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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 47063-2-II

COURT OF APPEALS FOR DIVISION II
OF THE STATE OF WASHINGTON

SHERRY KING
Appellant,

v.

STATE FARM MUTUAL INSURANCE COMPANY
Respondent,

DILLION MCCARTEN and "JANE DOE" MCCARTEN,
Respondents.

APPELLANT'S BRIEF

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ORIGINAL

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I. INTRODUCTION

This case arises out of two motor vehicle collisions occurring on March 8, 2011 and April 20, 2011. The former collision was caused by a phantom driver. The latter collision was caused by Dillon McCarten. Ms. King was injured in both collisions. Ms. King filed a lawsuit in Thurston County Superior Court, naming State Farm and Dillon McCarten as Defendants. State Farm's capacity in this lawsuit was as Ms. King's UM insurer, stepping into the shoes of the phantom driver who caused the March 8, 2011 collision. State Farm was not sued in its capacity as UIM insurer on the April 20, 2011 collision. After the arbitration, Ms. King settled her claim with McCarten for less than the total arbitration award, and in so doing avoided McCarten filing a request for trial de novo. Ms. King executed a release, releasing McCarten. McCarten's counsel and Ms. King's counsel executed a stipulation and order to dismiss Ms. King's claims against McCarten, as the parties had settled.

State Farm, in its capacity as UM carrier on the March 8, 2011 collision, and thus having no standing, interest or capacity to seek a judgment in favor of Ms. King and against McCarten, moved to have judgment entered on the arbitration award against McCarten in favor of Ms. King – because it believed that a judgment against McCarten would hurt Ms. King's UIM claim

against State Farm on the April 20, 2011 collision.

Ms. King and McCarten both opposed this. McCarten moved for dismissal of McCarten. Judge Tabor denied McCarten's motion to dismiss, disregarded the settlement between Ms. King and McCarten and entered judgment on the arbitration award. Judge Tabor then used the settlement agreement between McCarten and Ms. King (for payment of \$50,000.00) as a basis to enter a satisfaction of the \$52,156.95 judgment.

Ms. King appeals.

II. ASSIGNMENTS OF ERROR

- A. **The Superior Court erred when it granted a motion by State Farm to enter a judgment and entered judgment against McCarten, where State Farm lacked standing and had no interest in or capacity to seek such relief.**

Issue: Did State Farm lack standing, have no interest in or capacity, to seek a judgment for Ms. King against McCarten?

- B. **The Superior Court erred when it denied McCarten's motion to dismiss McCarten, and instead granted a motion by State Farm to enter a judgment and entered judgment, against McCarten – a party who had previously settled with and been released by Ms. King.**

Issues: Should the Court have upheld the settlement agreement between McCarten and Ms. King? Should the Court have entered judgment against a party who had been released? Should the Court have denied McCarten's motion to dismiss McCarten, when McCarten and Ms. King had agreed to dismissal and had settled and when McCarten had paid the settlement and when Ms. King had released McCarten and when State Farm, in its capacity as UM carrier on the non-McCarten collision was in no

way affected by McCarten's dismissal?

- C. The Superior Court erred when it granted a motion by State Farm to enter judgment and entered judgment against McCarten and for Ms. King, when the motion and the purpose of the relief sought by State Farm was a violation of Washington law.**

Issue: Should the Superior Court grant a motion that violates Washington law?

- D. The Superior Court erred when it ordered the \$52,156.95 judgment against McCarten satisfied, when it had not been satisfied.**

Issue: Did the Court err when it ordered a judgment for \$52,156.95 against McCarten satisfied when only \$50,000.00 had been paid by McCarten, and when the release and stipulation and order of dismissal between McCarten and Ms. King could in no way be construed to contemplate a judgment against McCarten or an agreement by Ms. King, should judgment be entered, to satisfy the judgment for payment of a lesser amount?

III. STATEMENT OF THE CASE

A. Motor Vehicle Collisions and the Arbitration

The Appellant, Sherry King, was injured in a motor vehicle collision that occurred on March 8, 2011, which was caused by a phantom driver.

King had Uninsured insurance coverage through State Farm. *CP 2-00000039:5-12; CP 00000039:26 - 40:12.*

Ms. King was then injured in a motor vehicle collision that occurred on April 20, 2011, which was caused by Defendant Dillon McCarten ("McCarten"). *CP 2-00000040-43.*

Ms. King filed a lawsuit in Thurston County Superior Court against McCarten (tortfeasor who caused the 4/20/11 collision) and also against State Farm. *CP 2-0000006-13*. State Farm's inclusion in this case as a Defendant for Ms. King's personal injury damages arose out of State Farm stepping into the shoes of the phantom driver that caused the March 8, 2011 collision. *CP 2-00000006:18-23; CP 2-00000007:8 – 8:7*. Stated otherwise, Ms. King's lawsuit did not involve or include a personal injury claim against State Farm under its underinsured motorist coverage related to the April 20, 2011 collision caused by McCarten.

Even State Farm-1's arbitration brief recognized that State Farm's inclusion in the present action was related to its status as the UM carrier regarding the March 8, 2011 collision, as shown in this excerpt:

A CLAIMS AT ISSUE

This arbitration involves a claim against State Farm by Plaintiff Sherry King regarding a 3-8-11 accident with an uninsured motorist and a claim against Defendant Dillon McCarten regarding a 4-20-11 accident. The Complaint in this matter does not allege claims against State Farm for the 4-20-11 accident . . . *CP 2-000000112:1-7; CP 2-00000083:16-17*.

Even the letter by State Farm's counsel, which enclosed their settlement check and proposed Stipulation and Order of Dismissal, identified the "date of loss" as March 8, 2011.

Ms. King's claims against State Farm and McCarten were placed into

mandatory arbitration, and arbitrated on March 11, 2014. *CP 2-000000037-43*. A neutral arbitrator presided over Ms. King's arbitration, and found from the evidence the following material conclusions: (the arbitrator's written opinion is found at *CP 2-000000037-43*)

1. The damages to Ms. King from the April 2, 2011 MVA are divisible from the damages from the March 8, 2011 MVA. State Farm is not responsible under any theory, including joint and several liability, for medical expenses incurred from the April 2, 2011 collision. *CP 2-000000040:7-12*.

2. The April 20, 2011 MVA was a "high velocity, significant impact accident." *CP 2-000000040: 14-16*.

3. Mr. McCarten is deemed liable for the damages incurred by Ms. King in the April 20, 2011 MVA. *CP 2-000000042:10-12*.

4. Ms. King went through "extensive treatment: physical therapy, velcro appendages to offer her support in her shoulders and ankle, and considerable time spent with massage therapy, all which never really concluded in her being asymptomatic." *CP 2-000000042:16-19*.

5. Ms. King "spent hours if not days in bed all of which left her unable to be with her dog, boyfriend, or father to carry on normal tasks." *CP 2-000000042:19-22*.

6. The medical bills in incurred as a direct result of the April 20, 2011 MVA

are \$17,859.83. *CP 2-000000043: 1-2.* That was only the medical bills for the first three years.

7. A “fair general damage award for that time period [the first 3 years after the 4/20/11 MVA] of pain and suffering and inconvenience and distress attributed to days and days of treatment and suffering is worth \$15,000.00 a year for a total damage amount of \$45,000.00.” *CP 2-000000043: 3-7.*

8. The “total amount of damages that Mr. McCarten is responsible for is \$45,000.00 plus \$17,859.83 for a total of \$62,859.59. The mandatory arbitration limits in this case is \$50,000.00.” *CP 2-000000043: 7-10.*

9. The \$50,000.00 MAR limit damages allocated to McCarten “are not joint and several and State Farm is not liable for any portion of the \$50,000.00 judgment award against Dillon McCarten.” *CP 2-000000043:11-13.*

The arbitrator’s award did not even consider Ms. King’s future damages (whether that be general or special damages) because the three years of past damages alone totaled \$62,859.59 – which exceeded the Mandatory Arbitration Rule limits of \$50,000.00. The arbitrator’ s award states in pertinent part:

I specifically did not address the issue of damages in the future, because the amount of damages I have awarded for the accident itself in the three year period previously mentioned, exceed the mandatory arbitration amounts anyway; so it is a mute [sic] issue at this point. *CP 2-000000043:14-18.*

Regarding Ms. King's UM claim against State Farm arising from the March 8, 2011 collision, the arbitrator allocated \$2,059 in medical expenses - to be offset by what was paid under PIP - plus \$3,500.00 in general damages, for a total outstanding award (due to the PIP offset) of \$3,500.00.

CP 2-000000039:26 – 40:6.

B. Ms. King settled her claim with, and released, McCarten

McCarten, who caused the April 20, 2011 collision, had liability limits of \$50,000.00, meaning that he was substantially underinsured, given Ms. King's damages from that collision. *CP 2-000000103:13-15; CP 2-000000083:16-17.*

After Ms. King's motion for statutory attorney's fees and also for costs, the arbitrator also awarded \$2,156.95 against Mr. McCarten. *CP 2-000000044.* Thereafter, under threat by McCarten's insurer of filing a request for trial de novo, Ms. King and McCarten entered into a settlement agreement, whereby McCarten would not pay the costs and fees that were awarded, but would pay (via his insurer) \$50,000.00, which were McCarten's insurer's policy limits. *CP 2-000000103:18-21.* A settlement agreement would also prevent a request for a trial de novo.

McCarten's counsel sent the following email to Ms. King's counsel on April 8, 2014:

I received your voice mail message today, thank you, confirming that your client agrees to settle her claim for \$50,000.00, inclusive, without additional costs and fees, in consideration for my client and his carrier not requesting a trial de novo following the arbitration award. Please send your tax ID number and I will request the check made payable to your office in trust for your client. *CP 2-000000103:23 – 104:11; CP 2-000000083:16-17.*

McCarten's insurer thereafter tendered a check for the settlement amount, and Ms. King executed a "Release of All Claims and Hold Harmless Agreement." *CP 2-000000104:12-14; CP 2-000000083:16-17; CP 2-000000094.* Counsel for McCarten and Ms. King executed a Stipulation and Order of Dismissal of Defendants McCarten. *CP 2-000000096-98.*

C. Ms. King settled her claim with State Farm

Prior to the arbitration, State Farm's counsel offered, by letter dated March 6, 2014, to pay \$4,000.00 regardless of the outcome of the arbitration. *CP 2-000000104:17-18; CP 2-000000083:16-17.* An excerpt from that letter provides in pertinent part:

Still, with this letter, State Farm affirms that once there has been final resolution of this claim, either by arbitration or by trial, and you have provided the necessary tax ID number, State Farm will pay at least the amount of that \$4,000 initial offer even if, as is certainly possible, the trier of fact finds that your client's damages are lower than the amount in that offer. By making this commitment to pay at least that \$4,000 initial offer, State Farm has guaranteed its insured a minimum recovery in this matter. *CP 2-000000104:18-24; CP 2-000000083:16-17.*

After the arbitration Ms. King's counsel wrote State Farm's counsel, seeking payment of the \$4,000.00 plus payment of Hamm fees. *CP 2-000000104:25-26; CP 2-000000083:16-17*. An excerpt from that post-arbitration award letter to State Farm counsel states:

Pursuant to your letter please tender payment to our firm, "Ron Meyers PLLC ITF Sherry King," in the amount of \$4,000.00 plus Hamm fees and costs so that we can wrap up this case. For purposes of calculating the Hamm fees/costs owed by State Farm, our contingency fee is 40 percent. *CP 2-000000104:26 – 105:5; CP 2-000000083:16-17*.

Thereafter, State Farm's counsel and Ms. King's counsel agreed to payment by State Farm of \$4,823.60 (\$4,000.00, plus \$823.00 in *Hamm* fees). *CP 2-000000105:6-7; CP 2-000000083:16-17*. State Farm's counsel sent a Stipulation and Order of Dismissal – not a proposed judgment – to Ms. King's counsel under cover letter dated April 17, 2014, along with the check of \$4,823.60. *CP 2-000000105:7-10; CP 2-000000083:16-17*. Notably, rather than send a proposed judgment to Ms. King along with the check, State Farm tendered the payment along with the Stipulation and Order of Dismissal. Even State Farm's counsel's own words refer to "settlement." *CP 2-000000105:11-12; CP 2-000000083:16-17*. By email dated May 20, 2014, State Farm counsel emailed Ms. King's counsel and stated:

We have not seen the signed Stipulation and Order of Dismissal back from your office that we mailed with the settlement check on April 17, 2014. I have attached another

copy here for your signature and return to us. Thank you for your assistance. *CP 2-000000105:12-106:1; CP 2-000000083:16-17.*

Ms. King's counsel emailed counsel for State Farm and McCarten, asking for a Stipulation and Order of Dismissal that was worded to make it clear that Ms. King was in no way prejudicing or dismissing her UIM claim against State Farm arising out of the April 20, 2011 McCarten collision. *CP 2-000000106:2-5; CP 2-000000083:16-17.* That email stated in pertinent part:

Ms. King still has a UIM claim with State Farm arising out of McCarten's conduct, and so I need the Stip and order of dismissal to make it clear (or perhaps to avoid any dispute) that the stip and dismissal shall in no way prejudice or dismiss any such claims against State Farm. *CP 2-000000106:5-16; CP 2-000000083:16-17.*

Ms. King's counsel was asked to propose language for the Stipulation and Order of Dismissal. *CP 2-000000106:16-17; CP 2-000000083:16-17.* Ms. King's counsel responded in kind, and sent an email to State Farm and Mr. McCarten's counsel proposing such language. *CP 2-000000106:17-18; CP 2-000000083:16-17.* An excerpt from this email to both defense counsel states:

Stipulation: "This is [sic] stipulation shall not dismiss or otherwise affect the Plaintiff's UIM claim against State Farm arising out of the subject collisions."

Order: "The Plaintiff's UIM claim against State Farm arising out of the subject collisions is not dismissed or affected by

this order.” *CP2-000000106:18-107:1; CP 2-000000106:16-17; CP 2-000000083:16-17.*

It was clear by the arbitrator’s analysis that Ms. King’s damages exceed Mr. McCarten’s insurance policy limits of \$50,000.00. Ms. King presented a UIM demand to State Farm in August, 2014, for damages arising out of the April 20, 2011 collision caused by Mr. McCarten. *CP 2-000000107:2-5; CP 2-000000083:16-17.*

The Defendant identified by Ms. King as “State Farm” in the Superior Court proceedings will be hereafter referred to as State Farm-1. State Farm-1 stepped into the shoes of the phantom driver who caused the March 8, 2011 collision, and that was the capacity in which State Farm-1 served as a Defendant in the present action. *CP 2-00000006:18-23; CP 2-00000007:8 – 8:7; CP 2-000000112:1-7.*

The State Farm that steps into the shoes of McCarten on a UIM claim by Ms. King arising out of McCarten’s April 20, 2011 collision will hereafter be referred to as State Farm-2. State Farm-2 steps into the shoes of Mr. McCarten who caused an April 20, 2011 collision – not the phantom driver who caused the March 8, 2011 collision. Ms. King chose not to join a UIM claim against State Farm-2 on the April 20, 2011 collision in the present action. Rather, the present action was against State Farm-1 (stepping into the shoes of the tortfeasor who caused the March 8, 2011 collision) and

McCarten (who caused the April 20, 2011 collision).

The arbitrator ruled that the damages he awarded against McCarten are not joint and several and that State Farm-1 is in not liable for any portion of the judgment award against McCarten. State Farm-1 and State Farm-2 have even assigned separate claim numbers.

D. State Farm-1 moves the Court to enter a judgment for Ms. King against McCarten.

State Farm-1 moved the Court to have a judgment entered in favor of Ms. King against Mr. McCarten. *CP 2-000000045-67*. The Court heard the matter on December 5, 2014. It bears repeating that Ms. King had settled her claim with McCarten, and Ms. King had released McCarten, and Ms. King and McCarten (through counsel) entered into a stipulation and order to dismiss her claims against McCarten.

In response to State Farm's Motion for Entry of Final Judgment, McCarten's attorney filed a Motion to Dismiss and Opposition to Defendant State Farm's Motion for Entry of Final Judgment. *CP 2-000000068-72*.

Ms. King also filed a response in opposition to State Farm-1's Motion for Entry of Final Judgment. *CP 2-000000100-114*.

State Farm-1's purpose for its motion, that is, the only reason it wanted to force Ms. King to get a judgment against McCarten, was to help State Farm-2 defend against Ms. King's UIM claim against State Farm-2

(arising out of McCarten's negligence). State Farm-1 believed that if judgment was entered against McCarten for the April, 2011 collision, it would hurt Ms. King's UIM claim against State Farm-2. See State Farm-1's Opposition to Defendant State Farm's Motion to Dismiss and Opposition to Defendant State Farm's Motion for Entry of Final Judgment, where State Farm reveals that:

State Farm has a real interest in the subject matter of the lawsuit. An entry of judgment would preclude Plaintiff from recovering UIM damages pursuant to State Farm's policy language, which provides: . . . *CP 2-000000081, 21-24.*

See also, VRP 7:8-9 (where State Farm-1's attorney, regarding Ms. King's UIM claim against State Farm-2 arising out of McCarten's negligence states, ". . . and the reason judgment would be entered is to preclude the UIM claim . . .").

Judge Tabor heard oral argument on December 5, 2014, granted State Farm-1's motion, denied McCarten's motion to dismiss, and entered a judgment for Ms. King against McCarten in the amount of the \$52,156.95 arbitration award --- a judgment that neither Ms. King nor McCarten wanted or bargained for. Judge Tabor entered judgment against Mr. McCarten for the arbitration award of \$52,156.95. *CP 2-000000129-236.* Additionally, Judge Tabor ordered that the \$52,156.95 judgment against McCarten had been fully satisfied, despite the fact that only \$50,000.00 had been paid. *CP*

2-000000141-142. *VRP 15:24 - 16:21; 18:14 - 20:4.*

Judge Tabor then stated that it was his opinion that the previous agreement (the settlement agreement between McCarten and Ms. King) “allows for the judgment to be satisfied even though the agreement was for less [than the judgment].” *VRP 19:9-12.*

Ms. King’s counsel informed the Court, “. . . I just want to preserve my objection to that because if I were to have presented a judgment on the award, I would have presented it for every penny that the award was for.” *VRP 19:5-8.*

During his ruling, Judge Tabor stated, “. . . What I want to see [sic] is that you go right ahead and enforce the agreements you have, but I’m entering the judgment and then I’m saying that the judgment can be satisfied by your agreement even if it’s considerably less than what the judgment was.” *VRP 17:2-7.*

The very nature of entry of judgment for \$52,156.95 necessarily un-enforces the agreement between Ms. King and McCarten. McCarten and Ms. King had reached a settlement, Ms. King had released McCarten, had received the \$50,000.00 settlement payment, and their respective counsel had entered a stipulation and order dismissing Ms. King’s claims against McCarten. This favored both parties, as McCarten paid less than what the

arbitrator awarded, and Ms. King avoided a request for trial de novo by McCarten. Now, State Farm-2 intends to use Ms. King's judgment against McCarten to defend against Ms. King's UIM claim against State Farm-2 (on the April, 20, 2011 collision) by arguing that the judgment against McCarten sets forth what Ms. King is "legally entitled to recover" from McCarten and thus under its policy there is no UIM exposure. *CP 2-000000081-82*. Also, Ms. King was not paid \$2,156.95 of the judgment, yet the Court ordered the judgment was fully satisfied, and McCarten now has a judgment on his record – and All of this was the result of a motion by State Farm-1, who has no interest in a judgment for Ms. King against McCarten, nor capacity or standing to bring a motion to enter the judgment.

State Farm-1 is not State Farm-2. The arbitrator found Ms. King's damages divisible between the two collisions. The arbitrator ruled that State Farm-1 was not liable under any theory including joint and several liability for the medical expenses incurred in the McCarten collision. The arbitrator ruled that State Farm-1 is not liable for the damages assessed against McCarten:

I specifically find from the medical information as well as the testimony in this case, that the damages suffered by Ms. King in the second accident are divisible from the damages she suffered from the in the first accident. Therefore, State Farm is not responsible under any theory, including joint and several liability for medical expenses incurred in the accident

incurring on April 20, 2011. *CP 2-000000040:7-12; CP 2-000000043:1-13.*

[the \$50,000.00 damages assessed against McCarten] “are not joint and several and State Farm is not liable for any portion of the \$50,000.00 judgment award against Dillon McCarten.” *CP 2-000000043:11-13.*

As stated previously, Ms. King and McCarten, through counsel, executed a Stipulation and Order to Dismissal of Defendant McCarten’s, which provided that,

IT IS HEREBY STIPULATED that an order may be entered herein dismissing the above-entitled action against Defendants MCCARTEN, with prejudice and without costs, and without notice of presentation of this order, *for the reason that the same has been settled* and the settlement is reasonable. *CP 2-000000075: 21-25 [emphasis added].*

Nonetheless, at the December 5, 2014 hearing, Judge Tabor also entered an Order denying Mr. McCarten’s Motion to Dismiss. *CP 2-0000000145-147.*

IV. ARGUMENT

Standard of Review

This court reviews questions of law and conclusions of law de novo. *Weyerhaeuser Co. v. Calloway Ross, Inc.*, 133 Wash. App. 621, 624, 137 P.3d 879 (2006).

The Court had no authority to enter a judgment against a previously-released defendant. The court erred when it tossed the settlement

agreement, release, and dismissal between McCarten and Ms. King aside and forced a judgment for Ms. King against McCarten. The Court erred when it granted State Farm's motion to enter a judgment, when State Farm had no standing or interest to seek such relief and State Farm's capacity in the case was that of UM insurer on the March 8, 2011 collision. The Court erred when it granted a motion by State Farm where the sole purpose of the motion was an unlawful act by an insurance carrier against its insured.

A. The court erred when it entered judgment against a party who had previously settled with and been released by Ms. King

Settlements are considered under the common law of contracts. *Ferree*, 71 Wash.App. at 39, 856 P.2d 706 (CR 2A acts as a supplement but does not supplant the common law of contracts in settlements). Washington follows the objective manifestation theory of contracts, which has us determine the intent of the parties based on the objective manifestations of the agreement, rather than any unexpressed subjective intent of the parties. *Condon v. Condon*, 177 Wash. 2d 150, 162, 298 P.3d 86 (2013).

In the present case, Ms. King agreed to not require that McCarten pay the awarded costs of \$2,156.95, and rather receive payment of McCarten's \$50,000.00 policy limits. Settlement on these terms also ensured that there would be no request for trial de novo by McCarten.

Ms. King signed a Release and Hold Harmless agreement, which reflected the compensation amount of \$50,000.00 (opposed to \$52,156.95).

Ms. King's counsel and McCarten's counsel executed a stipulation and order dismissing Ms. King's claims against McCarten, which stated that it was "for the reason that the same has been settled and the settlement is reasonable." *CP 2-000000096*. McCarten's counsel brought a motion to dismiss McCarten, stating that "the Plaintiff and Defendant McCarten have achieved settlement and have stipulated to dismissal." *CP 2-000000068*;

The Court erred when it entered judgment against McCarten, a released party that should have been dismissed, and when it denied McCarten's motion to dismiss.

The term "release" is not ambiguous. The plain meaning of "release" is the "surrender of a claim, which may be given for less than full consideration, or even gratuitously." *DeNike v. Mowery*, 69 Wash.2d 357, 366, 418 P.2d 1010, 422 P.2d 328 (1966); see also Black's Law Dictionary 1403 (9th ed.2009) (defining "release" as "[l]iberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced"); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* 332 (5th ed.1984) ("a release is a surrender of the cause of action, which may be gratuitous, or given for inadequate consideration"); Warren Freedman, *Joint and Several Liability: Allocation of Risk and Apportionment of Damages* 70 (1987) (a release is "a surrender of the cause of action, gratuitously or for some consideration"). *Barton v. State, Dep't of Transp.*, 178 Wash. 2d 193, 203-04, 308 P.3d 597 (2013).

Courts will not revise a clear and unambiguous agreement or contract for parties or impose obligations that the parties did not assume for themselves. *Condon v. Condon*, at 163.

Moreover, RCW 4.22.070 does not allow judgment against released parties.

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title 51 RCW. ***Judgment shall be entered against each defendant except those who have been released by the claimant*** or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. RCW 4.22.070 [emphasis added].

“Thus, settling, released defendants do not have judgment entered against them within the meaning of RCW 4.22.070(1), and therefore are not jointly and severally liable defendants. *Washburn v. Beatt Equip. Co.*, 120 Wash. 2d 246, 294, 840 P.2d 860 (1992).

“Settling parties, released parties, and immune parties are not parties against whom judgment is entered and will not be jointly and severally liable under RCW 4.22.070(1)(b).” *Kottler v. State*, 136 Wash.2d 437, 447, 963 P.2d 834 (1998) (citing *Washburn v. Beatt Equip. Co.*, 120 Wash.2d 246, 294, 840 P.2d 860 (1992); *Anderson v. City of Seattle*, 123 Wash.2d 847, 852, 873 P.2d 489 (1994) (A released party

“cannot under any reasonable interpretation of RCW 4.22.070(1)(b) be a defendant against whom judgment is entered.”)).*Barton v. State, Dep't of Transp.*, 178 Wash. 2d 193, 202, 308 P.3d 597 (2013).

Neither Ms. King nor McCarten bargained for judgment against McCarten. It would be nonsensical for Ms. King to willingly sign a release that releases McCarten for consideration of an agreed upon payment of a lesser amount than was awarded by the arbitrator, and then seek a judgment against McCarten for the arbitration award.

In its Motion for Entry of Judgment, State Farm-1 relies on MAR 6.3, advancing an incorrect position that if no Request for Trial de Novo is made within 20 days of the arbitration award, Ms. King must have judgment entered against the defendants on the arbitration award. MAR 6.3 is not on point, and is not controlling in this case.

First, nowhere in MAR 6.3 does it compel the prevailing party to enter a judgment against a party that it has already entered into a settlement with and released.

Second, it is clear from the case law, that the objective of MAR 6.3, and the primary context in which the Court's have addressed MAR 6.3 or appeals from judgment on arbitration award, are not germane in this case.

Pybas v. Paolino, 73 Wash. App. 393 869 P.2d 427 (1994), involved the Superior Court's order vacating a judgment on the arbitration award,

based on Plaintiff's excusable neglect for not timely filing the request for trial de novo. *Pybas v. Paolino*, 73 Wash. App. 393, 395-396, 869 P.2d 427 (1994). Moreover, when the Superior Court vacated the judgment, it also allowed the case to proceed with trial de novo. *Id at 396*. The issue for the Appellate Court was to determine when a superior court can use CR60(b) to circumvent the deadline for filing a request for trial de novo of a mandatory arbitration proceeding,. *Id*. It was within this context, entirely distinct from the present case, that the Court, in dicta, mentioned MAR 6.3.

Pybas is not on point and in no way analogous to the present case. Unlike in *Pybas*, Ms. King did not attempt to nor want to file a request for trial de novo on the award against McCarten. She was awarded the MAR limits, plus additional fees and costs. Unlike in the *Pybas* case, Ms. King is not seeking to vacate the judgment due to excusable neglect so that she can proceed with a trial de novo.

In *Cook v. Selland Const., Inc.*, 81 Wash. App. 98, 912 P.2d 1088 (1996), Cook sued a contractor (Selland) for negligence and nuisance. *Cook v. Selland Const., Inc.*, 81 Wash. App. 98, 100, 912 P.2d 1088 (1996). Defendant Selland moved for summary judgment and lost, although the Court dismissed the nuisance claim. *Id*. Thereafter, the case was put into mandatory arbitration. *Id*. Selland lost, and an arbitration award was filed.

Id. Selland appealed, seeking review of the trial court's ruling on Selland's motion for summary judgment. *Id.* Selland filed an amended petition for discretionary review, seeking review of the trial court's ruling on Selland's motion for summary judgment and the arbitration award. *Id.*

The Court stated that "the correct avenue for review of an adverse arbitration award is trial de novo" and "the superior court sitting in its appellate capacity can then review both the question of Selland's duty and its liability to the Cooks." *Cook v. Selland Const., Inc.*, 81 Wash. App. 98, 102, 912 P.2d 1088 (1996). It was in this context, entirely dissimilar from the present case, that the Court cited *Pybas* regarding direct appeals from a judgment on the arbitration award. *Id.*

In the present case, unlike Cook, Ms. King is not appealing a pre-arbitration order on summary judgment, nor is she appealing the arbitration award or even claiming that the award is adverse.

In *Dill v. Michelson Realty Co.*, 152 Wash. App. 815, 219 P.3d 729 (2009), the Defendant unsuccessfully argued during the arbitration for a limitation on attorney's fees. *Dill v. Michelson Realty Co.*, 152 Wash. App. 815, 822, 219 P.3d 726, 728 (2009). When that argument failed, rather than request a trial de novo, the Defendant sought to amend the award in the superior court by requesting reduction of the fee award. *Id.* When that effort

failed, it filed a direct appeal on the judgment on the arbitration award. *Id.*

The Court stated that, “The remedies for an unsatisfactory arbitration award are “limited to a trial de novo ... and, in very limited circumstances, a motion to vacate the judgment on the award.”” *Dill v. Michelson Realty Co.*, at 820. internal citation omitted.

The present case is entirely different than *Dill*. Ms. King was the Plaintiff, was awarded the MAR limits of \$50,000.00, plus roughly \$2,000.00 in fees and costs. Ms. King is not seeking a remedy from the Court for an “unsatisfactory” arbitration award as *Dill* was, nor did she ever ask the Court to amend or modify the award as *Dill* did. Rather, in the face of an impending trial de novo by McCarten, Ms. King was able to secure payment of \$50,000.00, avoid a trial de novo, and McCarten avoided a judgment.

It is clear from context in which the above Courts have addressed MAR 6.3 or an appeal from a judgment on arbitration award in general, that Ms. King’s case and bases for her appeal are distinguishable. Moreover, the objective for the limiting-appeal language of MAR 6.3 is not in anyway applicable in this case. Referring in part to MAR 6.3, the Court in *Pybas* stated,

The objectives behind these rules are clearly apparent: promoting the finality of disputes; alleviating court congestion, and reducing the delay in having civil cases heard. *Pybas v. Paolino*, at 398.

Ms. King's appeal is not to undue the finality of her case to get a second bite at the Defendants. To the contrary, Ms. King chose to avoid a trial de novo by McCarten and accepted a settlement payment of \$50,000.00 (rather than \$52,156.95). Ms. King then signed a Release and Hold Harmless agreement. Ms. King, through counsel, signed a Stipulation and Order Dismissing her claims against McCarten. McCarten then moved for dismissal, and Ms. King did not object. It is actually State Farm-1's devious motives, manifested by its motion, that resulted in unnecessary court congestion and an unnecessary lack of finality.

State Farm also relied on *Thomas-Kerr v. Brown*, 114 Wash. App. 554, 59 P.3d 120, 125 (2002), in its Motion for Entry of Judgment. That case is not on point. *Thomas-Kerr v. Brown* speaks to whether a party can take a voluntary non-suit after an arbitration. A voluntary non-suit is entirely different than the parties dismissing the claim after having reached a mutually-agreeable settlement.

B. State Farm-1 lacked standing and had no interest in or capacity to seek the relief of a judgment for Ms. King against McCarten.

“The doctrine of standing generally prohibits a party from asserting another person's legal right.” *Timberlane Homeowners Ass'n, Inc. v. Brame*, 79 Wash. App. 303, 307-08, 901 P.2d 1074 (1995); citing *Haberman v. WPPSS*, 109 Wash.2d 107, 138, 744 P.2d 1032, 750 P.2d 254 (1987), appeal

dismissed, 488 U.S. 805, 109 S.Ct. 35, 102 L.Ed.2d 15 (1988); *Miller v. U.S. Bank*, 72 Wash.App. 416, 424, 865 P.2d 536 (1994).

“A party has standing to raise an issue if it “has a distinct and personal interest in the outcome of the case.” *Id.*; citing *Erection Co. v. Department of Labor & Indus.*, 65 Wash.App. 461, 467, 828 P.2d 657 (1992), *aff'd*, 121 Wash.2d 513, 852 P.2d 288 (1993). [emphasis added]. “Stated another way, a party has standing if it demonstrates “a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and the party must show that a benefit will accrue it by the relief granted.” *Id.*

In the present case, the Superior Court entered a judgment for Ms. King against McCarten, which neither Ms. King nor McCarten agreed to. It was State Farm-1 that moved the Court to have the Court enter a judgment that in no way involved State Farm-1. A judgment is “the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies.” *CR 54*. State Farm-1 does not have a distinct and personal interest in a judgment for Ms. King, against McCarten. State Farm-1 does not have a real interest in forcing Ms. King to enter a judgment against McCarten.

State Farm-1 is not State Farm-2. While they share the same name,

they are separate in the eyes of the law. State Farm's policy was invoked in the instant case under its policy of UM coverage relating to the March 8, 2011 collision involving the phantom driver (State Farm-1) – opposed to a UIM claim arising out of McCarten's underinsurance on the April 20, 2011 collision (State Farm-2). Even State Farm-1's arbitration brief recognized that State Farm's inclusion in the present lawsuit was related to its status as the UM carrier regarding the March 8, 2011 collision. *CP 2-00000006:18-23; CP 2-00000007:8 – 8:7; CP 2-000000112:1-7; CP 2-0000083:16-17.*

Even the letter by State Farm's counsel wherein its settlement check and proposed Stipulation and Order of Dismissal was enclosed, identified the "date of loss" as March 8, 2011.

State Farm-2 was not a party to this lawsuit. A UM claim arising out of the March 8, 2011 collision is entirely distinct from a UIM claim arising out of the April 20, 2011 collision. "When an underinsured motorist causes injury, the insurance company of the injured party carrying UIM steps into the shoes of the negligent underinsured and supplements his policy." *Jain v. State Farm Mut. Auto. Ins. Co.*, 130 Wash. 2d 688, 692, 926 P.2d 923, (1996).[emphasis added]. State Farm-1 stepped into the shoes of the phantom-driver who caused the March 8, 2011 collision. State Farm-1, did not step into the shoes of McCarten – yet State Farm-1 sought to have the

Court enter judgment for Ms. King against McCarten because it thought a judgment would hinder Ms. King's chances of having a UIM claim against State Farm-2.

The Washington State Supreme Court has found this type of conduct by insurers particularly troubling. In *Ellwein v. Hartford Acc. & Indem. Co.*, the Hartford's insured was substantially injured when turning left in an intersection. *Ellwein v. Hartford Acc. & Indem. Co.*, 142 Wash. 2d 766, 768, 15 P.3d 640, 641 (2001), as amended (Jan. 18, 2001) overruled by *Smith v. Safeco Ins. Co.*, 150 Wash. 2d 478, 78 P.3d 1274 (2003) on grounds not applicable in the present case. Three vehicles were involved: Hartford's insured who turned left, an Allstate Insured who hit the turning vehicles, and an Safeco insured whose vehicle was also damaged. *Id.* at 768-769.

Safeco and Allstate brought subrogation claims against Hartford. *Id.* at 769. Hartford's insured asked the Hartford to not prejudice her potential liability claim against the Allstate insured by conceding comparative fault in the property damage subrogation claims. *Id.* As part of its investigation into the accident, Hartford hired an accident reconstructionist, obtained his report, and then wrote Safeco asserting that the Hartford's insured was not at fault for the collision, based on the report of the accident reconstructionist. *Id.* at 769-770. Internally, however, Hartford was preparing to defend itself from

a potentially large uninsured motorist claim by its own insured. *Id.*, at 770. When the Hartford insured brought her UIM claim against Hartford, Hartford's attorney wrote its insured's attorney and implied that the accident reconstructionist was *Hartford's* witness. *Id.*, at 770-771. Hartford, in defense of its insured's UIM claim, obtained a sworn declaration from the accident reconstructionist that revised his initial findings and conclusions in a way that now concluded the Hartford's insured was a fault. *Id.*, at 771.

The Supreme Court asked itself: "Does a UIM insurer violate its duty of good faith by hiring an expert for its insured to aid in the insured's liability representation, and then retaining that expert to aid in its defense of an insured's UIM claim?" *Ellwein v. Hartford Acc. And Indem. Co.*, at 778.

The Supreme Court found the insurer's conduct particularly troubling.

Finally, we find it particularly troubling that the insurer may "commingle" the liability representation file with the UIM file in such a way. If the insurer truly "stands in the shoes" of the tortfeasor, the benefits of the adversarial relationship should be accompanied by its costs. *Ellwein v. Hartford Acc. & Indem. Co.* at 782.

In the present case, State Farm-1's sole purpose for forcing a judgment between Ms. King and McCarten was to self-serve State Farm-2's defense of a UIM claim against State Farm-2 – a UIM claim that was not even a part of the current action, and in which State Farm-1 had no interest in or capacity to defend against in the current action.

The Supreme Court held in *Ellwein* that, “UIM insurers should be prohibited from using or manipulating an expert where it would be unable to do so if it were, in fact, the tortfeasor.” *Ellwein v. Hartford Acc. & Indem. Co.* at 782. It follows that UM insurer State Farm-1 should be prohibited from forcing a judgment to be entered against its insured, where it would be unable to do so if it were the phantom driver in whose shoes State Farm-1 stepped. The tortfeasor from the March, 2011 collision – the phantom driver – has no legal basis to force a judgment between Ms. King and McCarten: (a) The arbitration award found the damages between the two collisions divisible; (b) State Farm-1 was in no way liable for the damages allocated to the April 20, 2011 collision; (c). Ms. King settled her claims with McCarten; (c) Ms. King released McCarten; (d) Ms. King and McCarten’s counsel executed a stipulation and order to dismiss Ms. King’s claims against McCarten.

State Farm-2 was presented with a settlement demand letter by Ms. King’s counsel for UIM benefits arising out of McCarten being underinsured on the April 20, 2011 collision. State Farm-1's counsel has revealed that he is also acting as State Farm-2 counsel. Specifically, after having received Ms. King’s settlement demand for UIM benefits on the April 20, 2011 collision, State Farm-1 and State Farm-2's, counsel (Mr. Worden) gave Ms. King the

following ultimatum in a letter dated October 15, 2014:

(A) State Farm will only agree to a dismissal of the present action if Ms. King stipulates that she will not seek UIM benefits from State Farm arising from McCarten's negligence; (B) If Ms. King will not so stipulate, then State Farm demands that MS. King enter judgment on the arbitration award; (C) If Ms. King does stipulate to not seek UIM benefits against State Farm (for McCarten's negligence) or if judgment is entered on the award against State Farm (in the present action), then State Farm-PIP will not seek reimbursement of the amounts State Farm paid in PIP. An excerpt from this October 15, 2014 letter is as follows:

State Farm will only agree to a dismissal of this case if you and your client stipulate that your client is not seeking UIM benefits from State Farm for the McCarten accident.

If you and your client will not so stipulate, then per MAR 6.3, which states that when, as here, there has been no denovo, that the prevailing party "shall present to the court a judgment on the award of arbitration for entry as a final judgment," State Farm demands that you present the arbitration award for entry as final judgment.

If you and your client stipulate that your client is not seeking UIM damages for the McCarten accident or if judgment is entered on the award, State Farm will not seek reimbursement from your client for amounts paid in PIP.

CP 2-000000110:1-10; CP 2-000000083:16-17. Not only is this the type of wrongful commingling contemplated by the Supreme Court in *Ellwein*, but

it is also expressly an unfair or deceptive act or practice by State Farm. WAC 284-30-330, it states in pertinent part:

Specific unfair claims settlement practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

...

(12) Failing to promptly settle claims, where liability has become reasonably clear, ***under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.*** WAC 284-30-330 (subsections 1 through 11 omitted). [emphasis added].

This WAC is also part of State Farm's insurance policy with Ms. King. Insurance regulatory statutes become part of insurance policies. *See Clements v. Travelers Indem. Co.*, 121 Wash. 2d 243, 254, 850 P.2d 1298 (1993).

State Farm-1 is bullying its insured, setting up a ruse whereby it wants Ms. King to stipulate not to pursue a UIM claim against State Farm-2, or in the alternative it demanded that she have a judgment entered against McCarten (which the Court can see from State Farm's Motion is to try and prevent UIM exposure to State Farm-2). Both "options" were intended for the same result - to prevent State Farm-2 from paying UIM benefits on the April 20, 2011 collision. State Farm-1 also then dangles a waiver of PIP

reimbursement in front of Ms. King, to influence her to “not seek UIM damages for the McCarten accident.”

This is bad-faith insurance conduct, and should not be endorsed by any Court. Moreover, the protection provided by WAC 284-30-330(12) from an insurer using one portion of its policy to pit its insured against another portion of its policy shows that an insurer on one claim cannot conspire against its insured to benefit itself on another claim under a rationale that both policy coverages are “State Farm.”

No party requested a trial de novo (Ms. King settled with both State Farm and McCarten). Accordingly, State Farm-1 had no exposure to any damages other than those awarded by the arbitrator. The arbitrator specifically allocated damages in Ms. King’s action between State Farm-1 and McCarten. Specifically, State Farm-1, who stepped into the shoes of the phantom driver on March 8, 2011, was allocated \$2,059.00 in medical expenses and \$3,500.00 in general damages - and the total award against Stte Farm was \$3,500.00 due to an offset on its PIP payment. *CP 2-000000039-40*. McCarten, on the April 20, 2011 collision, was allocated with the full \$50,000.00 MAR limits. *CP 2-000000043*.

Accordingly, State Farm-1 was in no way affected by Ms. King and McCarten having settled, by Ms. King releasing McCarten, or by their

entering into a stipulation and order dismissing her claims against McCarten, because there is no potential contribution claim against State Farm-1 for McCarten's liabilities to Ms. King.

Moreover, Ms. King has also settled her claim (pre-judgment) with State Farm-1 for damages arising out of the March 8, 2011 collision. The arbitrator's award against State Farm was \$2,059.00, plus \$3,500.00 in general damages, but that State Farm-1 gets to offset what it already paid in PIP, thereby making the outstanding amount owed by State Farm-1 according to the award \$3,500.00. *CP 2-000000039-40*.

However, the parties settled their claim post-arbitration, whereby State Farm-1 paid \$4,000.00, plus Hamm fees of \$823.00. *CP 2-000000104-105; CP 2-0000083:16-17*. Clearly, Ms. King and State Farm-1 settled her claim, as the amount paid by State Farm-1, and agreed-to by Ms. King, was different than the amount awarded by the arbitrator.

It was State Farm-1's counsel that had conveyed a pre-arbitration proclamation that State Farm-1 will pay \$4,000.00 regardless of the arbitration award. *CP 2-000000104; CP 2-0000083:16-17*. It was State Farm-1's counsel that sent Ms. King's counsel the settlement check of \$4,823.00 (the \$4,000.00 it proclaimed it would pay, plus the amount agreed to by both counsel for *Hamm* fees). *CP 2-000000105; CP 2-0000083:16-17*.

It was State Farm-1's counsel that, along with the settlement check, sent Ms. King's counsel a Stipulation and Order of Dismissal – not a proposed judgment. *CP 2-000000105; CP 2-0000083:16-17*. It was State Farm-1's counsel that, in following up with Ms. King's counsel on the Stipulation and Order of Dismissal, referred in an email to the \$4,823.00 check as “the settlement check.” *CP 2-000000105; CP 2-0000083:16-17*. State Farm-1 had settled Ms. King's claim. McCarten had settled Ms. King's claim.

State Farm-1 had absolutely nothing to gain, nor any interest in, or right to seek a judgment for Ms. King against McCarten on the arbitration award.

C. The Court erred when it granted State Farm-1's motion for entry of judgment and entered such judgment against Ms. King, when the motion was a violation of Washington law.

State Farm-1's capacity as a Defendant in this action was that of UM insurer stepping into the shoes of a phantom driver who caused injury from a March 8, 2011 collision. The present action did not include a UIM claim against State Farm arising out of McCarten's negligence. State Farm-1 had no business meddling in the defense of a UIM claim by Ms. King against State Farm arising from McCarten's negligence. The present case invoked Ms. King's UM coverage on the March, 2011 collision, not the UM coverage on the April, 2011 collision. *CP 2-00000006:18-23; CP 2-00000007:8* –

8:7; CP 2-000000112:1-7; CP 2-0000083:16-17. Nonetheless, State Farm-1 was wrongfully attempting to benefit State Farm-2 by having a judgment entered for its insured against McCarten. The reason for State Farm-1's motion, and its purpose for the relief it sought (judgment for Ms. King against McCarten) was made clear by State Farm-1 itself. CP 2-000000081, 21-24; See also, VRP 7:8-9 (where State Farm-1's attorney, regarding Ms. King's UIM claim against State Farm-2 arising out of McCarten's negligence states, ". . . and the reason judgment would be entered is to preclude the UIM claim . . ."). By letter to Ms. King's counsel dated October 15, 2014 (after State Farm-2 had received Ms. King's UIM demand for the April, 2011 collision), counsel for State Farm dug its grave when its self-serving and conspiring intentions were revealed:

State Farm will only agree to a dismissal of this case if you and your client stipulate that your client is not seeking UIM benefits from State Farm for the McCarten accident.

If you and your client will not so stipulate, then per MAR 6.3, which states that when, as here, there has been no denovo, that the prevailing party "shall present to the court a judgment on the award of arbitration for entry as a final judgment," State Farm demands that you present the arbitration award for entry as final judgment.

If you and your client stipulate that your client is not seeking UIM damages for the McCarten accident or if judgment is entered on the award, State Farm will not seek reimbursement from your client for amounts paid in PIP.

CP 2-000000110:1-10; CP 2-000000083:16-17. This unfair, deceptive, self-serving back-door conduct is the type of insurance practice that Washington's Insurance Fair Conduct Act, and State Court do not tolerate. For the sake of brevity, Ms. King will incorporate herein, the section of this brief found at pages 26 - 32. The Superior Court should never have granted State Farm-1's motion, especially when State Farm-1's intent and purpose was known to the Court.

D. The Court erred when it ordered the McCarten judgment for \$52,159.95 satisfied, when in fact, it had not been satisfied.

RCW 4.56.100 – Satisfaction of Judgment for Payment of Money – states in pertinent part:

(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

In the present case, the judgment against McCarten for \$52,156.95 had not been paid or satisfied. The Superior Court's order and the way it arrived at is order cannot be rationally explained. On the one hand, the Court completely disregarded the settlement/release/dismissal agreed to by Ms. King and

McCarten – when it entered judgment against McCarten that neither Ms. King nor McCarten wanted or bargained for – and on the other hand, Judge Tabor stated that it was his opinion that the previous agreement (the settlement agreement between McCarten and Ms. King “allows for the judgment to be satisfied even though the agreement was for less [than the judgment].” *See VRP 14:20 - 15:7; 15:19 - 17:12; 18:14 - 19:18.*

“A release is a contract and its construction is governed by contract principles subject to judicial interpretation in light of the language used.” *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wash.2d 178, 187, 840 P.2d 851 (1992); see also *Del Rosario v. Del Rosario*, 152 Wash.2d 375, 382, 97 P.3d 11 (2004) (“This court has consistently held that personal injury releases are contracts governed by contract principles.”); 1 *Settlement Agreements in Commercial Disputes: Negotiating, Drafting & Enforcement* § 9.01 [B], at 9–3 (Richard A. Rosen ed., 2008) (“Because releases are contracts, contract law governs the formation and interpretation of releases.”) (hereinafter *Settlement Agreements*). “A court’s primary task in interpreting a written contract is to determine the intent of the parties.” *United States Life Credit Ins. Co. v. Williams*, 129 Wash.2d 565, 569, 919 P.2d 594 (1996); see also *Mills v. Inter Island Tel. Co.*, 68 Wash.2d 820, 829, 416 P.2d 115 (1966) (“[T]he distinction between a covenant not to sue and a release will be preserved according to the intention of the parties.”); 1 *Settlement Agreements*, supra, § 9.03[A], at 9–19 (if a release is ambiguous, “the court will proceed to consider the intent of the parties”).

Barton v. State, Dep't of Transp., at 208-09. In the present case, there was no language in the Release stating, or that could even be construed to suggest, that Ms. King was agreeing to accept \$50,000.00 despite a \$52,156.95

judgment. There was no judgment when the Release, which documented consideration of \$50,000.00, was signed by Ms. King. There was never going to be a judgment entered against McCarten because McCarten was going to file a request for trial de novo had Ms. King not settled with McCarten. Ms. King did not agree with McCarten that if a judgment were entered against McCarten on the arbitration award, she would accept payment of \$2,156.95 less than the award as a settlement. Moreover, McCarten and Ms. King's respective counsel executed a stipulation and order of dismissal of Ms. King's claims against McCarten after McCarten paid the \$50,000.00 settlement consideration. There is nothing about the release, the stipulation and order to dismiss, or the parties subsequent response to State Farm-1's motion, that are in anyway reflective of an intent to have the settlement amount satisfy the court's judgment on arbitration award.

V. CONCLUSION

Based on the foregoing, Ms. King respectfully asks this Court to overturn the lower court's ruling, judgment and satisfaction of judgment. This Court should also rule as a matter of law that the conduct of State Farm in brining its motion to have judgment entered for Ms. King against McCarten, in an unveiled attempt to serve State Farm against its insured's interests in defense of a UIM claim that State Farm knew was not a part of

the present case, is a violation of the Insurance Fair Conduct Act (RCW 48.30), and issue fees and damages under RCW 48.30.015(2) & (3) against State Farm.

DATED: March 19, 2015.

RON MEYERS & ASSOCIATES PLLC

By:  _____

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FILED
COURT OF APPEALS
DIVISION II

2015 MAR 23 PM 1:14

STATE OF WASHINGTON

BY C.M.
DEPUTY

No. 47063-2-II

COURT OF APPEALS FOR DIVISION II
OF THE STATE OF WASHINGTON

SHERRY KING
Appellant,

v.

STATE FARM MUTUAL INSURANCE COMPANY
Respondent,

DILLION MCCARTEN and "JANE DOE" MCCARTEN,
Respondents.

DECLARATION OF SERVICE OF APPELLANT'S BRIEF

Ron Meyers
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the date stated below I caused the documents referenced below to be served in the manners indicated below on the following:

DOCUMENTS: 1. APPELLANT'S BRIEF
 2. DECLARATION OF SERVICE

ORIGINAL TO: David Ponzoha, Clerk of the Court
Via Hand Delivery Washington State Court of Appeals, Div II
by ABC Legal Services 950 Broadway Ste 300
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DATED this 19 day of March, 2015, at Olympia, Washington.



Constance Stevenson, Litigation Paralegal