

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<b>Maria Rosario Francisco, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>3:14-cv-8111 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER AND OPINION</b>
	)	
<b>State Farm Mutual Automobile Insurance Company, et al.,</b>	)	<b>[Re: Motion at Docket 28]</b>
	)	
<b>Defendants.</b>	)	
	)	

**I. MOTION PRESENTED**

At docket 28 defendant State Farm Mutual Automobile Insurance Company (“State Farm”) moves for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on plaintiffs Maria Rosario Francisco and Catarino Celestino Francisco’s (“plaintiffs”) bad faith and punitive damages claims. State Farm’s motion also requests an order establishing that it is not bound by the default judgment entered by the Navajo County Superior Court in plaintiffs’ underlying liability action. Plaintiffs oppose State Farm’s motion at docket 36; State Farm replies at docket 43. Oral argument was heard on July 28, 2015.

**II. BACKGROUND**

Plaintiffs were injured in a motor vehicle accident in 2008 when their car collided with a car owned by Terry Pike (“Pike”) that was being driven by Marlan Oliver (“Oliver”),

1 third parties not before the court.<sup>1</sup> According to plaintiffs, Oliver caused the accident by  
2 running a red light.<sup>2</sup> The vehicle Oliver was driving was covered by an insurance policy  
3 issued by Geico Insurance (“Geico”) with liability coverage limits of \$15,000 per person  
4 and \$30,000 per occurrence.<sup>3</sup> Plaintiffs were insured by State Farm under a policy that  
5 contained underinsured motorist (UIM) coverage (with a limit of \$50,000 per person and  
6 \$100,000 per occurrence) and medical payments coverage (with a limit of \$5,000 per  
7 person).<sup>4</sup> In 2010 plaintiffs sued Pike and Oliver in Navajo County Superior Court:

8  
9  
10 *Francisco, et al. v. Oliver, et al.*<sup>5</sup>

11 On July 27, 2011, plaintiffs’ counsel Eduardo H. Coronado (“Coronado”) wrote  
12 State Farm a letter in which he stated that “[c]laims have been made now against the  
13 party whom we believe caused the harm,” but did not mention that plaintiffs had filed a  
14 lawsuit against Pike and Oliver, the court in which that lawsuit was filed, the identities of  
15 the defendants, or that they had served defendants with process in June 2011.<sup>6</sup>  
16 Coronado’s July 27 letter states that plaintiffs believed that “the responsible party”  
17 lacked sufficient liability insurance to cover plaintiffs’ injuries and that plaintiffs intended  
18 to pursue a UIM claim with State Farm if that turned out to be the case. State Farm  
19  
20

21  
22 <sup>1</sup>Doc. 29-1 at 45.

23 <sup>2</sup>Doc. 36-1 at 22.

24 <sup>3</sup>Doc. 29 at 2 ¶ 3; Doc. 36 at 2.

25 <sup>4</sup>Doc. 29-1 at 3.

26 <sup>5</sup>No. S-0900-CV-201000727 (complaint filed Dec. 3, 2010, docket available at:  
27 <http://www.azcourts.gov>).

28 <sup>6</sup>Doc. 29-2 at 2. State Farm disputes whether process was actually effectuated.

1 responded to Coronado's letter on August 8, informing him it appeared that the adverse  
2 policy had "accepted liability for the claim and paid for the damages to [plaintiffs']  
3 vehicle," but plaintiffs' bodily injury claims had not yet settled.<sup>7</sup> The record is unclear  
4 regarding the basis of State Farm's understanding as to these facts. State Farm  
5 informed Coronado that it would hold the UIM coverage open and, should such  
6 coverage be needed, plaintiffs would have to send in vehicle damage photos.<sup>8</sup> State  
7 Farm's claim notes from August 8 include the following entries: "Atty letter says he  
8 believe OIC has sufficient covg, but wanted to satisfy the laws regarding reporting the  
9 UIM, just in case;" "Close file, it does not appear there will be any handling"; and  
10 "Potential UIM claim If OIC does not have sufficient covg."<sup>9</sup>

11  
12  
13 Coronado wrote State Farm again on August 11 stating that plaintiffs were  
14 notifying State Farm pursuant to A.R.S. § 12-555 that they intended to pursue a UIM  
15 claim.<sup>10</sup> Coronado again failed to mention any details regarding the then-pending  
16 lawsuit against Pike and Oliver. State Farm's claim notes from that date contain the  
17 following entries: "Rev'd atty letter, it says he is notifying us in accordance w/the ARS  
18 statute, Called and LM to explain why our letter says what it does"; "Sec'y will have him  
19 call us"; and "Re-Closing file."<sup>11</sup>

---

23  
24 <sup>7</sup>Doc. 29-2 at 4.

25 <sup>8</sup>*Id.*

26 <sup>9</sup>Doc. 66-1 at 26-27.

27 <sup>10</sup>Doc. 29-2 at 6.

28 <sup>11</sup>Doc. 66-1 at 25.

1 Pike and Oliver did not answer plaintiffs' complaint and were defaulted.<sup>12</sup> On  
2 June 18, 2012, after reviewing plaintiffs' testimony and exhibits, the superior court  
3 issued findings of fact regarding plaintiffs' damages.<sup>13</sup> Judge Michala M. Ruechel found  
4 that plaintiff Maria Francisco's injuries "included opening stitches from a prior medical  
5 procedure and injuries to her shoulder and arm," that Ms. Francisco had not regained  
6 use of her arm after the accident, and that her disability was likely permanent.<sup>14</sup>  
7 Further, Ms. Francisco could no longer continue her previous work making and selling  
8 tamales by hand "at the same level," which would reduce her income by \$423,800 over  
9 the remainder of her working life.<sup>15</sup> Judge Ruechel also found that plaintiff Catarino  
10 Francisco had suffered an injury to his left leg that would require surgery and  
11 rehabilitation. The court awarded Ms. Francisco damages of \$550,000 "for loss of  
12 income, loss of use of her arm, medical bills and pain and suffering," and  
13 Mr. Francisco \$250,000 for "past and future medical expenses and pain and  
14 suffering."<sup>16</sup> This award was reduced to judgment on September 24, 2012.<sup>17</sup>

18 Four days later Coronado wrote State Farm stating that plaintiffs had obtained a  
19 \$800,000 judgment, that the "party at fault does not have enough coverage to cover the  
20 award," and that plaintiffs were thereby "putting forth their claim against the uninsured  
21

---

22 <sup>12</sup>Doc. 36-1 at 10.

23 <sup>13</sup>*Id.*

24 <sup>14</sup>*Id.* at 11.

25 <sup>15</sup>*Id.*

26 <sup>16</sup>*Id.*

27 <sup>17</sup>Doc. 36-1 at 12-15.

1 or underinsured motorist portion of their insurance policy.”<sup>18</sup> Coronado faxed various  
2 documents to State Farm, including a copy of the judgment.<sup>19</sup>

3  
4 In January 2013 Geico offered to pay Pike’s liability policy limit of \$30,000 to  
5 plaintiffs as full satisfaction of the judgment against Pike and Oliver.<sup>20</sup> Coronado then  
6 relayed this offer to State Farm, explaining that it was insufficient to cover plaintiffs’  
7 damages and demanding that State Farm pay plaintiffs UIM and medical payments  
8 policy limits by February 6.<sup>21</sup> State Farm’s lawyer, James E. Ledbetter (“Ledbetter”),  
9 responded on February 7, stating that “the apparent default judgment against the third-  
10 parties does not provide sufficient documentation” to pay the UIM claims and, based on  
11 the information that Ledbetter had reviewed, Geico’s payment was sufficient to cover  
12 plaintiffs’ damages.<sup>22</sup> Ledbetter asked plaintiffs to submit further documentation of their  
13 injuries, which they apparently provided over the following months.<sup>23</sup>

14  
15  
16 In September 2013 State Farm denied plaintiffs’ UIM claim.<sup>24</sup> State Farm stated  
17 that it was not bound by the default judgment, in part because it did not receive notice  
18 of the proceedings until September 2012 and therefore had “no opportunity to  
19  
20

---

21 <sup>18</sup>*Id.* at 18.

22 <sup>19</sup>*Id.* at 17.

23 <sup>20</sup>Doc. 29-2 at 16-17.

24 <sup>21</sup>*Id.* at 23-25, 27.

25 <sup>22</sup>*Id.* at 29-30.

26 <sup>23</sup>*Id.* at 32-34.

27 <sup>24</sup>*Id.* at 44-46.

1 participate.”<sup>25</sup> Further, State Farm asserted that “based on the extremely limited  
2 information that [had] been provided and obtained independently at State Farm’s own  
3 expense,” plaintiffs’ medical damages were “only a few thousand dollars each.”<sup>26</sup>  
4

5 Plaintiffs then filed the present action against State Farm.<sup>27</sup> Plaintiffs’ Second  
6 Amended Complaint (“Complaint”) includes three claims: claim one for breach of  
7 contract; claim two for bad faith; and claim three for “bad faith-against the insurance  
8 company.”<sup>28</sup> Plaintiffs seek punitive damages under their third claim only.  
9

### 10 III. STANDARD OF REVIEW

11 Summary judgment is appropriate where “there is no genuine dispute as to any  
12 material fact and the movant is entitled to judgment as a matter of law.”<sup>29</sup> The  
13 materiality requirement ensures that “only disputes over facts that might affect the  
14 outcome of the suit under the governing law will properly preclude the entry of summary  
15 judgment.”<sup>30</sup> Ultimately, “summary judgment will not lie if the . . . evidence is such that  
16 a reasonable jury could return a verdict for the nonmoving party.”<sup>31</sup> However, summary  
17 judgment is appropriate “against a party who fails to make a showing sufficient to  
18  
19  
20

---

21 <sup>25</sup>*Id.* at 45.

22 <sup>26</sup>*Id.*

23 <sup>27</sup>Doc. 1-1 at 2-5.

24 <sup>28</sup>*Id.* at 7-13.

25 <sup>29</sup>Fed. R. Civ. P. 56(a).

26 <sup>30</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

27 <sup>31</sup>*Id.*

1 establish the existence of an element essential to that party's case, and on which that  
2 party will bear the burden of proof at trial."<sup>32</sup>

3  
4 The moving party has the burden of showing that there is no genuine dispute as  
5 to any material fact.<sup>33</sup> Where the nonmoving party will bear the burden of proof at trial  
6 on a dispositive issue, the moving party need not present evidence to show that  
7 summary judgment is warranted; it need only point out the lack of any genuine dispute  
8 as to material fact.<sup>34</sup> Once the moving party has met this burden, the nonmoving party  
9 must set forth evidence of specific facts showing the existence of a genuine issue for  
10 trial.<sup>35</sup> All evidence presented by the non-movant must be believed for purposes of  
11 summary judgment and all justifiable inferences must be drawn in favor of the  
12 non-movant.<sup>36</sup> However, the non-moving party may not rest upon mere allegations or  
13 denials, but must show that there is sufficient evidence supporting the claimed factual  
14 dispute to require a fact-finder to resolve the parties' differing versions of the truth at  
15 trial.<sup>37</sup>  
16  
17  
18  
19  
20  
21

---

22 <sup>32</sup>*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

23 <sup>33</sup>*Id.* at 323.

24 <sup>34</sup>*Id.* at 323-25.

25 <sup>35</sup>*Anderson*, 477 U.S. at 248-49.

26 <sup>36</sup>*Id.* at 255.

27 <sup>37</sup>*Id.* at 248-49.  
28

1 **IV. DISCUSSION**

2 **A. Plaintiffs’ Bad Faith Claims**

3 Every insurance contract includes an implied covenant of good faith and fair  
4 dealing whereby each party is bound to “refrain from any action which would impair the  
5 benefits which the other had the right to expect from the contract or the contractual  
6 relationship.”<sup>38</sup> Two of plaintiffs’ causes of action allege that State Farm acted in bad  
7 faith by denying their UIM claim unreasonably.<sup>39</sup> Thus, plaintiffs bear the burden of  
8 establishing the following two elements: (1) that State Farm lacked a reasonable basis  
9 for denying their UIM claim (an objective test); and (2) that State Farm “knew or was  
10 conscious of the fact that it was acting unreasonably” in denying their claim (a  
11 subjective test).<sup>40</sup> State Farm argues that plaintiffs lack evidence of either of these  
12 elements. Plaintiffs do not respond to this argument directly, but they do imply that  
13 State Farm lacked an objectively reasonable basis for denying their claim because  
14 Judge Ruechel determined that their damages exceed the UIM policy limit. Plaintiffs’  
15 argument fails, however, because they do not present any facts that would tend to show  
16 the existence of the subjective component of the bad faith test. Because such a  
17 showing is essential to plaintiffs’ case and is one on which they would bear the burden  
18  
19  
20  
21  
22

23 \_\_\_\_\_  
24 <sup>38</sup>*Rawlings v. Apodaca*, 726 P.2d 565, 570 (Ariz. 1986).

25 <sup>39</sup>Doc. 1-1 at 10 ¶¶ 28, 30. Plaintiffs’ second bad faith claim also includes allegations  
26 that appear not to relate to this case, including allegations that State Farm refused to defend  
27 plaintiffs, refused to “investigate sites,” and repudiated its insurance policies. *Id.* at 11 ¶ 34.  
28 Plaintiffs do not challenge State Farm’s contention that these allegations have no bearing to the  
facts of this case and were included in the complaint by mistake. Doc. 28 at 12-13.

<sup>40</sup>*Lennar Corp. v. Transamerica Ins. Co.*, 256 P.3d 635, 642 (Ariz. Ct. App. 2011).

1 of proof at trial, summary judgment is mandated under Rule 56(c) on plaintiffs' two bad  
2 faith claims.<sup>41</sup> This includes plaintiffs' claim for punitive damages.

3 **B. Whether State Farm is Bound by the Default Judgment**  
4

5 State Farm argues that it is not bound by the *Francisco v. Oliver* default  
6 judgment for two reasons. First, the UIM policy contains various provisions to that  
7 effect; and second, even if such provisions did not exist, State Farm cannot be bound  
8 by the default judgment because State Farm lacked notice of that action and an  
9 opportunity to participate. State Farm's UIM coverage provision provides in pertinent  
10 part:  
11

12 **Deciding Fault and Amount**

13 1. a. The *insured* and we must agree to the answers to the following two  
14 questions:

- 15 (1) Is the *insured* legally entitled to collect damages from the  
16 owner or driver of the . . . *underinsured motor vehicle*?
- 17 (2) If the answer to 1.a.(1) above is yes, then what is the  
18 amount of the damages that the *insured* is legally entitled to  
19 recover from the owner or driver of the . . . *underinsured*  
*motor vehicle*?

20 b. If there is no agreement on the answer to either question in 1.a.  
21 above, then the *insured* shall:

- 22 (1) within three years after providing us written notice of the . . .  
23 underinsured motor vehicle claim file a lawsuit against us in  
24 a state or federal court that has jurisdiction;
- 25 (2) consent to a jury trial if requested by us;
- 26 (3) agree that we may contest the issues of liability and the  
27 amount of damages; and

---

28 <sup>41</sup>See *Celotex Corp.*, 477 U.S. at 322.

1 (4) secure a judgment in that action. The judgment must be the  
2 final result of an actual trial and any appeals, if any appeals  
3 are taken.

4 2. We are not bound by any:

5 a. judgment obtained without our written consent; and

6 b. default judgment against any *person* or organization other  
7 than us.<sup>42</sup>

8 Plaintiffs respond by arguing that, under *Sandoval v. Chenoweth*,<sup>43</sup> because  
9 State Farm could have filed a motion to set aside the default judgment, it is irrelevant  
10 whether the policy language precludes State Farm from being bound by a default  
11 judgment or whether State Farm lacked notice of the lawsuit while it was pending. In  
12 *Sandoval*, the defendant tortfeasor failed to notify his liability carrier that he had been  
13 sued, in violation of the terms of his policy, and he was defaulted. The carrier argued  
14 that the defendant's policy violation prevented it from being bound by the default  
15 judgment. The Arizona Supreme Court disagreed, holding that former A.R.S. § 28-  
16 1170 applied and precluded the carrier's "policy defense" because under that statute  
17 "no violation of [a] policy shall defeat or void the policy."<sup>44</sup> Further, the court held that  
18 the carrier could not "relitigate the facts of the original suit in the subsequent  
19 garnishment action" because a garnishment action is "merely an ancillary proceeding to  
20 subject the indebtedness to satisfaction of a judgment."<sup>45</sup> Because the carrier could  
21  
22  
23

---

24 <sup>42</sup>Doc. 29-1 at 6.

25 <sup>43</sup>428 P.2d 98 (Ariz. 1967).

26 <sup>44</sup>*Id.* at 101 (quoting former A.R.S. § 28-1170 (1967), currently codified at A.R.S. § 28-  
27 4009(C)(5)(a)).

28 <sup>45</sup>*Id.* at 102.

1 (and did) file a motion to set aside the default judgment pursuant to Rule 60(c) of the  
2 Arizona Rules of Civil Procedure, the carrier's due process rights were not violated.<sup>46</sup>

3  
4 *Sandoval* can be differentiated from this case for at least two reasons. First,  
5 because State Farm is not attempting to defeat or void plaintiffs' policy, but rather to  
6 avoid being bound by the default judgment, State Farm's policy defense is not  
7 precluded by statute. And second, even if State Farm could have intervened in the state  
8 court proceeding to set aside the default,<sup>47</sup> it was not required to do so by *Sandoval*. In  
9 *Sandoval*, the insurer was contractually bound by the default judgment's determination  
10 of damages,<sup>48</sup> which is why it was bound by that judgment in the absence of Rule 60(c)  
11 relief. The insurance contract here states the opposite: that State Farm is not bound by  
12 the default judgment. Thus, if the policy's terms are given effect, State Farm does not  
13 need Rule 60(c) relief.  
14

15  
16 It is unclear whether the policy terms upon which State Farm relies are void as a  
17 matter of public policy, however. Although Arizona law is silent, in a majority of  
18 jurisdictions "an insurer will be bound by the 'findings, conclusions and judgment'  
19 entered in the action against the tortfeasor when it has notice and an opportunity to  
20 intervene in the underlying action against the tortfeasor," even if the policy language  
21

---

22  
23  
24 <sup>46</sup>*Id.* at 102 (citation omitted).

25 <sup>47</sup>See *Liston v. Butler*, 421 P.2d 542, 548 (Ariz. Ct. App. 1966) ("[O]ne whose interests  
26 are directly affected by a judgment in a proceeding to which he is not a party, may timely move  
27 to set aside such judgment, and the trial court after notice and hearing may set aside said  
28 judgment and grant a motion to intervene.").

<sup>48</sup>*Sandoval*, 428 P.2d 102 ("[The rendition of judgment against the insured . . . create[d]  
a debt under the insurance contract between the judgment debtor and his insurer.").

1 states otherwise.<sup>49</sup> There is no need for the court to decide whether Arizona law would  
2 adopt this approach, however, because plaintiffs did not provide State Farm with  
3 sufficient notice of their lawsuit against Pike and Oliver.  
4

5 Even in jurisdictions that follow the majority approach, an insurer will not be  
6 bound by a default judgment where it lacked “a reasonable opportunity to appear in,  
7 and thus to protect its interests in, the proceedings that led up to the judgment or  
8 award.”<sup>50</sup> In *Beck v. Farmers*, for example, the insureds presented evidence showing  
9 that the insurer knew the severity of the accident, that the insureds’ claims would likely  
10 exceed the tortfeasor’s liability coverage limits, and that the insureds were represented  
11 by counsel that “was aggressively pursuing all available benefits.”<sup>51</sup> The Court of  
12 Appeals of Washington held that this was insufficient to put the insurer on notice of the  
13 lawsuit because the insureds failed to inform the insurer “that [the tortfeasor] had been  
14 sued, of where the suit was filed, of who the parties were, of what the claims were, or of  
15 how [the insurer] could make an appearance.”<sup>52</sup>  
16  
17

18 The information that plaintiffs relayed to State Farm about their underlying  
19 lawsuit is even more vague than the information provided to the insurer in *Beck*. The  
20

---

21  
22 <sup>49</sup>*Fisher v. Allstate Ins. Co.*, 961 P.2d 350, 353 (Wash. 1998) (quoting *Finney v.*  
23 *Farmers Ins. Co.*, 586 P.2d 519, 530 (Wash. Ct. App. 1978)). *But see Peterman v. State Farm*  
24 *Mut. Auto. Ins. Co.*, 948 P.2d 63 (Colo. Ct. App. 1997); *Mazziotti v. Allstate Ins. Co.*, 695 A.2d  
1010 (Conn. 1997); *Allstate Ins. Co. v. Hunt*, 450 S.W.2d 668 (Tex. App. 1970).

25 <sup>50</sup>*Beck v. Farmers Ins. Co. of Wa.*, 53 P.3d 74, 77 (Wash. Ct. App. 2002).

26 <sup>51</sup>*Id.* at 76.

27 <sup>52</sup>*Id.* at 78. *See also id.* (holding that insureds’ letter was insufficient because “it did not  
28 state any of the information that a party would need to assess whether an appearance was  
necessary to protect its interests and, if so, how such an appearance could be made.”).

1 obvious facts missing from plaintiffs' letters to State Farm include: that a lawsuit had  
2 been filed; the case number; the venue; the parties; whether Pike and Oliver had been  
3 served; and the claims alleged in the complaint. Plaintiffs did not even notify State  
4 Farm that there was a lawsuit pending, let alone gave it sufficient information to assess  
5 whether it needed to make an appearance to protect its interests. Perhaps plaintiffs  
6 were deliberately vague in hopes that they could secure an uncontested default  
7 judgment. In any event, because plaintiffs failed to give State Farm adequate  
8 information, the default judgment is not binding on State Farm.  
9  
10

#### 11 V. CONCLUSION

12 Based on the preceding discussion, State Farm's motion for partial summary  
13 judgment at docket 28 is **GRANTED** as follows: (1) Plaintiffs first and second claims  
14 and request for punitive damages are dismissed, and (2) State Farm is not bound by  
15 the default judgment.  
16

17 DATED this 29th day of July 2015.  
18  
19

20 /s/ JOHN W. SEDWICK  
21 SENIOR UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28