

# Carnahan Perry Hanlon & Hudson, PLC

Arizona Law Update

March 2010

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## Arizona Appeals Court Clarifies Requirements for Insurers Under UM/UIM Statute

On December 23, 2009, the Arizona Appeals Court provided automobile insurers with much needed guidance concerning the manner in which they offer uninsured motorist/underinsured motorist ("UM/UIM") coverage to potential insureds. The Appeals Court, in *Ballesteros v. American Standard Insurance Company of Wisconsin*, 572 Ariz. Adv. Rep. 22, at ¶ 28 (App. 2009), held that under the UM/UIM statute (aka A.R.S. § 20-259.01), an insurer is only required to convey the offer of UM/UIM coverage in a way reasonably calculated to apprise the potential insured of its contents.

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

Every insurer writing automobile liability or motor vehicle liability policies shall make available to the named insured . . . uninsured [and underinsured] motorist coverage which extends to and covers all persons uninsured under the policy . . . . The selection of limits or rejection of coverage by a named insured or applicant on a form approved by the director is valid for all insureds under the policy.

The *Ballesteros* court first acknowledged the ambiguity of the portion of § 20-259.01 which reads:

The selection of limits or rejection of coverage by a named insured or applicant on a form approved by the director is valid for all insureds under the policy.

American Standard Insurance Company of Wisconsin ("American Standard") argued that because its representatives had obtained Mr. Ballesteros' signature (declining UM/UIM coverage) on a department of insurance approved form, it was in compliance with § 20-259.01 and therefore insulated from liability. Mr. Ballesteros argued that since his primary language is Spanish, American Standard was required to do more to make certain that he understood what was being communicated to him.

The *Ballesteros* court then acknowledged the purpose of the statute which is "to guarantee that responsible drivers will have an opportunity to protect themselves and their loved ones as they would others." *Estate of Ball v. Am. Motorists Ins. Co.*, 181 Ariz. 124, 127, 888 P.2d 1311, 1314 (1995). The *Ballesteros* court also acknowledged the unwillingness of Arizona courts to interpret § 20-259.01, including assessing the sufficiency of an offer, in a way that conflicts with the legislature's intent to provide protection from uninsured and underinsured motorists. *Calvert v. Farmers Ins. Co. of Ariz.*, 144 Ariz. at 294, 697 P.2d at 687 (1985).

Next, the *Ballesteros* court acknowledged that the Arizona Supreme Court, in *Tallent v. National General Insurance Co.*, 185 Ariz. 266, 915 P.2d 665 (1996), had rejected any suggestion that insurers had the burden to explain UM/UIM coverage in writing as part of the offer form. However, the *Ballesteros* court did not agree that the *Tallent* decision had removed the requirement that insurance companies convey the offer of UM/UIM coverage in a way reasonably calculated to bring to the insured's attention that which is being offered.

Lastly, the *Ballesteros* court acknowledged that it had found nothing in either the legislative history or the agency interpretation of the statute to suggest that the legislature intended to do away with the requirement that offers of UM/UIM coverage be provided in a way reasonably calculated to apprise the insured of what is being offered. The *Ballesteros* court further acknowledged that by simply obtaining the signature of a potential insured on a department of insurance approved form, an insurance company was facially in compliance with the statute. However, the *Ballesteros* court reasoned that if that same insurance company knew or should have known that merely providing the offer form would be insufficient to convey the offer of coverage to the potential insured because the insured could not read it, the insurance company would have to take additional steps reasonably calculated to ensure the offer is communicated effectively to the insured.

While the *Ballesteros* holding does require insurance companies to ensure the offer of UM/UIM coverage is communicated effectively to a potential insured, it does not require insurance companies to provide potential insureds with forms in their respective languages. The *Ballesteros* court acknowledged that it found nothing in the statute or the case law interpreting the statute to suggest any such requirement. The *Ballesteros* court reasoned that the legislature would have included Spanish-language requirements in the statute if it had intended such requirements.

The *Ballesteros* court did not rule on the question of whether American Standard had done enough to make certain that Mr. Ballesteros actually understood what he was being offered. The *Ballesteros* court acknowledged that American Standard had presented evidence suggesting that it had take additional steps to make sure that Mr. Ballesteros understood what he was being offered (for example, American Standard had provided declarations from two Spanish-speaking employees, who stated it was their practice to translate and explain the offer form for Spanish-speaking insureds). As a result, the *Ballesteros* court remanded that question to the trial court so it could review all the relevant evidence and provide its ruling.