Notes

STATE FARM V. WILSON: A "COMMON SENSE" INSURANCE DECISION FROM THE ARIZONA SUPREME COURT

R.M. Joe Bushong

I. INTRODUCTION

In October 1989 the Arizona Supreme Court resolved two significant issues that are vitally important to the future of Arizona insurance practice.[1] First, the court announced a new standard for resolving ambiguous insurance policy provisions.[2] Second, the Arizona Supreme Court denied insureds punitive damage coverage under the insured's own uninsured and underinsured motorist coverage (UM and UIM respectively).[3]

The *Wilson* case raised two issues. First, a contractual issue of whether Wilson's UIM policy provided coverage for punitive damages.[4] This Note first discusses the historical development of Arizona's standard for resolving ambiguous insurance contracts.[5] Then, this Note reviews the holding in *State Farm v. Wilson*[6] and the new standard applicable to ambiguous insurance contracts. The second issue in *Wilson* involved the public policy rationale for permitting punitive damage awards.[7] Not constrained by the *P.A.T. Homes* blind ambiguity rule, the *Wilson* court engaged in a comprehensive review of the legislative and judicial history behind Arizona's mandatory UM and UIM coverage. The third section of this Note analyzes punitive damage awards against uninsured or underinsured tortfeasors in Arizona and explores the rationale for excluding punitive damages from first party uninsured and underinsured motorist coverage.[8] Finally, this Note analyzes UM and UIM

---

1. State Farm Mut. Auto. Ins. Co. v. Wilson, 162 Ariz. 251, 782 P.2d 727 (1989).
2. The court finally eliminated any remaining precedential value of Federal Ins. Co. v. P.A.T. Homes, 113 Ariz. 136, 547 P.2d 1050 (1976). *Wilson*, 162 Ariz. at 258, 782 P.2d at 734.
3. *Wilson*, 162 Ariz. at 260, 782 P.2d at 736.
4. *See infra* notes 46-49 and accompanying text.
5. *See, e.g., Wilson*, 162 Ariz. at 256-59, 782 P.2d at 732-35. *See also* Sparks v. Republic Nat'l Life Ins. Co., 132 Ariz. 529, 534, 647 P.2d 1127, 1132 (1982); Harbor Ins. Co. v. United Serv. Auto. Ass'n, 114 Ariz. 58, 61, 559 P.2d 178, 181 (1976); State Farm Mut. Auto. Ins. Co. v. O'Brien, 24 Ariz. App. 18, 20-21, 535 P.2d 46, 48-49 (1975); D.M.A.F.B. Fed. Credit Union v. Employers Mut. Liability Ins. Co., 96 Ariz. 399, 402-03, 396 P.2d 20, 22-23 (1964).
6. 162 Ariz. 251, 782 P.2d 727.
7. *See infra* notes 46-49 and accompanying text.
8. *Wilson*, 162 Ariz. at 260, 782 P.2d at 736.

coverage of punitive damages in other jurisdictions, which provide direction and guidance for Arizona in the future.

II. ARIZONA'S STANDARD FOR RESOLVING AMBIGUOUS INSURANCE POLICY PROVISIONS

A. Historical Development of Standards for Review

Arizona contract law has historically resolved contract ambiguities against the drafter.[9] The Arizona Supreme Court applied this principle to insurance contracts[10] as early as 1964.[11] The court stated that where there is more than one possible interpretation of the insurance policy provisions, the contract should be construed in favor of the insured.[12] Thus, the court imposed a presumption against insurance contract drafters and resolved ambiguities in insurance contracts against the insurer.[13]

Arizona courts treated ambiguity as an issue of fact. The trier of fact determined ambiguity by reviewing the policy's language from the perspective of a layperson not trained in law or insurance.[14] Thus, the court resolved issues of fact by examining the language of the contested insurance contract.[15]

Subsequent case law consistently applied the general presumption against insurance companies for more than two decades. The Arizona Supreme Court, however, took the presumption one step further in *Federal Insurance Co. v. P.A.T. Homes*.[16] In *P.A.T. Homes*, the court changed the ambiguity determination from an issue of fact, resolved by interpreting the policy language, into an issue of law, based upon prior interpretations from cases in other jurisdictions.[17] Following *P.A.T. Homes*, Arizona courts declared an insurance policy ambiguous as a matter of law when two jurisdictions had interpreted the same policy provisions and arrived at different interpretations. Courts would then resolve the contract in favor of the insured. Thus, the Arizona Supreme Court determined the ambiguity of policy language without analyzing or interpreting the language of the policy itself.[18] For example, if a

---

9. *See* Darner Motor Sales v. Universal Underwriters Ins. Co., 140 Ariz. 383, 389, 682 P.2d 388, 394 (1984).

10. "The insurer drafted the confusion in the policy and, therefore, it should be resolved in favor of the insured." *P.A.T. Homes*, 113 Ariz. at 140, 547 P.2d at 1054 (citing *D.M.A.F.B. Fed. Credit Union*, 96 Ariz. 399, 396 P.2d 20).

11. *D.M.A.F.B. Fed. Credit Union.*, 96 Ariz. 399, 396 P.2d 20.

12. *Id.* at 402-03, 396 P.2d at 23.

13. *Id.* Although the *D.M.A.F.B.* court stated that the intent of the parties was the "cardinal principle" in interpreting the policy provisions (*id.* at 402, 396 P.2d at 22-23), it nonetheless proceeded to impose the presumption regardless of intent.

14. *Sparks*, 132 Ariz. at 534, 647 P.2d at 1132.

15. The issue of fact being whether the insurance policy is ambiguous.

16. 113 Ariz. 136, 547 P.2d 1050.

17. *Id.* at 138, 547 P.2d at 1052.

18. The Arizona Supreme Court relied upon an Oregon Supreme Court decision for its holding in *P.A.T. Homes*, 113 Ariz. at 138, 547 P.2d at 1052 (citing Cimaron Ins. Co. v. Travelers Ins. Co., 224 Or. 57, 66, 355 P.2d 742, 746-47 (1960)). The Oregon Supreme Court held that when more than one jurisdiction had previously interpreted an insurance policy and arrived at different conclusions about the meaning of the language, ambiguity was established as a matter of law. *Cimaron*, 224 Or. at 66, 355 P.2d at 746-47 (citing Equitable Life Ins. Co. v. Gerwick, 50 Ohio App. 277, 281, 197 N.E. 923, 925 (1934)). "Where the

court in Tucson, Arizona and a court in Prescott, Arizona had undertaken an interpretation of the policy provisions at issue, and these two courts had reached differing conclusions as to the meaning of the policy language, Arizona courts, in all subsequent cases, would be required to declare the policy ambiguous and find in favor of the insured. In essence, the intent of the parties would no longer be a relevant factor in the interpretation of the policy.

This principle of deference to other courts and its ensuing impact on insurance litigation has since been criticized. In *Darner Motor Sales v. Universal Underwriters Insurance Co.*,[19] the Arizona Supreme Court shifted the ambiguity determination back to an issue of fact. The Supreme Court recognized that "[they] may find [them]selves justly criticized for accepting the inventions of other courts," without entering their own interpretation of the policy provisions at issue.[20]

The Arizona Supreme Court first criticized *P.A.T. Homes* implicitly. In *Transamerica Insurance Group v. Meere*,[21] the court recognized that basing ambiguity solely upon prior unrelated cases was illogical. The court criticized this method of interpretation because it permitted courts to create a contract that supported their desired outcome.[22] The *Meere* court announced that Arizona courts would determine the meaning of the insurance contract on a case-by-case basis.[23]

The *Meere* standard was reaffirmed in *Wilson*.[24] The court returned to a basic analysis of contract policy language and explicitly provided Arizona courts with a three-pronged test to determine ambiguity.[25] The test indicated

---

language of a clause used in an insurance contract is such that courts of numerous jurisdictions have found it necessary to construe it and in such construction have arrived at conflicting conclusions as to the correct meaning, intent, and effect thereof, the question whether such clause is ambiguous ceases to be an open one." *P.A.T. Homes*, 113 Ariz. at 138, 547 P.2d at 1052. Accepting this principle, the *P.A.T. Homes* court placed significant precedential value in the interpretation of insurance policy provisions by other courts. The court stated that Arizona would follow Oregon and rely on the past interpretations of other jurisdictions to determine ambiguity. Arizona will "follow the principle of construction that where various jurisdictions reach different conclusions as to the meaning, intent, and effect of the language of an insurance contract *ambiguity is established*." *Id.* at 138-39, 547 P.2d at 1052-53 (emphasis added). "If judges learned in the law can reach so diametrically conflicting conclusions as to what the language of the policy means, it is hard to see how it can be held as a matter of law that the language was so unambiguous that a layman would be bound by it." *Id.* at 138, 547 P.2d at 1052 (quoting Alvis v. Mut. Benefit Health & Accident Ass'n, 201 Tenn. 198, 204, 297 S.W.2d 643, 645-46 (1956)).

19. 140 Ariz. 383, 682 P.2d 388 (1984).

20. *Id.* at 389, 682 P.2d at 394.

21. 143 Ariz. 351, 694 P.2d 181 (1984).

22. "Of course, a finding of ambiguity is the easy way out since it permits the court to create its own version of the contract and to find, or fail to find, ambiguity in order to justify an almost predetermined result. This is an approach which we have abandoned." *Id.* at 355, 694 P.2d at 185. Thus, the *Meere* court cited *Darner*, 140 Ariz. 383, 682 P.2d 388, as having abandoned the *P.A.T. Homes* rule.

23. *Meere*, 143 Ariz. at 355, 694 P.2d at 185.

24. 162 Ariz. at 257, 782 P.2d at 733.

25. *See Meere*, 143 Ariz. at 355, 694 P.2d at 185.

that ambiguity would be determined by examining the purpose of the policy clause, the public policy considerations and the transaction as a whole.[26]

Similar criticism of *P.A.T. Homes* and continued support for the change in analysis appeared again in *Arizona Property & Casualty Insurance Guarantee Fund v. Helme*.[27] Rather than automatically presume ambiguities against the insurance company, the court opted to consider the factors cited above to determine the meaning of the clause at issue.[28] The court preferred analyzing the specific policy provisions to blindly following the interpretations of two different jurisdictions.[29]

The conflicting standards for interpreting ambiguous insurance policy language culminated in *State Farm v. Wilson*.[30] *Wilson* reiterated that a court faced with a disputed provision should interpret it in light of the factors outlined in *Meere*.[31] *Wilson*, however, clearly stated that the appropriate time to determine ambiguity was not at the outset of the case, but was only after the court had considered those factors.[32] Only after the trier of fact has reviewed the relevant facts can it resolve the ambiguity issue.

B. The Wilson *Approach to Resolving Ambiguities*

The facts of *Wilson* were undisputed. Michael Wilson was injured in a collision with a drunk driver. He sued the driver and was awarded a judgment of $5,000 compensatory and $20,000 punitive damages. The driver's insurance company paid the compensatory damages award but refused to pay the punitive damages. Wilson then filed a claim with his own UM/UIM insurer, demanding that State Farm pay the punitive damage award.[33]

Wilson advanced two arguments to support his position that an insured's UIM policy should cover a punitive award. First, he claimed that the law in Arizona was conflicting because in prior cases the two court of appeals divisions had arrived at opposite conclusions about the meaning of the language in his State Farm policy.[34] Wilson then reasoned that because the conflict in

---

26. "We believe the proper methodology is *to determine* the meaning of the clause — where it is susceptible to different constructions — by examining the purpose of the exclusion in question, the public policy considerations involved and the transaction as a whole." *Id.* (emphasis added).

27. 153 Ariz. 129, 134-35, 735 P.2d 451, 456-57 (1987).

28. *Id.* at 134-35, 735 P.2d at 456-57.

29. *Id.*

30. 162 Ariz. 251, 782 P.2d 251.

31.

> [W]hen a question of interpretation arises, we are not compelled in every case of apparent ambiguity to blindly follow the interpretation least favorable to the insurer. The policy language is essential to our analysis, but neither language nor apparent ambiguity alone is dispositive without first addressing questions as to the requirements established by the legislature [the purpose of the exclusion in question], public policy required to fulfill legislative goals, and the dominant purpose of the transaction.

Id. at 257, 782 P.2d at 733.

32. *Id.*

33. *Id.* at 251, 782 P.2d at 727.

34. Wilson argued that the conflict between the decisions in State Farm Fire and Casualty Co. v. Wise, 150 Ariz. 16, 721 P.2d 674 (Ct. App. 1986), and Price v. Hartford Accident & Indemnity Co., 108 Ariz. 485, 502 P.2d 522 (1972), created an ambiguity under *P.A.T. Homes*, 113 Ariz. 136, 547 P.2d 1050. "The UIM endorsement provides: we will pay

precedent created an ambiguity in the language, the court had to interpret the policy against the insurance company.[35] Second, Wilson argued that without a specific exclusionary provision, the court should award punitive damages under general policy language that provided coverage for "any amount due ... to the insured."[36] The trial court held State Farm liable for the punitive damages.[37] State Farm appealed and the court of appeals reversed.[38]

The Arizona Supreme Court's decision in *Wilson* represents a return to "common sense" contract principles.[39] As applied to the facts in *Wilson*, the new rule permitted the Arizona Supreme Court to interpret the actual policy language at issue instead of deferring blindly to conflicting lower court inter-

---

damages for *bodily injury an insured* is legally entitled to collect from the owner or driver of an *underinsured vehicle*." *Wilson*, 162 Ariz. at 252, 782 P.2d at 728 (emphasis in original). Wilson's policy also provided:

> Deciding Fault and Amount
> Two questions must be decided by agreement between the *insured* and us:
> 1. Is the *insured* legally entitled to collect damages from the owner or driver of an *underinsured motor vehicle*; and
> 2. If so, in what amount?
> Payment of Any Amount Due
> We will pay any amount due:
> 1. to the insured; ...

Id.

35. *Wilson*, 162 Ariz. at 252, 782 P.2d at 728. The claimed ambiguity involved the apparently inconsistent policy provisions, with one section providing coverage for only "bodily injury" and another offering to pay "any amount due." *Id.*

36. *Id.*

37. *Id.*

38. *Id. See also* State Farm Mut. Auto. Ins. Co. v. Wilson, 162 Ariz. 247, 782 P.2d 723 (Ct. App. 1989).

39. *See Wilson*, 162 Ariz. at 257, 782 P.2d at 733. The standard announced in *Wilson* combines the principles announced in *Darner*, 140 Ariz. 383, 682 P.2d 388; *Meere*, 143 Ariz. 351, 694 P.2d 181; and *Helme*, 153 Ariz. 129, 735 P.2d 451. Each of these post-*P.A.T. Homes* decisions retreated from *P.A.T Homes*' blind ambiguity rule. "We prefer to adopt a rule of common sense and have attempted to do so on numerous occasions." *Wilson*, 162 Ariz. at 257, 782 P.2d at 733. For example,

> The rule which we adopt ... parallels the general rule which applies to all contracts by attempting to *discover the intent* of the parties, ... , and attempts to ascertain the *real agreement*. ...[T]he rule ... frees the courts from having to write a contract for the parties, and *removes the temptation to create ambiguity* or invent intent in order to reach a result.

Darner Motor Sales, 140 Ariz. at 393-94, 682 P.2d at 398-99 (emphasis added).

> "[A] finding of ambiguity is the easy way out since it permits the court to create its own version of the contract to find, or fail to find, ambiguity in order to justify an almost predetermined result. *This is an approach which we have abandoned* [citing *Darner*, 140 Ariz. 383, 682 P.2d 388]. We believe the proper methodology is to determine the meaning of the clause — where it is susceptible to different constructions — by examining the purpose of the exclusion in question, the public policy considerations involved and the transaction as a whole."

Meere, 143 Ariz. at 355, 694 P.2d at 185 (emphasis added).

> [W]e would be compelled to find the policy provisions ambiguous, and for that reason to find in favor of the [insured]. We have attempted to abandon this approach. *We prefer*, instead, *to determine the meaning of [the] clause.*

Helme, 153 Ariz. at 134-35, 735 P.2d at 456-57 (citing *Meere*, 143 Ariz. at 355, 694 P.2d at 185) (emphasis added).

pretations. First, the court discerned the parties' intent.[40] The court found that Wilson did not intend to purchase coverage for punitive damages and did not reasonably expect such coverage.[41] The court also found that State Farm's intent was to provide the minimum coverage mandated by state law. State Farm did not intend to provide coverage for punitive damages awarded against an uninsured or underinsured driver.[42]

Second, the court examined the public policy considerations raised by this issue. Punitive damage awards are meant to punish the tortfeasor and deter others from engaging in similar conduct in the future. Coverage of first party UM/UIM punitive damages would not satisfy these objectives.[43] Therefore, public policy dictated a ruling against coverage.[44]

Finally, the court viewed the broad scope of the transaction as a whole. No unusual circumstances indicated that Wilson intended to purchase more than the statutory minimum coverage. Nor was there an indication that Wilson negotiated for any additional coverage. By reviewing the entire agreement, the court was able to resolve the conflict, ruling that the policy should not be declared ambiguous because there were no indications that the agreement between the parties was meant to include coverage of UM/UIM punitive damages.[45]

Cases calling for insurance coverage of punitive damages can often be resolved by addressing two specific questions. First, does the insurance policy provide for coverage of punitive damages;[46] this is a contract issue.[47] Second, if the insurance policy does cover punitive damages, is such coverage

---

While none of its predecessors specifically overruled *P.A.T. Homes*, *Wilson* finally made clear that to the extent that *P.A.T. Homes* deviates from the new rule, "it is disapproved." *Wilson*, 162 Ariz. at 258, 782 P.2d at 734.

40. The court considered the purposes of uninsured and underinsured motorist coverage, the reasons behind a consumer's purchase of such coverage and the reasonable expectations for coverage under such policies.

41. *Wilson*, 162 Ariz. at 260, 782 P.2d at 736. The court held that UM and UIM insurers were only liable to pay punitive damages if they specifically contracted to do so. "State Farm did not so contract. No reasonable expectation of the insured — nothing in the dickered deal, the nature of the transaction, or clear intent manifested in the policy language — militates in favor of finding such an undertaking." *Id.*

42. If State Farm had intended to provide coverage for such damages it would have included specific language in its policy, rather than relying on ambiguous terms to create coverage for punitive damages. *See Wilson*, 162 Ariz. at 260, 782 P.2d at 736.

43. "[A]ssessment of punitive damages to be paid by the tortfeasor fulfills the social policy of deterrence that underlies such awards. ...[T]he payment of punitive damages by the *victim's* insurance company is counter-productive." *Id.* at 255, 782 P.2d at 731 (emphasis in original). *See infra* notes 50-79 and accompanying text.

44. *See Wilson*, 162 Ariz. at 260, 782 P.2d at 736.

45. *Id.*

46.

> Where an actor is insured for liability, so that the insurer is obliged to pay damages for which the actor is legally liable, is the insurer also liable to pay punitive damages assessed against the actor? There are two separate questions here. One is whether the insurer's policy actually covers punitive damages, and this is a question of interpreting the contract between the parties. The other is whether, if the policy does indeed call upon the insurer to pay its insured's punitive liability, this is permissible as a matter of public policy.

D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES § 3.9, at 216 (1973).

47. *Id.*

permissible under public policy.[48] The *Wilson* case raised both of these issues and the Arizona Supreme Court resolved both of them.[49] The first two sections of this Note addressed the contract issue in *Wilson*. The next two sections address the second question, analyzing the public policy rationale for permitting punitive damage awards and its relation to the *Wilson* decision.

III. PUNITIVE DAMAGES AND STATUTORY MINIMUM UNINSURED AND UNDERINSURED MOTORIST COVERAGE

A. The Legislative History and Intent Behind UM/UIM Coverage

Arizona's version of the Uniform Motor Vehicle Safety Responsibility Act (SRA) is modeled after a similar act created by the National Conference on Street and Highway Safety.[50] The purpose of the SRA is to protect the driving public from financial burdens potentially forced upon them by financially irresponsible drivers and automobile owners.[51] In 1965 the Arizona legislature first required insurance carriers to *offer* uninsured motorist coverage to all consumers in all motor vehicle policies issued within the state.[52] By 1972 Arizona had removed the purchaser's option to refuse UM coverage and mandated that *all* motor vehicle polices provide UM coverage.[53] The legislature expanded the SRA in 1981 to include underinsured motorist coverage based upon perceived inadequacies in the UM system.[54] In spite of the many amendments to the SRA, the objective of the statute remains to protect persons legally entitled to recover damages for "bodily injury or death."[55]

B. Public Policy and Insurance Coverage For Punitive Damages in Arizona

Punitive damages implant criminal law theories into the context of civil litigation.[56] Courts usually award punitive damages to punish defendants and deter others from engaging in similar conduct.[57] Although the purpose and

---

48. *Id.*
49. *Wilson*, 162 Ariz. 251, 782 P.2d 727.
50. ARIZ. REV. STAT. ANN. § 28-1101 (1989).
51. Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963); Jenkins v. Mayflower Ins. Exch., 93 Ariz. 287, 290, 380 P.2d 145, 147 (1963). *See also Wilson*, 162 Ariz. at 253, 782 P.2d at 729. Originally enacted in 1951, Arizona's SRA required all owners and operators of motor vehicles to purchase or obtain liability insurance coverage. 162 Ariz. at 253, 782 P.2d at 729.
52. ARIZ. REV. STAT. ANN. § 20-259.01(A) (1989). The legislative intent is clear from the language of the statute. "No automobile liability or motor vehicle liability policy insuring against loss ... shall be delivered or issued for delivery in this state ... unless coverage is provided in the policy ... *for the protection of persons insured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.*" *Id.* (emphasis added).
53. From 1965 to 1972 the insured had the right to reject UM coverage. *See* ARIZ. REV. STAT. ANN. § 20-259.01 (1989).
54. ARIZ. REV. STAT. ANN. § 20-259.01(C) (1989). As originally enacted in 1981, UIM coverage was mandatory; however, in the 1982 Amendment to ARIZ. REV. STAT. ANN. § 20-259.01, UIM coverage was made optional to insureds. The statute still required, and still does require, that all insurers *offer* UIM coverage. *Id.*
55. ARIZ. REV. STAT. ANN. §20-259.01(A) (1989).
56. W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON THE LAW OF TORTS § 2, at 9 (5th ed. 1984).
57. *Id.*

function of punitive damages were not at issue in *Wilson*, the court analyzed the relationship between punitive damages and the goals of the SRA.

Arizona has recognized that general liability insurance policies[58] can cover punitive damages.[59] Several reasons support this extension of coverage.[60] First, punitive damages may only be awarded for certain extreme torts. Typically these extreme torts also carry potential criminal penalties. Upon the conviction for such a tort or the award of punitive damages against a tortfeasor, that party becomes a higher risk to their insurer. Based on this higher risk, the insurer is justified in increasing the insured's insurance rates. Criminal prosection and increased insurance rates punish insureds.[61] Second, insurers voluntarily provide coverage for all damages without specifically excluding punitive damages, so insurance premiums presumably include a charge for the additional risk.[62] Finally, the possibility that punitive damages might exceed liability limits under the policy, forcing the tortfeasor to pay excess damages, deters similar conduct by others.[63]

Arizona has also enforced express policy provisions denying punitive damage coverage.[64] In *Cassel v. Schacht*,[65] the insured parties claimed that the SRA not only allowed coverage for punitive damages but mandated it.[66] The court assessed the public policies behind punitive damage awards together with the legislative objectives and public policies supporting the Arizona SRA. The goal of the Arizona SRA is to compensate injured parties for actual injuries and

---

58. General liability insurance differs from UM/UIM insurance in several significant ways. First, general liability insurance is purchased by an insured to pay damages for which the insured may be liable. UM/UIM insurance is purchased by insureds to protect themselves from the harm that may be inflicted upon them by a third party. The benefits of a general liability policy are paid to the injured third party, on behalf of the insured. The benefits of a UM/UIM policy are paid to the injured insured.

59. *See* Price v. Hartford Accident & Indemnity Co., 108 Ariz. 485, 502 P.2d 522 (1972). In *Price* the issue was not whether the insurance policy provided coverage for punitive damages, but whether *public policy* would permit a party to be insured against punitive damages. "The clear, unequivocal language of the policy requires the insurance company to defend the action and pay the judgment. The only issue, therefore, is whether the public policy of the state makes the insurance contract illegal insofar as it relates to punitive damages." *Id.* at 486, 502 P.2d at 523.

60.

> [P]ublic policy reasons for not allowing socially irresponsible automobile drivers to escape the element of personal punishment in punitive damages [include the following:] The delinquent driver must not be allowed to receive a windfall at the expense of the purchasers of insurance, transferring his responsibility for punitive damages to the very people — the driving public — to whom he is a menace....
>
> And there is no point in punishing the insurance company; it has done no wrong.

Id. at 486-87, 502 P.2d at 523-24.

61. Increased insurance rates would force the wrongdoer to pay for his/her wrong, therefore, maintaining the punishment characteristic. *Id.* at 487, 502 P.2d at 524.

62. *Id.*

63. *Id.* In *Price*, the insurance policy unambiguously provided coverage for "all sums" for which the insured may have been held liable, which was a distinguishing factor from more recent cases. Since the language of the policy itself provided for coverage, legislative intent and the SRA were not at issue in *Price*. *Id.* at 485-86, 502 P.2d at 522-23.

64. Cassel v. Schacht, 140 Ariz. 495, 683 P.2d 294 (1984).

65. *Id.*

66. *Id.* at 495-96, 683 P.2d at 294-95. The coverage of compensatory damages was not disputed; the issue was whether the policy could be extended to cover punitive damages.

damages.[67] The court noted that the SRA permitted punitive damage awards in addition to, and not as part of, compensatory damages.[68] Since the legislative and policy goal of the SRA is to compensate injured parties for actual damages,[69] the court easily dismissed the insured's claim, and declined to extend the SRA's minimum coverage requirements to include punitive damages.[70]

After establishing that the SRA does not require punitive damage coverage in automobile liability insurance policies,[71] the court then considered a number of open questions in the same context. For example, in *State Farm v. Wise*[72] the court held that without a specific exclusion, an insurer is liable to the insured for punitive damages awarded against an uninsured party.[73] In *Employers Mutual Casualty Co. v. McKeon*,[74] the court held that insurers cannot abrogate any minimum coverage mandated by the SRA,[75] regardless of an attempt by the insurer and insured to enter a mutual agreement excluding such coverage.[76] These cases and numerous others created a checkered set of case law precedent which did not provide guidance to courts or consumers. Without clear and decisive law, the *Wilson* case presented the Arizona Supreme Court with an opportunity to exercise its interpretive abilities.

This legislative and judicial history provides a background for *State Farm v. Wilson*. Faced with the clear statutory objective of the SRA, a variety of case law precedent and no recognizable national trend to follow, the Arizona Supreme Court arrived at a common sense and logical answer to the question of whether UM/UIM coverage should include punitive damages.

C. The Wilson *Decision on the Issue of Punitive Damages*

The Arizona Supreme Court addressed the issue of whether first party

---

67. *Id.* at 496, 683 P.2d at 295.
68. *Id.*
69. *Schecter*, 93 Ariz. 273, 380 P.2d 136; *Jenkins*, 93 Ariz. 287, 380 P.2d 145.
70. *Cassel*, 140 Ariz. at 496, 683 P.2d at 295.

> The legislative and policy objectives of *compensating* actual injury and loss sought to be accomplished by the act ... would not be advanced in any way by prohibiting insurers from excluding coverage for punitive damages or by requiring that the mandatory, minimum insurance required by the act cover punitive damage awards. Nor would the policy furthered by the punitive damage rule be served by *compelling* insurers to pay punitive damage awards from such coverage.

Id. (emphasis in original).

71. *Price*, 108 Ariz. 485, 502 P.2d 522.
72. 150 Ariz. 16, 721 P.2d 674 (1986).
73. *Id.* at 17, 721 P.2d at 675. Upholding the arbitrator's award, the court stated that the insurer's "failure to specifically exclude punitive damages from its uninsured motorist coverage makes it liable for punitive damages." *Id.* The decision in *Wise* has since been called into question (*Wilson*, 162 Ariz. 251, 260, 782 P.2d 727, 736) and was not relied upon as controlling in *Wilson*. In fact, the court in *Wilson* arrived at a completely different result based on very similar facts. *See id.*
74. 159 Ariz. 111, 765 P.2d 513 (1988).
75. *Id.* at 114, 765 P.2d at 516.
76. "Our statutes require an insurer to provide full uninsured motorist coverage to every insured." *Id. See also* ARIZ. REV. STAT. ANN. § 20-259.01(A), (B) (1989).

underinsured motorist protection includes coverage of punitive damages[77] in *Wilson*. Since the SRA fails to answer this specific question or address the coverage of punitive damages,[78] the court had to ascertain the scope of the statutory coverage.[79] The court's answer to this question provides the Arizona insurance industry and consumers with guidelines for future litigation.

Despite its analysis of the ambiguity issue, the supreme court had no difficulty denying Wilson's claim for punitive damages. The court declined to extend the coverage to this fact situation because it did not further the objectives of the SRA, which are to protect the insured for his/her bodily injury. Furthermore, imputing this coverage does not punish the tortfeasor or deter others from engaging in similar conduct because the punitive damages are paid by the injured party's own insurer.[80]

The future value and guidance provided by the *Wilson* decision can be easily seen when viewing the resolution of the same issue by various other jurisdictions.

IV. UM/UIM PUNITIVE DAMAGE DECISIONS IN OTHER JURISDICTIONS

A number of states have resolved the issue of whether punitive damages are recoverable under UM/UIM insurance policies. There is no consensus, however, among these states.[81] The factors emphasized in each state's unique analysis of the issue vary significantly. Specifically, statutory language, legislative objectives, statutory mandates for UM/UIM coverage and the recognized purposes served by punitive damage awards differ. Each state has based its resolution of the issue on unique combinations of these factors.

A. Conflicting State Standards for Punitive Damages

States first addressed whether UM/UIM insurance policies should cover punitive damages in the 1960's. By the 1980's, litigation over this issue had markedly increased,[82] but there is still no agreement among those states that

---

77. Absent a specific policy exclusion.

78. *See* ARIZ. REV. STAT. ANN. § 20-259.01 (1989).

79. *Wilson*, 162 Ariz. at 254, 782 P.2d at 730. "[T]he statute does not direct that UM or UIM coverages extend to punitive damages assessed against the tortfeasor. Moreover, our review of the minutes of the various committees in which the bills ... were considered [did] not shed any light on specific legislative intent regarding coverage for punitive damages." *Id.*

80. *Id.* at 255, 782 P.2d at 731.

> We have considered the goals and social policies that underlie the legislative requirement that UM coverage be provided and UIM coverage be offered — to provide protection to the insured for his bodily injury. We have also considered the social policy underlying punitive damage awards — to punish the tortfeasor and deter others. These considerations provide no basis to conclude that the statutes or legislative policy underlying the UM and UIM coverage require or should be read to require the victim's UM or UIM insurer to pay punitive damage awards assessed to punish the tortfeasor rather than to compensate the victim for his injuries.

Id.

81. "We are cognizant that a conflict of authority exists in cases from other jurisdictions." *Id.* at 258, 782 P.2d at 734.

82. The first significant state case was in 1964 (*see infra* note 83 and accompanying text), the next major case was not decided until 1972 (*see infra* note 89 and accompanying text),

have considered the issue. This section analyzes states that allow recovery of punitive damages under UM/UIM provisions as well as states that do not. A comparison of Arizona law to statutes and cases from other states further illustrates the strength of the *Wilson* decision.

The Supreme Court of South Carolina handed down the first significant decision in this area more than twenty-five years ago in *Laird v. Nationwide Ins. Co.*.[83] The court relied primarily on the South Carolina Uninsured Motorist Law and the legislative purpose for enacting the law to deny a claim for insurance coverage of punitive damages awarded against an uninsured motorist.[84] From the language and objectives of the South Carolina statute, similar to Arizona's SRA,[85] the *Laird* court recognized that compensatory damages for bodily injury were recoverable. The court, however, regarded punitive damages as an award neither contemplated nor endorsed by the lawmakers who drafted the uninsured motorist statute.[86] Presumably, if the South Carolina legislature had intended that punitive damages be included in the minimum coverage provided by the South Carolina Uninsured Motorist Law, the legislature would have indicated this intention in some manner. Since the legislature did not state such an intention, the court reasoned that the lawmakers did not intend for punitive damages to be covered.[87]

The State of Virginia addressed the issue in 1972 and relied upon its mandatory uninsured motorist statute to allow punitive damage coverage under a first party uninsured motorist policy.[88] In *Lipscombe v. Security Insurance Co.*,[89] the Virginia Supreme Court interpreted the Virginia uninsured motorist statute. The Virginia statute is clearly distinguishable from both the Arizona and South Carolina statutes. Virginia's code read that all automobile insurance policies must provide UM coverage to the insured for *all sums* which the insured is legally entitled to recover as damages from an uninsured tortfeasor.[90] This language, coupled with the absence of any specific provision excluding punitive damage awards, provided the statutory support lacking in both *Wilson* and *Laird*.[91] Virginia interpreted the words "all sums" to indicate a legislative

---

and in the 1980's there were hundreds of cases on the issue of punitive damage coverage under UM/UIM insurance policies.

83. 134 S.E.2d 206 (S.C. 1964).

84. S.C. CODE ANN. §§ 46-750.11, 46-750.14 to -750.18 (Law. Co-op. 1962), *recodified as* S.C. CODE ANN. § 38-77-150 (1987).

85. The South Carolina Supreme Court stated that the purpose of their uninsured motorist law "was to provide financial recompense to innocent persons who receive bodily injuries, property damage and to the dependents of those who are killed through the wrongful conduct of uninsured motorists." *Laird*, 134 S.E.2d at 208.

86. *Id.* at 210.

87. *Id.* at 209.

88. Ironically, the South Carolina Uninsured Motorist Law, relied on in *Laird*, was modeled after Virginia's Uninsured Motorist Act. However, it was the Virginia act which was used as the foundation for a completely opposite decision in Lipscombe v. Security Ins. Co., 213 Va. 81, 189 S.E.2d 320 (1972). *See Laird*, 134 S.E.2d at 208.

89. 213 Va. 81, 189 S.E.2d 320.

90. The Virginia statute provided that all policies must have "provisions undertaking to pay the insured *all sums* which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle." VA. CODE ANN. § 38.1-381(b) (1950), repealed by Acts 1952, ch. 562 (emphasis added).

91. In contrast, the Arizona SRA provides that the insured shall have insurance protection for those damages the insured is "legally entitled to recover ... because of bodily

intent to provide insurance coverage for *all* damages, including both compensatory and punitive.[92]

The Tennessee Supreme Court upheld an award of punitive damages, relying on statutory language nearly identical to the Arizona SRA. In *Mullins v. Miller*,[93] the Tennessee court interpreted silence on the issue of punitive damages in the Tennessee Financial Responsibility Law as an indication that the legislature did not intend to limit recoverable damages to compensatory damages.[94] Failing to address whether such awards serve any punitive function, the court simply equated an uninsured motorist policy to a general liability insurance policy. Because insureds could recover punitive damages under general liability insurance policies, the court reasoned that they could likewise recover them under uninsured motorist policies.[95]

Although the *Mullins* court acknowledged the unique nature of UM policies, it failed to consider the significant differences between general liability insurance[96] and UM coverage.[97] First, the insurer of the tortfeasor pays punitive damages recovered under a general liability insurance contract. In the UM/UIM context, however, the injured party's insurer pays the punitive damages.[98] Further, general insurance awards of punitive damages arguably serve a deterrent function, because the tortfeasor will be subject to increased insurance rates and potential policy cancellation. In the UM/UIM field, an award of punitive damages against an uninsured motorist serves no deterrent

---

injury, sickness or disease, including death, resulting therefrom." ARIZ. REV. STAT. ANN. § 20-259.01(A) (1989).

92. The absence of the words "all sums" from the Arizona statute creates a significant difference in statutory meaning and is adequate to distinguish the *Lipscombe* and *Wilson* cases from *Laird*.

93. 683 S.W.2d 669 (Tenn. 1984). The relevant language of the Tennessee statute provides "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." TENN. CODE ANN. § 55-12-107, recodified as TENN. CODE ANN. § 55-12-122 (1977). Note that the only difference between this provision and the same provision in the Arizona statute is Tennessee's inclusion of the word "thereunder"; for all practical purposes, the provisions are identical. *See* ARIZ. REV. STAT. ANN. § 20-259.01(A) (1989).

94. *Mullins*, 683 S.W.2d at 670. *See supra* note 93 for statutory language. "The General Assembly at no point has expressed any intention that coverage be limited to compensatory damages only. ...[I]t seems to us that the General Assembly has expressed its intention that all damages which can legally be recovered under a liability policy shall also be recoverable under an uninsured motorist policy." *Mullins*, 683 S.W.2d at 670.

95. 683 S.W.2d at 670.

96. General liability insurance is purchased to cover damages suffered by a third party due to the fault of the insured. *See supra* note 53.

97. Uninsured motorist protection is meant to indemnify the insured party for injuries inflicted by a third party who does not have general liability insurance to cover the damages caused. *See supra* note 58.

98. Rationales supporting awards of punitive damages in the general liability insurance context include that the party sought to be punished will, in fact, be punished through increased insurance rates and possible criminal prosecution. In the general liability insurance context, the insurer that is forced to pay punitive damages is the insurer of the party who committed the wrong. In the UM context, the insurer that is forced to pay punitive damages is the injured party's insurer. Therefore, in this context, there is clearly no connection between the party who committed the wrong and the party who is being punished.

function because the injured party's own insurer pays the award.[99] The distinctions in the nature of UM insurance and general liability insurance are significant. By moving from analogy to conclusion without considering these differences, the Tennessee Supreme Court overlooked the very reasons other jurisdictions deny coverage for punitive damages.[100]

Ohio's mandatory UM/UIM statute contains language almost identical to Tennessee's statute and Arizona's SRA.[101] In *Hutchinson v. J.C. Penney Casualty Insurance Co.*,[102] the Ohio Supreme Court permitted an award of punitive damages based on the absence of specific policy language excluding punitive damages and statutory language granting the injured party's insurer a right of subrogation. The *Hutchinson* court,[103] like the *Mullins* court,[104] did not discuss the punitive function of the award. The court cursorily stated that since the statute provided a right of subrogation to the insurer, the deterrent effect of the punitive award was not lost. The underlying premise suggests that the insurer's right to pursue an action against the tortfeasor for indemnity of damages paid to the insured actually punishes the tortfeasor and discourages others from acting similarly.[105]

The *Hutchinson* court's theory, however, has little practical value. The insurer's right of subrogation is rarely a right worth pursuing because uninsured tortfeasors are often judgment proof.[106] While the tortfeasor may

---

99. Punitive damages have also been justified as a means of deterring others from engaging in similar culpable conduct in the future. However, when the punitive award is paid by the injured party's own insurer, the purpose of the award is lost. In fact, the punitive award does not punish the wrongdoer, and therefore does not discourage anybody from engaging in similarly irresponsible behavior.

100. The insurance policy at issue in *Mullins* did contain the "all sums" language, which would have supported a punitive award under contract theory regardless of statutory interpretation. However, the Tennessee court did not rely on this narrow contract language issue as the primary justification for its decision. Rather, it only recognized the policy provision as additional support for its decision to allow the insurance of punitive damages awarded against an uninsured party. *Mullins*, 683 S.W.2d at 671.

101.

> No automobile liability or motor vehicle liability policy of insurance 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 both of the following are provided: (1) Uninsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for bodily injury or death under provisions approved by the superintendent of insurance, 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.

OHIO REV. CODE ANN. § 3937.18(A) (Anderson 1989).

102. 17 Ohio St. 3d 195, 478 N.E.2d 1000 (1985).

103. *Id.*

104. 683 S.W.2d 669. *See supra* note 100 and accompanying text.

105. State Farm Mut. Auto. Ins. Co. v Mendenhall, 164 Ill. App. 3d 58, 61, 517 N.E.2d 341, 344 (1987). "Mendenhall in oral argument suggested that the offending driver might be punished if State Farm was successful in a subrogation claim. This is wild-eye conjecture which lacks practical application." *Id.*

106. *Wilson*, 162 Ariz. at 269, 782 P.2d at 735. "Although theoretically State Farm had the right of recovery against the tortfeasor, we do not believe the subrogation right to be

ultimately be liable to the injured party's insurer, rarely does such liability result in actual indemnification.[107] The innocent insurer is still the punished party.[108]

The Ohio and Tennessee supreme courts both mistakenly interpreted statutory silence regarding punitive damage coverage as an indication of legislative intent to cover them. If the legislature had "intended" the statutes to require coverage of punitive damages, however, it probably would have explicitly provided for such coverage. Arizona's interpretation of the statutory silence, in light of the legislative history and the objectives, arrives at a more logical conclusion.

B. The Success of Comprehensive Analysis by the Judiciary

The Arizona Supreme Court conducted a thorough and comprehensive analysis of punitive damages coverage under UM/UIM insurance in *Wilson*. This section discusses the value of a comprehensive review of legislative intent, statutory language and judicial precedent in resolving this issue. This section also discusses the methods of analysis used by Illinois and Massachusetts in their resolution of the same issue. This section then compares the effective methods of analysis to the ineffective methods used by Ohio in its mistaken interpretation.

The Illinois Supreme Court denied punitive damage coverage under statutory UM/UIM insurance policies with no difficulty. In *Mendenhall*,[109] the Illinois court engaged in a brief but direct analysis of the objectives underlying UM/UIM insurance. The court recognized that providing compensation for bodily injury caused by an uninsured or underinsured driver was the purpose for mandatory UM/UIM coverage.[110] The court then reviewed Illinois case law interpreting the purposes of punitive damages as punishment and deterrence.[111] Punitive damage awards, from the injured party's own insurer, do not further these purposes.[112] Because the insurer pays the damages, the tortfeasor is not punished, and because the tortfeasor is not punished, others are not discouraged

---

dispositive. The right of subrogation no longer exists against underinsured motorists because such efforts were seldom successful." *See also supra* note 105.

107. *See supra* note 105. *See also* Santos v. Lumbermens Mut. Casualty Co., 408 Mass. 70, 83, 556 N.E.2d 983, 990 (1990).

108. *Mendenhall*, 164 Ill. App. 3d at 61, 517 N.E.2d at 344. "The purpose of the uninsured motorist coverage is ... [not] to punish the insured's insurance company for the wrongdoings of others." *See also Santos*, 408 Mass. at 83, 556 N.E.2d at 990.

109. 164 Ill. App. 3d 58, 517 N.E.2d 341.

110.

> [W]e believe the reasonable purpose of the statutory uninsured motorist provisions is to assure that compensation will be available to policyholders, in the event of injury by an uninsured motorist, to at least the same extent compensation is available for injury by a motorist who is insured in compliance with the Financial Responsibility Law.

Id. at 61, 517 N.E.2d at 344 (citing Putnam v. New Amsterdam Casualty Co., 48 Ill. 2d 71, 89, 269 N.E.2d 97, 106 (1970)).

111. "[P]unitive damages ... 'are awarded primarily to punish the offender and to discourage other offenses.'" *Mendenhall*, 164 Ill. App. 3d at 61, 517 N.E.2d at 344 (quoting Mattyasovszky v. West Towns Bus Co., 61 Ill. 2d 31, 35, 330 N.E.2d 509, 511 (1975)).

112. *See supra* note 80 and accompanying text and *infra* note 118 and accompanying text.

from engaging in similar conduct in the future. Thus, the *Mendenhall* court denied the claim.[113]

Mendenhall[114] illustrates that a comprehensive review of statutory language, the judicial interpretation of the statute and the established purposes for certain damage awards can result in a logical ruling. The Illinois legislature's failure to amend the statute subsequent to the *Mendenhall* decision may also indicate that the holding accurately reflected the legislature's intent.

When Massachusetts was faced with the issue of punitive damages under UM/UIM insurance policies, it applied a comprehensive analysis similar to those of the Illinois and Arizona courts. In *Santos*,[115] the Massachusetts Supreme Judicial Court undertook a comprehensive review of the UM/UIM statute and the recognized purposes for punitive damage awards.[116] Like Tennessee and Ohio, Massachusetts' UM/UIM statute was silent on whether punitive damages were covered.[117] Rather than interpreting silence as an indication that the legislature intended to include punitive damages, however, the *Santos* court interpreted the language of the statute and reviewed the relevant case law. The court denied the insured's claim for punitive damages from his insurer because the purpose of the Massachusetts SRA is to compensate not punish.[118] Punitive damages awards serve punishment and deterrent functions.[119]

The Ohio Supreme Court's misinterpretation of the mandatory UM/UIM statute in *Hutchinson v. J.C. Penney Casualty Insurance Co.*[120] drew a quick response from the Ohio legislature. In 1986 the Ohio General Assembly amended the mandatory UM/UIM statute, explicitly prohibiting insurance coverage for punitive damages.[121] The Assembly originally believed that the legal principles disallowing coverage that indemnifies a person for irre-

---

113. *Mendenhall*, 164 Ill. App. 3d at 61, 517 N.E.2d at 344.
114. 164 Ill. App. 3d 58, 517 N.E.2d 341.
115. 408 Mass. 70, 556 N.E.2d 983.
116. *Id.* at 80, 556 N.E.2d at 989.
117. *Id.*

> No policy shall be issued or delivered in the commonwealth with respect to a motor vehicle ... unless such policy provides coverage *in amounts or limits prescribed for bodily injury or death* for a liability policy under this chapter ... for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles ... and hit and run motor vehicles *because of bodily injury, sickness or disease, including death resulting therefrom*, and coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of insured motor vehicles ... whose policies or bonds are insufficient in limits of liability to satisfy said damages.

MASS. GEN. L. ch. 175, § 113L (1988) (emphasis in original).

118. 408 Mass. at 81-82, 556 N.E.2d at 989-90. "We have stated that 'the purpose of the uninsured motor vehicle statute [is] to provide the availability of compensation for bodily injury or death caused by a tortfeasor who is uninsured.'" *Id.* (quoting Surrey v. Lumbermens Mutual Casualty Co., 384 Mass. 171, 173, 424 N.E.2d 234 (1981)). "General Laws c.175, § 113L, mandates coverage 'for the protection of persons insured,' which also suggests a compensatory purpose." *Id.* at 81-82, 556 N.E.2d at 990.

119. *Id.* at 81-82, 556 N.E.2d at 990. "Requiring an insurance company to pay punitive damages to the insured would not serve to deter wrongdoing, or punish the wrongdoer; rather it would result in payment of punitive damages by a party who was not a wrongdoer."

120. 17 Ohio St. 3d 195, 478 N.E.2d 1000.

121. OHIO REV. CODE ANN. § 3937.18.2 (Anderson 1986).

sponsible conduct were so well established that it was not necessary to prohibit such coverage in the statute.[122] Rather than stating every type of damage award that *is not* intended to be included, the legislature provided for those damage awards that were intended to be covered. The Ohio legislature's subsequent corrective action illustrates the weakness of the *Hutchinson* reasoning.[123] In *Casey v. Calhoun*[124] Ohio courts recognized the statutory prohibition of insuring against punitive damages.[125] This total ban on insuring against punitive damages is more expansive than Arizona's ban in the UM/UIM context. It is evidence, however, of the need for courts to view legislative objectives more carefully when interpreting statutory provisions.

Ohio's experience illustrates one of the most valuable aspects of the *Wilson* decision. The *Hutchinson* court's misinterpretation of the UM/UIM statute directs courts to carefully review statutory development as well as legislative and judicial history when ascertaining the meaning of a statute. The Arizona Supreme Court successfully traced that development in *Wilson*. The Arizona Supreme Court respected the established objectives of the SRA and the recognized functions of punitive damage awards in Arizona. By following the progression of the law, Arizona has avoided not only the time and cost of enacting further legislation, but more importantly, it has assisted citizens and insurers in planning for future contract agreements. Because the status of coverage for punitive damages in the UM/UIM context is no longer founded on unclear and conflicting case holdings, but rather is dictated by the clear holding in *Wilson*, Arizona consumers and insurance companies can enter UM/UIM contracts knowing the extent of coverage required by law.

V. CONCLUSION

The Arizona Supreme Court's decision in *State Farm v. Wilson*[126] represents a logical and positive change in Arizona insurance law. *Wilson* provides a new standard for interpreting ambiguous insurance policy provisions. The return to common sense contract interpretation, and the retreat from *P.A.T. Homes'*[127] per se ambiguity rule permits Arizona courts to review the actual agreement at issue without the constraints of a forced finding of

---

122. "[I]t was assumed that the legal principles opposed to authorization for insurance that would indemnify a person for conduct leading to the award of punitive damages were so well established that was unnecessary to negate such an intention." Casey v. Calhoun, 40 Ohio App. 3d 83, 85-86, 531 N.E.2d 1348, 1350 (1987).

123. The faults in the *Hutchinson* logic, can also be seen in *Mullins*. The Tennessee Supreme Court, in *Mullins*, specifically stated that since the statute was silent as to whether punitive damages should be granted, and since such damages were not explicitly excluded by the statute, the court would assume that they were intended to be included. This is the same assumption, that when made by the Ohio court, forced the Ohio General Assembly to enact clarifying legislation, negating coverage for punitive damages. If the Ohio legislature had intended for punitive damages to be covered, it probably would have explicitly provided for them in the original version of the statute.

124. 40 Ohio App. 3d 83, 531 N.E.2d 1348.

125. *Id.* at 86, 531 N.E.2d at 1351. "It is clear that with the passage of this bill the General Assembly has assumed its role as policymaker and has firmly expressed its intention that an individual must be prohibited from insuring against his own intentional or malicious acts."

126. 162 Ariz. 251, 782 P.2d 727.

127. 113 Ariz. 136, 547 P.2d 1050.

ambiguity. *Wilson* also clearly establishes that coverage of punitive damages under statutorily mandated UM/UIM coverage is not required. Without a policy provision excluding coverage of punitive damages, the Arizona SRA does not require a UM/UIM insurer to cover such damages.

Wilson is the product of a comprehensive review of statutory language, legislative intent and case law precedent. The Arizona Supreme Court's thorough review of these factors enabled it to arrive at a resolution that is consistent with the objectives behind both the SRA and punitive damages. This careful review guarantees to the citizens of Arizona and the Arizona insurance industry that the law not only stands on the footings of judicial precedent, but also has statutory and legislative support.

By providing a well-reasoned solution to the issue, the court has provided a stable method of analysis that Arizona courts, legislators and citizens can rely on. Even accounting for differences in the specifics of each case, several states have utilized flawed logic in arriving at their resolution of this question. *Wilson*'s comprehensive analysis of statutory intent, history, contract law, as well as the nature of the insurance agreement at issue, resulted in a reasonable and logical holding.

When compared to the incomplete reasoning and mistaken interpretations of other states, *State Farm v. Wilson* is a "common sense" insurance decision from the Arizona Supreme Court.