

MAY 13 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RLI INSURANCE COMPANY, an Illinois
Corporation,

Plaintiff - Appellee,

v.

ANDREA NEFF, an individual,

Defendant - Appellant.

No. 07-17301

D.C. No. CV-07-00681-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Argued and Submitted April 17, 2009
San Francisco, California

Before: NOONAN, ARCHER,** and McKEOWN, Circuit Judges.

RLI Insurance Company's ("RLI") commercial umbrella policy includes a
following form endorsement entitled "AUTOMOBILE LIABILITY FOLLOWING

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Glenn L. Archer, Jr., United States Circuit Judge for
the Federal Circuit, sitting by designation.

FORM.” This endorsement covers “liability for bodily injury or property damage [that] is covered by valid and collectible underlying insurance as described in the schedule of underlying insurance . . . for such hazards for which coverage is afforded under said underlying insurance.” We agree with the district court that in this case RLI's umbrella policy was limited to the liability of the insured and the following form endorsement did not incorporate the underinsured motorist ("UIM") coverage from the Coregis policy. Contrary to Neff's argument, the following form here serves only to ensure that RLI would be the excess insurer for the liability of the insured.¹

Additionally, the Arizona statutes treat umbrella policies differently from underlying insurance policies. Arizona Statute 20-259.01(L) expressly excepts umbrella policies from the requirement that the insurer make UIM available to the insured. This action by the Arizona legislature suggests that an umbrella policy should not be presumed to include UIM coverage.

AFFIRMED.

¹Although the district court vacated judgment in favor of RLI with respect to the issue of coverage and did not reenter judgment on that issue, the court and the parties treated that judgment as dispositive of the coverage issue. We treat the initial judgment in favor of RLI on coverage as being merged into the final judgment for purposes of a final appealable order.