done by agents.

Although we STRONGLY disagree with this position the only “opinion” that counts here is that of the Arizona Supreme Court.

We have once again retained counsel to obtain permission to file an Amicus Brief or “Friend of the Court” brief to present our Association’s position. We have obtained that permission and have already filed the brief with the Supreme Court.

We are now in the anxious stage of waiting for a decision. The decision could be next week, or sometime in early 2016. The Courts are extremely busy and must address issues on a priority established for and by them. All we can do at this point is pray and wait.

The mission of the IIABAZ is to accomplish collectively what we could not accomplish individually. This is an excellent example of what your association does on a daily basis to protect your agency. It would only take one situation such as this decision to make the difference between an agency making a profit for the year. Thank you for entrusting us with the future of your agency and your profession.

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

KATELIN NEWMAN,
Plaintiff/Appellant,

v.

**CORNERSTONE NATIONAL INSURANCE COMPANY DBA FREEDOM NATIONAL
INSURANCE SERVICES,**
Defendant/Appellee.

No. CV-14-0121-PR
Filed March 18, 2015

Appeal from the Superior Court in Maricopa County
The Honorable David O. Cunanan, Judge
No. CV2011-099023
AFFIRMED

Opinion of the Court of Appeals, Division One
234 Ariz. 377, 322 P.3d 194 (App. 2014)
VACATED

COUNSEL:

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JUSTICE BRUTINEL authored the opinion of the Court, in which CHIEF JUSTICE BALES, VICE CHIEF JUSTICE PELANDER, and JUSTICES BERCH and TIMMER joined.

JUSTICE BRUTINEL, opinion of the Court:

¶1 Arizona Revised Statutes § 20-259.01(B) requires motor vehicle insurers writing liability policies to “make available” and “by written notice offer” underinsured motorist (“UIM”) coverage to their insureds. We hold that § 20-259.01(B) does not require the notice to specify the cost of the UIM coverage.

I.

¶2 Katelin Newman was injured in a motor vehicle accident caused by another driver’s negligence. The at-fault driver’s insurance was insufficient to cover Newman’s damages. She sought UIM coverage from her insurer, Cornerstone National Insurance Company (“Cornerstone”), but Cornerstone denied her claim because Newman had waived UIM coverage. Cornerstone had previously offered Newman UIM coverage on a form approved by the Arizona Department of Insurance (“ADOI”) when she purchased her car insurance, but Newman declined the coverage.

¶3 Newman sued, seeking a declaration that the UIM waiver form was void and that she was entitled to coverage. She sought partial summary judgment on the ground that Cornerstone’s offer was deficient under A.R.S. § 20-259.01(B) because the written notice offering the UIM coverage did not include a premium quote, which a proper offer requires. Cornerstone cross-moved for summary judgment, arguing that: (1) the ADOI had approved the form on which Newman declined uninsured/underinsured (“UM/UIM”) coverage, and ADOI-approved forms satisfy § 20-259.01’s requirements; and (2) even if the ADOI had not approved the form, Arizona law does not require an offer of UM/UIM

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coverage to include a premium quote. The trial court denied Newman's motion for summary judgment and granted Cornerstone's cross-motion.

¶4 The court of appeals affirmed, holding that "no premium price is required for a written offer of UIM coverage to be valid," and therefore "Cornerstone's offer of UIM coverage to Newman satisfied the requirements of A.R.S. § 20-259.01." *Newman v. Cornerstone Nat'l Ins. Co.*, 234 Ariz. 377, 378 ¶ 1, 380 ¶ 10, 322 P.3d 194, 195, 197 (App. 2014). The court reasoned that the statute is "very specific regarding what the offer must contain" and declined to impose additional requirements. *Id.* at 379 ¶ 7, 322 P.3d at 196.

¶5 We granted review to resolve whether the statutorily required written offer must include a premium quote, a recurrent legal question of statewide importance. We have jurisdiction pursuant to Article 6, Section 5(3) of the Arizona Constitution and A.R.S. § 12-120.24.

II.

¶6 We review the interpretation of statutes de novo. *State v. Hansen*, 215 Ariz. 287, 289 ¶ 6, 160 P.3d 166, 168 (2007). Section 20-259.01(B) provides:

Every insurer writing automobile liability or motor vehicle liability policies shall also *make available* to the named insured thereunder and shall *by written notice offer* the insured and at the request of the insured shall include within the policy underinsured motorist coverage which extends to and covers all persons insured under the policy, in limits not less than the liability limits for bodily injury or death contained within the policy. The selection of limits or rejection of coverage by a named insured or applicant on a form approved by the director shall be valid for all insureds under the policy.

(Emphasis added.)

¶7 Newman argues that an "offer," as understood under the common law, must include the price. But this interpretation conflicts with our prior interpretation of the statute.

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¶8 We have held that § 20-259.01's requirement that an insurer "make available" UM/UIM coverage means "that insurers be willing to provide such coverage." *Ballesteros v. Am. Standard Ins. Co. of Wis.*, 226 Ariz. 345, 348 ¶ 11, 248 P.3d 193, 196 (2011). In *Ballesteros* we also held that the provision "by written notice offer" requires only "that insurers bring the availability of such coverage to the insured's attention." *Id.* (citing 1981 Ariz. Sess. Laws, Ch. 224, § 1 (1st Reg. Sess.)). As used in § 20-259.01, the word "offer" is a verb and means "[t]o bring to or before; to present for acceptance or rejection; to hold out or proffer; to make a proposal to; to exhibit something that may be taken or received or not." *Tallent v. Nat'l Gen. Ins. Co.*, 185 Ariz. 266, 267-68, 915 P.2d 665, 666-67 (1996) (quoting Black's Law Dictionary 1081 (6th ed. 1990)). Thus, § 20-259.01(B) requires an insurer to "make available" UIM insurance and to communicate that availability in a written notice. The statute does not require the insurer to convey all material terms of the proposed insurance contract. Although we applied general contract principles in both *Tallent* and *Ballesteros*, we declined to add requirements not specifically included in the statute. *Id.*; *Ballesteros*, 226 Ariz. at 348-49 ¶¶ 13-14, 248 P.3d at 196-97.

¶9 Whether an offer of UM/UIM coverage has been made does not depend on the insured's understanding of the terms being offered, but instead on whether a reasonable person would understand that his or her acceptance would bind the insurer to provide the offered coverage. *Ballesteros*, 226 Ariz. at 348-49 ¶¶ 13-14, 248 P.3d at 196-97. Based on that reasoning, we held that § 20-259.01 does not require an explanation of UIM coverage. *Tallent*, 185 Ariz. at 267, 915 P.2d at 666. Similarly, the offer need not be translated into Spanish; the statute requires only that the insurer provide written notice offering coverage that, if accepted, binds the insurer. *Ballesteros*, 226 Ariz. at 349 ¶ 14, 248 P.3d at 197.

¶10 Here, Cornerstone's UM/UIM selection form brought the availability of coverage to Newman's attention. It informed her that she had "a right to purchase *both* Uninsured Motorist coverage and Underinsured Motorist coverage" in an amount up to her policy's liability limit. If Newman had elected to receive UM/UIM coverage on Cornerstone's form and initialed the box captioned "Accept," a reasonable person in her position would understand that Cornerstone was bound to provide the coverage regardless of whether a premium price was included. Cornerstone's offer of UIM coverage satisfied A.R.S. § 20-259.01's requirements.

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¶11 Although the cost might be useful information in encouraging insureds to purchase coverage and helping them to decide whether to buy, § 20-259.01 does not require this information. We have previously refused to add requirements to this statute and again decline to do so. *Ballesteros*, 226 Ariz. at 349 ¶ 17, 248 P.3d at 197; *Tallent*, 185 Ariz. at 268, 915 P.2d at 667. Nothing precluded Newman from asking how much UIM coverage would cost before she chose to forego it, and nothing suggests that insurers would refuse to provide the price information if requested.

III.

¶12 For the foregoing reasons, we affirm the trial court's judgment and vacate the court of appeals' opinion. Cornerstone also requests an award of its attorney fees on appeal pursuant to A.R.S. § 12-341.01. In the exercise of our discretion, we deny its request.