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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRADLEY YOUNG,

Plaintiff-Appellant,

v.

OWNERS INSURANCE COMPANY, a Michigan corporation,

Defendant-Appellee,

and

PROGRESSIVE CASUALTY INSURANCE COMPANY, an Ohio corporation; PROGRESSIVE CASUALTY INSURANCE COMPANY; COMMERCE INSURANCE COMPANY, a Massachusetts corporation,

Defendants.

No. 22-15070

D.C. No. 3:20-cv-08077-DWL

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Dominic Lanza, District Judge, Presiding

Argued and Submitted November 18, 2022
Phoenix, Arizona

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: BYBEE, OWENS, and COLLINS, Circuit Judges.

Bradley Young appeals the district court's grant of summary judgment for Owners Insurance Company. We have jurisdiction under 28 U.S.C. § 1291 and review a district court's rulings on summary judgment de novo. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 923 (9th Cir. 2022). We vacate the order and remand.

After leaving a New Year's Eve party in the Glamis Sand Dunes, Young was struck from behind by an uninsured motorist. Owners denied coverage based on an exclusion in its policy for damages caused by "any vehicle designed for use mainly off public roads while not on public roads." Young argued that the collision occurred on a stretch of public land unofficially known as the "sand highway," and that this sand highway constitutes a public road.

At summary judgment, the district court sidestepped the question of whether the sand highway is a public road under the policy. Instead, it determined that Young had been struck in a pedestrian area next to the sand highway. Next, relying on *Gittings v. American Family Insurance Co.*, 888 P.2d 1363 (Ariz. Ct. App. 1994), the district court concluded that this pedestrian area was not a public road under the policy.

We hold that the district court erred in its application of *Gittings*. Though *Gittings* found that an area not being "intended for vehicular travel" was important to its analysis, it "d[id] not find this factor dispositive." *Id.* at 1369. Instead, the *Gittings* court recognized that if, "through some mishap," a vehicle "veer[s]" off the public road on which it was traveling, causing an off-road collision, it may still be said that the accident occurred on a public road. *Id.* In other words, if an accident began on a public road, it could have occurred on a public road even if the ultimate injury occurred off-road. *Id.* As the insurer, Owners bears the burden to show that the accident did not occur while the motorbike was on a public road. *See Keggi v. Northbrook Property & Cas. Ins. Co.*, 13 P.3d 785, 788 (Ariz. Ct. App. 2000) ("[T]he insurer bears the burden to establish the applicability of any exclusion."). Without evidence of how the accident began—including the motorbike's location and path of travel prior to its collision with Young—Owners cannot meet this burden. Thus, by granting summary judgment merely because the ultimate collision occurred in the pedestrian area rather than the sand highway, the district court erred.

We **VACATE** the order below and **REMAND** to the district court to determine, in the first instance, whether the sand highway is a public road under the insurance policy at issue. Each party shall bear its own costs.