

No. 6774-8-1

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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EYOB MICHAEL

Appellant,

v.

AMERIPRISE AUTO & HOME INSURANCE AGENCY, INC.

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Appellant Eyob Michael was in two automobile accidents. He recovered a total of \$125,000 in settlement from the two at-fault drivers. He chose to pursue a single UIM claim under the auto insurance policy he purchased from Ameriprise Auto & Home Insurance. At trial of his UIM claim, Mr. Michael presented a single damages claim. When jury instructions and a verdict form were submitted to the trial court, he did not propose that his damages be segregated between the two accidents and did not object in any way to a verdict form that asked the jury to assign a single dollar value to his injuries from the two accidents.

As Mr. Michael chose to posture his claim, if the jury had concluded his damages from both accidents exceeded \$125,000, he would have been entitled to a UIM payment, even though he would not have proven that either driver, individually, was underinsured. Under the jury instructions and verdict form that Mr. Michael agreed should go to the jury, Ameriprise would have been required to make a UIM payment to him only if the jury returned a verdict in excess of the \$125,000 total Mr. Michael had already received from the two at-fault drivers.

When it was too late to object to the jury instructions and verdict form, and too late to argue that the jury should be asked to segregate his total damages between the two accidents, Mr. Michael changed his mind –

because the jury found his total damages were only \$72,596.68 – considerably less than the \$125,000 he had already collected for his injuries.

After the fact – and after having invited the putative error he now asserts on appeal – Mr. Michael claims it was *Ameriprise's* burden to seek an allocation between the two accidents. That argument must fail. Under the express terms of the Ameriprise policy, the insurance company was entitled to an offset for the total amount Mr. Michael had received from the at-fault drivers before any UIM payment was required. Because Mr. Michael received more from the at-fault drivers than the amount of his damages for the two accidents as determined by the jury, he failed to establish he was entitled to an additional recovery under the plain provisions of the Ameriprise UIM coverage. Furthermore, having approved jury instructions and a verdict form that asked the jury to assign a single, cumulative value to his injuries, Mr. Michael could not object, after the jury returned an adverse verdict, that the jury should have been instructed to allocate his damages in some other way.

With Mr. Michael's unequivocal approval, the trial court asked the jury to determine his total damages from the two accidents and to consider a single, unitary personal injury claim. The jury did as it was asked and found that his damages were \$72,596.68. Because this was far less than the \$125,000 that Mr. Michael had already collected for those damages,

Ameriprise was entitled to recover the \$18,412.43 PIP payment it had previously paid to Mr. Michael, less *Hamm*<sup>1</sup>/*Winters*<sup>2</sup> fees of \$6,657.21.

Contrary to Mr. Michael's assertion, Ameriprise was not required to seek allocation of the damages between the two accidents before it was entitled to seek PIP reimbursement. *Mr. Michael* was the master of his own fate. He chose to present a single claim to the jury and, before the jury returned a verdict for less than his prior \$125,000 recovery, he did not ever argue that the jury should allocate his damages between the two accidents, or that Ameriprise had the burden of segregating his damages between the two accidents. Mr. Michael chose to await the outcome of the trial, and only when the outcome proved unfavorable did he belatedly object. For obvious reasons of fairness and judicial economy, our appellate courts have never permitted a party to pursue such a "lay in the weeds" strategy.

Furthermore, under the express terms of the insurance policy, Ameriprise was entitled to reimbursement once Mr. Michael had been made whole by all payments from other parties. The policy's reimbursement provision did not require Ameriprise to prove that each at-fault driver's payment made Mr. Michael whole for damages caused by that particular driver's actions. Rather, Ameriprise's policy language allowed the company to consider the payments made by both drivers in total to determine whether

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<sup>1</sup> *Hamm v. State Farm Auto. Ins. Co.*, 151 Wn.2d 303, 88 P.3d 395 (2004).

<sup>2</sup> *Winters v. State Farm Auto. Ins. Co.*, 144 Wn.2d 869, 31 P.3d 1164 (2001).

Mr. Michael had been fully compensated for the damages he sustained in both accidents.

Because Mr. Michael was made whole by the payments he received from the at-fault drivers, the trial court properly entered a judgment in Ameriprise's favor for a net PIP recovery of \$11,755.22, along with costs of \$3,160.90.

## **II. ASSIGNMENTS OF ERROR**

Mr. Michael assigns error to the following:

- A. The September 2, 2011, Judgment in favor of Ameriprise.
- B. The denial of his Motion for Reconsideration of the September 2, 2011, Judgment.

## **III. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

A. Did the trial court properly conclude Ameriprise owed nothing to Mr. Michael under the UIM provisions of his policy when the jury concluded his damages were less than he had already received in settlement from the at-fault drivers?

B. Did the trial court properly conclude Ameriprise was entitled to recover the PIP payments it had previously made, minus *Hamm/Winters* fees because the amounts Mr. Michael received from the at-fault drivers were more than enough to make him whole?

C. Did the trial court properly deny Mr. Michael's Motion for Reconsideration when the law and the Ameriprise policy supported the original entry of judgment in favor of Ameriprise; and when the case went to the jury based on jury instructions and a verdict form that Mr. Michael had approved and that asked the jury to determine only his total damages, without allocation of damages between his two accidents?

#### IV. STATEMENT OF THE CASE

##### A. Pre-Suit Facts

Appellant Eyob Michael was involved in two automobile accidents. On October 7, 2007, the car he was driving was rear ended by a car driven by Heidi Page. (CP 3) On September 22, 2008, the car he was driving was rear ended by a car driven by Bethel Gregory-Ayres. (*Id.*)

Mr. Michael's automobile was insured under a policy issued to him by Ameriprise Auto & Home Insurance. (CP 2) Following each accident, Mr. Michael submitted a claim to Ameriprise under the Personal Injury Protection ("PIP") coverage of the policy. Ameriprise made PIP payments of \$8,412.43 in relation to the October 7, 2007, accident. (CP 987) It made payments of \$10,000 in relation to the September 22, 2008, accident. (*Id.*)

The Ameriprise policy also includes Underinsured Motorists ("UIM") Coverage, which provides:

### **Coverage C – Underinsured Motorists Coverage**

We will pay compensatory damages which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle due to:

1. Bodily injury sustained by that person and caused by an accident;

...

We will pay damages for bodily injury an insured person suffers in a car accident while occupying a private passenger car or utility car, . . . . We will pay under this coverage only after any applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements.

...

(CP 112) The policy includes the following definition:

Underinsured motor vehicle means a land motor vehicle or trailer:

...

- b) which has bodily injury and property damage liability insurance in effect and applicable at the time of the accident, but the limits of that insurance are less than the applicable damages the insured person is legally entitled to recover;

...

(CP 126) The policy also includes the following provision:

Limits of liability

...

Amounts otherwise payable for damages which the insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury or property damage caused by an accident, shall be reduced by all sums paid because of bodily injury or property

The policy includes a similar reimbursement provision in an endorsement entitled Amendment of Policy Provisions – Washington:

**Our Recovery Rights**

In the event of a payment under this policy, we are entitled to all the rights of recovery that the person or organization to whom the payment was made has against another. That person or organization must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after loss to harm our rights.

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

We shall be entitled to a recovery as stated in this provision only after the person has been fully compensated for damages by another party.

Our rights under the first paragraph of this section with respect to Underinsured Motorists Coverage do not apply if we:

1. Have been given prompt written notice of a tentative settlement between and insured person and the insurer of an underinsured motor vehicle; and
2. Fail to advance payment to the insured person in an amount equal to the tentative settlement within a reasonable time after receipt of notification.

...

(CP 114)

Based upon these provisions, Ameriprise included the following Affirmative Defense in its Answer to Mr. Michael's Complaint:

**Third Affirmative Defense:** If Defendant Ameriprise made any prior payments to or on behalf of the Plaintiff for these accidents, those payments should be offset against any damages award for the Plaintiff.

(CP 17)

After Mr. Michael settled with the Defendant drivers, Ameriprise moved for an order requiring him to hold in trust the amount of the PIP payments previously made by Ameriprise, pursuant to the policy provision allowing Ameriprise reimbursement under certain circumstances. (CR 24 – 28) The trial court granted that motion. (CP 136 – 138) Plaintiff was, therefore, required to hold in trust at least \$18,412.43.

The matter then proceeded to trial. Ameriprise did not dispute the liability of the two drivers. The only issue was the extent of Mr. Michael's damages.

The parties submitted their proposed jury instructions and verdict forms. (CP 226 – 248; 317 – 329) Neither party proposed a verdict form that would have apportioned liability between the two drivers. The trial court submitted *Mr. Michael's* proposed verdict form to the jury. As Mr. Michael requested, the trial court asked the jury to determine his damages without allocation of damages between the two accidents.

The jury returned the following verdict:

We the jury, find for the plaintiffs in the following sums:

- |  |                    |
|--|--------------------|
| (1) for past economic damages                | \$ <u>2,596.68</u> |
| (2) for future economic damages              | <u>\$20,000.00</u> |
| (3) for past and future non-economic damages | <u>\$50,000.00</u> |

(CP 955)

**C. Entry of Judgment**

Following trial, Ameriprise moved for entry of judgment. (CP 970 – 992) Because the jury found Mr. Michael’s total damages were only \$72,596.68 and he had already received a total of \$125,000 from the at-fault drivers, he was not entitled to recover anything under the UIM provisions of the Ameriprise policy. In addition, because the \$125,000 he had already received substantially overcompensated him for his total damages, Ameriprise was entitled to recoup a portion of the \$18,412.43 PIP payments it had made. The trial court entered a judgment of \$14,916.12 in favor of Ameriprise. (CP 1098 – 1101) The calculation of that amount is discussed in detail in the argument section, below.

Mr. Michael filed a Motion for Reconsideration on Entry of Judgment. (CP 1102 – 07) He asserted that Ameriprise was not entitled to an offset because it asserted such a right only as an affirmative defense and not as a counterclaim. He has not pursued this argument on appeal.<sup>3</sup> He also

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<sup>3</sup> Mr. Michael apparently now acknowledges that CR 8(c) allows a trial court to consider an affirmative defense as a counterclaim if it should have been so designated and that, when a

argued, for the first time, that jury should have been asked to enter a separate award of damages for each accident – and, failing that, the trial court should allocate the jury’s damages award between the two accidents.

The trial court denied the Motion for Reconsideration. Mr. Michael’s Notice of Appeal followed. (CP 1130 – 42)

## V. ARGUMENT

### A. Standard of Review

The issues presented on appeal relate to the calculation of the proper offset amount awarded to Ameriprise under its contractual reimbursement rights. These issues should be reviewed *de novo*.<sup>4</sup>

### B. Mr. Michael failed to meet his burden of proof on his UIM claim and judgment was properly entered in Ameriprise’s favor.

Mr. Michael argues he is entitled to the benefit of his bargain with Ameriprise.<sup>5</sup> Thus, it is important to understand what that bargain was. Ameriprise agreed to pay Mr. Michael “compensatory damages which” he was “legally entitled to recover from the owner or operator of an underinsured motor vehicle due to bodily injury sustained” by him “and caused by an accident.” (CP 112) An “underinsured motor vehicle” is defined by the policy to include a vehicle “which has bodily injury and property damage liability insurance in effect and applicable at the time of the

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defendant’s claim for offset results in a net award in the defendant’s favor, CR 13(c) allows the court to enter a monetary judgment in the defendant’s favor as it did here.

<sup>4</sup> *Sherry v. Financial Indem. Co.*, 160 Wn.2d 611, 617, 160 P.3d 31 (2007).

<sup>5</sup> Brief of Appellant at 16.

accident, but the limits of that insurance are less than the applicable damages the insured person is legally entitled to recover.” (CP 126)

As an initial matter, “[b]efore one establishes coverage under the UIM provisions of an insurance policy, it is essential that the at-fault motorist be shown to be uninsured or underinsured.”<sup>6</sup> The insured bears the burden of proof on this issue.<sup>7</sup>

Here, Mr. Michael was injured in two accidents. Heidi Page was the at-fault driver in the October 7, 2007, accident. (CP 3) She had liability limits of \$25,000 and her insurer paid those limits to Mr. Michael. (CP 25) Bethel Gregory-Ayres was the at-fault driver in the second accident, occurring on September 22, 2008. (CP 3) She had liability limits of \$100,000 and her insurer paid those limits to Mr. Michael. (CP 25)

After receiving the policy limits applicable to the two accidents, Mr. Michael continued to pursue UIM coverage from Ameriprise. As the UIM claimant, Mr. Michael bore the burden of proving that one or both of the at-fault drivers, Ms. Page and Ms. Gregory-Ayers, were underinsured – i.e., that Ms. Page was legally obligated to pay him more than \$25,000 and/or that Ms. Gregory-Ayres was legally obligated to pay him more than \$100,000.

Yet Mr. Michael did not ask the jury to determine his damages for each accident; he asked for only a single, undifferentiated award of damages.

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<sup>6</sup> *Dixie Ins. Co. v. Mello*, 75 Wn. App. 328, 335, 877 P.2d 740 (1994) (citing JOHN A. APPLEMAN, INSURANCE LAW AND PRACTICE § 5087, at p. 318-20 (1981)).

<sup>7</sup> *Id.*

Therefore, when the jury concluded Mr. Michael's total damages were \$72,596.68, that number did not establish that either at-fault driver was underinsured. Nor did that award demonstrate that Mr. Michael had been undercompensated in the aggregate – his total insurance recovery exceeded his total damages by over \$50,000!

Thus, the only question that remained for the trial court upon entry of judgment on the verdict was whether and to what extent Ameriprise was entitled to an offset for the \$125,000 payments received from the at-fault drivers in determining whether Mr. Michael was entitled to recover any UIM benefits.

Mr. Michael argues that Ameriprise was barred from aggregating the limits of the two at-fault drivers' policies in order to establish that Mr. Michael was not entitled to a monetary judgment in his favor on the UIM claim. He asserts Ameriprise was required to individually analyze whether each driver was underinsured before the company was entitled to an offset for the liability payments previously made by the other insurers. However, that was never Mr. Michael's theory of the case. He pursued his case at trial as though his damages from the two accidents could be aggregated for purposes of his UIM claim. The case was tried as one UIM claim and Mr. Michael cannot now argue it should have been tried as two separate claims, whether

for the purposes of his recovery of UIM benefits or for the purpose of Ameriprise's reimbursement of its prior PIP payments for his injuries.

Even if the case were now treated as though it involved two separate UIM claims, the policy provisions mandate that Mr. Michael recover nothing for his UIM claim. The Washington Changes endorsement in the policy includes the following provision:

**Our Recovery Rights**

In the event of a payment under this policy, we are entitled to all the rights of recovery that the person or organization to whom the payment was made has against another. That person or organization must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after loss to harm our rights.

**When a person has been paid damages by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.**

We shall be entitled to a recovery as stated in this provision only after the person has been fully compensated for damages by another party.

Our rights under the first paragraph of this section with respect to Underinsured Motorists Coverage do not apply if we:

1. Have been given prompt written notice of a tentative settlement between and insured person and the insurer of an underinsured motor vehicle; and
2. Fail to advance payment to the insured person in an amount equal to the tentative settlement within a reasonable time after receipt of notification.

...<sup>8</sup>

(CP 114)

Because this provision states only the first paragraph does not apply to UIM claims if certain conditions are met, the second and third paragraphs necessarily apply to all UIM claims. Here, those two paragraphs mean Ameriprise was entitled to an offset against the verdict for the full amount of the payments received from other parties, regardless of whether there was joint and several liability on the part of the at-fault drivers. It is simply a matter of accounting, not a matter of allocating fault. Thus, contrary to Mr. Michael's assertion on appeal, Ameriprise was not required to ask the jury to allocate the damages between the two accidents in order to enforce its right to an offset for the full amount Mr. Michael received in his settlements with the at-fault drivers.

Mr. Michael claims Ameriprise should be entitled to an offset of only \$25,000, representing the limits of Ms. Page's policy for the 2007 accident. He asserts he is, therefore, entitled to UIM benefits of \$47,596.68. His theory is incorrect. The verdict established that Mr. Michael's total damages were \$72,596.68. He already received \$125,000 for those total damages, meaning he was more than made whole. Therefore, if Ameriprise were to pay Mr. Michael \$47,596.68 for a UIM claim, it would immediately be entitled to reimbursement from him for that entire amount because he had

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<sup>8</sup> Emphasis added.

already received full compensation for all damages from another party.

There is simply no way to account for Mr. Michael's total damages and the total payments he has received from other parties that would not entitle Ameriprise to full reimbursement for any UIM payments that could be calculated based upon the verdict that was entered. Our Supreme Court has noted "[i]t is well established in Washington that insureds are not entitled to double recovery[.]"<sup>9</sup> The trial court's conclusion that Mr. Michael was entitled to recover nothing under the UIM coverage of his policy is consistent with the basic rule against double recovery.

Mr. Michael relies heavily on *Allstate Insurance Co. v. Batacan*,<sup>10</sup> but that case did it involve a case where the UIM claimant had specifically asked the jury to combine his damages from two separate accidents into one claim – *Batacan* involved one, three-car accident. In addition, *Batacan* did not address the application of a reimbursement provision like the one in the Ameriprise policy. In that case, the Batacans were the injured parties seeking UIM coverage. In a UIM arbitration, the Batacans established that their total damages were \$60,000; and that Kim and Cantrill were each 50% at-fault for those damages. Kim had no insurance and Cantrill had insurance with a \$300,000 limit. Cantrill's insurer paid \$54,000 to settle the Batacans' claim against her. Allstate claimed it had a right to offset the \$300,000 limits of

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<sup>9</sup> *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 160 P.3d 31 (2007) (citing *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 219, 588 P.2d 191 (1978)).

<sup>10</sup> 139 Wn.2d 443, 986 P.2d 823 (1999).

Cantrill's policy against the entire \$60,000 in damages based upon a theory that the two at-fault drivers were jointly and severally liable. The court rejected that notion, holding that joint and several liability did not apply. The court concluded that, because the Batacans had established they were entitled to recover \$30,000 from Kim and he had no insurance, they had proven a \$30,000 UIM claim with regard to Kim. Thus, the Batacans recovered a total of \$84,000, but their total damages were only \$60,000.

Absent from the *Batacan* opinion is any discussion of whether Allstate would have been entitled to rely on a reimbursement provision like the one in the Ameriprise policy to recover any portion of the UIM payment it was required to make. Also absent is any indication that the Batacans, like Mr. Michael, had taken their claims to a jury and approved jury instructions that directed the jury to make a single, undifferentiated damages award with respect to two accidents. *Batacan* is, therefore, inapplicable here.<sup>11</sup>

Mr. Michael attempted to prove that his damages exceeded the \$125,000 he had received from the combined policies of the two at-fault drivers, without having to prove that his damages from each of the accidents exceeded the limits of coverage available to each driver. By agreeing to instruct the jury as they did, both Ameriprise and Mr. Michael tacitly agreed

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<sup>11</sup> To the extent Ameriprise argued below that there was joint and several liability here, that argument would not create reversible error. This Court may affirm the trial court "on any basis supported by the record." *Hadley v. Cowan*, 60 Wn. App. 433, 804 P.2d 1271 (1991) (citing *LaMon v. Butler*, 112 Wn.2d 193, 200-201, 770 P.2d 1027 (1989)).

that Mr. Michael could seek a UIM recovery on that basis. Mr. Michael did not assert that the jury instructions and verdict form were inadequate until the jury returned an unfavorable verdict. He cannot assert trial court erroneously instructed the jury now.

To the extent the failure to obtain a differentiated damages award was an error, it was an error Mr. Michael invited by failing to object before the jury was instructed on the law, provided a verdict form to complete and returned its verdict.<sup>12</sup> The trial court could not, *post hoc*, make a factual determination the jury had not been asked to make in the jury instructions and verdict form – nor can this Court make such a factual determination on appeal. This Court should treat the matter in the same way Mr. Michael intended it to be treated at trial – as one UIM claim based on one undifferentiated damages award.

**C. Ameriprise was entitled to a judgment for PIP reimbursement.**

The PIP provisions of the Ameriprise policy include the following:

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

We shall be entitled to a recovery as stated in this provision only after the person has been fully compensated for damages by another party.

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<sup>12</sup> *State v. Momah*, 167 W.2d 140, 217 P.3d 321 (2009) (citing *State v. Henderson*, 114 Wn.2d 867, 868, 792 P.2s 514 (1990) (“The basic premise of the invited error doctrine is that a party who sets up an error at trial cannot claim that very action as error on appeal and receive a new trial. The doctrine was designed in part to prevent parties from misleading trial courts and receiving a windfall by doing so.”))

(CP 119)

Mr. Michael argues that Ameriprise was required to ask for apportionment of damages between the two accidents before it would be entitled to PIP reimbursement under this provision. In other words, he argues Ameriprise was required to prove he was fully compensated for the 2007 accident by Ms. Page's insurance and that he was fully compensated for the 2008 accident by Ms. Gregory-Ayres' insurance before it is entitled to PIP reimbursement. However, the PIP reimbursement language does not require such proof. Rather, it requires reimbursement when the insured has been "fully compensated for damages by another party." The policy provision does not state that the compensation must come solely from the party at fault for specific elements of damage.

Here, Mr. Michael has been fully compensated for all his damages. His total damages for both accidents were \$72,596.68 and he has recovered \$125,000. Thus, he has been fully compensated for his damages "by another party," and Ameriprise was entitled to reimbursement under the provisions of the policy.

The trial court properly calculated the PIP reimbursement under *Hamm v. State Farm Mutual Automobile Insurance Co.* and *Winters v. State Farm Mutual Automobile Insurance Co.* as follows:

$$\begin{array}{rcl}
\$18,412.43 \text{ PIP} \div \$125,000 & = & .1472994 \text{ ratio} \\
1/3 \text{ of } \$125,000 & = & \$41,666.67 \text{ attorney fees} \\
+ \$3,528.43 \text{ expenses} & = & \$45,195 \text{ fees \& costs}
\end{array}$$

$$\$45,195 \times .1472994 = \$6,657.21 \text{ Hamm/Winters fee}$$

$$\begin{array}{r}
\$18,412.43 \text{ PIP} \\
- \underline{6,657.21} \\
\mathbf{\$11,755.22 \text{ total PIP reimbursement}}
\end{array}$$

(CP 1092)

Mr. Michael has never attempted to argue that the trial court improperly calculated the reimbursement due to Ameriprise. Instead, he argues that Ameriprise was not entitled to any reimbursement at all because the jury did not enter a separate damage award for each of his two accidents. However, separate awards were not required to obtain PIP reimbursement under the broadly worded Ameriprise PIP reimbursement provision. Because Ameriprise was entitled to reimbursement as a simple matter of contract, the trial court's calculation of the reimbursement amount and its entry of judgment for that amount should be affirmed.

**D. Mr. Michael is not entitled to an award of attorney fees or pre-judgment interest because the trial court correctly decided all the issues presented on appeal.**

Mr. Michael seeks attorney fees and pre-judgment interest as a prevailing party on appeal. However, the trial court's rulings are not erroneous; and, to the extent the trial court may have erred, Mr. Michael invited the error and cannot obtain reversal based on such invited error. He is not entitled to fees, costs and interest on appeal.

## VI. CONCLUSION

Mr. Michael's UIM claim went to the jury precisely as he asked the trial court to present it to the jury - as a single, undifferentiated claim for damages. After the jury returned its verdict, he tried to circle back and asked the trial court to make new findings of fact, somehow allocating the damages award between two automobile accidents. Mr. Michael cannot be permitted to change course after the entry of a verdict based on jury instructions and on a verdict form he unequivocally approved.

Similarly, the Ameriprise insurance policy did not require an allocation of damages between the two accidents before Ameriprise could obtain PIP reimbursement. Instead, the policy broadly provides that Ameriprise shall receive reimbursement when the insured's damages have been paid by another party - without regard to the payor's allocable share of "fault" for those damages. Because Mr. Michael's insurance recoveries of \$125,000 far exceeded his damages of \$72,596.68, Ameriprise the trial court properly awarded PIP reimbursement under the plain wording of the Ameriprise policy.

The judgment should be AFFIRMED.

DATED and respectfully submitted this 5<sup>th</sup> day of April, 2012

By 

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CERTIFICATE OF SERVICE

The undersigned certifies that under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be served and filed with The Court of Appeals of the State of Washington, Division I, and arranged for delivery of true and correct copies of the foregoing document upon the following:

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DATED at Seattle, Washington this 6th day of April, 2012.

  
Betty J. Dobbins