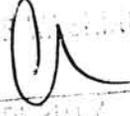


2010 7-7 11:11  
STATE OF WASHINGTON  
BY   
DEPUTY

NO. 45003-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

STATE FARM INSURANCE COMPANY, Respondent

v.

BRENT & VERA ROLLINS, Appellants.

---

BRIEF OF APPELLANTS

---

Shawn B. Briggs  
Attorney for appellants  
10222 Gravelly Lk. Dr. SW  
Lakewood, WA 98499  
(253) 588-6696  
WSB# 16162

TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ASSIGNMENT OF ERROR .....	1
	<i>Issue Pertaining to Assignments of Error</i> .....	1
III.	STATEMENT OF THE CASE .....	1
IV.	SUMMARY OF ARGUMENT .....	3
V.	ARGUMENT .....	3
	A. <i>Standard of Review</i> .....	3
	B. <i>Summary Judgment Standard</i> .....	3
	C. <i>Construction of Policy</i> .....	3
	1. Exclusion Unenforceable Where There is No Increased Risk .....	4
	2. Providing Coverage Is Consistent With Consumer Expectations .....	6
	3. Providing Coverage Is Consistent With Political, Social and Environmental Policy Considerations .....	7
VI.	CONCLUSION .....	8
VII.	APPENDIX .....	A-1
	<i>Washington State DOT Project: I-5 – SR 16 Tacoma/     Pierce County HOV Program</i> .....	A-2

## TABLE OF AUTHORITIES

### Cases

<u>Barth v. Allstate</u> , 95 Wn. App. 552, 977 P.2d 6 (1999).....	4
<u>Butzberger v. Foster</u> , 151 Wn.2d 396, 89 P.3d 689 (2004).....	4, 7
<u>Detweiler v. J.C. Penney Cas. Ins. Co.</u> , 110 Wn.2d 99, 751 P.2d 282 (1988). ....	4, 7
<u>Eddy v. Fidelity and Guar. Ins. Underwriters, Inc.</u> , 113 Wn.2d 168, 776 P.2d 966 (1989).....	5
<u>Farmers Ins. Co. of Washington v. Koehler</u> , 52 Wn. App. 822, 764 P.2d 1005 (1988) .....	5
<u>Grange Ins. Ass'n v. MacKenzie</u> , 103 Wn.2d 708, 694 P.2d 1087 (1985).....	5
<u>Hall v. State Farm Mut. Auto. Ins. Co.</u> , 133 Wn. App. 394, 135 P.3d 941 (2006) .....	5
<u>Hubbard v. Spokane County</u> , 146 Wn.2d 699, 50 P.3d 602 (2002).....	3
<u>Mendoza v. Rivera-Chavez</u> , 140 Wn.2d 659, 999 P.2d 29 (2000).....	5
<u>Mutual of Enumclaw Ins. Co. v. Wiscomb</u> , 97 Wn.2d 203, 643 P.2d 441 (1982) .....	4, 6
<u>Progressive Cas. Ins. Co. v. Jester</u> , 102 Wn.2d 78, 683 P.2d 180 (1984).....	4
<u>Ross v. State Farm Mut. Auto. Ins. Co.</u> , 132 Wn.2d 507, 940 P.2d 252 (1997) .....	3, 4, 5
<u>Wilson v. Steinbach</u> , 98 Wn.2d 434, 656 P.2d 1030 (1982).....	3

Statutes

RCW 47.04.280.....	7
RCW 48.22.085.....	6
RCW 48.22.095.....	1

Rules

CR 56.....	3
------------	---

## **I. INTRODUCTION**

This case involves the question of whether a personal auto policy covers an insured while they are ride-sharing.

## **II. ASSIGNMENT OF ERROR**

The trial court erred in granting summary judgment to plaintiff and denying defendants' cross-motion for summary judgment by order entered on May 17, 2013.

### ***Issue Pertaining to Assignments of Error***

Should a person who is injured while ride-sharing to work be entitled to the benefits of their Personal Injury Protection coverage?

## **III. STATEMENT OF THE CASE**

Brent and Vera Rollins were insured by a State Farm Insurance Company Auto Policy that included Personal Injury Protection (PIP) coverage.<sup>1</sup> (CP 70-127). Mr. and Mrs. Rollins purchased the policy with the expectation that their PIP coverage would apply to pay medical bills if either of them were injured in a car accident. (CP 47-52).

---

<sup>1</sup> PIP coverage provides payment of medical expenses and other benefits on behalf of an insured who is injured in a car accident, regardless of fault. RCW 48.22.095.

On January 19, 2012, Vera Rollins was commuting to work as a passenger in a vanpool van when it was involved in an accident. (CP 2, ¶ 3.5). Mrs. Rollins was injured and incurred medical expenses. She applied for PIP coverage under her State Farm policy. (CP 2, ¶ 3.9). State Farm denied the PIP claim, leaving the Rollinses with thousands of dollars in medical bills. (CP 48; CP 51). State Farm cited a “regular use” exclusion in its policy as the basis for its denial and sought declaratory judgment on the issue. (CP 1-3).<sup>2</sup>

State Farm filed for summary judgment asking that the regular use exclusion be applied to deny Vera Rollins PIP coverage for the January 19, 2012 accident. (CP 7-18). The Rollinses filed a cross-motion for summary judgment requesting determination that the regular use exclusion did not apply to the facts of this case. (CP 38-44).

On May 17, 2013, the trial court granted summary judgment to State Farm and denied the Rollinses’ cross motion for summary judgment. (CP 133-134; CP 139-141).

---

<sup>2</sup> The PIP exclusion provides that there is no coverage for an insured who is occupying a motor vehicle “furnished for your regular use if it is not your car or a newly acquired car”. (CP 87).

#### **IV. SUMMARY OF ARGUMENT**

Based on reasonable consumer expectations, public policy considerations, common sense, and a narrow construction of the regular use exclusion in favor of the insured, Vera Rollins should be entitled to PIP coverage for the January 19, 2012 loss.

#### **V. ARGUMENT**

##### **A. Standard of Review**

An appellate court reviews a summary judgment order de novo, applying the same standard as the trial court. Hubbard v. Spokane County, 146 Wn.2d 699, 50 P.3d 602 (2002).

##### **B. Summary Judgment Standard**

Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56; Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982).

##### **C. Construction of Policy**

Interpretation of an insurance policy is an issue of law. Ross v. State Farm Mut. Auto. Ins. Co., 132 Wn.2d 507, 940 P.2d 252 (1997). Policy language should be construed to provide fair, reasonable and sensible interpretations consistent with the

expectations of the average purchaser. Id. Construction of a policy depends upon the facts of each case, and must take into consideration the contemplation of the parties when entering into the contract. Butzberger v. Foster, 151 Wn.2d 396, 89 P.3d 689 (2004).

Although regular use exclusions have been determined to be clear and unambiguous, contract provisions are subject to limitations if they contravene public policy. Progressive Cas. Ins. Co. v. Jester, 102 Wn.2d 78, 683 P.2d 180 (1984). Exclusionary clauses are to be strictly construed against the insurer and in favor of coverage. Ross v. State Farm, supra.

1. **Exclusion Unenforceable Where There Is No Increased Risk.**

A regular use exclusion is designed to prevent an insured from obtaining coverage for multiple automobiles while paying a premium for only one, thereby increasing the risk to the insurer. Barth v. Allstate, 95 Wn. App. 552, 977 P.2d 6 (1999). The activity excluded must constitute an increased risk to the insurer in order to enforce an exclusion. Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wn.2d 203, 643 P.2d 441 (1982). Exclusions that bear no relation

to an increased risk faced by the insurer violate public policy.

Mendoza v. Rivera-Chavez, 140 Wn.2d 659, 999 P.2d 29 (2000).

Denials of UIM coverage under the regular use exclusion have been confirmed in situations where the increased risk to the insurer is clear, such as:

- When an insured is driving an employer-provided vehicle. Eddy v. Fidelity and Guar. Ins. Underwriters, Inc., 113 Wn.2d 168, 776 P.2d 966 (1989); Hall v. State Farm Mut. Auto. Ins. Co., 133 Wn. App. 394, 135 P.3d 941 (2006).
- Wife was driving her husband's car, registered only in his name and not covered by a UIM policy. Ross v. State Farm, supra (1997).
- A cohabitant's vehicle is regularly available for insured to drive. Farmers Ins. Co. of Washington v. Koehler, 52 Wn. App. 822, 764 P.2d 1005 (1988).
- Insured is sole driver of unlicensed brother's automobile. Grange Ins. Ass'n v. MacKenzie, 103 Wn.2d 708, 694 P.2d 1087 (1985).

In this case, there is no increased risk to State Farm by Vera Rollins choosing to carpool to work. In fact, carpooling reduces the risk to State Farm. Had Vera Rollins chosen not to carpool, she would have been driving her own vehicle which was insured by State Farm. State Farm would have then been exposed to potential liability, property damage, and first party claims (uninsured/underinsured motorist and PIP). Where the risk to State

Farm was not increased by the ride-sharing arrangement, the regular use exclusion violates public policy and should not apply.

**2. Providing Coverage Is Consistent With Consumer Expectations.**

In Washington, there is a strong public policy to provide monetary protection and compensation to people who are injured by the negligent use of public highways by others. Mutual of Enumclaw v. Wiscomb, supra. The legislature has recognized the importance of PIP coverage by deeming it a mandatory coverage. RCW 48.22.085. It is a no-fault benefit available regardless of who caused an insured's injury.

No Washington case has addressed a regular use exclusion where the insured was a passenger in a carpooling situation. To accept State Farm's position would work to exclude coverage in common situations in which a reasonable consumer expects coverage. For example, under State Farm's theory, there would be no coverage for an insured who is a passenger:

- (1) Carpooling to work.
- (2) Ridesharing to school, soccer, etc.
- (3) Going out on a regularly scheduled date-night.
- (4) Commuting with a friend to church.

- (5) Riding with a colleague to bi-weekly committee meetings.

An insured reasonably expects that their insurance policy will provide protection in these situations.

The Court has broadly construed policies to provide UIM coverage in much more unusual situations:

- Insured who was injured by bullet that ricocheted off car after he shot gun at his vehicle to stop unauthorized user from driving it away entitled to UIM coverage under his policy. Detweiler v. J.C. Penney Cas. Ins. Co., 110 Wn.2d 99, 751 P.2d 282 (1988).
- Good Samaritan who stopped to provide assistance to driver in overturned truck entitled to UIM coverage from employer's policy (vehicle driven to scene) and injured motorist's policy on truck. Butzberger, supra.

3. **Providing Coverage Is Consistent With Political, Social and Environmental Policy Considerations.**

Public policy encourages ridesharing arrangements as a means to improve the transportation system and enhance the environment.<sup>3</sup> In Pierce County alone, the State has earmarked \$1.6 billion to fund construction of HOV lanes to help maximize the people-carrying capacity on the freeway and reduce transportation-related pollution and dependency on fossil fuels.<sup>4</sup> Interpreting personal auto insurance policies to exclude coverage in

---

<sup>3</sup> RCW 47.04.280.

<sup>4</sup> Washington State DOT Project: I-5 – SR 16 Tacoma/Pierce County HOV Program (A-2 – A-4).

carpooling/ridesharing situations acts to discourage conduct that we, as a society, support.

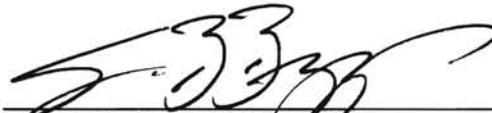
In this case, a narrow construction guided by common sense, consumer expectations and public policy considerations dictates that the regular use exclusion should not be extended to deny coverage to Vera Rollins simply because she chose to participate in a ridesharing arrangement.

#### **VI. CONCLUSION**

The court should reverse the May 17, 2013 Order granting summary judgment to State Farm and grant the Rollinses' cross motion for summary judgment finding that the regular use exclusion does not apply and that Vera Rollins is entitled to coverage regarding the January 19, 2012 claim.

October 3, 2013.

Respectfully submitted



---

SHAWN B. BRIGGS of  
BRIGGS & BRIGGS  
Attorneys for appellants  
WSB# 16162

## VII. APPENDIX

## I-5 - SR 16 Tacoma/Pierce County HOV Program

### Status

October 2013

- On September 22, 2011, WSDOT awarded the construction contract for the I-5/SR 16 Eastbound Nalley Valley project to Mowat Construction for \$74.7 million. Construction began in late 2011 and will continue through spring 2014.
- Curious about how the "Sprague T" interchange will work? Check out this .wmv file showing a simulation of SR 16 through the Nalley Valley after we have completed all our work. The animation shows all of changes we're making, and the "Sprague T" ramp is easy to spot. It is the ramp that will accommodate traffic going from eastbound SR 16 to Sprague Avenue, and traffic going from Sprague Avenue to northbound and southbound I-5.
- In April 2010, the Washington State Department of Transportation issued a Determination of Non-Significance for the three projects on Interstate 5:
  1. I-5: M Street to Portland Avenue – HOV;
  2. I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV
  3. I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV.



[View entire map.](#) The Tacoma/Pierce County HOV Program is a series of projects that will provide operational improvements on I-5, SR 16 and SR 167. Click on the map to view the project area and a list of the projects.



The Tacoma/Pierce County HOV Program is a series of projects that build 70 high-occupancy-vehicle (HOV) lane miles on I-5, SR 16 and SR 167 in Pierce County.

From this page, you can navigate to individual projects that make up the program. Some projects are complete, some under construction, others in design and some are unfunded.

Through 2020, six funded projects are being designed and constructed in Tacoma from the Nalley Valley to the King County line.

Real-time highway conditions through Tacoma are also available.

#### Why is WSDOT building a regional HOV program?

To understand the answer to that question, it helps to understand what HOV lanes are.

HOV stands for **H**igh **O**ccupancy **V**ehicle, and is a designation WSDOT gives to highway lanes restricted to vehicles carrying two persons or more. In the early 1990s, WSDOT began in earnest to build a core HOV system on state highways around greater Seattle, and has been expanding the system ever since.

WSDOT's core HOV system plan includes designing and constructing about 320 lane miles of HOV lanes. Currently WSDOT has built and opened about 235 of those HOV lane miles, most of which are located

#### Nalley Valley Viaduct after the new westbound structure is completed.

The new westbound SR 16 facility opened to westbound traffic in June 2011.

This project is the first of three to rebuild and expand the I-5/SR 16 interchange and the Nalley Valley Viaduct. The second phase, Eastbound Nalley Valley, is also under way.

north of the King/Pierce County line. They can be found on numerous highways and interstates, including Interstate 5, Interstate 405, Interstate 90, State Route 520, State Route 509, State Route 525, State Route 526, State Route 167, State Route 522 and State Route 99.

In 2007, WSDOT opened its first HOV lanes in Pierce County on State Route 16. They extend from Union Avenue in Tacoma to Olympic Drive in Gig Harbor. In 2010, WSDOT opened its first I-5 HOV lanes in Pierce County. The six lane-miles (three lanes in each direction) extend from the King County Line to the Port of Tacoma Road. In addition, WSDOT has completed several projects to prepare for future HOV construction closer to downtown Tacoma, and has built a new westbound viaduct at the I-5/SR 16 interchange. Construction on a new eastbound viaduct is also under way.

### **Why does WSDOT build HOV lanes?**

WSDOT believes we cannot build our way out of congestion. However, we can make the best possible use of new and existing highway capacity. To that end, WSDOT has established policies regarding the HOV system. The goals of the system are:

- To **maximize the people-carrying capacity** of the freeway system by providing incentives to use buses, vanpools and carpools.
- To **provide capacity** for future travel growth.
- To help **reduce transportation-related pollution** and dependency on fossil fuels.

Through HOV programs and policies, we strive to make the best use of existing facilities by increasing freeway efficiency and promoting programs to move more people in fewer vehicles. Have questions about how HOV lanes work? Check out HOV frequently asked questions.

### **The End Result**

When the Tacoma/Pierce County HOV Program is complete, you'll be able to travel in an HOV lane from Gig Harbor all the way to Everett.

### **Project Benefits**

In addition to 70 miles of HOV lanes, these projects include many other improvements:

- **Safety** – Additional merge lanes, wider shoulders, improved ramp alignments and curves, and improved lighting.
- **Traffic and Operations** – Improved mobility due to additional capacity, better roadway alignments and the relocation of on-ramps and exits.
- **Environment** – Noise barriers at select locations to minimize traffic noise, enhance or expand nearby wetlands, improved methods to treat storm water runoff.
- **Intelligent Transportation System (ITS)** – New closed-circuit traffic cameras, more electronic signs for traveler notification, highway advisory radio broadcast transmitters, and traffic data collectors. Each of these tools helps WSDOT better manage traffic and improve communication with the traveling public.

### **What is the project timeline?**

The Tacoma/Pierce County HOV Program consists of a series of a projects that started in 2001 and will continue through 2020.

### **Currently Under Construction:**

- **I-5/SR 16: Eastbound Nalley Valley**

### **Design complete; construction pending right of way and permitting activities:**

- **I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV**

### **Currently in Active Design:(in order of future construction):**

- **I-5: M Street to Portland Avenue - HOV**
- **I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV**
- **I-5/SR 16: HOV Connectors**

### Completed Projects

We have already completed several projects within the Tacoma/Pierce County HOV Program. Each project contributes to the bigger transportation picture in Pierce County.

- **2012 - I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV Stage 1.** In this first contract, crews focused on widening, seismic upgrades and ground improvements to prepare for future projects that will ultimately help improve traffic flow on I-5 through Tacoma.
- **2011 - I-5/SR 16: Westbound Nalley Valley.** In June, crews opened the new westbound SR 16 viaduct over Nalley Valley, and three new ramps at the SR 16/Sprague Avenue interchange: 1) southbound I-5 to Sprague Ave., 2) northbound I-5 to Sprague Ave., and 3) Sprague Ave. to westbound SR 16.
- **2010 - I-5: Port of Tacoma Road to King County Line.** Crews opened almost 6 HOV lane miles on I-5 (3 northbound and 3 southbound) from the King County Line to the Port of Tacoma Road.
- **2008 - Although the new Tacoma Narrows Bridge is not funded with monies in the HOV Program (it is funded through tolls instead), HOV projects sandwich the bridge, making it a vital transportation link for HOV projects in Pierce County. All construction included in the bridge project is now complete. The bridge opened to traffic on July 15, 2007.**
- **2008 - The I-5 - South 48th Street to Pacific Avenue** project is complete. This project prepared for the reconstruction of the Nalley Valley.
- **2007 - SR 16 - Union to Jackson Avenue** complete.
- **2005 - SR 16 - 36th Street Interchange to Olympic Drive** project complete.
- **2004 - SR 16 - Pearl Street to Jackson Avenue** project complete.
- **2002 - SR 16 - Sprague Avenue Interchange to Snake Lake** project complete.
- **2001 - I-5 - 38th Street Interchange** project complete.

### Financial Information

Financial Data for PIN 300504A, 300504B, 300509M, 300509N, 300509S, 300509X, 300563A, 300566A, 300567A, 300568A, 300569G, 300569H, 300576A, 301636A

Funding Source	Amount (\$ in thousands)
2003 Gas Tax (Nickel Funding)	\$423,318
2005 Gas Tax (TPA)	\$1,042,322
Pre-Existing Funds (PEF)	\$139,550
<b>Total</b>	<b>\$1,605,189</b>

Project signage will reflect the cost of construction engineering, project bid award and sales tax.

The funding listed above represents the current delivery plan. While the HOV Program scope has remained the same, the work delivery plan has been modified over time to increase construction efficiencies and maximize resources.

The total costs for all funded projects within the HOV Program include the completed projects on I-5 and SR 16, and projects in active design and construction. The HOV Program also includes future unfunded projects, the costs for which are not reflected in the above totals.

### How can I get more information?

#### Contact:

Claudia Bingham Baker  
Communications Manager  
WSDOT Olympic Region  
360-357-2789

[☐](#) back to top

Copyright WSDOT © 2013

CLERK OF COURT  
2013 OCT -7 PM 1:11  
STATE OF WASHINGTON  
DEPUTY

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on this day I deposited a copy of the foregoing Brief of Appellants with ABC Legal Messenger Service for delivery to:

Gregory Worden  
Attorney for State Farm  
2101 Fourth Avenue #700  
Seattle, WA 98121

Dated October 3, 2013 at Lakewood, WA.



---

Debera S. Ellis, paralegal to  
Shawn Briggs of  
Briggs & Briggs  
Attorneys for appellants