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## And The Defense Wins

The West Virginia Supreme Court of Appeals has upheld exclusionary language in State Farm's auto policy with respect to all-terrain vehicles. State Farm's policy excludes uninsured motorist coverage when ATVs are operated off-road. The court held this exclusion is clear and unambiguous and does not violate the uninsured motorist statute in *Boniley v Kuchinski*, (No. 34152, W.Va., filed May 14, 2009). DRI member [E. Kay Fuller](#), director of litigation at **Martin & Seibert, L.C.** in Martinsburg, West Virginia, successfully defended State Farm.



E. Kay Fuller

The issue arose when an insured was injured while riding as a passenger on an uninsured ATV while on an off-road trail. The Circuit Court of Brooke County found the exclusion violated the "spirit and intent" of the uninsured motorist statute, W.Va. Code §33-6-31(b). The West Virginia Supreme Court reversed, finding an ATV is not an "uninsured motor vehicle" pursuant to the statute.

Writing for the unanimous court, Chief Justice Brent Benjamin found that the policy underlying the UM statute is to protect innocent victims from negligent drivers who failed to comply with liability insurance requirements imposed by the State's Motor Vehicle Safety Responsibility Law. That law, however, only applies to motor vehicles which are required to be registered and licensed. Because ATVs are not required to be registered and licensed, they are exempt from the financial responsibility statute. As such, an ATV does not meet the definition of an uninsured motor vehicle.

"Where no liability insurance coverage is required ... obviously no uninsured motorist coverage is mandated to provide the equivalent of such coverage. Consequently, it would not further the purpose of the uninsured motorist statute to construe the statute to require uninsured motorist insurance to cover these motor vehicles which are not required by the financial responsibility law..." the court held. The court further held that the principal purpose of mandatory insurance is to protect the public injured on public highways. That purpose is not advanced, the court held, by requiring an auto policy's UM provisions to cover ATVs when operated off-road.

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