Arizona Choice of Law Provision: UM/UIM Claims

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Arizona is a popular destination for out of state residents to enjoy the beauty and warmth the state has to offer. We especially see an increase in visitors from October to May. Many of these individuals stay in Arizona for a period of multiple months.

Unfortunately, some experience an auto accident during their stay in Arizona. Typically, the out of state resident maintains an auto insurance policy issued in their home state. As a part of their policy, they may have personal insurance protection ("PIP") or medical payments coverage. Under these coverages, the carrier will likely pay for the initial medical expenses or other losses that may qualify due to the accident. Also, the visitor may settle with the other driver involved, and depending on the damages, file an uninsured ("UM") or underinsured motorist claim ("UIM").

A central issue that may arise when a carrier is presented with a UM or UIM claim is whether the carrier can offset the PIP or medical payments previously made. If the certified policy does not contain a choice of law provision, a choice of law analysis must be conducted. In Arizona, pursuant to A.R.S. § 20-259.01(G), offsetting no-fault medical payments is not allowed. However other states allow the PIP and medical payments to be offset when an UM or UIM claim is presented. This article explores the analysis of Arizona courts in applying Arizona choice of law rules.

A. Where is the principal location of the insured risk?

In the absence of a choice of law provision, Arizona courts apply Arizona choice of law rules to determine which law to apply to substantive issues such as stacking of insurance. *Beckler v. State Farm Mut. Auto. Ins. Co.*, 195 Ariz. 282, 285, 987 P.2d 768, 771 (Ct. App. 1999), *opinion corrected sub nom. Beckler v. State Farm Mut. Auto Ins. Co.*, 196 Ariz. 366, 997 P.2d 1195 (Ct. App. 2000). Arizona follows the Restatement (Second) of Conflict of Laws for its choice of law analysis. *Beckler,* 195 Ariz. at 286, 987 P.2d at 772.

Restatement § 193 reads:

> Contracts of Fire, Surety or Casualty Insurance
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> The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied.

Beckler, 195 Ariz. at 286, 987 P.2d at 772

Comment b to § 193 provides that the principal location of the insured risk is "in the state where it will be during at least the major portion of the insurance period," and the "insured risk" is "the object or activity which is the subject matter of the insurance." Comment b also states: "[T]he risk's principal location is the most important contact to be considered in the choice of the applicable law" and "[t]he location of the insured risk will be given greater weight than any other single contact." *Beckler*, 195 Ariz. at 287, 987 P.2d at 773.

The Restatement provides the automobile is the insured risk in an automobile insurance policy. Thus, the court must look to the principal location of the automobile, not the named insured. *Beckler*, 195 Ariz. at 287, 987 P.2d at 773.

In *Beckler*, the court found Arizona was the principal location of the insured risk because both parties knew the vehicle would be in Arizona for nine months out of the year while the insured was attending college in Arizona. The only fact given

regarding the insurer's knowledge of the principal location of the risk was that the Beckler's State Farm agent "understood that [the insured] and the [vehicle] would be in Arizona during the school year." *Beckler*, 195 Ariz. at 284, 987 P.2d at 770. Thus, the court appeared to impute the agent's knowledge to the insurer, which is consistent with Arizona law of agency. *Smith v. Republic Nat. Life Ins. Co.*, 107 Ariz. 112, 117, 483 P.2d 527, 532 (1971).

The *Beckler* court distinguished its decision from other cases where the law of the state where the policy was written applied, because in those cases the principal location of the risk was the same as where the policy was issued or where the insureds primarily resided, citing *Walker v. State Farm Mut. Auto. Ins. Co.,* 973 F.2d 634, 636-37 (8th Cir.1992) (insureds residents of, car garaged at, and policy issued in Kansas), *Boardman v. United Servs. Auto. Ass'n,* 470 So.2d 1024, 1033 (Miss.1985) (insureds residents of, car garaged at, and policy issued in Nebraska), *State Farm Mut. Ins. Co. v. Conyers,* 109 N.M. 243, 784 P.2d 986, 990 (1989) (car garaged at and policy issued in New Mexico), *McAllaster v. Bruton,* 655 F.Supp. 1371, 1373 (D.Me.1987) (policy issued and vehicle garaged in Connecticut), *Hartzler v. American Family Mut. Ins. Co.,* 881 S.W.2d 653, 654 (Mo.Ct.App.1994) (insureds residents of, car garaged at, and policy issued in Kansas), and *Adkins v. Sperry,* 190 W.Va. 120, 437 S.E.2d 284, 285, 288 (1993) (Ohio insurance application, insureds residents of, and car registered, licensed, and garaged in Ohio). *Beckler*, 195 Ariz. at 286, 987 P.2d at 772.

B. *Does another state have a more significant relationship to the parties and the transaction than the principal location of the insured risk?*

Determining the principal location of the risk is not the end of the analysis. Restatement § 193 requires the court to determine another state does not have a more "significant relationship" to the parties and the transaction. The significant relationship test is qualitative rather than quantitative, so merely listing the number of contacts with each state is insufficient. *Beckler*, 195 Ariz. at 289, 987 P.2d at 775. In determining whether another state has a more significant relationship to the transaction, the court reviews the following factors outlined in § 6 of the Restatement:

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

Examining the factors above, the *Beckler* court found Arizona has a strong interest in applying Arizona law to issues of UM/UIM coverage, and applying Arizona law would not hamper harmonious relations between Nebraska and Arizona. Arizona's purpose for UM/UIM legislation is to protect its citizens from uncompensated damages caused by financially irresponsible drivers. *Evenchik v. State Farm Ins. Co.,* 139 Ariz. 453, 458, 679 P.2d 99, 104 (App.1984). In addition, Arizona has an interest in providing recovery for those individuals who physically reside within its borders. *Beckler*, 195 Ariz. at 289-90, 987 P.2d at 775-76. The *Beckler* court noted if State Farm wanted to assure application of Nebraska law to policies written in Nebraska, it could have included a choice of law provision in its policies. *Beckler*, 195 Ariz. at 289, 987 P.2d at 775.

In *Beckler,* the court found Arizona has a strong interest in applying its own law where Arizona law provides greater protection for victims of uninsured motorists than the law of the state where the policy was issued. In *Beckler*, the court found Nebraska's interest in prohibiting stacking does not outweigh Arizona's interest in compensating the victims of

accidents occurring within Arizona's borders.

The *Beckler* court found the parties' justified expectations were that Arizona law would apply, because the parties knew the car would be primarily be located in Arizona. 195 Ariz. at 290, 987 P.2d at 776. Finally, the *Beckler* court found that choice of law rules should be simple and easy to apply, applying Arizona law provides for at least the same ease in application as would applying Nebraska's laws, and applying Arizona law is reasonable and results in uniformity. *Beckler*, 195 Ariz. at 290, 987 P.2d at 776.

Takeaway: It is important to be aware of the applicable choice of law when the policy does not contain a choice of law provision. The applicable state law could impact the valuation of the claim as to whether payments made under PIP or medical payments coverage can be offset or not. If precluded from offsetting payments, the UM or UIM claim may have actual value that dictates the need to obtain all information and engage in meaningful settlement discussions. The choice of law analysis will assure proper evaluation occurs and avoid the possible exposure to bad faith litigation.

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