

COURT OF APPEALS OF THE STATE
OF WASHINGTON, DIVISION TWO
No. 41931-9-II (Consolidated)

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JAMES and DEBORAH SHARBONO, individually and the marital community
composed thereof; CASSANDRA SHARBONO,
Appellants

vs.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY; a foreign
insurer; LEN VAN DE WEGE and "JANE DOE" VAN DE WEGE, husband
and wife and the marital community composed thereof,
Respondents,

and

CLINTON L. TOMYN, individually and as Personal Representative of the
Estate of CYNTHIA L. TOMYN, deceased; and as Parent/Guardian of
NATHAN TOMYN, AARON TOMYN and CHRISTIAN TOMYN,
minor children
Intervenors/Respondents

CLINTON L. TOMYN, individually and as Personal Representative of the
Estate of CYNTHIA L. TOMYN, deceased; and as Parent/Guardian of
NATHAN TOMYN, AARON TOMYN and CHRISTIAN TOMYN,
minor children
Respondents

v.

CASSANDRA SHARBONO, individually; JAMES and DEBORAH
SHARBONO, individually and the marital community composed thereof,
Appellants

BRIEF OF APPELLANTS

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2. The trial court erred by failing to order the Tomyns to file a full satisfaction of the judgment entered in Tomyn v. Sharbono, Pierce County Cause No. 99-2-12800-7, after the Tomyns received the funds paid to them on March 4, 2011.

3. The trial court erred when it allowed full satisfaction of the judgment entered in Sharbono v. Universal, Pierce County Cause No. 01-2-07954-4, without fully satisfying the judgment entered in Tomyn v. Sharbono, Pierce County Cause No. 99-2-12800-7.

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STATEMENT OF RELATED CASES

This court has considered this case in multiple other related appeals. They are: docket no. 33379-1-II, which resulted in a published decision, *Sharbono v. Universal Underwriters*, 139 Wn. App. 383, 161 P.3d 406 (2007); docket nos. 38425-6-II and 38596-1-II, which were consolidated, resulted in a published decision, *Sharbono v. Universal Underwriters*, 158 Wn. App. 963, 247 P.3d 430 (2010, amended Jan 19, 2011); docket no. 39781-1-II, which resulted in an unpublished decision on March 22, 2011; docket no. 40245-9-II, which resulted in an unpublished decision on July 19, 2011; and this appeal. The background facts are taken from those decisions.

ASSIGNMENTS OF ERROR

1. The trial court erred by failing to order that the judgment entered in *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7, was fully satisfied by the funds the Tomyns received on March 4, 2011.
2. The trial court erred by failing to order the Tomyns to file a full satisfaction of the judgment entered in *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7, after the Tomyns received the funds paid to them on March 4, 2011.
3. The trial court erred when it allowed full satisfaction of the judgment entered in *Sharbono v. Universal*, Pierce County Cause No. 01-2-07954-4, without fully satisfying the judgment entered in *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the settlement agreement require the Tomyns to satisfy the confessed judgment once they received payment in excess of the amount owing under that judgment?
2. Should the trial court have ordered the Tomyns to satisfy the confessed judgment once they received payment in excess of the amount owing under that judgment, or alternatively ordered the clerk to satisfy the judgment?
3. Should the trial court have allowed the judgment in *Sharbono v. Universal* to be fully satisfied without requiring full satisfaction of the *Tomyn v. Sharbono* judgment?

STATEMENT OF THE CASE

1. Introduction

This is an appeal of trial court orders which (1) declined to order that a money judgment against the appellants that was paid in full be satisfied in full, and (2) ordering that a different judgment in favor of appellants which was not fulfilled be fully satisfied. The results of these orders was the entry of a partial satisfaction of judgment where a full satisfaction should have been entered, and the entry of a full satisfaction of judgment where only a partial satisfaction should have been entered. To understand the appeal, it is necessary to review, briefly, some of the years of history that precede it.

2. Cynthia Tomyn is killed in a car accident and the Sharbonos are responsible.

Cynthia Tomyn died in a car accident on December 11, 1998. The accident occurred when the 16 year-old daughter of James and Deborah

Sharbono, Cassandra Sharbono, swerved into oncoming traffic to avoid vehicles stopped in front of her. In June, 1999, the Tomyns demanded \$5 million from the Sharbonos to settle their claims from the accident.

3. Universal refuses to help the Sharbonos determine how much insurance they should have.

Universal Underwriters, Inc. was one of the Sharbonos' insurers. It provided excess insurance. Following the accident, Universal told the Sharbonos they had \$1 million of excess insurance. The Sharbonos believed they should have had at least \$3 million.

The Sharbonos retained counsel to help them determine why they did not have the amount of insurance they thought they had purchased. In August, 1999, the Sharbonos' attorneys began communications with Universal in an attempt to obtain documents relating to the Sharbonos' purchase of insurance. Universal refused to provide the requested documents. Later, the Tomyns joined in the demand, threatening suit against the Sharbonos if Universal did not act.

4. The Sharbonos and the Tomyns settle. The Sharbonos agree to confess judgment for \$4.525 million, sue Universal, and pay some of the recovery to the Tomyns. The Tomyns to satisfy the judgment with the payment.

After it became apparent Universal would not help the Sharbonos in their coverage investigation, the Tomyns sued them. *Tomyn v. Sharbono*, Pierce County cause no. 99-2-128000-7. In March, 2001, they reached a

settlement . (CP 244-48)¹ Under the terms of the settlement, the Sharbonos agreed to have judgment entered against them. (CP 245 at ¶1.) In addition, they agreed to file a lawsuit against Universal, and to give certain benefits of their recovery from Universal, if any, to the Tomyns. (CP 245-46 at ¶¶2,3.) The Sharbonos retained their rights to other recoveries. (CP 246 at ¶2.) In exchange, the Tomyns agreed not to execute on the judgment against James and Deborah Sharbono, and to forebear from executing against Cassandra. (CP 247 at ¶¶ 5-6). With regard to the Sharbonos' obligations, the agreement states:

1. Confession of Judgment: The defendants will comply with and take all steps needed to confess judgment pursuant to RCW ch. 4.60 in the amount of \$4,525,000. The signature of defendants and their attorneys on a confession of judgment in the form attached hereto and marked as attachment 1 will be deemed full compliance with this paragraph.
2. Assignment of Rights: The defendants assign to plaintiffs all amounts awarded against or obtained from Universal for the following:
 - A. The benefits payable under any liability insurance policy in which Defendants have any interest for a covered loss that Universal has breached with respect to claims arising out of

1. The record includes two sets of Clerks Papers. One set provides pleadings from cause number 01-2-07954-4, Sharbono v. Universal. The vast majority of relevant documents (pages 1 - 392) are in this set. The other provides pleadings from cause no. 99-2-128000-7, Tomy v. Sharbono. Appellant will cite the first set as "CP" and the second set as "CP II."

the December 11, 1998 motor vehicle accident.

B. The benefits payable under any liability insurance policy which, because of an act of bad faith, Universal is estopped to deny or deemed to have sold to Defendants.

C. If one or both insurers fail immediately to tender the undisputed liability coverage amounts, any and all causes of action against such insurers resulting from such failure of tender, including claims for the lost use of such monies, bad faith insurance practices, violation of Washington's Consumer Protection Act, misrepresentation, fraud, breach of fiduciary duties, negligence, non-feasance, misfeasance, malfeasance, or other such similar causes of action.

(CP 245-46, ¶¶ 1 and 2.) The settlement obligated the Tomyns as follows:

Plaintiffs will apply the proceeds, if any, they obtain by virtue of this assignment towards the judgment referred to in paragraph 1. above, and execute full or partial satisfaction of said judgment as is thereby appropriate.

(CP 246, ¶ 2.) The agreement contained a condition precedent:

Condition Precedent: This agreement, and all acts taken in furtherance of it as set forth herein is conditioned upon the immediate tender of the undisputed liability coverages from the Defendants' carriers; to-wit State Farm -- \$250,000.00, and Universal -- \$1,000,000.00. This agreement is voidable upon notice from any party within five days of either carrier's failure to pay. In the event a party declares the agreement void, all parties will take such acts as are necessary to return the parties to the status quo ante.

(CP 247, ¶7.)

There is no dispute the condition precedent money was paid, and the

settlement agreement became final. (CP 245 at ¶2C.) Accordingly, also on March 30, 2001, a Confession of Judgment was entered in *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7. (CP 220-24 ;CP II at 1-5.)

5. The Sharbonos successfully sue Universal.

On May 10, 2001, the Sharbonos filed suit against Universal. The history of that lawsuit is detailed in *Sharbono v. Universal Underwriters*, 139 Wn. App. 383, 161 P.3d 406 (2007) (*Sharbono I*). The Sharbonos were successful in many of their claims. They obtained partial summary judgments determining that their settlement with the Tomyns was reasonable and that Universal acted in bad faith as a matter of law. They obtained a directed verdict establishing Universal's liability for the consent judgment. In March, 2005, they prosecuted a jury trial which determined that Universal's actions caused them personal damages. The jury awarded the Sharbonos \$4.5 million dollars in addition to Universal's obligation to pay the consent judgment, which then totaled about \$4.9 million.

On May 20, 2005, the trial court entered a money judgment against Universal for approximately \$9.4 million. (CP 226-28.) The two principle awards were stated in separate paragraphs:

1. Judgment is hereby entered in favor of plaintiffs and against defendant Universal Underwriters Insurance Company in the amount of the unpaid balance of the Judgment by Confession entered against plaintiffs in the matter of *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-

12800-7, to wit \$3,275,000.00, together with interest that has accrued thereon since the date of entry, March 30, 2001, which, as of May 13, 2005, (four years, 43 days @ 12 %/yr.) totals \$ 1,618,298.63, and together with interest that continues to accrue thereon as set forth in said judgment until said judgment is paid.

2. Judgment is hereby entered in favor of plaintiffs James and Deborah Sharbono and against defendant Universal Underwriters Insurance Company in the additional sum of \$4,500,000.00, as and for past and future general and special damages as found by the jury.

(CP 228.)

Universal appealed the judgment. As *Sharbono I* shows, some of the Sharbonos' successes survived that appeal while some did not. The appellate court affirmed summary judgment holding Universal guilty of bad faith. It also affirmed paragraph 1 of the judgment requiring Universal to pay the Tomyln/Sharbono consent judgment. The court reversed paragraph 2 of the judgment requiring Universal to pay the Sharbonos for their personal damages and remanded for retrial.

The case was mandated to the trial court in July, 2008. Thereafter, the Sharbonos promptly moved to enforce and have paid that part of the judgment the Court of Appeals affirmed. See *Sharbono v. Universal Underwriters*, 158 Wn. App. 963, 968, 247 P.3d 430 (2010, amended Jan 19, 2011)(*Sharbono II*). In conjunction with the Sharbonos' actions, the Tomyns moved to intervene. (CP 15-32.) On September 5, 2008, the court allowed the Tomyns

to intervene. (CP 33-35.) Thereafter, the Tomyns joined the Sharbonos' efforts to execute on the part of the judgment affirmed by the Court of Appeals. *Sharbono II*, 158 Wn. App. at 968. Both agreed this part of the judgment belonged to the Tomyns pursuant to their settlement agreement. (CP 117-20.)

The Sharbonos and the Tomyns were successful in their efforts to execute on the affirmed part of the judgment. On October 3, 2008, the trial court granted the Sharbonos' motion to execute on Universal's appeal bond, ordering Ohio Casualty Insurance Company, the issuer of Universal's appeal bond, to pay the judgment. *Sharbono II*, 158 Wn.App. at 968. When Ohio Casualty failed to pay, the court ordered Universal to post cash (nearly \$13 million) in lieu of bond. Then, on June 12, 2009, after Universal made the payment, the trial court ordered a part of that fund, \$4.893 million, to be paid directly to the Tomyns. (CP 144-47.) The Tomyns received that payment. The payment corresponds to the value of the Tomyn/Sharbono consent judgment with interest through May 20, 2005, the date of the judgment in this action. (CP 120 n.3) When combined with the previous payments they already had received (\$1,250,000.00), the Tomyns had now received a total of \$6,143,298.63, with a balance still owing.

Universal appealed the October 3, 2008 order. The Court decided that appeal on December 17, 2010. *Sharbono II*, 158 Wn. App. 963, 247 P.3d

430 (2010, amended Jan 19, 2011). The Court affirmed the award of post-judgment interest, but remanded the case to the trial court for re-calculation of that interest.

After *Sharbono II*, all that remained in the litigation between the Sharbonos and Universal was for the trial court to calculate post-judgment interest and Universal to pay it. The Sharbonos had settled their retained claims for their personal losses in October, 2009, so those claims were no longer at issue in the case. Only amounts owing to the Tomyns remained to be paid.

6. The Sharbonos recover \$9,023,234.93 for the Tomyns, but the Tomyns refuse to satisfy the confessed judgment.

On March 4, 2011, the Sharbonos, the Tomyns and Universal brought three motions before the trial court to end the case: (1) a Motion to Disburse Funds brought by Intervenors (CP 148-86); (2) a Motion to Disburse Funds brought by Universal (CP 187-205); (3) a Motion to Satisfy Judgment In Cause No. 99-2-12800-7 (Tomyn v. Sharbono) brought by the Sharbonos. (CP 235-69.) In the motions, all parties agreed Universal owed the balance due under paragraph 1 of the May 20, 2005 judgment, and that the balance due was \$2,879,936.30. All parties also agreed the money should go to the Tomyns by virtue of the March 30, 2001 settlement agreement.

But the parties disagreed on the effect of Universal's payment on the

satisfaction of the two judgments at issue. The Sharbonos contended that if the court recognized Universal's payment as fully satisfying the Sharbono/Universal Judgment in cause no. 01-2-07954-4, then it also had to satisfy the Tomyn/Sharbono judgment in Cause No. 99-2-12800-7. (CP 238-40) This was for three reasons. First, paragraph 1 of the May 20, 2005 Sharbono/Universal judgement specifically obligated Universal to pay the Tomyn/Sharbono judgment:

1. Judgment is hereby entered in favor of plaintiffs and against defendant Universal Underwriters Insurance Company in the amount of the unpaid balance of the Judgment by Confession entered against plaintiffs in the matter of *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7, to wit \$3,275,000.00, together with interest that has accrued thereon since the date of entry, March 30, 2001, which, as of May 13, 2005, (four years, 43 days @ 12 %/yr.) totals \$ 1,618,298.63, and together with interest that continues to accrue thereon as set forth in said judgment until said judgment is paid.

If Universal's obligation was being satisfied in full, then it had to fully satisfying the Tomyn/Sharbono judgment. Second, the Tomyn/Sharbono settlement agreement obligated the Tomyns to enter a full satisfaction the judgment:

Plaintiffs will apply the proceeds, if any, they obtain by virtue of this assignment towards the judgment referred to in paragraph 1. above, and execute full or partial satisfaction of said judgment as is thereby appropriate.

At the time of the hearing, the balance owing on the Tomyn/Sharbono

judgment was \$1,935,464.01. Because of the “step-up” in post judgment interest awarded in *Sharbono II*, 158 Wn. App. 972-73, the payment from Universal would be \$2,879,936.30, actually exceeding the amount owed on the judgment by nearly \$1 million. Since the payment the Tomyns would receive from Universal would exceed the amount owing on the Tomyn/Sharbono judgment, the settlement agreement required the Tomyns to fully satisfy the judgment. Third, the law required it. Accounting for the effect of previous payments towards, the face value of the Tomyn/Sharbono judgment through March 4, 2011, was \$8,078,762.64.² The Tomyns would actually receive \$9,023,234.93.³ The Sharbonos argued that the law required the Tomyns to satisfy the judgment.

For their part, the Tomyns argued they did not have to fully satisfy the judgment because they had additional claims against the Sharbonos for breach

2. The Principle amount of the Tomyn/Sharbono judgment was \$4,525,000.00. The Sharbonos’ insurers immediately paid \$1,250,000.00, reducing the principle to \$3,275,000.00. Under the terms of the judgment, that amount generated interest at the rate of 12% (\$393,000.00) per annum. By June 12, 2009, when the trial court ordered partial payment to the Tomyns – eight years, two months and twelve 12 days from the date the judgment was entered – the principle balance had accrued \$3,222,420.64 in interest, bringing its total current value to \$6,497,420.64. On June 12, 2009, the Tomyns received \$4,893,298.63, leaving a balance of \$1,604,122.01. That balance generated interest to the March 4, 2011 totaling \$331,342.00. The total value of the judgment on March 4, 2011, is determined by adding \$1,250,000 + \$4,893,298.63 + \$1,604,122.01 + \$331,342.00 = \$8,078,762.64.

3. This sum represents the total of the payments the Tomyns actually received: \$1,250,000.00 (paid by insurers in March, 2001) + \$4,893,298.63 (paid from court registry in June, 2009) + \$2,879,936.30 (paid by Universal in March, 2011) = \$9,023,234.93.

of the settlement agreement. (284-90.) The Tomyns were agreeable to a partial satisfaction of judgment. To obtain a full satisfaction of judgment, the Tomyns required the Sharbonos to pay them the \$2.35 million the Sharbonos obtained in settlement of their personal, unassigned claims. (RP 14-15)

7. The trial court refuses to order the Tomyns to fully satisfy the confessed judgment, leaving the Sharbonos with uncertain obligations.

On March 4, 2011, the trial court denied the Sharbonos' motion while granting Universals' and the Tomyns'. The court made four decisions. First, it ordered the Clerk to disburse \$2,879,936.30 being held in the court registry to the Tomyns. (CP 359-61) Second, it ordered the balance of funds held in the court registry to be returned to Universal. (CP 362-64); Third, it ordered the Tomyns to partially satisfy the Tomyn/Sharbono judgment (CP 357-58). Fourth, it approved a full satisfaction of the Sharbono/Universal judgment, which showed the Tomyns as the judgment creditors, and which only they signed. (CP 365-67). These decisions had the effect of releasing Universal from any further responsibility to the Sharbonos while still holding the Sharbonos responsible to the Tomyns under the Tomyn/Sharbono judgment.

Pursuant to the court's order, on March 15, 2011, the Tomyns filed a Partial Satisfaction of Judgment in Tomyn v. Sharbono. (CPII at 6-9.) The anomaly created by the court's ruling is apparent from the face of the judgment. It shows that Tomyns have received more than the face value of the

judgment, which should mean the judgment is fully satisfied. (CPII at 7-8.) Yet, consistent with the trial court's order, the document is titled as merely a "partial" satisfaction. As a result, the judgment remains a stain on the Sharbonos' record. (CPII at 6-9.) The anomaly creates a practical problem as well. Because the amount paid exceeds the amount owed, the judgment no longer reveals how it can be satisfied so the stain can be removed. Put simply, the Sharbonos have no way to know how they can satisfy the judgment.

ARGUMENT

1. The Tomyn/Sharbono settlement agreement required that the Tomyns satisfy the judgment in full when they received payments sufficient to do so.

A settlement agreement is a contract subject to the principles of contract construction. *Martinez v. Miller Indus., Inc.*, 94 Wn. App. 935, 942, 974 P.2d 1261 (1999); *Byrne v. Ackerlund*, 44 Wn. App. 1, 5, 719 P.2d 1363 (1986). In interpreting a contract, the court considers only what the parties wrote, giving words their ordinary, usual, and popular meaning unless the agreement as a whole clearly demonstrates a contrary intent. *Renfro v. Kaur*, 156 Wn. App. 655, 662, 235 P.3d 800 (2010), citing *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005).

Here, the settlement agreement is clear and unambiguous. The Tomyns agreed that if they received benefits assigned to them, they would

apply those benefits to satisfy the judgment they held against the Sharbonos. If they received sufficient benefits to fully pay the judgment, they would fully satisfy the judgment.

When the funds Universal paid are applied to the Tomyn/Sharbono judgment along with the amounts they previously received, the judgment was satisfied in full. The original judgment amount was \$4,525,000.00. The Sharbonos' insurers immediately paid \$1,250,000.00, reducing the principle to \$3,275,000.00. Under the terms of the judgment, that balance generated interest at the rate of 12% (\$393,000.00) per annum. By June 12, 2009, when the trial court ordered partial payment to the Tomyns – eight years, two months and twelve 12 days from the date the judgment was entered – the principle balance had accrued \$3,222,420.64 in interest, bringing the total amount owed to \$6,497,420.64. On June 12, 2009, the Tomyns received \$4,893,298.63, leaving a balance of \$1,604,122.01. The new balance generated interest to March 4, 2011 totaling \$331,342.00. **Thus, the total that was due on the Tomyn/Sharbono judgment on March 4, 2011, was \$1,935,464.01** (\$1,604,122.01 + \$331,342.00). On March 4, 2011, the Tomyns received \$2,879,936.30, nearly a million dollars more than what the Sharbonos owed. Since the settlement agreement obligated the Tomyns to apply the payments to the Tomyn/Sharbono judgment, and since the benefits

the Tomyns received exceeded what the Sharbonos owed under that judgment, the settlement agreement obligated the Tomyns to fully satisfy the Tomyn/Sharbono judgment. The trial court order relieving the Tomyns from that obligation is in error and should be reversed.

2. As judgment debtors who have caused the full amount of the money judgment against them to be paid, the Sharbonos are entitled to full satisfaction of the Tomyn/Sharbono judgment.

RCW 4.56.100(1) provides:

(1) When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution, or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his or her attorney of record in such action or his or her assignee acknowledged as deeds are acknowledged.

Here, the Tomyns were paid from money held by the clerk. The payment fully paid all the amounts the Sharbonos owed under the judgment the Tomyns held against them. Under RCW 4.56.100(1), the clerk was obligated by statute to satisfy the judgment. The court's order wrongfully interfered with that obligation.

3. The Tomyns' desire to preserve future claims against the Sharbonos did not justify denying full satisfaction of the Tomyn/Sharbono judgment.

In the trial court, the Tomyns resisted having to fully satisfy their judgment against the Sharbonos on the grounds that they did not want to impair further action against the Sharbonos under the settlement agreement. The Tomyns claimed the Sharbonos breached the settlement agreement when they claimed they were entitled to certain post-judgment interest granted in the May 20, 2005 Sharbono/Universal judgment. Though the Tomyns ultimately received all the post-judgment interest awarded by the courts (*Sharbono II*, 158 Wn.App. at 974 (affirming the designation of the Tomyns as the recipients of all judgment interest)), the Tomyns claimed the Court of Appeals would have awarded them more interest if the Sharbonos had not tried to recover the interest themselves.⁴ (RP 14-15)

The argument should be rejected. “A satisfaction of judgment is merely an acknowledgment that the judgment that was entered has been satisfied.” *Do v. Farmer*, 127 Wn. App. 180, 189, 110 P.3d 840 (2005). If

4. In simplest terms, the Tomyns contend that if, in *Sharbono II*, the Sharbonos had not asked that post-judgment interest be awarded to them instead of the Tomyns, the Court of Appeals would have ordered Universal to pay more post judgment interest. The argument is patently unsupportable. In *Sharbono II*, the court reduced the amount of interest Universal owed not because of the whims of the parties' alignment, but because it determined the law required that result. Indeed, it reached its conclusion despite the fact that the Sharbonos asked for a larger sum regardless of whether they or the Tomyns ultimately received the award. Thus, in making the lower award, the Court rejected both the Sharbonos and the Tomyns arguments to the contrary. The Tomyns' argument gives no respect to the Court of Appeals' independent analysis.

the judgment itself does not address a claim, satisfaction of the judgment does not resolve the claim. Thus, in *Do*, a party argued that a full satisfaction of judgment precluded a later claim for attorney fees. But, because the underlying judgment did not address attorney fees, the Court rejected the argument.

Here, the judgment pertained to the personal injury claims by the Tomyns against the Sharbonos arising from the accident. It did not pertain to an alleged breach of the settlement agreement. Thus, satisfaction of the judgment would not preclude whatever claims the Tomyns believe they have against the Sharbonos for an alleged breach of the settlement agreement. It was improper for the trial court to refuse to order the Tomyns to satisfy the Tomyn/Sharbono judgement to preserve the Tomyns' alleged claims.

4. The Sharbono/Universal judgment cannot be satisfied if the Tomyn/Sharbono judgment is not satisfied.

“[I]n the third-party context, ‘if the insured shows by a preponderance of the evidence the insurer acted in bad faith, there is a presumption of harm.’” *Mutual of Enumclaw Ins. Co. v. Dan Paulson Constr. Co.*, 161 Wn.2d 903, 920 P.3d 1 (2007), quoting *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 394, 823 P.2d 499 (1992). “[I]f the insured prevails on the bad faith claim, the insurer is estopped from denying coverage.” *Id.*; *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 564, 951 P.2d 1124 (1998); accord *Besel v.*

Viking Ins. Co., 146 Wn.2d 730, 739, 49 P.3d 887 (2002); *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 390, 823 P.2d 499 (1992). Where coverage by estoppel applies, “the amount of a covenant judgment is the presumptive measure of an insured’s harm caused by an insurer’s tortious bad faith if the covenant judgment is reasonable.” *Besel*, 146 Wn.2d at 738, 49 P.3d 887.

The judgment the Sharbonos obtained against Universal on May 20, 2005 reflected these rules. The Sharbonos’ had proved that Universal acted in bad faith. Accordingly, the judgment ordered Universal to pay the amount of the covenant judgment between the Sharbonos and the Tomyns:

1. Judgment is hereby entered in favor of plaintiffs and against defendant Universal Underwriters Insurance Company in the amount of the unpaid balance of the Judgment by Confession entered against plaintiffs in the matter of *Tomyn v. Sharbono*, Pierce County Cause No. 99-2-12800-7, to wit \$3,275,000.00, together with interest that has accrued thereon since the date of entry, March 30, 2001, which, as of May 13, 2005, (four years, 43 days @ 12 %/yr.) totals \$ 1,618,298.63, and together with interest that continues to accrue thereon as set forth in said judgment until said judgment is paid.

To fully satisfy this part of the judgment, Universal had to pay the Tomyn/Sharbono judgment.

The trial court failed to follow the plain working of the judgment. The trial court did not require Universal to pay the Tomyn/Sharbono judgment. Instead, it allowed Universal to pay, and to be given a full

satisfaction of the judgment against it, while only partially satisfying the Tomynd/Sharbono judgment.

CONCLUSION

The anomaly created by the court's rulings is apparent. On one hand the partial satisfaction of judgement entered in the Tomynd/Sharbono matter shows that the Tomyns have received more than the face value of the judgment, which should mean the judgment is fully satisfied. Yet, the document is captioned as merely a "partial" satisfaction. Moreover, because the amount paid exceeds the amount owed, the judgment no longer reveals how it can be satisfied. The Tomyns have simply manufactured the contention that the Sharbonos can fully satisfy the judgment by paying them the money the Sharbonos received in the settlement of their personal claims with Universal, another \$2.35 million.

On the other hand, the judgment entered in the Sharbono/Universal matter required Universal to pay the Tomynd/Sharbono judgment. Despite allowing the Tomynd/Sharbono judgment to be only partially satisfied, the trial court allowed a full satisfaction of the Sharbono/Universal judgment. This means the asset which should have satisfied the Tomynd/Sharbono judgment – the Sharbono/ Universal judgment – is no longer available.

A judgment creates a judicial lien against the judgment debtor's property. A.M. Dickerson, R.B. Hagedorn & F.W. Smith, *The Law of*

Debtors & Creditors §6:59 at 6-163 (Thompson West 2005). Because the Tomyn/Sharbono judgment remains unsatisfied, the lien against the Sharbonos remains. That should not be the case.

The trial court erred by failing to order the Tomyns to satisfy the Tomyn/Sharbono judgment. Once the Tomyns received enough money to fully pay the face amount of their judgment, the court should have ordered them to satisfy the judgment. Alternatively, the trial court erred by relieving Universal from the obligations imposed by the Sharbono/Universal judgment without fully satisfying the Tomyn/Sharbono judgment. If the court would not order the Tomyn/Sharbono judgment satisfied, it should not have relieved Universal of further obligations to the Sharbonos.

The Sharbonos ask this court to reverse the trial court and remand with instructions that the trial court either order the Clerk to show that the Sharbonos have fully satisfied the Tomyn/Sharbono judgment, or withdraw the full satisfaction of the Sharbono/Universal judgment to show it has only been partially satisfied.

Dated this 27th day of August, 2011.

By: 
TIMOTHY R. GOSSELIN, WSBA # 13730
Attorney for Appellants

Appendix 1

**SETTLEMENT AGREEMENT
(INCLUDING COVENANTS AND ASSIGNMENT OF RIGHTS)**

PARTIES

The parties to this agreement are the plaintiffs and defendants in Pierce County Superior Court Cause No 99-2-12800-7. The plaintiffs are Clinton Tomy; the Estate of Cynthia Tomy, by and through Clinton Tomy its personal representative, Nathan Tomy, by and through David Bufalini, his guardian ad litem, Aaron Tomy, by and through Stanley J. Rumbaugh, his guardian ad litem, and Christian Tomy, by and through John Combs, his guardian ad litem. They will be referred to collectively as plaintiffs and individually by their individual names. The defendants are Cassandra Sharbono, James Sharbono, individually and on behalf of his marital community, and Deborah Sharbono, individually and on behalf of her marital community. They will be referred to collectively as defendants and individually by their individual names.

PURPOSE OF AGREEMENT

The purpose of this agreement is to protect the assets, earnings and personal liability of defendants from a verdict in excess of the limits of primary insurance acknowledged as applicable by State Farm Automobile Insurance Company (hereafter State Farm) and umbrella insurance acknowledged as applicable by Universal Underwriters Insurance Company (hereafter Universal), as well as to protect defendants from the expense and hardship of bankruptcy proceedings.

Plaintiffs have filed suit against defendants in Pierce County Superior Court under cause number 99-2-12800-7 for damages suffered from a car accident that occurred on December 11, 1998. The accident resulted in the death of Cynthia Tomy, the wife of Clinton Tomy, and the natural mother of Nathan, Aaron and Christian Tomy.

Defendants have primary liability insurance in the amount of \$250,000.00 with State Farm. Defendants have umbrella liability insurance with Universal. The amount of insurance Universal provides is disputed. Universal contends and therefore acknowledges that it provides \$1 million in insurance coverage. Universal has denied any further obligation. Defendants contend Universal is obligated to provide at least \$3 million in insurance coverage. Defendants also contend that in the event Universal provides only \$1 million in insurance coverage, the coverage Universal sold to

Initials

Original 1 of 2
Page 1 of 5

defendants was sold through fraud, misrepresentation, negligence or other misconduct on the part of Universal, the selling agent or others

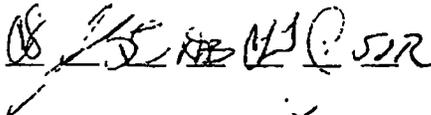
Plaintiffs suffered damages as a result of the death of Cynthia Tomy. The parties, by and through their respective attorneys, have conducted independent investigations and evaluations of the plaintiffs' claims against the defendants and concluded that defendants face a real and substantial risk that judgment will be entered against defendants in excess of the \$250,000 insurance provided by State Farm and the \$1 million insurance Universal acknowledges. Universal's denial of additional insurance has left the defendants' property, earnings and personal assets exposed to substantial risk of attachment to satisfy any such judgment

Therefore, in an effort to settle all of plaintiffs' claims against defendants in a way that offers some protection of defendants' assets, eliminates or reduces the risk that any defendant must file bankruptcy to protect their personal financial well-being, as a consequence of the extreme severe adverse financial impact of a judgment which is likely to exceed all available insurance coverages and Defendants' net assets, and preserves the ability to challenge any wrongful conduct by Universal or others with regard to the insurance available to defendants, the parties have agreed to settlement on the following terms and conditions

TERMS AND CONDITIONS

- 1 Confession of Judgment: The defendants will comply with and take all steps needed to confess judgment pursuant to RCW ch 4 60 in the amount of \$4,525,000. The signature of defendants and their attorneys on a confession of judgment in the form attached hereto and marked as attachment 1 will be deemed full compliance with this paragraph
- 2 Assignment of Rights. The defendants assign to plaintiffs all amounts awarded against or obtained from Universal for the following
 - A The benefits payable under any liability insurance policy in which Defendants have any interest for a covered loss that Universal has breached with respect to claims arising out of the December 11, 1998 motor vehicle accident
 - B The benefits payable under any liability insurance policy which, because of an act of bad faith, Universal is estopped to deny or deemed to have sold to Defendants
 - C If one or both insurers fail immediately to tender the undisputed

Initials

Handwritten initials and signatures, including what appears to be 'AS', 'S', 'RB', 'MS', and 'JR'.

Original 1 of 2
Page 2 of 5

to the total damages awarded in the suit

- 4 Court Approval Plaintiffs may request a judicial determination that this settlement is reasonable under RCW 4 22 060, and/or that the settlement is in the best interests of the minor plaintiffs under SPR 98 16W, and/or such other proceedings to obtain the same or similar results. Defendants will make themselves reasonably available and provide truthful, accurate testimony or evidence for such proceedings
- 5 Covenant not to Execute In consideration of the foregoing, the plaintiffs agree and covenant not to execute or enforce the judgment referred to in paragraph 1 above against the defendants James and Deborah Sharbono, their successors, heirs or assigns, that they will not proceed against those defendants' personal assets, earnings or property, and that as to those defendants they shall confine collection of the remaining balance of the judgment to the funds obtained pursuant to the assignment set forth in paragraph 2 above. Regardless of the result, upon final resolution of the suit referred to in paragraph 3 above, plaintiffs will execute a full satisfaction of judgment in favor of defendants James and Deborah Sharbono.
- 6 Covenant to Forebear In consideration of the foregoing, the plaintiffs agree and covenant to forbear from executing or enforcing the judgment referred to in paragraph 1 above against the defendant Cassandra Sharbono, her successors, heirs or assigns until final resolution of the suit referred to in paragraph 3 above, and that until such time plaintiffs will not proceed against that defendant's personal assets, earnings or property in collection of said judgment. Plaintiffs further agree and covenant not to execute or enforce the judgment against any assets, proceeds or awards Cassandra Sharbono recovers other than those described in paragraphs 2 A and 2 B above
7. Condition Precedent This agreement, and all acts taken in furtherance of it as set forth herein is conditioned upon the immediate tender of the undisputed liability coverages from the Defendants' carriers, to-wit State Farm -- \$250,000 00, and Universal -- \$1,000,000 00. This agreement is voidable upon notice from any party within five days of either carrier's failure to pay. In the event a party declares the agreement void, all parties will take such acts as are necessary to return the parties to the status quo ante.
- 8 Satisfaction of Liens and Claims Plaintiffs will satisfy and discharge all liens and rights of subrogation of any type which have or may attach to the proceeds of this agreement. Plaintiffs further agree to indemnify defendants and their attorneys and hold them harmless from any and all claims and causes of action for such liens or subrogation interests. This agreement includes all lien claims for services rendered pursuant to public or private obligation, contract or statute

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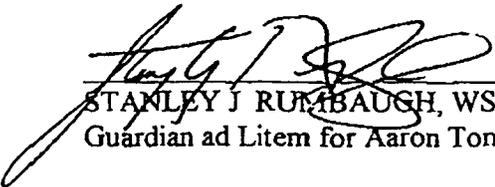
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Original 1 of 2
Page 4 of 5

- 9 Resolution of All Claims. The parties intend that this agreement fully and finally resolve all claims among them. In the event any such claim is not specifically provided for herein, the parties agree it is compromised, fully released and finally discharged
- 10 Advice and Counsel Plaintiffs have executed this agreement after advice and counsel by their attorneys, Ben F Barcus and Peter Kram Defendants have executed this agreement after advice and counsel by their attorneys, Timothy R Gosselin and Dennis J La Porte Regardless, the parties agree they have read, understood and voluntarily accepted the terms of this agreement for the purposes set forth above, including the full and final resolution of all claims among them
- 11 Entire Agreement: This agreement contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be modified or amended in any way except in writing signed by the parties hereto


 CLINTON TOMYN, Individually and as
 Personal Representative of the Estate of
 Cynthia Tomyn

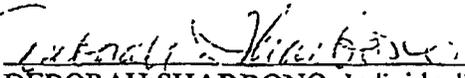

 DAVID A BUFALINI, WSBA #8262
 Guardian ad Litem of Nathan Tomyn


 STANLEY J RUMBAUGH, WSBA#8980
 Guardian ad Litem for Aaron Tomyn


 JOHN E. COMBS, WSBA#13721
 Guardian ad Litem for Christian Tomyn

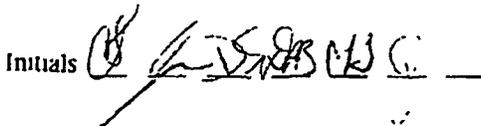

 CASSANDRA SHARBONO


 JAMES SHARBONO, Individually and
 on behalf of his marital community


 DEBORAH SHARBONO, Individually
 and on behalf of her marital community

Subscribed and sworn to before me this 30th day of MARCH, 2001


 Print Name Timothy R. Gosselin
 Notary Public in and for the State of Washington
 Residing at TACOMA, WA
 My Commission Expires 9-6-03

Initials 

Appendix 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CLINTON L. TOMYN, individually and as
Personal Representative of The Estate of
CYNTHIA L. TOMYN, deceased; and as
Parent/Guardian of NATHAN TOMYN, AARON
TOMYN; and CHRISTIAN TOMYN, minor
children,

Plaintiffs,

vs

CASSANDRA SHARBONO, individually,
JAMES and DEBORAH SHARBONO,
individually and the marital community composed
thereof,

Defendants

NO 99-2-12800-7

JUDGMENT BY CONFESSION

JUDGMENT SUMMARY

1 Judgment Creditors'

CLINTON L. TOMYN, individually and as Personal
Representative of The Estate of CYNTHIA L. TOMYN,
deceased, and as Parent/Guardian of NATHAN TOMYN,
AARON TOMYN, and CHRISTIAN TOMYN, for them
and on their behalf

JUDGMENT BY CONFESSION - 1
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BURGESS FITZER, P. S.

ATTORNEYS AT LAW
1501 MARKET STREET, SUITE 300
TACOMA, WASHINGTON 98402-3333
(253) 572-5324 FAX (253) 627-8928

1 2. Judgment Debtors CASSANDRA SHARBONO, individually; JAMES and
2 DEBORAH SHARBONO, individually and as a marital
3 community
4 c/o Timothy R. Gosselin
5 BURGESS FITZER, P S
6 1501 Market, Suite 300
7 Tacoma, WA 98402-3333

6 3 Principal Judgment Amount. \$4,525,000
7 (Estate of Cynthia L. Tomyn - \$
8 (Clinton Tomyn, individually - \$
9 (Nathan Tomyn, individually - \$
10 (Aaron Tomyn, individually - \$
11 (Christian Tomyn, individually - \$

10 5 Interest to Date of Judgment -0-

11 6 Statutory Attorney's Fees (RCW 4 84 080) -0-

12 7 Costs (RCW 4 84 010) -0-

13 8. Other Recovery Amounts -0-

14 9 Principal Judgment Amount shall bear interest at 12% per annum (RCW 19 52 010)

15 10. Attorneys for Judgment Creditors: Ben F Barcus, Attorney at Law
16 4303 Ruston Way
17 Tacoma, WA 98402
18 (253) 752-4444

18 JUDGMENT BY CONFESSION

19 THIS MATTER having come on regularly for hearing this date, the plaintiffs appearing by and
20 through their attorney, Ben F Barcus, the defendants appearing through their attorneys of record,
21 Dennis J La Porte, KRILLICH, LA PORTE, WEST & LOCHNER, P.S , and Timothy R Gosselin,
22 BURGESS FITZER, P.S., and the Court finding based upon the declaration subjoined hereto and upon
23 the representations of counsel for the respective parties, that the requisites for confession of judgment
24 as set forth in RCW 4.60 060 have been met, and concluding that under RCW 4 60 010, this confession
25 of judgment is valid, pursuant to RCW 4.60 070, it is now, hereby

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28 JUDGMENT BY CONFESSION - 2
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BURGESS FITZER, P. S.

ATTORNEYS AT LAW
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(253) 572-5324 FAX (253) 627-8928

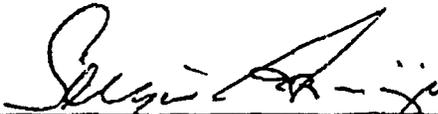
1 ORDERED, ADJUDGED AND DECREED that the plaintiffs, CLINTON L TOMYN,
2 individually and as Personal Representative of The Estate of CYNTHIA L TOMYN, deceased; and
3 as Parent/Guardian of NATHAN TOMYN, AARON TOMYN, and CHRISTIAN TOMYN be, and the
4 same hereby are granted judgment, jointly and severally, against the defendants, CASSANDRA
5 SHARBONO, individually; JAMES and DEBORAH SHARBONO, individually and as a marital
6 community, in the sum of \$4,525,000 00, it is further

7 ORDERED, ADJUDGED AND DECREED that the principal judgment amount shall bear
8 interest at the rate of 12% per annum (RCW 19.52 010), and it is further

9 ORDERED, ADJUDGED AND DECREED that each party shall bear their own costs and
10 attorney fees incurred herein, and it is further

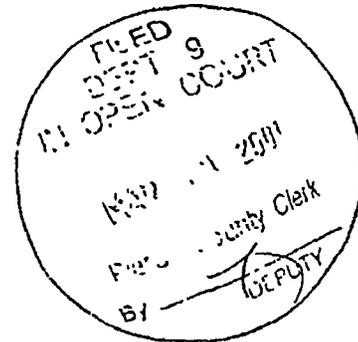
11 ORDERED, ADJUDGED AND DECREED that his judgment fully and finally resolves all
12 claims among all the parties to this action arising out of the motor vehicle accident of December 11,
13 1998

14 DONE in Open Court this 30th day of March, 2001.

15 
16 HONORABLE SERGIO ARMIJO

17
18 APPROVED AND PRESENTED BY
19 LAW OFFICES OF BEN F BARCUS

20 
21 By BEN F. BARCUS, WSB # 15576
22 Attorney for Plaintiffs



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28 JUDGMENT BY CONFESSION - 3
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BURGESS FITZER, P.S.

ATTORNEYS AT LAW
1501 MARKET STREET, SUITE 300
TACOMA, WASHINGTON 98402-3333
(253) 572-5324 FAX (253) 627-8928

1 Approved as to Form and Content, Notice
of Presentation Waived.

2 KRILLICH, LA PORTE,
3 WEST & LOCHNER, P S

4 
5 By DENNIS J. LA PORTE, WSB #2971
6 Attorney for Defendants

7 BURGESS FITZER, P S

8 
9 By TIMOTHY R. GOSSELIN, WSB #13730
10 Attorneys for Defendants

11
12 We the undersigned, pursuant to RCW 4.60.060, after being fully advised of the consequences
13 hereof, and after consultation with our attorneys identified above, submit this statement and verification
14 as authorization for entry of judgment against us in the amounts set forth above, specifically
15 \$4,525,000 00

16 This judgment and our confession thereto arise out of a two-car motor vehicle accident that
17 occurred on or about December 11, 1998. One vehicle was driven by Cassandra Sharbono, the natural
18 daughter of James and Deborah Sharbono. The other was driven by Cynthia L. Tomy, the wife of
19 Clinton Tomy, and the natural mother of Nathan, Aaron and Christian Tomy. At the time of the
20 accident, Cassandra Sharbono was a minor, and was residing with her parents. The vehicle she was
21 driving was owned by James and Deborah Sharbono and maintained in part as a family car.

22 The accident resulted from the sole negligence of Cassandra Sharbono. Cassandra crossed the
23 centerline between her lane of travel and oncoming traffic to strike Ms. Tomy head-on.

24 Cynthia Tomy died as a result of the accident. Our counsel's investigation has revealed that Ms
25 Tomy was born on July 28, 1965 and was 34 years old at the time of her death. She had met her
26

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28 JUDGMENT BY CONFESSION - 4
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BURGESS FITZER, P.S.

ATTORNEYS AT LAW
1501 MARKET STREET, SUITE 300
TACOMA, WASHINGTON 98402-3333
(253) 572-5324 FAX (253) 627-8928

1 husband Clinton during high school They had been married for 15 years Ms Tomyn was a high
2 school graduate. She had been employed at Tacoma General Hospital for 5 1/2 years She worked as
3 a heart monitor technician at the time of her death. Cynthia and Clinton had three children At the time
4 of Cynthia's death, Nathan was 12, Aaron was 14, and Christian was 7 years old Cynthia volunteered
5 extensively at her childrens' school

6 Our counsel's investigation indicates Cynthia was a loving wife, devoted mother and a fine person
7 Under the circumstances, we believe a jury could reasonably respond with a substantial award of
8 damages, possibly well in excess of the amount to which we have consented For that reason, we
9 believe this confession of judgment is in our best interests and agree accordingly

10
11 We declare and state under the penalty of perjury under the laws of the State of Washington that
12 the foregoing is true and correct

13 Signed the 30th day of March, 2001, at Tacoma, Washington

14 
15 CASSANDRA SHARBONO

16 
17 JAMES SHARBONO

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19 DEBORAH SHARBONO

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28 JUDGMENT BY CONFESSION - 5
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Appendix 3

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAY 20 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

The Honorable Rosanne Buckner
TRIAL DATE: MARCH 28, 2005

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

JAMES and DEBORAH SHARBONO,
individually and the marital community
composed thereof; CASSANDRA SHARBONO,

Plaintiffs,

vs.

UNIVERSAL UNDERWRITERS INSURANCE
COMPANY, a foreign insurer; LEN VAN DE
WEGE and "JANE DOE" VAN DE WEGE,
husband and wife and the marital community
composed thereof,

Defendants

NO. 01 2 07954 4

JUDGMENT



I. JUDGMENT SUMMARY

- 1. Judgment Creditors: James Sharbono, Deborah Sharbono and Cassandra Sharbono (currently known as Cassandra Barney)
- 2. Attorney for Judgment Creditor Timothy R Gosselin, Burgess Fitzer, P.S., 1501 Market Street, Suite 300, Tacoma, Washington 98402
- 3. Judgment Debtor: Universal Underwriters Insurance Company
- 4. Principle Judgment Amount: \$9,393,298 63, plus interest accruing on the unpaid portion of the Judgment by Confession entered in the matter of Tomyv v. Sharbono, Pierce County Cause No 99-2-12800-7 pursuant to the terms of said judgment

JUDGMENT - Page 1 of 4

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BURGESS FITZER, P.S.

ATTORNEYS AT LAW

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5. Attorney Fees and Costs: \$ 204,090.⁰⁰/_{FF}

6. Other Recovery Amounts: \$ 10,000.⁰⁰/_{FF}

7. Post- Judgment Interest: Post-judgment interest shall accrue on \$4,893,298 63 of the principle judgment amount, and on such additional amounts as become due and owing under paragraph 1 below, at the rate of 12% per annum Post-judgment interest shall accrue on \$4,500,000.00 of the principle judgment amount, and on attorney fees, costs and other recovery amounts, at the rate of 5 1/2 percent per annum from the date of entry of this judgment until said judgment is paid.

8. Attorney for Judgment Debtor: Dan'l W. Bridges, 11100 NE 8th Street, Suite 300 Bellevue, W A 98004

II. JUDGMENT

This matter was tried to a jury of 12 before the Honorable Roseanne Buckner beginning on March 28, 2005. Plaintiffs, James, Deborah and Cassandra Sharbono, appeared personally or through their attorney, Timothy R. Gosselin. Defendants Universal Underwriters Insurance Company, Len Van de Wege and "Jane Doe" Van de Wege appeared personally or through their attorney Dan'l W. Bridges.

On December 27, 2002, January 24, 2003, May 2, 2003 and March 28, 2005, the court entered orders on motions for full or partial summary judgment resolving certain issues and claims. During trial, the court dismissed the claims against defendants Van de Wege, and dismissed the claims of Cassandra Sharbono for general damages. During trial the court also determined as a matter of law that Universal Underwriters Insurance Company was obligated to pay the unpaid portion of the Judgment by Confession entered on March 30, 2001 in the matter of Tomyn v Sharbono, Pierce County Cause No. 99-2-12800-7.

Following trial on the merits on the issues of whether Universal Underwriter's bad faith and violations of Washington's Consumer Protection Act were a proximate cause of injury and damage to the plaintiffs, the jury returned a verdict in favor of the plaintiffs. A copy of the verdict is attached hereto and incorporated herein. Also following trial, the court made additional rulings regarding attorney fees, costs and other relief. Based upon these rulings, decisions and the verdict of the jury, the

1 court hereby enters judgment against Universal Underwriters Insurance Company as follows:

2 1. Judgment is hereby entered in favor of plaintiffs and against defendant Universal
3 Underwriters Insurance Company in the amount of the unpaid balance of the Judgment by Confession
4 entered against plaintiffs in the matter of Tomyn v Sharbono, Pierce County Cause No. 99-2-12800-7,
5 to wit \$3,275,000.00, together with interest that has accrued thereon since the date of entry, March 30,
6 2001, which, as of May 13, 2005, (four years, 43 days @ 12 %/yr.) totals \$ 1,618,298.63, and together
7 with interest that continues to accrue thereon as set forth in said judgment until said judgment is paid.

8 2. Judgment is hereby entered in favor of plaintiffs James and Deborah Sharbono and
9 against defendant Universal Underwriters Insurance Company in the additional sum of \$4,500,000 00,
10 as and for past and future general and special damages as found by the jury

11 3 Judgment is hereby entered in favor of plaintiffs and against defendant Universal
12 Underwriters Insurance Company for punitive damages pursuant to RCW 19.86.090 in the amount of
13 \$ 10,000.00.

14 4. Judgment is hereby entered in favor of plaintiffs and against defendant Universal
15 Underwriters Insurance Company in the additional sum of \$ 203,585.00 for actual attorney fees.

16 5. Judgment is hereby entered in favor of plaintiffs and against defendant Universal
17 Underwriters Insurance Company in the additional sum of \$ 505.00 for costs

18 ~~6. Judgment is hereby entered in favor of plaintiffs James and Deborah Sharbono and
19 against defendant Universal Underwriters Insurance Company in the additional sum of
20 \$ _____ to compensate said plaintiffs for the increased income tax due and owing as a
21 result of receipt of payment of damages in a lump sum.~~

22 7. Amounts awarded pursuant to paragraph 1 shall bear post-judgment interest pursuant
23 to RCW 4.56.110(4) and RCW 19.52 020 at the rate of 12 percent per annum. Amounts awarded
24 pursuant to paragraphs 2 through 6 shall bear post-judgment interest pursuant to RCW 4.56 110(3) at
25 the rate of 5.125 percent per annum.

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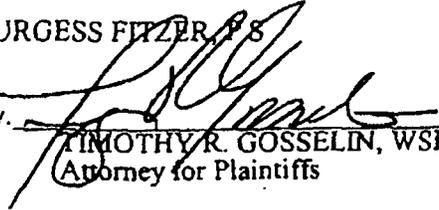
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Signed this 20th day of May, 2005.


HONORABLE ROSANNE BUCKNER

PRESENTED BY:

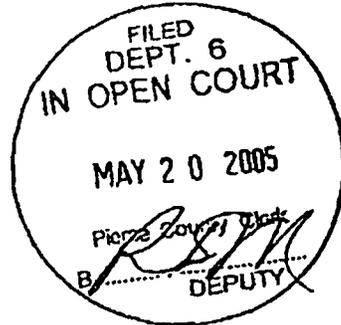
BURGESS FITZER, P.S.

By: 
TIMOTHY R. GOSSELIN, WSBA# 13730
Attorney for Plaintiffs

APPROVED AS TO FORM; NOTICE OF PRESENTATION WAIVED.

LAW OFFICES OF DAN'L W. BRIDGES

By: 
DAN'L W. BRIDGES, WSBA# 24179
Attorney for Defendants



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

FILED
CLERK OF COURT
BY _____
DATE

JAMES and DEBORAH SHARBONO,
individually and the marital community
composed thereof; CASSANDRA
SHARBONO, *Appellants*

vs.

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY, a foreign
insurer; LEN VAN DE WEGE and
"JANE DOE" VAN DE WEGE, husband
and wife and the marital community
composed thereof, *Respondents*

and

CLINTON L. TOMYN, individually and
as Personal Representative of The Estate
of CYNTHIA L. TOMYN, deceased; and
as Parent/Guardian of NATHAN
TOMYN; AARON TOMYN; and
CHRISTIAN TOMYN, minor children,
Intervenors/Respondents

NO. 41931-9-II

DECLARATION OF
SERVICE OF BRIEF OF
APPELLANTS

CLINTON L. TOMYN, individually and as
Personal Representative of the Estate of
CYNTHIA L. TOMYN, deceased; and as
Parent/Guardian of NATHAN TOMYN,
AARON TOMYN and CHRISTIAN
TOMYN, minor children *Respondents*

v.

CASSANDRA SHARBONO,
individually; JAMES and DEBORAH
SHARBONO, individually and the marital
community composed thereof, *Appellants*

ORIGINAL

I, TIMOTHY R. GOSSELIN, declare and state:

GOSSELIN LAW OFFICE, PLLC
1901 JEFFERSON AVENUE, SUITE 304
TACOMA, WASHINGTON 98402
OFFICE: 253.627.0684 FACSIMILE: 253.627.2028

I am a citizen of the United States of America and the State of Washington, over the age of twenty-one (21), not a party to the above-entitled proceeding, and competent to be a witness therein.

On the 27th day of August, 2011, I did place in the United States Mail, first class postage affixed, the following documents:

1. BRIEF OF APPELLANTS

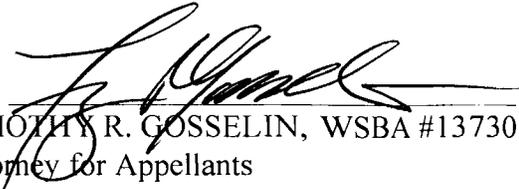
and this declaration directed to and to be delivered to:

Jacquelyn A. Beatty
KARR TUTTLE CAMPBELL
1201 Third Avenue, Suite 2900,
Seattle, WA 98101-3028

Ben F. Barcus/
Paul Lindenmuth
LAW OFFICES OF BEN F. BARCUS
4303 Ruston Way
Tacoma, WA 98402

I declare and state under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 27th day of August, 2011 at Tacoma, Washington.

By : 
TIMOTHY R. GOSSELIN, WSBA #13730
Attorney for Appellants

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