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Insurance Law-Uninsured Motorist Coverage-Insurers Extending Liability Coverage Into Mexico Need Not Provide Coextensive Uninsured Motorist Coverage- Transamerica Insurance Co. v. McKee

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Insurance Law—UNINSURED MOTORIST COVERAGE—INSURERS EXTENDING LIABILITY COVERAGE INTO MEXICO NEED NOT PROVIDE COEXTENSIVE UNINSURED MOTORIST COVERAGE—*Transamerica Insurance Co. v. McKee,* 27 Ariz. App. 158, 551 P.2d 1324 (1976), *review denied*, No. 12783-PR (Ariz., Sept. 14, 1976).

In October 1973, four Arizona families went on a short vacation trip to Mexico, taking several vehicles, including a custom-made dune buggy. The dune buggy's owner gave an adult member of the party permission to use the vehicle to take three children for a ride, during which the vehicle overturned, causing extensive injuries to the two minor claimants.

Because of various exclusions in applicable automobile liability insurance policies, neither the dune buggy nor its driver were insured for the claimants' injuries.[1] Therefore, the claimants sought recovery under the uninsured motorist provision of their families' automobile insurance policies. Transamerica Insurance Company (Transamerica) had issued nearly identical automobile policies to both claimants' families. Both extended liability coverage to "anywhere in the world," yet limited the territory of the uninsured motorist coverage to the United States, its territories or possessions, and Canada.[2]

The claimants sought a declaratory judgment that (1) automobile insurance policy provisions granting liability coverage but excluding uninsured motorist coverage in Mexico are contrary to Arizona statutes or public policy, and (2) policy exclusions in a Mexico coverage endorsement providing that "Family Protection Coverage" is not applicable to accidents occurring in Mexico are ambiguous and therefore ineffective.[3] An Arizona superior court granted summary judgment in favor of the claimants on both grounds, and Transamerica appealed. The Arizona Court of Appeals affirmed the finding that the policy provisions were ambiguous, but disagreed with the lower court's first determination, stating that if an insurance company chooses to write liability

1. At the time of the accident the dune buggy was not insured by any United States insurance company. Although the owner had procured Mexican insurance for the trip, the Mexican insurance policy excluded coverage for damages arising from bodily injuries to passengers. The driver-tortfeasor had liability insurance coverage with an American insurance company. However, his policy provided coverage for accidents occurring within Mexico only if the accident occurred within 50 miles of the United States border. Thus, neither the vehicle nor its driver were insured for the bodily injuries sustained by the claimants. Transamerica Ins. Co. v. McKee, 27 Ariz. App. 158, 160, 551 P.2d 1324, 1326 (1976).

2. 27 Ariz. App. at 160, 551 P.2d at 1326.

3. Brief for Appellees at 2-4.

policies covering accidents in countries other than the United States and Canada, neither Arizona statutes nor public policy require it to provide coextensive uninsured motorist coverage.[4]

I. BACKGROUND

A. *Historical Development of Uninsured Motorist Coverage*

The rapid expansion of automobile use on American highways brought a concomitant increase in the incidence of automobile accidents and resulting injuries.[5] Whenever the responsible motorist carried automobile liability insurance or possessed sufficient wealth, no social problem was created since the innocent victim received compensation for his injuries. Unfortunately, not all persons whose negligent conduct inflicted injuries on their fellow travelers could meet the financial burden that traditional legal processes placed upon them. Since an award of compensatory damages to the innocent parties was meaningless when the wrongdoer was financially irresponsible, the injured party bore the loss himself. As these cases increased in number, the problem became one of nationwide significance and the public demanded a solution.

1. *Financial responsibility laws*

The initial legislative response to this problem was the enactment of various state financial responsibility laws. Beginning with Connecticut in 1925,[6] all states and the District of Columbia enacted some variant of financial responsibility legislation.[7]

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4. 27 Ariz. App. at 161-62, 551 P.2d at 1327-28.

5.

Year	Number of Motor Vehicle Registrations Issued	Millions of Miles Driven in the U.S.	Number of Auto Accidents
1915	2,490,900		
1930	26,749,800	206,320	
1940	32,453,200	302,188	6,100,000
1950	49,161,600	458,246	8,300,000
1960	73,868,600	718,845	10,400,000
1970	108,407,300	1,120,705	16,000,000

BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970, H.R. Doc. No. 93-78 Part 2, 93d Cong., 1st Sess. 716, 718-20 (1975).

6. 1925 Conn. Pub. Acts, ch. 183.

7. *See* M. WOODROOF, J. FONSECA, & A. SQUILLANTE, AUTOMOBILE INSURANCE AND NO-

These financial responsibility laws were intended to induce motorists to acquire liability insurance.[8] They provided, in essence, that where a financially irresponsible motorist was involved in an accident involving bodily injury or property damage above a certain specified amount and failed to respond in damages, his license was automatically revoked. The license would not be restored until he submitted proof of future financial responsibility (usually in the form of an insurance policy).[9] These laws were characterized as "first bite" statutes since the motorist was entitled to one accident before he became subject to financial responsibility;[10] no statute provided for compensating the first victim. These laws also did not apply to accidents involving stolen cars or hit-and-run accidents where the responsible driver could not be identified. Further, the state's license revocation power did not extend to out-of-state or foreign motorists.[11] These gaps in the financial responsibility laws left many injured persons without financial remuneration.[12]

FAULT LAW § 3:5 (1974) [hereinafter cited as WOODROOF]. For a list of the original statute citations, see Ward, *New York's Motor Vehicle Accident Indemnification Corporation: Past, Present and Future*, 8 BUFFALO L. REV. 215, 218 n.8 (1959). For a more current list and analysis of state financial responsibility laws, see R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM app. C, at 539-42 (1965).

8. A. WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE § 1.2 (1969). In Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140-41 (1963), the court stated:

> The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons. . . . It may, as incidental purposes and effects . . . (1) encourage operators of motor vehicles to obtain liability insurance and (2) encourage drivers to drive more carefully.

Accord, Canal Ins. Co. v. Sinclair, 208 Kan. 753, 761-62, 494 P.2d 1197, 1203 (1972); LaPoint v. Richards, 66 Wash. 2d 585, 590, 403 P.2d 889, 893 (1965).

Prior to the adoption of its financial responsibility act in 1951, the percentage of uninsured motorists in Arizona may have been as high as 70%. *See* Schecter v. Killingsworth, 93 Ariz. at 285, 380 P.2d at 144.

9. *See, e.g.*, ARIZ. REV. STAT. § 28-1142 (1976).

10. Notman, *A Decennial Study of the Uninsured Motorist Endorsement*, 43 NOTRE DAME LAW. 5, 6 (1967). This situation was "reminiscent of the old common-law rule applied to the canine species of tortfeasors: one 'free bite' is allowed. The procedure looks to the *second* accident, not the first, and requires proof of only *future* financial responsibility." *Id.*

11. Donaldson, *Uninsured Motorist Coverage*, 36 INS. COUNSEL J. 397, 398 (1969).

12. For example, in the early 1950's the loss attributed to uninsured motorists in New York State alone had risen to over $7 million per year even though 80-85% of that state's motorists carried liability insurance. NEW YORK DEP'T OF JUSTICE, THE PROBLEM OF THE UNINSURED MOTORIST 10 (1951), *cited in* A. WIDISS, *supra* note 8, § 1.6. Similarly, estimates in the latter part of the 1950's showed that at least one-third of Virginia's automobile accidents involved an uninsured vehicle. Comment, *Uninsured Motorist Coverage in Virginia*, 47 VA. L. REV. 145, 145 (1961).

2. Uninsured motorist coverage legislation

Attempting to fill the gaps left by financial responsibility legislation, state legislatures enacted a variety of statutes ranging from state-sponsored unsatisfied judgment funds[13] to mandatory liability insurance for all automobile owners.[14] The insurance industry responded to the problem by developing uninsured motorist coverage as a relatively inexpensive addition to the standard policy of automobile liability insurance. Uninsured motorist coverage is, in effect, insurance against a tortfeasor's lack of insurance. Under this coverage, the insured can recover the amount of damages he or she would have been entitled to receive from the owner or operator of an uninsured or hit-and-run vehicle.[15] This coverage is currently a standard form endorsement, generally referred to as either uninsured motorist coverage or family protection insurance.[16]

The insurance industry's introduction of uninsured motorist coverage prompted state legislation requiring insurance companies to offer uninsured motorist coverage as a supplement to every automobile liability insurance policy issued in the enacting state. The purposes of this legislation were to close the gaps inherent in the financial responsibility laws and to provide protection to victims of negligent uninsured motorists.[17] Forty-eight states and

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13. Unsatisfied judgment funds have been widely discussed, but only five states—North Dakota, Maryland, Michigan, New Jersey and New York have established the funds. A. WIDISS, *supra* note 8, § 1.5. For an excellent treatment of this subject, see V. HALLMAN, UNSATISFIED JUDGMENT FUNDS (1968).

14. Massachusetts (1925), New York (1956), and North Carolina (1957) are the only states that have enacted compulsory insurance requirements. A. WIDISS, *supra* note 8, § 1.2 & n.6. For a general discussion of these states' statutes, see R. KEETON & J. O'CONNELL, *supra* note 7, at 76-102.

15. I. SCHERMER, AUTOMOBILE LIABILITY INSURANCE § 17.01 (rev. 1975). Uninsured motorist coverage was made available throughout the United States in 1956. For the 1956 Countrywide Uninsured Motorist Endorsement, see DEFENSE RESEARCH INST., INC. & J. CORBLEY, UNINSURED MOTORIST PROTECTION app. B, at 44-45 (1968) and A. WIDISS, *supra* note 8, app. A 2, at 299-305.

16. A. WIDISS, *supra* note 8, § 1.10 n.35:

> The terms "uninsured motorist coverage" and "family protection insurance" have been used interchangeably by the industry to identify this coverage, and have been accorded general acceptance as the appropriate nomenclature. However, individual insurance companies are free to choose that terminology which they deem desirable. Thus, the endorsement has received numerous other designations, such as "Innocent Victim Coverage" and "Family Protection Against Uninsured Motorists."

Note that one of the issues in the instant case was whether Transamerica's use of these two terms was ambiguous.

17. *See, e.g.*, Balestrieri v. Hartford Acc. & Indem. Ins. Co., 22 Ariz. App. 255, 257,

the District of Columbia presently have uninsured motorist statutes.[18] Fifteen states (including Arizona) mandate the inclusion of uninsured motorist coverage in every automobile liability policy issued in the state; the remaining states require that the insurer offer the endorsement but give the insured the right to reject the offered coverage.[19] In spite of these and other differences, many of the provisions of uninsured motorist statutes enacted throughout the country are identical.[20] Therefore, issues raised under one jurisdiction's uninsured motorist statute will seldom, if ever, be unique to that jurisdiction.

B. Territorial Limitations

1. Liability coverage originally limited to the United States and Canada

Uninsured motorist legislation has no territorial limits; that is, the statutes obligating insurance companies to provide coverage neither specify the required geographical scope of coverage nor sanction any territorial restrictions or limitations.[21] When uninsured motorist coverage was made available in 1956, the standard automobile liability policies limited their territory of

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526 P.2d 779, 781 (1974); Palisbo v. Hawaiian Ins. & Guar. Co., 547 P.2d 1350, 1354 (Hawaii 1976).

18. Uninsured motorist coverage is required by statute in every state except Maryland and New Jersey. WOODROOF, *supra* note 7, § 7.2. For a compilation of the 48 state statutes, *see id.* § 1.48 n.41; A. WIDISS, *supra* note 8, app. B 1, at 306-09. For a chart illustrating the various provisions of state uninsured motorist laws, see P. PRETZEL, UNINSURED MOTORISTS app. A, at 200-03 (1972).

19. The 15 states requiring uninsured motorist coverage with no right of rejection are Arizona, Connecticut, Illinois, Maine, Massachusetts, Missouri, New Hampshire, North Dakota, Oregon, South Carolina, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin. Also, uninsured motorist coverage on private passenger vehicles may not be rejected in Minnesota and Pennsylvania. I. SCHERMER, *supra* note 15, § 17.01.

20. A. WIDISS, *supra* note 8, § 3.2. For example, at least 35 states have adopted a provision substantially like the following:

> No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in [the state's financial responsibility statutes], for the protection of persons insured thereunder who are entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

Id.

21. *Id.* § 3.5.

coverage to the United States, its territories and possessions, and Canada.[22] Since uninsured motorist coverage was an endorsement to existing automobile liability policies, the uninsured motorist coverage was limited to the same territory by the insurance industry.[23]

The only challenge to an insurance policy's territorial provisions limiting both liability and uninsured motorist coverage to the United States and Canada was unsuccessful.[24] It has since been generally understood that an uninsured motorist provision is subject to the same geographic limitations that apply to the liability coverage in the policy.[25] Hence, the effect of a provision in an automobile liability policy providing coverage only to accidents occurring while the insured automobile is in the United States or Canada is to exclude uninsured motorist coverage for accidents occurring outside of the United States or Canada.

2. *Liability coverage extended into Mexico*

As more Americans drove into Mexico for business, vacation, and recreation,[26] they demanded and received automobile liabil-

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22. Paragraph VIII of the 1955 Standard Provisions for Automobile Combination Policies, entitled "Policy Period, Territory, Purpose of Use," stated: "[t]his policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof . . . ." R. KEETON, BASIC INSURANCE LAW app. F, at 635 (1960).

23. Paragraph III of the 1956 Countrywide Uninsured Motorist Endorsement, entitled "Policy Period, Territory," stated: "[t]his endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada." DEFENSE RESEARCH INST., INC. & J. CORBLEY, *supra* note 15, app. B, at 44.

24. In American Cas. Co. v. Foster, 31 Misc. 2d 818, 219 N.Y.S.2d 815 (Sup. Ct. 1961), the court determined that a policy's territorial provision providing coverage "only to accidents, occurrences and loss . . . while the automobile is within the United States of America . . . or Canada" excluded coverage of the insured's injuries sustained while riding in an uninsured vehicle in Italy. The court commented on the quoted provision:

> Although it is true that the insurer here could have written its policy so as to obviate any possible doubt that the coverage was to apply to accidents occurring only in the United States or Canada, it is abundantly clear that that is the only logical import of the policy. Any other interpretation would be strained and illogical.

31 Misc. 2d at 819, 219 N.Y.S.2d at 816.

25. 12 COUCH ON INSURANCE (SECOND) § 45:647 (1964).

26. In 1940, United States citizens crossed the Mexican border less than 8 million times; in 1974 they crossed the border approximately 68 million times. IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, 1974 ANNUAL REPORT Table 20, at 80 (1974). These figures represent the number of times United States citizens crossed the border back into the United States. The Mexican government apparently does not record the number of United States citizens crossing into Mexico.

ity insurance coverage extending into Mexico.[27] However, insurance companies granting United States citizens liability coverage into Mexico refuse to provide uninsured motorist coverage beyond the United States-Mexican border. Undoubtedly this is due in part to the large number of uninsured motorists in Mexico.[28]

The only previous case involving the issue of whether an insurance company violates public policy by restricting its uninsured motorist coverage to the United States and Canada while extending liability coverage into Mexico is *Mission Insurance Co. v. Brown.*[29] In that case, the California Supreme Court unanimously held that the public policy of California as evidenced by

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27. *See generally* Robbins & Netherton, *Mexican Automobile & Insurance Law*, 47 MICH. ST. B.J. 22, 28 (Jan. 1968).

Various insurance policies have expanded their territorial limits to include coverage into Mexico for accidents 50, 75, or 100 miles from the United States border. *See, e.g.*, Kvalheim v. Farm Bureau Mut. Ins. Co., 195 N.W.2d 726, 728 (Iowa 1972) (policy limiting coverage to 75 miles into Mexico). This was the same type of policy carried by the tortfeasor in the instant case. 27 Ariz. App. at 160, 551 P.2d at 1326.

Other insurance companies have provided a "Mexico Endorsement" covering journeys into Mexico for limited amounts of time. *See, e.g.*, United Servs. Auto. Ass'n v. Kresch, 48 Cal. App. 3d 640, 645, 121 Cal. Rptr. 773, 775 (1975); Mission Ins. Co. v. Brown, 63 Cal. 2d 508, 509, 407 P.2d 275, 275, 47 Cal. Rptr. 363, 363 (1965). Similarly, the claimant's Mexico Endorsement issued by Transamerica provided liability coverage throughout all of Mexico for occasional trips not exceeding a period of 10 days at a time. Brief for Appellees at 13.

Recently some insurance companies have redefined the territory covered by their policies as "anywhere in the world," provided the claim is filed in the United States. The general liability-automobile policy form found in R. KEETON, BASIC TEXT ON INSURANCE LAW app. G, at 654 (1971), provides the following as its policy territory:

> (1) the United States of America, its territories or possessions, or Canada, or
>
> . . . .
>
> (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use . . . within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.

The territory of the Transamerica policies involved in the instant case was "anywhere in the world," provided that resulting claims were originally asserted in the United States. 27 Ariz. App. at 160, 551 P.2d at 1326.

28. Only about 20% of Mexican drivers are insured. Robbins & Netherton, *supra* note 27, at 28. Seguros La Provincial, a leading insurance company in Mexico, estimates the current percentage of insured Mexican motorists as only 18%. Letter from American Embassy in Mexico, Office of Citizens Consular Services, to Brigham Young University Law Review (Sept. 9, 1976).

29. 63 Cal. 2d 508, 407 P.2d 275, 47 Cal. Rptr. 363 (1965). The claimants in *Mission Ins. Co. v. Brown* received personal injuries in a collision with an uninsured vehicle less than 75 miles from the United States border and within 10 days after entering Mexico (hence, within their liability policy coverage). The territory on their uninsured motorist endorsement was limited to the United States and Canada. *Id.* at 509, 407 P.2d at 275-76, 47 Cal. Rptr. at 363-64.

its uninsured motorist statute[30] required an insurance company that extended liability coverage into Mexico to likewise extend uninsured motorist coverage.[31] In so doing the court declared the territorial limits stated in the policy to be void.[32] In support of its holding the court reasoned that (1) California's uninsured motorist statute was designed to minimize losses to California residents who are involved in accidents with uninsured or financially irresponsible motorists; (2) the California statute did not contemplate a piecemeal whittling away of liability for injuries caused by uninsured motorists, either territorially or under other conditions; and (3) public policy required uninsured motorist coverage to extend to the same territory in which an insured is covered for liability.[33]

II. Instant Case

The majority and concurring opinions concluded that although the terms "uninsured motorist protection" and "family protection" are synonymous in the insurance trade,[34] lay persons would have no such understanding unless the terms were defined in the policy. Since the term "family protection coverage" was not defined in the policies, the court concluded that the two Transamerica policies were ambiguous.[35] The court therefore construed the ambiguity against the insurer[36] and affirmed the ruling of the superior court.

The majority determined, however, that neither Arizona statutes nor public policy drawn from those statutes required insurers who write liability insurance outside of the United States or Canada to provide coextensive uninsured motorist coverage. In reaching its conclusion, the majority first analyzed the section of Arizona's financial responsibility law which provides that an owner's automobile liability policy must insure against loss from

30. 1961 Cal. Stats. ch. 1189, § 1 (current version at Cal. Ins. Code § 11580.2(a) (West 1972)).

31. 63 Cal. 2d at 510, 407 P.2d at 276, 47 Cal. Rptr. at 364.

32. *Id.*, 407 P.2d at 276, 47 Cal. Rptr. at 364.

33. *Id.* at 509-11, 407 P.2d at 276-77, 47 Cal. Rptr. at 364-65.

34. *See* note 16 *supra.*

35. 27 Ariz. App. at 161-62, 551 P.2d at 1327-28.

36. It is a general principle of insurance law that all ambiguities in an insurance policy are to be construed in the light most favorable to the insured and against the insurer-draftsman. *E.g.*, State Farm Mut. Auto. Ins. Co. v. O'Brien, 24 Ariz. App. 18, 21, 535 P.2d 46, 49 (1975); State Farm Mut. Auto. Ins. Co. v. Partridge, 10 Cal. 3d 94, 102, 514 P.2d 123, 128, 109 Cal. Rptr. 811, 816 (1973); Witherspoon v. St. Paul Fire & Marine Ins. Co., 86 Wash. 2d 641, 548 P.2d 302, 308 (1976).

liability imposed by law within the United States or Canada.[37] Noting that Arizona's uninsured motorist statute contained no territorial limitation and reasoning that the purpose of the uninsured motorist statute was to close the gaps left open by the financial responsibility laws, the majority concluded that the territorial coverage required by the Arizona uninsured motorist statute was the same as that required of liability coverage by the financial responsibility laws, namely, the United States and Canada.[38]

After determining that the Arizona uninsured motorist statute did not mandate the extension of uninsured motorist coverage into Mexico, the majority summarily disposed of the public policy question, finding no statutory public policy requiring the extension of uninsured motorist coverage into foreign countries.[39] Similarly, the majority rejected *Mission Insurance Co. v. Brown,* stating that it was unable to agree with the California Supreme Court's decision.[40]

The concurring opinion disagreed with both the majority's statutory and public policy determinations, contending that Arizona's uninsured motorist statute and public policy implicitly required that all automobile liability policies provide coextensive uninsured motorist coverage. It advocated adherence to the California Supreme Court's "prudent course" of requiring coextensive liability and uninsured motorist coverage, fearing that in rejecting the rule set down in *Mission Insurance Co. v. Brown,* the majority created a "serious gap" in Arizona's minimum standards of insurance protection.[41]

III. ANALYSIS

With only one case precedent and virtually no legal commentaries on the issue, the court chose to decide the instant case solely on an interpretation of Arizona's uninsured motorist stat-

37. ARIZ. REV. STAT. § 28-1170(B) (1976) provides in part:

> The owner's policy of liability issurance must comply with the following requirements:
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> . . . .
>
> 2. It shall insure the person named therein . . . against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicle . . . within the United States or the Dominion of Canada . . . .

38. 27 Ariz. App. at 160-61, 551 P.2d at 1326-27.

39. *Id.* at 161, 551 P.2d at 1327.

40. *Id.*, 551 P.2d at 1327.

41. *Id.* at 162-63, 551 P.2d at 1328-29.

ute,[42] two sections of the financial responsibility statute,[43] and the public policy it found evidenced by those statutes.[44] Had the court broadened its analysis, realized the inadequacy of a narrow statutory determination, and considered manifestations of public policy not found in the statutory language, it probably would have concluded that the needs of the Arizona motoring public would be best met by requiring coextensive liability and uninsured motorist coverage. This note first examines the court's attempt to determine legislative intent through statutory language and then evaluates nonstatutory manifestations of public policy that the court should have considered in reaching its decision.

A. Legislative Intent

The purpose of financial responsibility laws and uninsured motorist statutes is to protect persons using the highways from financial hardship that may result from the use of automobiles by financially irresponsible or uninsured persons.[45] Courts facing territorial limitations in this area could interpret uninsured motorist statutes in one of several ways. As will be discussed below, the failure of uninsured motorist statutes to mandate territorial boundaries could imply that the various state legislatures intended to either (1) adopt the boundaries established in the financial responsibility laws, namely, the United States and Canada; (2) require coextensive liability and uninsured motorist coverage; or (3) protect United States citizens wherever they travel. A final and probably most likely inference is that the drafters of the statutes simply failed to consider the territorial boundary question.

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42. ARIZ. REV. STAT. § 20-259.01(A) (1975) provides in part:

> On and after January 1, 1966, no automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in § 28-1142, under provisions filed with and approved by the insurance director, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

43. ARIZ. REV. STAT. §§ 28-1142 & 28-1170(B)(2) (1976).

44. 27 Ariz. App. at 160-61, 551 P.2d at 1326-27.

45. *See* notes 8 and 17 and accompanying text *supra*.

1. Territorial boundaries of uninsured motorist coverage established by financial responsibility laws

The Arizona uninsured motorist statute provides that all insurance policies insuring any vehicle registered or principally garaged in Arizona must provide uninsured motorist coverage in monetary limits specified in a section of Arizona's financial responsibility laws.[46] The court in the instant case reasoned that since the legislature provided no statutory territorial boundaries in the uninsured motorist statute, yet referred therein to the monetary limits of the state's financial responsibility laws, it intended the uninsured motorist statutory boundaries to be those named in the prior laws, namely, the United States and Canada.[47]

This line of reasoning finds support in the fact that the uninsured motorist statutes were passed by state legislatures to fill gaps left by the financial responsibility laws; the two laws were to complement each other. Since the financial responsibility laws do not mention Mexico,[48] arguably the tandem uninsured motorist statutes likewise do not statutorily require coverage extending into Mexico.

An inherent weakness in this statutory interpretation is the assumption that since the uninsured motorist statute refers to one section of the financial responsibility laws[49] (adopting its required monetary limits), it therefore assumes other definitions and specifications of another section of those laws[50] (requiring liability coverage for accidents in the United States and Canada). A literal reading of the uninsured motorist statute reveals that its only reference to the financial responsibility laws is to the monetary limits[51] covering bodily injury or death. This indicates only

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46. For the language of Arizona's uninsured motorist statute, see note 42 *supra*. The monetary limits required of uninsured motorist coverage in Arizona are "fifteen thousand dollars because of bodily injury to or death of one person in any one accident and . . . not less than thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident . . . ." ARIZ. REV. STAT. § 28-1142 (1976); *see* note 51 *infra*.

47. 27 Ariz. App. at 161, 551 P.2d at 1327.

48. The financial responsibility laws require automobile liability insurers to protect the insured "against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicle or motor vehicles within the United States or the Dominion of Canada . . . ." ARIZ. REV. STAT. § 28-1170(B)(2) (1976).

49. ARIZ. REV. STAT. § 28-1142 (1976).

50. ARIZ. REV. STAT. § 28-1170(B) (1976).

51. ARIZ. REV. STAT. § 28-1142(C) (1976) provides:

> Every such policy . . . is subject, if the accident has resulted in bodily injury or death, to a limit . . . of not less than fifteen thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the

that the legislature intended to require the minimum uninsured motorist coverage to be at least as great as that required of liability policies,[52] not that the territorial coverage of the uninsured motorist statute is limited to the United States and Canada.[53] Taking the minimum territorial requirement of liability policies from the financial responsibility laws and imposing it as an uninsured motorist coverage restriction works against the remedial purpose of the uninsured motorist statute,[54] namely, to fill the gaps left by the minimum requirements[55] of the financial

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limit for one person, to a limit of not less than thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

52. The majority of states today require that insurance companies provide liability and uninsured motorist coverage in minimum amounts not less than those fixed by the financial responsibility law of the state. WOODROOF, *supra* note 7, § 7:13. Three states, Connecticut, Minnesota, and New Hampshire, require the insurer to write uninsured motorist coverage up to the amount requested by the insured in basic liability coverage. *Id.*

For a recent list of the minimum amounts required of uninsured motorist coverage, see P. PRETZEL, *supra* note 18, app. A, at 200-03.

ARIZ. REV. STAT. § 28-1170(B)(2) (1976) requires automobile insurance companies to provide coverage:

> [S]ubject to limits exclusive of interest and costs, with respect to each motor vehicle as follows:
>
> (a) Fifteen thousand dollars because of bodily injury to or death of one person in any one accident.
>
> (b) Subject to the limit for one person, thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident.
>
> (c) Ten thousand dollars because of injury to or destruction of property of others in any one accident.

See ARIZ. REV. STAT. § 28-1142(C) (1976). The financial responsibility laws of every state contain a similar or identical provision, but provide varying amounts of minimum limits. For a list of these minimal financial responsibility requirements, see R. KEETON & J. O'CONNELL, *supra* note 7, app. C, at 539-42 (1965).

53. This is evidenced by the inapplicability of other provisions within the same section of the financial responsibility law. For example, the Arizona uninsured motorist statute provides coverage only for bodily injury or death. ARIZ. REV. STAT. § 20-259.01(A) (1975). The section of Arizona's financial responsibility law referred to in the uninsured motorist statute, ARIZ. REV. STAT. § 28-1142 (1976), specifies limits for bodily injury or death and property damage. Clearly, the part of the section setting limits for property damage is inapplicable. Uninsured motorist coverage is designed as a bodily injury protection. Only the following six states have expanded that initial design to require (or allow) uninsured motorist protection for property damage: Georgia, New Mexico, North Carolina, South Carolina, Virginia, and West Virginia. WOODROOF, *supra* note 7, § 7:3.

54. *See* note 17 and accompanying text *supra*.

55. The parties to an insurance contract may agree on higher limits or more expansive territories than the minimums required by the financial responsibility laws. *E.g.*, McCarthy v. Preferred Risk Mut. Ins. Co., 454 F.2d 393, 395 (9th Cir. 1972); State Farm Mut.

responsibility laws.[56]

2. Coextensive liability and uninsured motorist coverage

The language of the uninsured motorist statutes support a second interpretation, the one voiced by the California Supreme Court in *Mission Insurance Co. v. Brown* and advocated in the concurring opinion of the instant case. This interpretation requires an insurance company to provide coextensive uninsured motorist protection if it chooses to write liability insurance in Mexico or, presumably, in other foreign countries. The Arizona uninsured motorist statute requires that "no automobile liability or motor vehicle liability policy . . . shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided" for accidents involving uninsured motorists.[57] The language requiring uninsured motorist coverage with every liability policy issued supports an interpretation that all automobile insurance policies provide coextensive liability and uninsured motorist coverage. It does not contemplate partial uninsured motorist coverage.

The majority of state uninsured motorist statutes provide that an insured may reject uninsured motorist coverage if he so desires.[58] Interpreting such a statute,[59] the California Supreme Court noted that the only way the legislature provided for a waiver of uninsured motorist coverage was by a written rejection[60] and held that the statute would not allow a territorial or any other restriction of uninsured motorist coverage.[61] Based on the reasoning of the California Supreme Court, an interpretation requiring coextensive coverage would be even more justified in states such as Arizona that require uninsured motorist coverage on all vehicles, with no right of rejection.[62]

Ins. Co. v. Edgington, 13 Ariz. App. 374, 375, 476 P.2d 895, 896 (1970); Garcia v. Allstate Ins. Co., 327 So. 2d 784, 786 (Fla. Dist. Ct. App. 1976); ARIZ. REV. STAT. § 20-259.01(B) (1975). The instant case illustrates parties agreeing to expanded territory.

56. *See* notes 13-20 and accompanying text *supra.*

57. ARIZ. REV. STAT. § 20-259.01(A) (1975).

58. *See* note 19 and accompanying text *supra.*

59. 1961 Cal. Stats., ch. 1189, § 1 (current version at CAL. INS. CODE § 11580.2(a) (West 1972)).

60. Mission Ins. Co. v. Brown, 63 Cal. 2d at 509-10, 407 P.2d at 276, 47 Cal. Rptr. at 164.

61. *See id.* at 511, 407 P.2d at 277, 47 Cal. Rptr. at 365; notes 30-33 and accompanying text *supra.*

62. The argument is that the legislature has mandated uninsured motorist coverage

This interpretation of the statutory language is the most viable, allowing the application of the statute to change with the needs of the motoring public. For example, as times change and insurance companies expand their liability underwriting to new territories, uninsured motorist coverage would likewise expand into those territories. This interpretation would also explain the lack of territorial boundaries in the uninsured motorist statutes.[63]

This interpretation of the statute is supported by a number of cases wherein insurers, while granting liability coverage throughout the United States and Canada, attempted to limit uninsured motorist coverage to a particular state border or at the United States-Canadian boundary. Courts facing this analogous situation have held that uninsured motorist coverage followed liability coverage throughout the United States and Canada.[64]

3. Uninsured motorist protection wherever insureds travel

Since one of the primary purposes of uninsured motorist statutes is to afford protection to victims of negligent uninsured motorists,[65] another explanation of the absence of statutorily prescribed territorial boundaries is that the various state legislatures intended to protect United States citizens from the financial hardships encountered following an accident with an uninsured motorist anywhere in the world. This interpretation is supported by the statutory language itself,[66] wherein no provision is made for any exclusions of coverage based on territorial limits. It is appealing in terms of public policy because it provides the greatest amount of protection to American citizens.

This interpretation, however, is filled with inherent weaknesses.[67] United States insurance companies are not prepared or

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on all insured vehicles, with no right of rejection. If the court were to uphold a policy provision limiting uninsured motorist coverage to territory less than liability coverage, it would allow the insurer to indirectly reject coverage while it cannot do so directly. *See, e.g.*, Dairyland Ins. Co. v. Lopez, 22 Ariz. App. 309, 310, 526 P.2d 1264, 1265 (1974).

63. Under this interpretation the *minimum* boundary of uninsured motorist coverage would be the United States and Canada, but the boundaries would always coincide with those specified in the accompanying liability coverage.

64. *See, e.g.*, Askey v. General Acc. Fire & Life Assur. Corp., 30 App. Div. 2d 632, 290 N.Y.S.2d 759 (1968) (holding that coverage existed for an accident that occurred in Canada); United Servs. Auto. Ass'n v. Porras, 214 So. 2d 749 (Fla. Dist. Ct. App. 1968) (effectively invalidating an uninsured motorist endorsement provision which seemed to restrict coverage to accidents within the state of New York).

65. *See* note 17 and accompanying text *supra*.

66. For the language of the Arizona statute, see note 42 *supra*.

67. While the court did not express its reasons, this interpretation was promptly rejected. 27 Ariz. App. at 161, 551 P.2d at 1327.

willing to accept the onerous burden of insuring the worldwide travels of American citizens solely through their automobile liability insurance policies. The number and frequency of fraudulent claims would undoubtedly increase. Litigation of claims would be beset with severe evidentiary and jurisdictional problems for both the parties and the courts. Finally, because so few American citizens drive their own cars to foreign countries other than Canada and Mexico, it cannot rationally be argued that the state legislatures enacting uninsured motorist statutes fifteen to twenty years ago intended to provide worldwide uninsured motorist coverage to their citizens.

4. Territorial question probably not considered by most legislatures

The various state legislatures probably failed to foresee or consider the territorial issue involved in the instant case. All state financial responsibility laws are similar,[68] and, as previously discussed, uninsured motorist statutes are basically uniform throughout the country.[69] Because of the nationwide similarity of the statutes, it is conceivable that many of the state legislatures adopting these laws did so with limited discussion.[70] Hence, legislative intent regarding the extension of uninsured motorist coverage into foreign countries cannot conclusively be inferred from statutory language.[71]

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68. All state financial responsibility laws are the "security-proof" type of act promulgated by the National Conference on Street and Highway Safety in the Uniform Motor Vehicle Safety Responsibility Act. WOODRUFF, *supra* note 7, § 3.5; *see* note 70 *infra*.

69. *See* note 20 and accompanying text *supra*.

70. This may be inferred from the reviser's note following Arizona's introductory section of its financial responsibility laws, ARIZ. REV. STAT. § 28-1101 (1976): "This chapter is based on the Uniform Motor Safety Responsibility Act, promulgated by the National Conference on Street and Highway Safety. . . . The substance of the Arizona law on financial responsibility is . . . identical to that of the uniform act except where differences are indicated by reviser's notes."

71. If anything, the history of these two statutes in Arizona evidences legislative intent favoring the maximum availability of increasing amounts of insurance for the greatest number of Arizona citizens. Arizona's original uninsured motorist statute required uninsured motorist coverage to be offered in all policies but allowed the insured to reject the endorsement if he so desired. As amended in 1972, the statute requires uninsured motorist coverage on all policies, with no right of rejection on the part of the insured. Arizona's original financial responsibility law has also been amended several times, each raising the minimum amount of coverage required of automobile insurers. At one time it required minimum coverage of (a) $5000 for bodily injury or death of one person in any one accident; (b) $10,000 for bodily injury or death of two or more persons in any one accident; and (c) $1000 for property damage resulting in any one accident. In 1966 those limits were raised to $10,000/20,000/5,000, and in 1972 to $15,000/30,000/10,000 respectively.

B. Public Policy Evidenced by Nonstatutory Sources

It is clear that uninsured motorist statutory language alone will support a number of different interpretations regarding the territorial issue involved in the instant case. Reaching a correct interpretation therefore requires analysis of nonstatutory factors such as public policy. Unfortunately, the court failed to analyze public policy appropriately. Among the nonstatutory public policies that should have been considered are the public policy involved in extending uninsured motorist coverage into Mexico and Arizona's judicial public policy regarding insurance funds and insurance claims.

1. Public policy considerations in extending coverage into Mexico

The court avoided the case's paramount public policy question by treating the issue as one concerning the extension of uninsured motorist coverage to the far corners of the earth.[72] While that issue may arise in the future, it was not before the court. Rather, the court was dealing with events occurring in Mexico, which shares over 1300 miles of international boundaries with the United States. By giving the issue a worldwide scope, the court apparently ignored the fact that with the exception of Canada (wherein uninsured motorist coverage already extends), Mexico is the only foreign nation into which American citizens can drive directly. Hence, the issue of uninsured motorist coverage in contiguous countries is much more relevant than the global context pronounced in the court's opinion.

A strong public policy argument can be made for requiring coextensive uninsured motorist coverage when liability coverage extends into Mexico. The number of United States citizens traveling into Mexico has increased at an enormous rate in the last few decades.[73] Automobile insurance companies have correspondingly enlarged the territorial limits of liability coverage in some of their policies. Some policies provide liability coverage into Mexico for a specified number of miles,[74] others provide Mexico endorsements for limited numbers of trips or for a limited amount

72. Even though the court discussed uninsured motorist coverage in Mexico, the language used in justifying and explaining its holding referred to "all parts of the world" and to "Afars and Issas." 27 Ariz. App. at 161, 551 P.2d at 1327.

73. *See* note 26 *supra*.

74. *See* note 27 *supra*.

of time.[75] A recent trend in insurance policy provisions is to enlarge the territorial limits of liability coverage to anywhere in the world.[76] Yet all of these policies limit uninsured motorist coverage to the territorial United States and Canada.

This limitation leaves American motorists in Mexico with little or no protection in case of accident, particularly in light of the fact that only twenty percent of Mexico's driving public is insured.[77] Even though all United States citizens traveling into Mexico are encouraged to and should purchase Mexican automobile insurance for other reasons,[78] they will find that uninsured motorist coverage from a Mexican insurance company is unavailable.[79] Hence, unless American insurers writing liability coverage in Mexico provide uninsured motorist coverage, American citizens driving in Mexico will have insufficient coverage. A further deficiency arises since Mexican insurance policies do not cover passengers injured in an automobile whose driver was negligent.[80] Finally, Mexican law allows insurance companies to exclude coverage from accidents if the insured tortfeasor is under the influence of alcohol.[81] Therefore, even if the tortfeasor carries Mexican insurance, the American victim may not be compensated.

While the preceding facts highlight the American motoring public's need for uninsured motorist coverage in Mexico, the same facts explain the insurance industry's refusal to expand that

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75. *Id.*

76. *Id.*

77. Note 28 *supra.*

78. *See generally* Robbins & Netherton, *Mexican Automobile & Insurance Law,* 47 MICH. ST. B.J. 22, 28 (Jan. 1968). The United States insurance companies providing Mexico endorsements give the following warning therein:

> UNLESS YOU HAVE AUTOMOBILE INSURANCE WRITTEN BY A MEXICAN INSURANCE COMPANY, YOU MAY SPEND MANY HOURS OR DAYS IN JAIL, IF YOU HAVE AN ACCIDENT IN MEXICO. INSURANCE COVERAGE SHOULD BE SECURED FROM A COMPANY LICENSED UNDER THE LAWS OF MEXICO TO WRITE SUCH INSURANCE IN ORDER TO AVOID COMPLICATIONS AND SOME OTHER PENALTIES POSSIBLE UNDER THE LAWS OF MEXICO, INCLUDING THE POSSIBLE IMPOUNDMENT OF YOUR AUTOMOBILE.

Brief for Appellee at 20.

79. Robbins & Netherton, *supra* note 78, at 28.

80. *Id.* at 27. Thus, even if a United States citizen buys Mexican automobile insurance, should there be an accident caused by his own negligence, any injuries sustained by his passengers are excluded from coverage. This was the position of the claimants in the instant case.

The basic uninsured motorist coverage in American insurance policies covers injuries sustained by both the driver and his passengers. P. PRETZEL, *supra* note 18, § 19.5.

81. Robbins & Netherton, *supra* note 78, at 27; *see, e.g.,* Ramirez v. Wilshire Ins. Co., 13 Cal. App. 3d 622, 91 Cal. Rptr. 895, 897 (1970).

coverage. Obviously, if Mexican insurance companies refuse to provide uninsured motorist coverage because eighty percent of their country's drivers are uninsured, there exists a high risk in underwriting uninsured motorist coverage in Mexico. Additionally, since the laws of Mexico allow Mexican insurance companies to exclude liability protection from passengers in a vehicle and to deny coverage if the insured is intoxicated, the already high risks of protecting against uninsured motorists are greatly magnified. If insurance companies are forced to assume this high risk of uninsured motorist protection in Mexico, the policy premiums paid by American citizens will need to rise accordingly.

These arguments are not persuasive, however, since motorists can choose to buy liability policies with or without coverage in Mexico. Those who seldom or never travel to Mexico can purchase less expensive insurance without the extended coverage; those who do travel to Mexico can pay for the added protection. It seems doubtful that Americans who drive in Mexico would object to paying for coextensive uninsured motorist protection, especially in light of the serious risks involved. Additionally, the California Supreme Court's decision in *Mission Insurance Co. v. Brown* requiring such an extension apparently did little to affect the insurance industry, its underwriting,[82] or the public's ability to afford insurance in that state. Finally, as discussed below, Arizona courts have shown more concern for the protection of its citizens than for the burden such protection imposes upon the insurance industry.

2. *Arizona judicial public policy regarding insurance funds and insurance claims*

Arizona courts have been among the most progressive in granting the claims of automobile accident victims to insurance funds held for their benefit. In fact, the court that decided the instant case has stated:

> Our Supreme Court has made it clear in its decisions . . . that it regards the claims of automobile accident victims to funds created by insurance as interests of the highest protectible order. While those opinions have been the subject of criticism,

82. Apparently some companies insuring California motorists haven't even changed their policy language following *Mission Ins. Co. v. Brown*. *See* United Servs. Auto. Ass'n v. Kresch, 48 Cal. App. 3d at 645-46, 121 Cal. Rptr. at 775-76 (dictum criticizing an insurance company that retained in its policies the provision held void and contrary to public policy in *Mission Ins. Co. v. Brown*).

> . . . they remain intact as strong expressions of the public policy of our state. They indicate to us that Arizona will be nowhere but in the forefront of jurisdictions in making available to automobile accident victims the fullest benefits of insurance coverage.[83]

Arizona courts have progressively extended insurance coverage for Arizona residents by voiding numerous restrictive policy provisions and expanding the scope of others. For example, the Arizona Supreme Court was one of the first to hold that the omnibus clause[84] prescribed in the financial responsibility laws must be a part of every motor vehicle liability policy.[85] By voiding a clause in the policy, the court made insurance proceeds available to people who formerly would have been excluded from coverage and evidenced a willingness to interpret liberally the state's financial responsibility laws to meet the needs of the Arizona public.

More closely related to the instant case are the Arizona decisions involving uninsured motorist coverage, which also evidence a progressive public policy regarding claims of injured insureds. Stating that the "uninsured motorist statute . . . is a strongly worded statutory mandate to be liberally construed in accordance with its remedial purposes,"[86] Arizona courts have repeatedly sought to support a pronounced public policy that under unin-

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83. Geyer v. Reserve Ins. Co., 8 Ariz. App. 464, 467, 447 P.2d 556, 559 (1968) (citations omitted).

84. ARIZ. REV. STAT. § 28-1170(B)(2) (1976) and companion statutes from the large majority of states that have adopted the Uniform Vehicle Safety Responsibility Act provide that an owner's policy of insurance "shall insure the person named therein and any other person, as insured, using the motor vehicle or motor vehicles with the express or implied permission of the named insured . . . ." In the insurance trade, this provision is referred to as the "omnibus clause."

85. The Arizona Supreme Court so held in Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 380 P.2d 145 (1963). California, Wildman v. Government Empl. Ins. Co., 48 Cal. 2d 31, 307 P.2d 359 (1957), and North Dakota, Hughes v. State Farm Mut. Auto Ins. Co., 236 N.W.2d 870 (N.D. 1975), have also held the omnibus clause to be a part of every automobile liability policy issued in their states.

This means that anyone who drives an insured vehicle with the express or implied permission of the insured is automatically an additional insured under the policy, irrespective of whether or not there was a restrictive endorsement in the policy excluding the person as an insured. The majority of states hold that the omnibus clause applies only to "certified policies," those required by the financial responsibility laws after a driver's "first bite," in contrast with those policies voluntarily carried by most drivers at lower premiums. *See* Comment, *Automobile Liability Insurers in Arizona—Are They Absolutely Liable?* 5 ARIZ. L. REV. 248, 250-52 (1964).

86. *E.g.*, Allstate Ins. Co. v. Pesqueria, 19 Ariz. App. 528, 529, 508 P.2d 1172, 1173 (1973).

sured motorist coverage, "every insured is entitled to recover the damages he or she would have been able to recover if the uninsured motorist had maintained a policy of liability insurance in a solvent company."[87]

In *Porter v. Empire Fire & Marine Insurance Co.*,[88] an insured who was injured in an automobile accident received only a portion of the minimum amount specified in the financial responsibility law because of a multiple splitting of the tortfeasor's liability insurance. The court held that he was entitled to recover the additional amount of his damages up to the statutory minimum from his uninsured motorist coverage.[89] In so holding, the Arizona Supreme Court stated:

> We agree with the principle that the person who avails himself of the protection afforded by uninsured motorist coverage should be permitted to recover as if the tort-feasor had the minimum amount of liability insurance. . . . This is so whether this sum is recoverable under the insured's policy alone or in combination with those funds actually receivable from the tortfeasor's liability coverage.[90]

In *Porter* the Arizona Supreme Court again placed Arizona in the forefront of jurisdictions granting full insurance benefits, being the first to hold that an insured is entitled to remuneration under his uninsured motorist coverage even though a tortfeasor carries liability insurance satisfying the requirements of the financial responsibility laws.[91] In so doing the court ignored the universal precedent on the issue,[92] policy provisions specifically excluding

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87. *See, e.g.*, Dairyland Ins. Co. v. Lopez, 22 Ariz. App. 309, 310, 526 P.2d 1264, 1265 (1974).

88. 106 Ariz. 274, 475 P.2d 258 (1970).

89. Because of a four-way division of the tortfeasor's liability insurance proceeds, the claimant received only $2500 for his injuries. The court held that he was entitled to recover an additional $7500 of his admitted damages under his uninsured motorist coverage. *Id.* at 279, 475 P.2d at 263.

90. *Id.*

91. The following jurisdictions now follow the precedent established by Arizona and cite *Porter v. Empire Fire & Marine Ins. Co.* as controlling authority: Hawaii, Palisbo v. Hawaiian Ins. & Guar. Co., 547 P.2d 1350, 1353-54 (Hawaii 1976); New Jersey, Gorton v. Reliance Ins. Co., 137 N.J. Super. 558, 350 A.2d 77, 80-81 (1975); *see* Hanlon v. Buckeye Union Ins. Co., 324 N.E.2d 598, 605 (Ohio C.P. Cuyahaga County 1975).

92. The majority rule is that a tortfeasor is not an uninsured motorist if he carries the minimum insurance coverage required by state statute. Therefore, an injured victim cannot recover against his own insurer under his uninsured motorist endorsement if the tortfeasor is insured within the statutory minimum. *E.g.*, Simmons v. Hartford Acc. & Indem. Co., 543 P.2d 1384, 1387-88 (Okla. 1975); Lund v. Mission Ins. Co., 270 Ore. 461, 467-68, 528 P.2d 78, 81 (1974).

coverage in such situations, and the burden that their holding would place on the insurance industry.

Other decisions of Arizona courts have declared void as contrary to the remedial purpose of the uninsured motorist statute and as contrary to Arizona public policy numerous attempts by insurers to restrict the recovery of persons injured by uninsured motorists.[93] The Arizona Supreme Court has stated:

> It is our opinion that in enacting [Arizona's uninsured motorist statute] it was the intent of the Legislature that each insured who availed himself of uninsured motorist coverage would have available *not less than* $10,000 per person and $20,000 per occurrence. Any attempt, by contract or otherwise, to reduce any part of this amount is violative of the statute.[94]

It is clear that the Arizona courts support the remedial purpose of Arizona's uninsured motorist statute by voiding insurance policy provisions that attempt to restrict liability. Moreover, Arizona courts have initiated several forms of insurance law reform, ignoring restrictive policy provisions to provide maximum uninsured motorist coverage to Arizona citizens. In light of these clear manifestations of public policy, the instant court's determination of the issue before it is surprising. The court failed to take advantage of this prime opportunity to maintain Arizona's position "in the forefront of jurisdictions making available to automobile accident victims the fullest benefits of insurance coverage."[95]

IV. Conclusion

The Arizona court's holding that uninsured motorist coverage need cover only claims arising from accidents in the United States and Canada was based on the narrowest of several possible interpretations of the territorial requirements of uninsured motorist coverage. The holding is supported by one interpretation of

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93. *E.g.*, Bacchus v. Farmers Ins. Group Exch., 106 Ariz. 280, 475 P.2d 264 (1970) (declaring void as against public policy a provision offsetting against uninsured motorist protection any amounts paid under the medical coverage of the same policy); Dairyland Ins. Co. v. Lopez, 22 Ariz. App. 309, 526 P.2d 1264 (1974) (declaring void as against public policy a provision in the policy allowing the insurer to deny coverage if the insured settled a claim without the consent of the insurer); Allied Mut. Ins. Co. v. Larriva, 19 Ariz. App. 385, 507 P.2d 997 (1973) (declaring void as against public policy provisions reducing uninsured motorist coverage by the amount recovered from workmen's compensation funds).

94. Bacchus v. Farmers Ins. Group Exch., 106 Ariz. at 283, 475 P.2d at 267 (emphasis in original).

95. Geyer v. Reserve Ins. Co., 8 Ariz. App. 464, 467, 447 P.2d 556, 559 (1968). *See* note 83 and accompanying text *supra*.

the statutory language and some elements of public policy, but it ignores both the needs of the increasing numbers of Arizona citizens driving into Mexico and Arizona's progressive judicial public policy dealing with insurance claims and coverage.

A better reasoned course would have been to hold, as did the California Supreme Court, that when an insurance company voluntarily writes an insurance policy extending liability coverage into Mexico, it cannot deny the insured the benefits of uninsured motorist coverage in that same territory. Requiring coextensive liability and uninsured motorist coverage would close a gap in Arizona's existing minimum standards of insurance protection.