

No. 69554-1-I

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

COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2013 JUN 29 PM 1:21

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FIROZ IBRAHIM,

Appellant,

v.

AIU INSURANCE COMPANY, A FOREIGN INSURER,

Respondent.

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REPLY BRIEF OF APPELLANT

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**I. The Trial Court Erred in Granting Summary Judgment**

In his Opening Brief, Plaintiff showed that:

(1) An insurance policy must be viewed in its entirety, and words or phrases cannot be interpreted in isolation, nor ignored and not given effect [*App. Br.* at 5-6];

(2) The Superior Court erred in its construction of AIU's coverage clause that it "will pay for **property damage** caused by an **automobile accident** which an **insured** is legally entitled to recover from the **owner** or operator of an **underinsured motor vehicle.**" [*App Br.* at 6-10];

(3) AIU is estopped from denying Plaintiff's diminished value claim because AIU acknowledge by letter that Plaintiff was entitled to such a claim under his insurance contract. [*App Br.* at 9-11]; and,

(4) Under Washington law, a person is legally entitled to the difference between the fair cash market value of the property immediately before the occurrence and its fair cash market value after it is repaired and not based upon whether the vehicle was restored to pre-loss condition. [*App. Br.* at 6-10].

AIU's brief ignores all of these issues. AIU:

(1) fails to discuss the requirement that a policy is to be construed as a whole, giving effect to each phrase;

(2) fails to discuss long-standing Washington law regarding the legal entitlement to claim diminished value for the damage to personal property; and,

(3) fails to discuss that it acknowledge to Plaintiff by way of letter that he was entitled to a diminished value claim under the terms of his insurance contract.

Viewing AIU's policy in its entirety, as must be done under well-established Washington law, it is clear that AIU's policy cover diminished value, and does not unambiguously exclude that covered loss under the Limits of Liability clause. The Superior Court's decision must therefore be reversed.

Even AIU knew that its interpretation of its own policy required it to pay diminished value because of the letter it sent to Plaintiff regarding such a claim, and it was unreasonable for AIU to deny Plaintiff's claim when he presented proof of the loss he suffered.

## **II. Conclusion**

For the foregoing reasons, this Court should reverse the grant of summary judgment, find that diminished value is a covered loss under AIU's policy, and then remand for further proceedings.

RESPECTFULLY submitted this 17<sup>th</sup> day of June, 2013.

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CERTIFICATE OF SERVICE

I certify that on <sup>June 17<sup>th</sup></sup> ~~March 14~~, 2013, I caused a true and correct copy of this Brief of Appellant to be served on the following by U.S. First Class Mail, postage prepaid.

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

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