

## **CASE SUMMARY**

*Scruggs v. State Farm Mutual Automobile Ins. Co.*  
--- Ariz. ---, 62 P.3d 989 (2003)  
decided February 18, 2003

In *Scruggs v. State Farm Mutual Automobile Ins. Co.*, --- Ariz. ---, 62 P.3d 989 (Ct.App. 2003), the Arizona Court of Appeals, Division 1, issued a written opinion on two key issues relating to uninsured (UM) motorist coverage in Arizona. First, the court addressed whether or not an insured's compliance with the statutory corroboration requirement in an UM matter was subject to arbitration. Second, the court examined the type of evidence sufficient to comply with Arizona's corroboration requirements.

### **FACTS OF THE CLAIM**

In November of 1998, Scruggs reported that an unidentified vehicle suddenly pulled into his lane of traffic, forcing him to swerve to his right to avoid a collision. Unfortunately for Scruggs, he rear-ended a tanker truck, which was stopped in the right lane of traffic. Because Scruggs did not make contact with the unidentified vehicle, and since that vehicle did not stop, Scruggs filed an UM claim with his insurer, State Farm.

Scruggs initially filed a police report with local authorities, detailing the events of the collision. Scruggs later obtained an affidavit and crash investigation report from an accident reconstruction expert. In this expert's opinion, Scruggs' vehicle was traveling at an angle from the left when it collided with the tanker. This opinion was generally consistent with Scruggs' version of events.

State Farm denied Scruggs' claim and refused to participate in arbitration because it asserted that Scruggs did not provide "sufficient corroborating evidence" as required by A.R.S. § 20-259.01(M).<sup>1</sup> Scruggs filed a complaint for declaratory relief in superior court, seeking an order that the determination of liability and damages under subsection (M) and his State Farm policy were factual matters to be decided through arbitration. The trial court found Scruggs' compliance with the requirement an issue of fact, and ordered the matter to arbitration. State Farm appealed.

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<sup>1</sup> Subsection (M) regulates certain uninsured motorist claims in which a claimant asserts that the accident was caused by an unidentified vehicle that did not make physical contact with anyone else in the accident (a "miss and run" vehicle). In such cases, subsection M requires the insured, to submit corroboration of his version of the accident with his claim.

## **IS AN INSURER REQUIRED TO ARBITRATE COMPLIANCE WITH ARIZONA'S STATUTORY CORROBORATION REQUIREMENT?**

In determining whether or not an insurer is required to arbitrate compliance with A.R.S. § 20-259.01(M), the Court of Appeals completed a comprehensive examination of legislative and case histories. The Court found that subsection M does not specifically provide that questions of compliance with the corroboration requirement be decided by an arbitrator. The Court held that in the absence of specific statutory language, the parties can only be compelled to arbitrate the issue of corroboration if they have agreed in the policy to do so. Scruggs' policy only submitted to arbitration the questions of whether he was legally entitled to collect damages from the owner or driver of the uninsured motor vehicle, and if so, the amount of damages.<sup>2</sup>

As such, the Court ruled that an insurer is not obligated to arbitrate the question of compliance with the corroboration requirements of the statute, as the statute does not specifically provide for such a remedy. Furthermore, Scruggs' own policy did not offer arbitration as an alternative for determining compliance; and therefore, whether the claim was corroborated was a coverage issue to be submitted to a court.

## **WHAT SUFFICES AS "SUFFICIENT COMPLIANCE" WITH ARIZONA'S STATUTORY CORROBORATING REQUIREMENTS IN UM MATTERS?**

Upon finding that compliance is a coverage issue to be determined by the courts, the Court of Appeals next looked to the sufficiency of the evidence submitted by Scruggs in support of his UM claim. First, Scruggs filed a report with the investigating police department stating he swerved to avoid a collision with an unidentified vehicle. Second, Scruggs provided to State Farm the report of an accident reconstruction expert, whose opinion was consistent with Scruggs' version of events.

Scruggs argued that his statements to the police were "excited utterances" and therefore admissible as evidence in a court of law. However, the appellate court was quick to note that A.R.S. § 20-259.01(M) requires the corroborating testimony, fact or evidence to be "additional ... to the insured's representation of the accident." Even if the statements to the police were found to be admissible, the Court ruled they were duplicative to Scruggs' own version of the accident. As the statements were not "additional" evidence, the Court held that this evidence alone did not meet the requirements under the corroborating statute.

The Court then addressed the report of Scruggs' accident reconstructionist. Although the report was consistent with Scruggs' version of the accident, in that he veered into

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<sup>2</sup> In pertinent part, State Farm's policy reads as follows:

Deciding Fault and Amount: Two questions must be decided and agreed between the insured and us:

1. Is the insured legally entitled to collect damages from the owner or driver of the uninsured motor vehicle: and,
2. If so, in what amount?

If there is no agreement, these questions shall be decided by arbitration upon written request of the insured or us.

the right lane, State Farm contended that there could have been numerous reasons to swerve that had nothing to do with an impeding vehicle. However, the Court noted that under subsection (M), an insured “corroborates” that “the unidentified motor vehicle caused the accident” by providing “any additional confirming testimony, fact or evidence that strengthens and adds weight or credibility to the insured’s representation of the accident.” (Emphasis added). Under this broad language, the Court held the reconstruction report was sufficient to corroborate Scruggs’ version of the accident, even though Scruggs had not provided independent evidence that an unidentified motor vehicle actually existed.

### **THE EFFECT OF SCRUGGS V. STATE FARM**

Generally speaking, an insurer is not required to arbitrate statutory compliance under Arizona’s corroboration requirements unless an insured’s policy specifically directs such matters be heard before an arbitrator or in an alternate forum. However, when examining compliance with subsection (M), Scruggs has left an expansive range of evidence available for claimants to use in satisfying this requirement. The statute permits “any additional confirming testimony, fact or evidence,” to qualify as corroborating confirmation of the events of the alleged accident. Although this decision does not prevent an insurer’s defense of a UM case once additional evidence is submitted, it limits an insurer’s ability to dismiss a weak UM matter early in litigation. It also alleviates the burden of the claimant to provide evidence of another vehicle in “miss and run” cases, so long as there is any additional evidence to further support claimant’s version of the accident.

If you have any questions concerning this case summary or uninsured motorist issues generally, please call [Jason Hunter](#) or [David Bell](#). You can also [click here](#) or on the italicized case name at the top of this case summary to read the complete opinion of the court.