



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**LESLEY & PAUL WILKS v. JOHN MANOBIANCO
INSURANCE AGENCY,
CV-14-0260-PR**

PARTIES:

Petitioners: John Manobianco, Sandra Manobianco, and John Manobianco Agency, Inc.
(collectively, “Manobianco”)

Respondents: Lesley and Paul Wilks (collectively, “Wilks” or “The Wilkses”)

Amici Curiae: Arizona Association for Justice/Arizona Trial Lawyers Association
Independent Insurance Agents and Brokers of Arizona
Randy Jones and Farmers Insurance Company of Arizona
Robert and Marcia Murray

FACTS:

Earlier, Wilks contacted Manobianco to get a “full coverage” insurance policy for two family vehicles. Manobianco obtained a policy for Wilks through State Farm with uninsured motorist (“UM”) and underinsured motorist (“UIM”) coverage. In 2003 Wilks switched to another insurer, keeping the UM/UIM coverage level. In 2004 Wilks again wanted to change carriers and to keep the same coverage. According to Lesley Wilks, the Manobianco Agency said it would do that.

She visited Manobianco to sign many documents. They included the Arizona Department of Insurance-approved form (“DOI form”), which Lesley admitted she did not read, that set out the choice to select or to reject UM/UIM coverage. The DOI form had been marked to select UM, but not to select UIM coverage. Manobianco obtained the policy from State Farm as the written instructions on the form indicated, with UM and without UIM coverage.

An underinsured driver rear-ended Lesley. State Farm denied her UIM coverage claim because she had signed the DOI-approved form rejecting that coverage. Wilks sued Manobianco, claiming professional negligence for failing to procure the UIM coverage despite Lesley’s request.

The superior court granted Manobianco summary judgment, as its “compliance with A.R.S. § 20-259.01 demonstrated that [it had] fulfilled [its] duties to Plaintiffs regarding offering the UM/UIM coverage” and “breached no duty owed to Plaintiffs.”

The court of appeals reversed and remanded to the superior court, holding that A.R.S. § 20-259.01(B) does not bar an insured from making a professional negligence claim against an insurance agent for not getting UIM coverage the insured asked for and the agent agreed to get for

the insured.

Judge Cattani specially concurred, agreeing summary judgment is not appropriate because there is a genuine issue of material fact regarding whether Manobianco breached the applicable standard of care for an insurance agent by failing to get Wilks the requested coverage. He concluded, contrary to the majority, that the statute should be read to protect both insurers and agents who provide a written offer of underinsured motorist coverage on an approved form from liability for failure to offer the coverage. Further statutory analysis is not necessary, he wrote, because the negligence asserted here relates to a different duty than the kind A.R.S. § 20-259.01 addresses.

ISSUES:

Did the Court of Appeals err in holding that an insurance agent who complies with A.R.S. § 20-259.01(B) in offering UM/UIM coverage on a Department-approved form is not afforded the same statutory protection against after-the-fact inquiries as the insurer he represents?

Issue presented to but not decided by the Court of Appeals:

Whether an insurer can be held vicariously liable on claims of insurance agent negligence notwithstanding the agent's compliance with A.R.S. §20-259.01 in offering UM/UIM coverage on a Department-approved form?

DEFINITIONS:

Amici Curiae: Latin phrase meaning “friends of the court,” people or organizations who are *not* parties to this case, but who (a) may be affected indirectly by it or (b) have special knowledge or insight that can help the Court consider the possible effects of its decision.

Insurance agent, broker, or producer: Insurance agent or broker, who brings together those who wants to be insured and the insurance company, which issues policies to cover risks.

Insurer or provider: Company that by contract spreads risk across a pool of policy holders.

Summary judgment: Case decided on undisputed facts by a trial court without a trial. It can resolve the entire case, or can be “partial summary judgment,” which resolves part of the dispute.

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.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.