

FILED
COURT OF APPEALS
DIVISION II

Court of Appeals No. 39947-4-II

10 MAR 15 PM 1:32

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

BY  _____
DEPUTY

THOMAS HUMLEKER

Appellant,

v.

ZURICH AMERICAN INSURANCE COMPANY

Respondent.

BRIEF OF APPELLANT

Joseph P. Lawrence, Jr., WSBA No. 19448
Vanessa M. Vanderbrug WSBA No. 31668
Lawrence & Versnel PLLC
701 Fifth Avenue, #4120 Seattle, WA 98104
(206) 624-0200
Attorneys for Appellant

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR.....	2
III. ISSUES RELATED TO ASSIGNMENTS OF ERROR.....	2
IV. STATEMENT OF THE CASE.....	3
V. ARGUMENT.....	7
A. Standard for Review.....	7
B. Overview of UM/UIM Coverage in Washington and the requirement of “affirmative and conscious” rejection of UM/UIM coverage as enunciated by the Supreme Court in <u>Clements v. Travelers Indemnity Company</u>	8
C. Zurich cannot establish that USB rejected, in writing, UIM coverage.....	14
1. Zurich fails to establish that an offer of UIM coverage in an amount equal to liability limits was made available to USB.....	14
i. Zurich’s argument that the UIM statute does not require an “offer” of UIM coverage leads to an absurd, and untenable, interpretation of the UIM statute.....	15
ii. Washington case law establishes that the insurer must establish an “offer” of UIM coverage.....	16

2.	Zurich cannot establish that the summary form constitutes a “specific and unequivocal” written rejection as contemplated by the UIM statute.....	19
i.	Washington case law requires that UIM coverage is a part of every policy of insurance unless effectively rejected by the insured through an affirmative and conscious act.....	20
ii.	Zurich’s summary form has already been held to be an insufficient written rejection of UIM coverage.....	29
D.	The summary form is ambiguous and must be construed against Zurich.....	34
E.	The subjective “post claim” intent of the parties to the contract cannot override the protective purpose of the UIM statute.....	35
F.	The only “writing” to be considered by this Court is the “summary form”; the unsigned Washington form is irrelevant to the inquiry.....	40
G.	The Washington form does not meet the requirements for a written rejection of UIM coverage as required by statute.....	43
H.	As Humleker had to bring suit to obtain the benefits of his insurance contract, he is entitled to recovery of his attorneys fees and costs pursuant to Olympic Steamship and RAP 18.1.....	44
VI.	CONCLUSION.....	46
	APPENDIX	

TABLE OF AUTHORITIES

<u>Washington Cases</u>	<u>Page(s)</u>
<u>Alamo Rent A Car v. Schulman,</u> 878 Wn.App. 412, 897 P.2d 405 (1995).....	13
<u>American Commerce Insurance Company v. Ensley,</u> 153 Wn.App. 31, 220 P.3d 215 (2009).....	9
<u>Boeing Co. v. Aetna Cas. & Sur. Co.,</u> 113 Wn.2d 869, 784 P.2d 507 (1990).....	15
<u>Bradbury v. Aetna Casualty & Surety Company,</u> 91 Wn.2d 504, 589 P.2d 785 (1979).....	12
<u>Brown v. Snohomish County Physicians Corporation,</u> 120 Wn.2d 747, 845 P.2d 334 (1993).....	11
<u>Butzberger v. Foster,</u> 151 Wn.2d 396, 89 P.3d 689 (2004).....	11,39
<u>Clements v. Travelers Indemnity Co.,</u> 121 Wn.2d 243, 850 P.2d 1298 (1993).....	12,14,18,21,35,36,38,42
<u>Cochran v. Great West Casualty Company,</u> 116 Wn.App. 636, 67 P.3d 1123 (2003).....	17,24,25,26,27,37
<u>Corley v. Hertz Corp.,</u> 76 Wn.App. 687, 887 P.2d 401 (1995).....	13,17,18
<u>First National Insurance Company of America v. Perala,</u> 32 Wn.App. 527, 648 P.2d 472 (1982).....	34
<u>Galbraith v. National Union Fire Ins. Co. of Pittsburgh,</u> 78 Wn.App. 526, 897 P.2d 417 (1995).....	19,21,23,24,34,35
<u>Harry v. Buse Timber & Sales Inc.,</u> 166 Wn.2d 1, 201 P.3d 1011 (2009).....	15

<u>Jain v. State Farm Mutual Automobile Insurance Co.,</u> 130 Wn.2d 688, 926 P.2d 923 (1996).....	11
<u>Jochim v. State Farm Mutual Insurance Company,</u> 90 Wn.App. 408, 952 P.2d 630 (1998).....	16
<u>Koop v. Safeway Stores,</u> 66 Wn.App. 149, 831 P.2d 777 (1992).....	22,23
<u>Kowal v. Grange Insurance Association,</u> 110 Wn.2d 239, 751 P.2d 306 (1988).....	12
<u>Leingang v. Pierce County Medical Bureau,</u> 131 Wn.2d 133, 147, 930 P.2d 288 (1997).....	44,45
<u>Marks v. Washington Insurance Guaranty Association,</u> 123 Wn.App. 274, 94 P.3d 352 (2004).....	27,28,29,43
<u>McGreevy v. Oregon Mut. Ins.Co.,</u> 128 Wn.2d 26, 904 P.2d (1995).....	44
<u>McMahan & Baker v. Continental Cas. Co. (CNA),</u> 68 Wn.App. 573, 843 P.2d 1133 (1993).....	24
<u>North Pacific Ins. Co. v. Christensen,</u> 143 Wn.2d 43, 17 P.3d 596 (2001).....	15
<u>Olympic Steamship v. Centennial Insurance Company,</u> 117 Wn.2d 37, 811 P.2d 673 (1991).....	2,44,45
<u>Safeco Insurance Company v. Woodley,</u> 150 Wn.2d 765, 82 P.3d 660 (2004).....	45
<u>S&K Motors Inc. v. Harco Nat. Ins. Co.</u> 151 Wn.App. 633, 213 P.3d 630 (2009).....	7,8
<u>State, Dept. of Ecology v. Campbell & Gwinn LLC,</u> 146 Wn.2d 1, 43 P.3d 4 (2002).....	15

<u>Tissel v. Liberty Mutual Insurance Company,</u> 115 Wn.2d 107, 795 P.2d 126 (1990).....	11
<u>Torgerson v. State Farm Mut. Auto Ins. Co.,</u> 91 Wn.App. 952, 957 P.2d 1283 (1998).....	30,40,41,42
<u>Touchette v. Northwestern Mutual Insurance Company,</u> 80 Wn.2d 327, 494 P.2d 479 (1972).....	9
<u>Van Vonno v. Hertz Corp.,</u> 120 Wn.2d 416, 841 P.2d 1244 (1992).....	1,9,10
<u>Weir v. American Motorists Insurance Company,</u> 63 Wn.App. 187, 816 P.2d 1278 (1991).....	20,21,24,37
<u>Young v. Key Pharmaceuticals Inc.,</u> 112 Wn.2d 216, 770 P.2d 182 (1989).....	8

Non-Washington Cases

<u>California Casualty Indem. Exch. V. Steven,</u> 5 Cal.App.3d 304, 85 Cal.Rptr. 82 (1970).....	36
<u>Estate of Ball v. American Motorists Insurance Company,</u> 181 Ariz. 124, 888 P.2d 1311 (1995).....	37,38
<u>Larson v. Bath,</u> 15 Kan.App.2d 42, 801 P.2d 1331 (1991).....	34
<u>Roser v. Anderson,</u> 222 Ill.App. 3d 1071, 584 N.E.2d 865 (1991).....	18,19
<u>Stemple v. Zurich,</u> 584 F.Supp.2d 1304 (D.Kansas, 2008).....	20,30,31,32,33

Statutes and Rules

RCW 48.22.030.....	4,8,9,10,16,19,24,25,26
RAP 18.1.....	45

I. INRODUCTION

Washington statutorily requires insurers to make underinsured motorist coverage in an amount equal to liability coverage available to all insureds, once the coverage is offered, the insured may reject the coverage in part or in its entirety. UIM coverage has been deemed important enough that, in Washington, it cannot be deleted from any policy of insurance absent an explicit, overt written rejection. The considerations underlying the required “written rejection” are larger than simply those parties to the original contract of insurance. Instead, as succinctly stated by the Washington Supreme Court, the statute is designed to provide “broad protection against financially irresponsible motorists.” Van Vonno v. Hertz Corporation, 120 Wn.2d 416, 420, 841 P.2d 1244 (1992). The policy considerations underlying the UIM statute are so fiercely held in Washington that courts have stricken down UIM limitations on the basis of policy alone.

Here, the Court is called upon to determine whether a form, created by an insurer, confusing on its face, and held invalid in at least one other jurisdiction constitutes a written rejection of underinsured motorist coverage. No form analogous to the form relied upon by Zurich in the instant case has been accepted by any Washington court and, for this

Court to accept this form, would undermine the broad pronouncements of public policy expressed by the Legislature as well as a established Washington precedent. This Court should decline to do so and should, accordingly, reverse the judgment entered for Zurich and remand for entry of judgment in favor of Humleker.

II. ASSIGNMENTS OF ERROR

The Superior Court erred in granting Zurich's Motion for Summary Judgment, denying Humleker's Motion for Reconsideration and holding that the UIM policy limits available to Mr. Humleker amounted to \$60,000 rather than \$1 million.

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

- A. Is a summary form, prepared by the insurer, which is facially ambiguous, and has been rejected in another jurisdiction sufficient to reject UIM coverage in accordance with the UIM statute's requirements that rejections be specific, unequivocal and resulting from an affirmative and conscious act?
- B. Is the intent of the parties, expressed post claim, relevant to whether the written rejection requirement of the UIM statute is satisfied?
- C. Is the insurer required, by the terms of the UIM statute, to make UIM coverage available to the insured in amounts equal to liability limits?
- D. Is the insured entitled to attorney fees and costs pursuant to Olympic Steamship and RAP 18.1 when he is forced to litigate the scope of coverage available to him under his policy of insurance?

IV. STATEMENT OF THE CASE

Zurich American Insurance (Zurich) issued a policy of insurance to Thomas Humleker's employer, United States Bakery dba Franz Bakery (USB), providing insurance coverage, including Underinsured/Uninsured Motorist coverage (UM/UIM), to vehicles operated by USB employees in the course of their employment. CP 459. The instant claim arose because Humleker, while in the course of his employment for USB, suffered injuries in a car accident. Id.

After exhaustion of the tortfeasor's policy, Humleker sought UIM coverage under USB's policy of insurance with Zurich. *See generally*, CP 457-468. In response, Zurich claimed that all UIM coverage, excepting \$60,000, had been waived by USB. CP 424.

The USB policy contains an endorsement limiting UIM coverage for "bodily injury" to \$60,000. CP 251. Mr. Jerry Boness, USB's Chief Financial Officer, procured insurance coverage for USB's fleet of vehicles. CP 327. Mr. Boness testifies, by declaration, that he made a "knowing and informed waiver of available UM and UIM limits of \$1 million and instead elected UM/UIM limits of \$60,000 for the State of Washington." CP 329. Expressly, Mr. Boness discussed UIM/UM coverage with USB's broker, Sharon Livas, and, based upon that

discussion, decided to “elect the minimum amount of coverage required by each of the respective states.” CP 328. Ultimately, Mr. Boness signed a form entitled “Uninsured/Underinsured Motorists Coverage Option II Selection/Rejection Summary Form” (hereinafter “Summary Form”) indicating selection of \$60,000 under the heading “State Min UM/UIM-Combined Single Limit”. CP 286-287. Mr. Boness did not sign a Washington specific UM/UIM waiver form and no such form is contained in the USB underwriting file. CP 195.

Ms. Andrea Burns, Commercial Underwriting Manager for Zurich, testified, by declaration, that, “under Zurich’s standard protocols” the “Washington Rejection of Underinsured Motorists Coverage or Selection of Lower Limit of Liability form” (“Washington Rejection Form”) would have been provided to Mr. Boness and filled out to “reflect the coverage selection Mr. Boness had made with respect to U.S. Bakery’s UM/UIM coverage in Washington-in this case, \$60,000 for UM/UIM coverage.” CP 484. Ms. Burns further testifies that she understands \$60,000 to be the minimum UM/UIM insurance coverage “required in Washington.” Id. Contradicting Ms. Burns, Zurich underwriter Curt Shipton testified that Washington has no minimum requirement for UM/UIM coverage. CP 44.

To support rejection of full coverage, Zurich relied upon its summary form entitled “Uninsured/Underinsured Motorists Coverage

Selection/Rejection/Limits Summary Form”. CP 195. The summary form¹ listed each of the fifty states (plus Puerto Rico and the District of Columbia) and set forth the “selected limits” for each state. Id. The summary form incorporated, by reference, state specific forms from each of the fifty United States (plus Puerto Rico and the District of Columbia). Id. The named insured’s signature on the summary form “indicated” that the insured had read and “understood” each state specific form. Id.

The Washington Rejection Form² provided as follows:

The Washington Code (Section 48.22.030), amended, permits you, the insured named in the policy to reject the Underinsured Motorist Coverage in its entirety, to reject the property damage only portion of the Underinsured Motorists Coverage or to select a limit of liability lower than the limit for Liability Coverage in the policy. You may select a lower limit for property damage only if Underinsured Motorists Coverage is provided on a split limit basis.

Underinsurance Motorists Coverage provides insurance for the protection of persons insured under the policy who are legally entitled to recover damages from the owners or operators or underinsured motor vehicles because of bodily injury, death or property damage where either no bodily injury or property damage liability bond or insurance policy applies at the time of the accident, or where the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the amount which the

¹ A copy of the summary form is attached to the Appendix.

² A copy of the unsigned Washington rejection form is attached to the Appendix.

covered person is legally entitled to recover as damages.

In accordance with the Washington Code (Section 48.22.030), amended, the undersigned insured (and each of them)

- [] agrees that the Underinsured Motorist Coverage afforded in the policy is hereby deleted.
- [] agrees that the property damage only portion of the Underinsured Motorists Coverage afforded in the policy is hereby deleted.
- [] agrees that the following lower limit of liability applies with respect to the Underinsured Motorists Coverage afforded in the policy.

(Enter if a single limit of liability applies.)

(Enter if separate limits of liability apply to Bodily Injury and Property Damage or if lower limit(s) of liability apply to Bodily Injury or Property Damage only.)

_____	each person	Bodily Injury
_____	each accident	Bodily Injury
_____	each accident	Property Damage

CP 289.

It is undisputed that the Washington Form is not signed by USB, is not contained within the underwriting file and is not attached to the policy.

CP 195.

Zurich denied Humleker's claim for UIM coverage and Humleker brought the instant action. CP 457³

On July 24, 2009, the trial court heard oral argument on the issue of whether the summary form constituted a rejection as contemplated by the UIM statute. RP 1-47. On August 24, 2009, the trial court filed a Memorandum Opinion granting judgment in favor of Zurich. CP 105. The trial court reasoned that, the summary form, "although less clear and unequivocal than might have been created" was sufficient to meet the statutory requirement for rejection of full UIM coverage. CP 119. The court denied Humleker's Motion for Reconsideration on October 7, 2009. CP 18. In denying reconsideration, the trial court noted that the decision presented a "close call". CP 23 On October 22, 2009, the trial court entered an Order Granting Zurich's Motion for Summary Judgment and Denying Plaintiff's Motion for Reconsideration. CP 14. The instant appeal followed. CP 09.

V. ARGUMENT

A. Standard for Review

The court of appeals reviews summary judgment orders de novo, engaging in the same inquiry as the trial court. S & K Motors, Inc. v.

³ Humleker sued Zurich and Gallagher Bassett (the third party administrator of claims) for bad faith and declaratory judgment. The claims against Gallagher Bassett and all bad faith claims were resolved and the parties entered a dismissal order so stating. CP 447.

Harco Nat. Ins. Co., 151 Wn.App. 633, 638, 213 P.3d 630, 632 (2009). Interpretation of an insurance policy is a question of law reviewed de novo. Id. Summary judgment disposition is appropriate where there are no issues of material fact and the issue is one of law. Young v. Key Pharmaceuticals, Inc. 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Humleker asks this Court to reverse the legal holding by the trial court establishing that Zurich's summary form was sufficient to reject full UIM coverage. As the facts are undisputed, Humleker requests that this Court reverse and remand for entry of judgment in his favor.

B. Overview of UM/UIM Coverage in Washington and the requirement of "affirmative and conscious" rejection of UM/UIM coverage enunciated by the Supreme Court in Clements v. Travelers Indemnity Company.

Typically, when an argument begins by setting forth public policy considerations, it is reasonable to question the strength of the arguments being made thereafter. However, when considering questions of insurance policy interpretation, this inference fails. In Washington, analysis of insurance coverage questions is necessarily underpinned with the premise that any ambiguity within the insurance contract must be construed in favor of the insured. S&K Motors, 151 Wn.App. at 640. Moreover, insurance policies should be construed to provide coverage "wherever possible." Id. With regard to UIM coverage, at issue here, the public

policy considerations must be given even greater weight as the legislature mandates that all insurance carriers offer UIM coverage to policyholders. RCW 48.22.030. In that vein, the Washington Supreme Court has concluded that, anytime a court considers whether UIM coverage has been effectively rejected, the court must keep “in mind the strong policy in favor of individuals injured by uninsured motorists.” Van Vonno v. Hertz Corporation, 120 Wn.2d 416, 420, 841 P.2d 1244 (1992). Even prior to the amendment of the UIM statute to require a written rejection, the Washington Supreme Court squarely held that the “declared public policy” as set forth in the UIM statute “must be given controlling effect” over the “express terms of an insurance contract.” Touchette v. Northwestern Mutual Insurance Company, 80 Wn.2d 327, 328, 494 P.2d 479 (1972).

In Washington UM/UIM coverage is included in every policy of insurance, by virtue of RCW 48.22.030, in an amount equal to third party liability limits unless the named insured effectively waives coverage. American Commerce Insurance Company v. Ensley, 153 Wn.App. 31, 38, 220 P.3d 215 (2009). The Washington Supreme Court confirmed:

RCW 48.22.030 is to be liberally construed in order to provide broad public protection against financially irresponsible motorists. The purpose of the statute is to allow an injured party to recover

those damages which would have been received had the responsible party maintained liability insurance.

Van Vonno v. Hertz Corporation, 120 Wn.2d 416, 420, 841 P.2d 1244

(1992).

The statute provides⁴, in pertinent part, as follows:

No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom,

.....Coverage required under subsection (2) [the above section] of this section shall be the same amount as the insured's third party liability coverage.....

.....
.....

A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply.

⁴ RCW 48.22.030 was enacted in 1980 and has been amended several times. The amendments to the statute since its enactment were not at issue at the trial court and do not change the analysis herein. For the convenience of the Court, the current version of the statute is attached to the Appendix.

Public policy considerations serve as the lynchpin for throwing out bargained for exclusions which undermine the public policy of “full compensation” for injured victims. Tissell v. Liberty Mutual Insurance Company, 115 Wn.2d 107, 113-114, 795 P.2d 126 (1990)(noting that failing to allow insured UIM coverage would violate “this State’s declared policy of full compensation for accident victims.”); see also, Brown v. Snohomish County Physicians Corporation, 120 Wn.2d 747, 845 P.2d 334 (1993)(holding that insurance policy provision limiting UIM recovery was void on public policy grounds).

The Washington Supreme Court has also relied upon public policy to ensure that the term insured is defined as broadly as possible to allow for compensation of injured parties. Butzberger v. Foster, 151 Wn.2d 396, 401, 89 P.3d 689 (2004)(noting, “the statutory policy of Washington’s UIM statute vitiates any attempt to make the meaning of insured for purposes of uninsured motorist narrower than the meaning of that term under the primary liability section of the policy.”)

The public policy considerations underlying UIM coverage have even served as the basis for voiding final settlement agreements to permit for “full compensation” of injured victims. Jain v. State Farm Mutual Automobile Insurance Company, 130 Wn.2d 688, 926 P.2d 923 (1996);

see also, Bradbury v. Aetna Casualty & Surety Company, 91 Wn.2d 504, 589 P.2d 785 (1979). In Jain, the Supreme Court reasoned that, although releases are given “great weight”, the “strong policy” of “compensating innocent victims of accidents and providing broad coverage” overrides the finality benefits inhering in settlement. In short, “releases may be voided by retroactive application of case law” to implement the broad public policy of “a comprehensive UIM scheme”. Id. at 694.

Of course, UIM coverage afforded by statute may be rejected, however, to be effective, that rejection must be “in writing” and by “affirmative and conscious act.” Clements, 121 Wn.2d 243, 254, 850 P.2d 1298 (1993). The broad, protective purpose of the statute cannot be voided by mere “intent” of the parties and, instead, doubts as to whether the rejection is effective should be resolved in favor of Washington’s policy of providing protection to injured parties. See, id. at 251-252.

Any rejection of UIM/UM coverage must also be evaluated keeping in mind the overarching principle in insurance law that any ambiguity within the policy must be “construed against the insurer and in favor of the insured.” Kowal v. Grange Insurance Association, 110 Wn.2d 239, 247, 751 P.2d 306 (1988). It is axiomatic that this principle is rendered all the more critical, *i.e.*, “applies with added force” when evaluating “limitations to the policy’s coverage.” Id.

Washington courts have struck down any purported “rejection” that is not “affirmative and conscious.” This is so even where the rejection language is clear. For example, in Alamo Rent A Car v. Schulman, 878 Wn.App. 412, 415, 897 P.2d 405 (1995), the court cursorily held that contract language stating “you and I reject uninsured motorist coverage to the extent permitted by law” was facially insufficient. See also, Corley v. Hertz Corporation, 76 Wn.App. 687, 887 P.2d 401 (1995).

Zurich will certainly contend that notions of public policy are irrelevant to the consideration here as, according to Zurich, UIM coverage was expressly limited by the insured to \$60,000. Zurich’s contention, however, misses the mark, as all parties are aware that, in this case, any rejection was not express. Instead, as the trial court stated, the “summary form” purportedly rejecting coverage was “less clear and unequivocal than might have been created”. Under Washington law, a rejection of UIM coverage that is equivocal and unclear must be construed in favor of the broad public policy of ensuring full compensation to injured victims. As a matter of law, the summary form fails to meet the standard enunciated by Washington precedent; Humleker should be afforded full compensation for his injuries.

C. Zurich cannot establish that USB rejected, in writing, UIM coverage.

The Washington UIM statute requires insurers to “make UIM coverage available” to its insureds, then, once made available, the insured is free to reject the coverage in writing. Clements, 121 Wn.2d at 250. The legislative intent in requiring a “written” rejection was to “place upon an insurer the burden of obtaining a knowing written rejection”. Id. at 255.

In sum, as set forth by the Washington Supreme Court, the determination of an effective rejection requires the insurer to make a two step showing. First, the insurer must establish that UIM coverage in an amount equal to liability limits was “made available” to the named insured. Second, the insurer must produce a written rejection which establishes that the insured declined UIM coverage by an “affirmative and conscious act.” If the insurer fails to make both showings, UIM coverage equal to liability limits, becomes part of the insurance policy.

1. Zurich fails to establish that an offer of UIM coverage in an amount equal to liability limits was made available to USB.

Zurich, at summary judgment proceedings, took the position that the UIM statute does not require the insurer to make an “offer” of UIM coverage to the insured. CP 424. The plain language of the UIM statute and case law interpreting the statute belie this reasoning and establishes

that an insurer must offer UIM coverage to the insured in an amount equal to liability coverage.

- i. Zurich's argument that the UIM statute does not require an "offer" of UIM coverage leads to an absurd, and untenable, interpretation of the UIM statute.

In determining the meaning of the UIM statute, it is well settled that statute should be construed as a whole, with no term superfluous. See, State, Dept. of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Furthermore, statutes should not be interpreted in a manner which leads to an absurd result. Harry v. Buse Timber & Sales, Inc., 166 Wn.2d 1, 15, 201 P.3d 1011 (2009).

The term "reject" is not defined in the UIM statute or within the policy and, accordingly, it should be given a meaning as would be understood by an average purchaser of insurance. North Pacific Ins. Co. v. Christensen, 143 Wn.2d 43, 48, 17 P.3d 596 (2001). "To determine the ordinary meaning of an undefined term, our courts look to standard English language dictionaries." Boeing Co. v. Aetna Cas. & Sur. Co., 113 Wn.2d 869, 877, 784 P.2d 507 (1990).

Here, the UIM statute sets forth the requirement that all policies of insurance shall provide coverage for liability arising out of the operation of underinsured vehicles. Within that same paragraph, the statute goes on

to clarify that “the coverage **required to be offered under this chapter** [UIM statute]...is not applicable to general liability policies...”. RCW 48.22.030 (2)(emphasis added.) The statute goes on to permit the named insured to “reject, in writing” UIM coverage. RCW 48.22.030(4). Once the insured “rejects” the coverage made available under subsection two of the statute, the UIM coverage will be deleted from the policy. RCW 48.22.030(4).

“Reject” is not defined within the UIM statute and, accordingly, the plain dictionary meaning of the term is adopted. The term “reject” is commonly defined as the refusal to accept. Merriam-Webster Online Dictionary. 2010. Merriam-Webster Online. 11 March 2010 <http://www.merriam-webster.com/dictionary/reject>. To interpret “reject” without requiring the predicate of an “offer” (*i.e.*, something to reject) would lead to an absurd result and is not what an average purchaser of insurance would anticipate. In short, the statute requires that the insurer offer UIM coverage in an amount equal to liability limits to the insured prior to beginning any analysis as to whether that “offer” was rejected.

- ii. Washington case law establishes that the insurer must establish an “offer” of UIM coverage.

In Jochim v. State Farm Mutual Insurance Company, 90 Wn.App. 408, 412, 952 P.2d 630 (1998) this Court confirmed that an insurer is

required to “make UIM coverage available in all Washington automobile insurance policies in the same amount as the insured’s third party liability or bodily injury coverage.” Once the coverage is offered, an insured may decline the coverage as provided by statute. Id. It is axiomatic that, for an insured to reject UIM/UM coverage, the insurer must first provide the insured with sufficient information to make an informed waiver of the coverage. Corley v. Hertz Corporation, 76 Wn.App. 687, 693, 887 P.2d 401 (1995). See also, Cochran v. Great West Casualty Company, 116 Wn.App. 636, 642, 67 P.3d. 1123 (2003).

The requirement that an insured reject UIM coverage by an affirmative and conscious act necessarily implies that the insured is given a choice between rejecting or accepting UIM coverage. Only if an insured is given a choice between these options can it be said that the insured affirmatively and consciously rejected UIM coverage by choosing between the two options.

Id. at 693 (Emphasis added.); see also, Cochran supra. Without a meaningful “offer” of coverage, the insured cannot validly execute a rejection. Id.

In the instant case, Zurich cannot establish that it ever made any offer to its insured, USB. Instead, the evidence presented by Zurich relies upon oral conversations between USB and the broker for USB. There is simply no showing that Zurich ever had any communications with USB,

written or otherwise. The Clements and Corley decisions make it clear that, in Washington, the insured must be given sufficient information by the insurer to make an informed decision regarding UIM coverage. The language of Clements and Corley dictates that, absent an offer, any subsequent “rejection” of UIM coverage will be without force.

The reasoning of the court in Roser v. Anderson, 222 Ill.App. 3d 1071, 584 N.E.2d 865 (1991) is similarly illustrative of Zurich’s utter failure to meet its burden to establish the making of any offer of UIM coverage to USB. At the time relevant to the insured’s claim, the Illinois statute, like Washington’s statute, did not require the insurer to make a “written offer” of coverage to the insured. Roser, 222 Ill.App.3d at 871 (noting that the statute had since been amended to specifically require a written offer of coverage). In Roser, the insurer argued that, the insured’s written rejection of UIM coverage necessarily implied that a valid offer had been made. The court disagreed with this logic reasoning:

“Reject” is commonly defined as “to refuse to take, agree to, accede to, use, believe, etc.” (Webster’s New Universal Unabridged Dictionary 1524 (2d ed. 1983)), and “rejection,” a term having legal significance, is defined as an offeree’s communication to an offeror that the terms of the offeror’s proposal are refused (Black’s Law Dictionary 1288 (6th ed. 1990)).....Thus, some action on GEICO’s [the insurer’s] part offering plaintiff additional uninsured motorist coverage or informing plaintiff that such coverage was available

was necessary before plaintiff could act to “elect to reject” such coverage.

Id. at 1077-1078. Based upon the fact that there was no showing the insurer had offered UIM coverage to the insured, the court concluded:

An insured’s mere implicit rejection of additional insurance by the purchase of the legally mandated minimum coverage limits is not an informed choice and is insufficient to allow an insurer to provide uninsured motorist coverage in an amount less than bodily injury liability limits.

Id. at 1081.

Here, there is simply no showing that Zurich made any “offer” of insurance to USB. The only evidence submitted establishes discussions between USB and its broker regarding UIM coverage. See, Galbraith v. National Union Fire Ins. Co. of Pittsburgh, 78 Wn.App. 526, 531, 897 P.2d 417 (1995)(broker acts on behalf of insured not insurer). As such, there is no evidence establishing that an offer was ever made by Zurich to USB of UIM coverage in an amount equal to liability limits.

2. Zurich cannot establish that the summary form constitutes a “specific and unequivocal” written rejection as contemplated by the UIM statute.

There is no Washington case which holds that a “summary form” (setting forth arbitrary amounts of UIM coverage for all fifty states) which is drafted by the insurer serves as an effective written rejection of UIM coverage as contemplated by RCW 48.22.030. To the contrary, all cases in

Washington holding that an effective rejection occurred rely upon either documentation produced by the insured specifically rejecting coverage or documentation prepared by the insurer which specifically sets forth the option to purchase UIM coverage in an amount equal to liability limits coupled with the statement of the right to reject that coverage. Perhaps most telling, the summary form used by Zurich in the current case has already been rejected as a legally insufficient rejection by at least one court in Stemple v. Zurich, 584 F.Supp.2d 1304 (D.Kansas, 2008). For this Court to hold that the summary form constitutes a valid rejection of UIM coverage would be contrary to long standing Washington precedent and the facial requirements of the UIM statute.

- i. Washington case law requires that UIM coverage is a part of every policy of insurance unless effectively rejected by the insured through an affirmative and conscious act.

A review of Washington case law addressing circumstances where, as here, there is some writing related to UIM coverage establishes the principle that, to be effective, the written rejection must be “specific and unequivocal”.

In Weir v. American Motorists Insurance Company, 63 Wn.App. 187, 816 P.2d 1278 (1991), the insured submitted a bid proposal to the insurer requesting “Minimum Statutory Uninsured Motorists (where

Mandatory)”. Weir, 63 Wn.App. at 189. In response to the insured’s request, the insurer issued an endorsement providing that the insured “rejected” coverage in all states where complete rejection of coverage is permitted. Id. The Court of Appeals, Division Three, was called upon to consider solely the issue of whether the “bid proposal” was sufficient to constitute a written rejection of UIM coverage in Washington. Id. The court viewed the bid proposal specifically requesting UIM coverage, only in states where mandatory, as evidencing the insured’s intent “at the time of contracting”. Id. at 191.

Initially, Weir is a Division Three, Court of Appeals case and, as such, is not binding upon this Court. Moreover, the reasoning of Weir, permitting consideration of the insured’s “intent” was adopted by the Court of Appeals in Clements v. Travelers Indem. Co., 63 Wn.App. 541, 544, 821 P.2d 517 (1991) and, subsequently, reversed by the Supreme Court at 121 Wn.2d 243, 850 P.2d 1298 (1993). Although the Court did not overrule Weir (or, indeed, even deign to mention Weir) the Court’s silent disregard of the reasoning in Weir casts doubt upon the persuasiveness of the decision. In short, as stated by a later decision construing Weir, “the effect of Weir, after Clements, is that the insured’s intent to waive UIM coverage must be manifested in writing.” Galbraith v.

National Union Fire Ins. Co. of Pittsburgh, 78 Wn.App. 526, 531, 897 P.2d 417 (1995).

Furthermore, the facts of the current case are not analogous to Weir. The Weir court relied entirely upon a proposal prepared by the insured as evidence of the insured's intent to reject coverage. Here, unlike Weir, the only "writing" available was prepared by the insurer, Zurich. As such, Weir is inapposite.

The reasoning of Koop v. Safeway Stores, 66 Wn.App. 149, 831 P.2d 777 (1992), similarly illustrates a reliance upon documents prepared by the insured to find a "written" rejection of UIM coverage. There, the insured sent a letter to the insurer stating:

Safeway does not wish to expose the special arrangements connected with this policy to losses involving these fringe coverages which are totally unessential to them as a corporation. Please issue an endorsement, for signature by Safeway, waiving the California Uninsured Motorists coverages. Additionally, if it is possible, please provide an endorsement waiving Uninsured Motorists and/or No Fault Fringe coverages on a blanket 'All States' basis. If that kind of blanket waiver is not possible, please issue waivers for each state where a waiver is possible. Perhaps one blanket type agreement listing the appropriate states would do the job."

Id. at 155. In accordance with the insured's request, the insurer issued an endorsement specifically excluding UIM coverage. Id. at 152. The insured then signed the endorsement excluding UIM coverage. Id. The Koop court

reasoned that these writings evidenced the insured's intent at the time of contracting and were sufficient rejections of UIM coverage. Id.

In the current case, unlike Koop, there is no documentary evidence prepared by the insured which establishes unequivocal rejection of full UIM coverage.

Following the line of reasoning looking at the insured's intent as evidenced by documents prepared by the insured at the time of contracting, Galbraith v. National Union Fire Insurance, 78 Wn.App. 526, 897 P.2d 417 (1995) stated:

If the insured or its agent prepares writing which reflect an unequivocal intent to waive UIM coverage and if those writings are submitted to the insurer, the waiver will be effective.

Id. at 531. In Galbraith, the insured's broker requested "Minimum Limits Uninsured Motorists", the insurer, as a result, issued a policy which provided for "statutory" UIM coverage of, according to the insurer, \$25,000. Id. at 532. The court reasoned that the rejection was ambiguous as to the "amount of coverage the insured had in mind" and, thus, did not meet the specificity requirements of the UIM statute. Id.

In Washington, UIM coverage is not mandatory and, accordingly, the insured's request could have meant either (1) an intent to reject all coverage; or; (2) an intent to select a limit lower than the liability limit.

See, id. Critically, in Galbraith, the insured's intent was to receive limited or no UIM coverage, however, because of the public policy at issue, the Court declined to give effect to either of these "intents" and, instead, held that the limits were equal to the liability limits of \$1 million dollars, even though that was, clearly, not what the parties intended. This result is mandated because, as stated previously, UIM coverage equal to liability limits becomes a part of every Washington insurance policy absent an effective rejection by the insured. RCW 48.22.030.

Here, akin to Galbraith, the signed Summary Form is ambiguous as to what the insured "had in mind" for coverage. Note that, any ambiguity excluding coverage is strictly construed against the insurer. McMahan & Baker, Inc. v. Continental Cas. Co. (CNA), 68 Wn.App. 573, 574, 843 P.2d 1133 (1993)(Court of Appeals reversing summary judgment favor of insurer and directing entry of judgment in favor of insured.)

Here, the Summary Form states, at the top, "State Min. UM/UIM" yet selects \$60,000 in coverage. The confusion is further evidenced by the contradictory testimony of Zurich's underwriters, *i.e.*, Ms. Burns testifies that Washington requires \$60,000 in UIM coverage, whereas, Mr. Shipton testifies that Zurich will only write UIM coverage in the minimum amount of \$60,000. CP 484, CP 29. This internal confusion at Zurich with regard to coverage casts further ambiguity upon the claimed "rejection" of full

coverage. As stated previously, the “post claim” statements, used to explain an ambiguous, purported “rejection” should not be considered at all in the analysis. However, Zurich’s continued, and contradictory, explanations for the coverage written for USB illustrates the confusion inhering in the form itself; *i.e.*, Zurich, by its submissions, concedes the necessity of extrinsic evidence to “explain” its ambiguous form.

Here, like Galbraith, there is no documentary evidence establishing that the insured intended to reject UIM coverage as required by the plain language of the UIM statute.

The case of Cochran v. Great West Casualty Company, 116 Wn.App. 636, 642, 67 P.3d. 1123 (2003), which brings together the reasoning of both Weir and Galbraith, is highly instructive and definitively establishes that Zurich fails to meet its burden to establish rejection. There, the plaintiff suffered severe injuries while driving his employer’s truck. Cochran, 116 Wn.App. at 638. Plaintiff ultimately demanded UIM benefits in the amount of 1 million dollars (the amount equal to the liability limits). Id. However, plaintiff’s employer waived UIM coverage equal to liability limits and, instead, selected limits of \$60,000 by his signature on a form stating as follows:

Underinsured Motorists Underinsured Motorists
Insurance (including uninsured motorists insurance)
must be provided for either bodily injury liability or

bodily injury and property damage liability. The bodily injury coverage must be provided at limits equal to the policy's liability limit(s) but not higher than that limit(s). I have the right to reject this coverage in writing or select limits lower than the policy's liability limit(s).

Id. at 639 (emphasis added.) The employer testified that he had no recollection of being “offered” UIM coverage equal to liability limits, however, it was undisputed that his signature appeared on the form. Id.

The court reasoned that the signature on the above form complies with the statutory requirements of RCW 48.22.030 as it “advises the insured of its right to select UIM coverage in an amount equal to the policy’s liability limit”. Id. at 641. The court stated:

[D]ocumentary evidence established that Smith knew that CTE was entitled to UIM benefits equal to liability limits but, on the advice of insurance brokers, requested UIM coverage of only \$60,000.

The court further stated that, “having been advised of statutory maximum UIM limits requirement, CTE’s choice of \$60,000 on the UIM selection form followed advisement of the right to UIM coverage up to the policy limits.” The insured’s signature on the form, accordingly, was “sufficiently specific and unequivocal to establish that CTE knowingly requested that Great West set the policy’s UIM limits at \$60,000 and thereby rejected the statutory UIM limits identical to the policy’s liability limits.” Id. at 644-645 (emphasis added.) The insured submitted testimony

during the summary judgment proceedings stating that he had not intended to reject UIM coverage, however, the court reasoned that the “factual question” of the insured’s intent was “irrelevant” to the inquiry because the writing was facially clear. Id. at 645.

Unlike Cochran, the summary form did not inform the insured of the “right to select UIM coverage in an amount equal to the policy’s liability limit.” The Cochran requirement follows the mandate of the UIM statute which expressly requires the insurer to “issue” a policy with full UIM coverage and permits rejection of those full limits only after documentary evidence shows that the insured was aware of the right to full coverage. Cochran also reiterates the principle that it is inappropriate to consider “after the fact” evidence suggesting what an insured’s intent might have been at the time of contracting. Instead, the sole inquiry is whether the documentary evidence, created at the time of contracting, establishes that the insured knew of the right to full UIM coverage and, with full knowledge, as evidenced in the writing, specifically and unequivocally rejected that right. Here, there is nothing in the summary form to show that USB was aware of the right to purchase full UIM coverage and knowingly rejected that right. Under Cochran, accordingly, full UIM coverage must be afforded.

Most recently, in Marks v. Washington Insurance Guaranty Association, 123 Wn.App. 274, 94 P.3d 352 (2004), the court confirmed the need for a written rejection to be “specific and unequivocal”. The “form” at issue in Marks demonstrates what a “specific and unequivocal” rejection looks like and, critically, the Zurich “summary form” does not pass muster.

In Marks, the insured signed a form stating as follows:

Insured: Blue Star Services dba Vancouver
Airporter
Policy Number: SH2534683

I acknowledge that:

(1) Reliance Insurance Company is required by statute to offer me Uninsured Motorists Coverage and/or Underinsured Motorists Coverage equal to the bodily injury limits of liability of my policy with the option to reject these coverages or to select a lower limit of Uninsured and/or Underinsured Motorist Coverage.

(2) I hereby select the following option:

I hereby reject the: UNINSURED MOTORISTS
COVERAGE

UNDERINSURED MOTORISTS COVERAGE

I desire that the limits of liability for the:

UNINSURED MOTORISTS COVERAGE

UNDERINSURED MOTORISTS COVERAGE

be the limits shown below:

\$60,000

\$100,000

\$50,000 [signature]

The term “Uninsured Motor Vehicle” shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under their Uninsured Motorists Coverage.

[signature]

Marks, 123 Wn.App. at 278-279. The signed form in Marks set forth, explicitly, the insured’s right to UIM/UM coverage in an amount equal to that of liability limits and unambiguously sets forth the insured’s right to “reject” said coverage. See id. The form at issue herein does not.

- ii. Zurich’s summary form has already been held to be an insufficient written rejection of UIM coverage.

It is rare to have a circumstance, as exists here, where another jurisdiction has considered the precise issue as that which comes before

this Court. Here, Zurich relies upon its “summary form” as legally sufficient rejection of UIM coverage and argues that, under Washington’s statutory requirement of “written rejection”, the summary form is, as a matter of law, a rejection. Zurich’s summary form has already been rejected in at least one jurisdiction, Kansas, as insufficient to meet the statutory “written rejection” requirement. Case law from other jurisdictions which, analogous to Washington, require a “written” rejection of UIM coverage should be considered as persuasive authority, particularly where, as in this circumstance, the case considered the precise dispute at issue here. See, Torgerson v. State Farm Mut. Auto. Ins. Co., 91 Wn.App. 952, 963, 957 P.2d 1283, 1288 (1998) (case law from jurisdictions which do not have written rejection requirements is not persuasive).

In Stemple v. Zurich, 584 F.Supp.2d 1304 (D.Kansas, 2008), the court rejected as legally insufficient a “Summary Form” nearly identical to the Form relied upon by Zurich in the instant case. The facts of Stemple are startlingly similar to the facts at issue in the current case. There, Stemple, the plaintiff, was involved in a fatal accident while in the course of his employment for Panther. Id. at 1305. Stemple’s estate sought UIM coverage in an amount equal to the liability limits and Zurich countered with a Summary Form signed by an executive officer of Panther. Id. The

court reasoned that the appropriate inquiry was “whether the language of the Summary Form constitutes a valid rejection of underinsured motorist coverage.” *Id.* at 1309. The reasoning of the court is so precisely on point with the facts of this case that it warrants quotation in full:

The court disagrees with defendant’s argument that the Summary Form clearly indicates that Panther rejected underinsured motorist coverage in excess of statutory minimums. Defendant points the court to the language of the Summary Form directly above Mr. Sliter’s signature which states, “I acknowledge that I have reviewed each individual state’s selection/rejection form, I have made the elections indicated and that I have the authority to sign this form on behalf of all Named Insureds on those policies listed above.”

Defendant contends that the language “I have made the elections indicated” refers to elections made within the Summary Form itself. In contrast, the court finds that if the document is read in whole, this language instead refers to elections made on individual state forms. The court reaches this conclusion by examining the Summary Form’s repeated references to the individual state specific forms. Specifically, the first paragraph of the Summary Form states “Your signature on this summary form indicates that you have read and understand each state-specific form and that the selections or rejections marked on the state forms have been accepted by you.” Considering this statement appears at the very top of the Summary Form and expressly references the selections or rejections made on other state forms, it is only logical that the language above the signature block stating “I have made the elections indicated” refers to those elections made on state forms, rather than the Summary Form.

The Summary Form also states in all capital letters that it is not a substitute for reviewing each individual state's selection/rejection form for UM and UMI coverage. Again, the court finds the Summary Form clearly indicates that elections made on individual state forms control what selections or rejections have been made, rather than the Summary Form itself.

Id. at 1311 (emphasis added). In short the court found that the signed summary form, standing alone, was legally insufficient to reject UIM coverage at the higher limits. Id.

The Stemple court also noted that the letter sent by Zurich's Account Executive, calling attention to the state forms, bolstered their finding that the summary form, standing alone, did not serve as a legally sufficient waiver. The court reasoned thusly:

Additionally, the court finds that the letter sent by Mr. Meyerholt, Account Executive for Zurich, which accompanied the Summary Form illustrates that Zurich intended the Summary Form affirm selections made on state forms, rather than the insured making actual selections on the form itself. In drawing this conclusion, the court points to the following language, "Your signature on the summary form indicates that you have read and understand each state-specific form and that the selections or rejections marked on the state forms have been accepted by you."

Id. The language in the Stemple letter is nearly identical to the wording of the letter sent by Zurich Account Executive Bill Ennis in the instant case.

CP 415-417. The Stemple court rejected Zurich's analysis stating:

From the language of the letter from Mr. Meyerholt and the Summary Form itself, it appears that Zurich believed that signing the Summary Form was an effective waiver of uninsured/underinsured motorist coverage for states which do not require a signed rejection, as it was a writing and issued by the insured. The court notes that Kansas case law, as discussed above, requires the written rejection be the product of an affirmative, unequivocal act specifically effectuating the insured's rejection of excess coverage. Taking into account that rejection provisions are to be narrowly and strictly construed, the court holds that the Summary Form is not an affirmative, unequivocal act as it repeatedly references coverage elections made on individual state selection forms, not the Summary Form itself.

Stemple v. Zurich American Ins. Co. 584 F.Supp.2d 1304, 1310 -1311

(D.Kan.,2008)(emphasis added).

The facts of Stemple are identical to the facts of the current case. In Stemple, as here, the named insured's representative signed a form which set forth the specific amount of UIM coverage requested and, by reference, confirmed that the named insured had read/understood each of the individual state forms addressing "rejection" of coverage. The only distinction between the two cases is that Stemple was decided in Kansas and the current case arises in Washington. However, this Court should

decline to hold that Washington law is less favorable to insureds than Kansas law. Both Kansas and Washington statutorily require a written rejection of UIM coverage. Furthermore, both Kansas and Washington narrowly construe UIM rejections to allow for the broadest possible protection of injured victims. See, Larson v. Bath, 15 Kan.App.2d 42, 44, 801 P.2d 1331 (1991)(holding that Kansas courts align themselves most closely with those courts who espouse the policy goal of protecting innocent victims). A holding by this Court that the “summary form” constitutes a “written rejection” as contemplated by statute would, effectively, render Washington less insured friendly than Kansas, a result which is not dictated by either law or policy.

D. The summary form is ambiguous and must be construed against Zurich.

Internal conflicts within an insurance policy must be construed in favor of the insured and courts should not engage in detailed analysis to make sense of what the policy could mean. First National Insurance Company of America v. Perala, 32 Wn.App. 527, 648 P.2d 472 (1982). Instead, any conflict must be resolved in favor of coverage. Id. When considering UIM coverage, an ambiguity within a claimed rejection of coverage will result in the rejection being thrown out and the imposition of

UIM coverage in an amount equal to liability coverage by operation of law. Galbraith supra.

In Washington there is no minimum requirement for UIM coverage, instead, UIM coverage must be offered in an amount equal to liability coverage, then, once offered, the insured may reject all or some of the coverage. Here, the “summary form” is facially ambiguous as to what the parties contracted for because the form impliedly selects “state minimum” limits then, inexplicably, for Washington, “selects” \$60,000 in coverage. CP 286-287.

This scenario is akin to that considered in Galbraith wherein the insured requested “minimum” limits and, mysteriously, received \$25,000 in coverage. As in Galbraith, where a purported rejection is ambiguous it cannot satisfy the terms of the UIM statute, coverage is set forth by operation of law. Galbraith, 78 Wn.App. at 532.

E. The subjective “post claim” intent of the parties to the contract cannot override the protective purpose of the UIM statute.

In analyzing this issue, an obvious question is, if USB only intended to obtain \$60,000 in UIM coverage, why should this Court undermine the intent of the parties? The Supreme Court has already answered that critical question in Clements and its progeny and held that,

intent, expressed “post claim”, cannot undermine the legislative purpose of the UIM statute.

In Clements the insured “neither wanted nor paid for UIM coverage” and, further, the insured “intended to exercise rejection under the Washington statute.” Id. at 251. Expressly, the insured, an employer, intended to purchase UIM coverage for his vehicle fleet only in the states which mandated UIM coverage. Id. Travelers, the insurer, further contended that the “absence of UIM coverage in the policy should be treated as written rejection of coverage.” Id. at 255. In rejecting this contention, the Clements court adopted the reasoning of the California court in California Casualty Indem. Exch. v. Steven, 5 Cal.App.3d 304, 306-307, 85 Cal.Rptr. 82 (1970) stating:

[b]ecause the provision of such coverage is a matter of public policy, a claim of waiver thereof is not to be determined simply by reference to the rules which courts otherwise apply to determine the intent of contracting parties. Deletion of the coverage required by the statute can be effected only by an express “agreement in writing delet[ing] the provision covering damage caused by an uninsured motor vehicle.”

Id. at 256. Ultimately, despite the undisputed intent of the parties, the Washington Supreme Court held that, “UIM coverage becomes part of every automobile liability coverage by operation of law unless the insured party in writing agrees to a waiver or rejection.” Clements, 121 Wn.2d at

255. The Court further noted that, to hold otherwise, would be to “effectively delete” the requirements for rejection set forth by the Legislature. Id. at 255.

The Washington UIM case law which addresses the intent of the parties establishes that the critical inquiry is the intent of the parties at the time of contracting as manifested by the writings produced, not, intent as crafted by the parties after a claim has been made and coverage is in dispute. In Weir, the court specifically states that the intent of the parties is to be determined at the time of contracting. Weir, 63 Wn.App. at 192. There, the insured’s intent was clear from the written documents; not extrinsic evidence. Id. Similarly, in Cochran, the court determined the intent of the parties at the time of contracting as evidenced by the writings. Cochran, 116 Wn. App. At 645. As such, the insured’s statements of intent, “post claim”, were not relevant to the inquiry. Id.

The Clements reasoning was relied upon by the Arizona Supreme Court in Estate of Ball v. American Motorists Insurance Company, 181 Ariz. 124, 888 P.2d 1311 (1995) wherein the Arizona court noted that Clements held that a “post-claim agreement that no coverage was desired and language in the policy requesting only minimal UIM coverage were not enough.” Estate of Ball, 181 Ariz. at 127.

In Estate of Ball, an employee of Fleming Company, Ball, was killed by a drunk driver while driving a company insured vehicle. Id. at 124. After exhausting the drunk driver's policy, Ball's estate requested UIM coverage. Id. American Motorists denied the claim on the basis that Fleming had rejected UIM coverage, for its fleet of vehicles, by requesting, in writing, UIM coverage only if required by state statute. Id. at 125. In Arizona, the UIM statute requires insurers to make a written offer of UIM coverage to the insured. Id. Fleming, although not party to Ball's case, took the side of American Motorists and provided testimony confirming that it had not intended to purchase UIM coverage. Id. The court rejected the attempt by American Motorists and Fleming to undermine the protective purposes, for all insureds, of the UIM statute stating:

A regime that allowed for ad hoc waivers of written offers would create havoc. An insurer could argue that a person who wrote a letter requesting specific coverage, but not UIM, made a knowing waiver of an offer of UIM. Or insurers and named insureds might have an incentive to agree to the underlying facts surrounding the issuance of an insurance policy when it suited them, to the detriment of others insured under the policy.

Id. at 126 (Emphasis added). The Ball court reasoned that "two parties cannot be allowed to waive the protection a statute affords to third

parties”); in essence, one of the purposes of the statute is to broadly provide protection, the “written notice” requirement assured this protection. Id.

The reasoning of Ball and Clements is equally applicable to the situation considered here. In short, the intent of the parties cannot override the public policy considerations applicable to “all” potential insureds under the policy; *i.e.*, the insurance contract for UIM coverage is “bigger” than the contracting parties because UIM coverage provides protection beyond the contracting parties.

This public policy concern is illustrated by the factual scenario in Butzberger v. Foster, 151 Wn.2d 396, 401, 89 P.3d 689 (2004). In Butzberger, a “Good Samaritan” was killed when attempting to rescue another driver. Id. The estate sought, in pertinent part here, to recover UIM benefits under the policy of the car the Good Samaritan was closest to when he was killed. Id. at 411. The Supreme Court held that benefits should be recovered even though the individual seeking the benefit of the coverage was not originally contemplated as an “insured” subject to protection under the policy. Id. It was, in essence, reasonable to expect that a “Good Samaritan” would be protected through UIM coverage if injured during the course of a rescue attempt. Id.

As indicated in Butzberger, the “insured” subject to recovery for injuries through UIM coverage can be broader than that originally

contemplated. For that reason, it is critical that strict compliance with the statutory scheme be followed. To do otherwise, would undermine the broad protective purposes of the statute and permit, for example, “after the fact” parties to the contract who do not need the coverage to, in “self serving” manner testify that it was their intent to reject UIM coverage. Here, the testimony by Boness and the Zurich underwriters regarding what they, theoretically, intended coverage to be, should not be considered as persuasive. To permit post-claim testimony regarding coverage would be to encourage collusion and is contrary to the policies set forth in Washington law.

F. The only “writing” to be considered by this Court is the “summary form”; the unsigned Washington form is irrelevant to the inquiry.

No Washington case, considering rejection of UIM coverage, has held that a court can consider an unsigned, unavailable document as evidence that the insured rejected UIM coverage in accordance with the UIM statute. Instead, all legal precedent requires that this court look solely to the actual writing executed by the insured. As such, for this Court to consider a form that Zurich claims, after the fact, has been reviewed by the insured, would be contrary to legal precedent and, moreover, would thwart the public policy concerns set forth within the UIM statute. As an aside, there is not even a showing by USB that its representative reviewed the

Washington form. As such, there is simply no basis for the Washington form to be a part of the consideration here.

The case of Torgerson v. State Farm Mutual Automobile Insurance, 91 Wn.App. 952, 957, 957 P.2d 1283 (1998) confirms that extrinsic evidence beyond a written rejection is irrelevant to a determination of whether UIM coverage has been rejected in accordance with the requirements of the statute. In Torgerson the insured, Togerson, rejected, in writing, UIM coverage for her initial policy of insurance; on a subsequent policy of insurance Togerson requested UIM coverage and the resultant policy (issued beginning in 1984, through the date of the accident in 1992) listed UIM limits at \$50,000. Id. at 956. It was undisputed that the Torgersons only paid a premium for coverage at the \$50,000 limit. Id. After the accident, Torgerson submitted a claim for UIM coverage in an amount equal to that of liability limits and State Farm rejected the claim relying upon the plain language of the policy. Id.

At trial, the court permitted State Farm to submit evidence establishing that the company, as a routine, obtained written rejection forms whenever a customer requests less than full UIM coverage. Id. at 962. Ultimately, the jury held that Torgerson had effectively rejected full UIM coverage in favor of lower limits. Id. The court of appeals **reversed**

the jury verdict holding that evidence of company routine was not admissible and stated:

The public policy underlying the requirement of a written rejection militates against the admission of evidence of habit or routine. Washington is one of the states which considers UIM coverage sufficiently important to require that any rejection of it must be in writing.

Torgerson v. State Farm Mutual Automobile Insurance, 91 Wn.App. 952, 963, 957 P.2d 1283 (1998).

The facts of the current case are far more compelling for Humleker than for the insured in Torgerson. Here, it is undisputed that the only writing at issue in this case is the “Summary Form” signed by Jerry Boness. CP 287. Zurich has not, and cannot, produce the Washington “rejection/notice” form. CP 196. Zurich speculates that, based upon Zurich’s standard operating processes, Jerry Boness “would have” been sent the Washington form. CP 484-487. Moreover, the Washington form “would have” been marked with an “X” to select the UIM limits of \$60,000. Id. The purported “Washington form” with its “selections” is notably absent from Zurich’s production of evidence and, perhaps more curiously, the specific Washington Form is without mention in Mr. Boness’s testimony. CP 327.

More compelling than Torgerson, there is not even an allegation that Mr. Boness signed the Washington form. Moreover, Zurich has presented no evidence of a “specific recollection” that Mr. Boness saw the Washington form. Thus, as per the Washington UIM statute, Torgerson and the Supreme Court authority of Clements supra this Court should decline to even consider the Washington form. As stated in Torgerson, absent a written rejection, this Court must, as a matter of law, enter a declaration establishing available coverage at the amount of \$1 million. Id. at 965.

G. The Washington form does not meet the requirements for a written rejection of UIM coverage as required by statute.

Even had the Washington form been signed by USB, which it undisputedly has not been, the form is legally insufficient to establish a written rejection of UIM coverage in accordance with statutory requirements. The Washington form is fatally deficient because it fails to give the insured a choice between obtaining full UIM coverage and rejecting it; there is no Washington case holding that such a form is sufficient to meet the written rejection requirements of the UIM statute. See e.g., Marks, 123 Wn.App. at 278-279 (form issued by insurer offered UIM coverage equal to liability limits); Cochran, 116 Wn.App. at 638-639 (form issued by insurer explained that insurer must make UIM coverage

available in an amount equal to liability limits). The Washington form is insufficient, as a matter of law, to meet the requirements for rejection under Washington law.

H. As Humleker had to bring suit to obtain the benefits of his insurance contract, he is entitled to recovery of attorney fees and costs pursuant to Olympic Steamship and RAP 18.1.

In 1991, the Washington Supreme Court announced the rule that when an insurer compels its insured to submit to litigation “to obtain the benefit” of the insurance contract, the insurer must pay the attorneys’ fees and costs incurred by the insured to do so. Olympic Steamship Company Inc. v. Centennial Insurance Company, 117 Wn.2d 37, 52-53, 811 P.2d 673 (1991). In short, an insured purchases an insurance contract for the purpose of avoiding litigation, not to, upon making a claim, be forced into “vexatious, time consuming, expensive” litigation with his insurer. Id. at 52. By announcing this rule, the Olympic Steamship court intended to encourage insurance carriers to promptly pay claims. Id. at 53.

In McGreevy v. Oregon Mut. Ins. Co., 128 Wn.2d 26, 30, 904 P.2d 731 (1995), the Supreme Court reaffirmed the Olympic Steamship rule and, notably, confirmed that the insured has a right to attorneys’ fees when forced to litigate the scope of coverage available under the policy. There, the insurer did not dispute the insured’s right to UIM coverage under the

policy but, instead, claimed that an anti-stacking clause within the policy limited the amount which the insured could recover. Id. at 30. The ruling of McGreevy was reaffirmed by the Supreme Court in Leingang v. Pierce County Medical Bureau, 131 Wn.2d 133, 147, 930 P.2d 288 (1997) where the Supreme Court confirmed that, where an insurer admits to “some coverage” but forces the insured to submit to litigation to receive the full benefit of the insurance contract, the Olympic Steamship rule applies. Similarly, in Safeco Insurance Company v. Woodley, 150 Wn.2d 765, 774, 82 P.3d 660 (2004), the Supreme Court reasoned that an insured who is required to engage in litigation to obtain the “full benefit” of coverage is entitled to his attorneys fees and costs.

Here, the Olympic Steamship rule is fully applicable to Humleker’s claim and, accordingly, Humleker is entitled to his fees and costs. Expressly, Humleker has been forced to engage in litigation over the issue of whether he is eligible for full UIM coverage. The scenario, a dispute over the scope of coverage, is precisely the scenario contemplated by Olympic Steamship and its progeny.

RAP 18.1(a) authorizes this Court to award fees to Humleker where “applicable law grants to a party the right to recover reasonable attorneys’ fees.” In the current case, Olympic Steamship authorizes Humleker to recover fees and costs by. Accordingly, this Court should

order that Humleker is entitled to recovery of fees at the trial court level and on appeal.

VI. CONCLUSION

The public policy of protecting innocent victims of underinsured motorists must be kept in mind by this Court while considering the legal sufficiency of the claimed “rejection” by USB of UIM coverage. Critically, the Court should evaluate the sufficiency of the rejection on the basis of the writing contained within the record (*i.e.*, the summary form), not, as will likely be urged by Zurich, post-claim statements of intent regarding the scope of UIM coverage.

There is no Washington precedent to permit the summary form to stand as a valid rejection of full UIM coverage. To the contrary, all precedent in Washington requires that any rejection of UIM benefits be based upon affirmative and conscious act. An affirmative and conscious act necessarily requires that the insured, at the time of contracting, know what is being given up. In short, the insurer must offer the insured full UIM coverage before he can knowingly reject it. Here, none of the documentation relied upon by Zurich, including the unsigned Washington form, advises the insured of the right to full UIM coverage. Instead, Zurich asks this Court to rely solely upon the post-claim statements of intent. There is no Washington case which permits the court to go behind

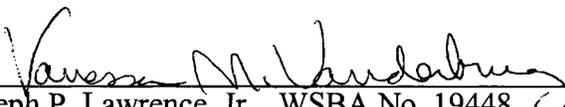
the writing in the manner which Zurich suggests. For this Court to do so would undermine Washington precedent encouraging full compensation of injured victims, allow for potential collusion between named insureds and insurers to the detriment of all those insured under the policy, and the long standing principle that any ambiguity in coverage must be construed in favor of coverage; not limitation of coverage.

Humleker, as an insured under the USB policy, has had to seek court intervention to allow for the full benefits of his policy. As a result, he is entitled to his attorneys' fees and costs both at the trial court level and for this appeal.

For these, and all the foregoing reasons, the ruling of the trial court should be reversed and this matter should be remanded for entry of judgment in favor of Humleker.

RESPECTFULLY SUBMITTED THIS 15th day of March, 2010.

LAWRENCE & VERSNEL PLLC

By: 
Joseph P. Lawrence, Jr., WSBA No. 19448
Vanessa M. Vanderbrug WSBA No. 31668
Of attorneys for Appellant

APPENDIX

CURRENT RCW 48.22.030

West's Revised Code of Washington Annotated Currentness

Title 48. Insurance (Refs & Annos)

Chapter 48.22. Casualty Insurance (Refs & Annos)

48.22.030. Underinsured, hit-and-run, phantom vehicle coverage to be provided--Purpose--Definitions--Exceptions--Conditions--Deductibles--Information on motorcycle or motor-driven cycle coverage--Intended victims

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property

damage coverage that is less than the insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him or her under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate

that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section.

CREDIT(S)

[2009 c 549 § 7106, eff. July 26, 2009; 2007 c 80 § 14, eff. July 22, 2007. Prior: 2006 c 187 § 1, eff. June 7, 2006; 2006 c 110 § 1, eff. June 7, 2006; 2006 c 25 § 17, eff. June 7, 2006; 2004 c 90 § 1, eff. June 10, 2004; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

West's RCWA 48.22.030

ZURICH SUMMARY FORM



Corporate Customer

**UNINSURED/UNDERINSURED MOTORISTS COVERAGE OPTION II
SELECTION/REJECTION/LIMITS SUMMARY FORM**

U-CA-309-H CW (12/01) Page 1 of 2

Your policy(s) contain Uninsured/Underinsured Motorists Coverage Selection/Rejection and Limits Options forms which allow you to reject coverage or to select various limits and coverage options. Your signature on this form indicates that you have read and understand each state form and that the selections or rejections marked on the state forms have been accepted by you without signing and dating each form. This form provides a summary of the selected Limits by State. However, in those states marked with an asterisk (*), the first named insured must sign that state's selection/rejection form.

OPTION II State Min UM/UIM – Combined Single Limit	
STATE	SELECTED LIMITS
Alabama	40,000
Alaska	125,000
Arizona *	40,000
Arkansas *	25,000 / 50,000
California *	35,000
Colorado	25,000 / 50,000
Connecticut *	40,000
Delaware	40,000
District Of Columbia	25,000 / 50,000 / 10,000
Florida *	30,000
Georgia	75,000
Hawaii *	20,000 / 40,000
Idaho	50,000
Illinois	55,000
Indiana *	60,000 UM 50,000 UIM
Iowa	20,000 / 40,000
Kansas	60,000
Kentucky	60,000
Louisiana *	30,000
Maine	125,000
Maryland *	55,000
Massachusetts	50,000
Michigan	20,000 / 40,000
Minnesota	30,000 / 60,000
Mississippi	10,000 / 20,000
Missouri	50,000
Montana	25,000 / 50,000
Nebraska	25,000/50,000
Nevada *	40,000
New Hampshire	25,000 / 50,000 / 25,000
New Jersey	35,000
New Mexico	60,000
New York	60,000
North Carolina *	85,000
North Dakota	75,000
Ohio *	25,000



Corporate Customer

OPTION II State Min UM/UIM – Combined Single Limit	
STATE	SELECTED LIMITS
Oklahoma *	10,000 / 20,000
Oregon *	60,000
Pennsylvania *	35,000
Puerto Rico	N/A
Rhode Island	75,000
South Carolina *	40,000
South Dakota	25,000 / 50,000
Tennessee	60,000
Texas	55,000
Utah *	65,000
Vermont	50,000 / 100,000/10,000
Virginia *	70,000
Washington	60,000
West Virginia *	50,000
Wisconsin	50,000UM 100,000 UIM
Wyoming	70,000

Please Note: * Indicates the attached State Form MUST be signed by the First Named Insured.

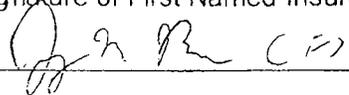
Please return the signed form and required state forms within 10 days of receipt to avoid unselected higher limits and the subsequent additional premium charges.

THIS SUMMARY IS NOT A SUBSTITUTE FOR REVIEWING EACH INDIVIDUAL STATE'S SELECTION/REJECTION FORM FOR UM AND UIM COVERAGE. YOU ARE REQUIRED TO DO SO.

Policy numbers to which this form applies: BAP3790262-00
 Effective date of coverage: 02/01/03
 First Named Insured shown in the Policy Declarations: UNITED STATES BAKERY

I acknowledge that I have reviewed each individual state's selection/rejection form, I have made the elections indicated and that I have the authority to sign this form on behalf of all Named Insured's on those policies listed above.

Signature of First Named insured shown in the Policy Declarations:



Title _____

Date Signed: _____

WASHINGTON REJECTION FORM

Return Premium (if any)

\$

REJECTION OF UNDERINSURED MOTORISTS COVERAGE OR SELECTION OF LOWER LIMIT OF LIABILITY

(WASHINGTON)

The Washington Code (Section 48.22.030), amended, permits you, the insured named in the policy, to reject the Underinsured Motorists Coverage in its entirety, to reject the property damage only portion of the Underinsured Motorists Coverage or to select a limit of liability lower than the limit for Liability Coverage in the policy. You may select a lower limit for property damage only if Underinsured Motorists Coverage is provided on a split limit basis.

Underinsured Motorists Coverage provides insurance for the protection of persons insured under the policy who are legally entitled to recover damages from the owners or operators of underinsured motor vehicles because of bodily injury, death or property damage where either no bodily injury or property damage liability bond or insurance policy applies at the time of the accident, or where the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the amount which the covered person is legally entitled to recover as damages.

In accordance with the Washington Code (Section 48.22.030), amended, the undersigned insured (and each of them)—

(Applicable item marked [X])

agrees that the Underinsured Motorists Coverage afforded in the policy is hereby deleted.

agrees that the property damage only portion of the Underinsured Motorists Coverage afforded in the policy is hereby deleted.

agrees that the following lower limit of liability applies with respect to the Underinsured Motorists Coverage afforded in the policy.

(Enter if a single limit of liability applies.)

_____ each accident

(Enter if separate limits of liability apply to Bodily Injury and Property Damage or if lower limit(s) of liability apply to Bodily Injury or Property Damage only.)

_____ each person

Bodily Injury

_____ each accident

Bodily Injury

_____ each accident

Property Damage

SIGNATURE OF INSURED

SIGNATURE OF INSURED

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the below date, I sent by delivery a true copy of this document as follows:

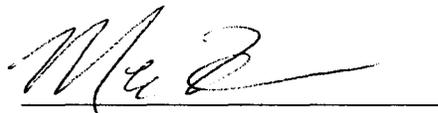
Jacquelyn A. Beaty
Gene Barton
Karr Tuttle Campbell
1201 Third Ave., #2900
Seattle, WA 98101
206-682-7100

ORIGINAL SENT FOR FILING TO:

Washington State Court of Appeals, Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

FILED
COURT OF APPEALS
DIVISION II
10 MAR 15 PM 1:32
STATE OF WASHINGTON
BY MJ
DEPUTY

DATED this 15th day of March, 2010, at Seattle, Washington.



Megan Fensterman, Legal Assistant to
Joseph P. Lawrence, Jr., WSBA No. 19448
Vanessa M. Vanderbrug WSBA No. 31668