

65644-9

No. 65644-9-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

JAVIER RODRIGUEZ,

Plaintiff/Appellant

v.

NORTHGATE AUTOMOTIVE, INC., a Washington corporation; JOE MAGAZINE,
and "JANE DOE" MAGAZINE, a Washington sole proprietor d/b/a NORTHGATE
AUTOMOTIVE, INC. and GREENLAKE AUTO SERVICE

Defendants

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic insurance
company,

Defendant/Respondent

Appeal from the Superior Court for King County
The Honorable Richard D. Eadie

**APPELLANT JAVIER RODRIGUEZ'S APPEAL BRIEF AND ASSIGNMENT OF
ERROR**

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I. INTRODUCTION

Plaintiff/appellant Javier Rodriguez (hereafter "Rodriguez") suffered injuries and other damages as the result of negligent maintenance on his vehicle. The repair shop that performed the maintenance was uninsured, but Rodriguez's own insurance policy included uninsured motorist ("UIM") insurance. The sole issue before the Court is whether Rodriguez's injuries and other damages flowing from the maintenance by an uninsured gives rise to UIM coverage under Rodriguez's policy.

II. ASSIGNMENTS OF ERROR

Rodriguez assigns error to the entire Order Granting Defendant Farmers Insurance Company of Washington's Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment entered on May 27, 2010. CP 232-34.

III. STATEMENT OF THE CASE

On August 8, 2005, Rodriguez took his vehicle to Northgate Automotive, Inc. (hereafter "Northgate Automotive") in Seattle for maintenance where the agents or employees of Northgate Automotive disassembled and serviced the vehicle's brakes. CP 198, 205. The following day, while Rodriguez was driving his vehicle, the entire left front wheel and brake assembly detached from

the vehicle. CP 198-99, 205. Rodriguez was injured and the vehicle was damaged in the ensuing crash. CP 198, 205. Rodriguez's damaged vehicle was towed to another repair shop where it was discovered that Northgate Automotive improperly reassembled the brakes. CP 196-206.

At the time of the maintenance, Northgate Automotive was uninsured. CP 174-76. However, at the time of the crash, Rodriguez was covered under an automobile insurance policy issued by defendant/respondent Farmers Insurance Company of Washington (hereafter "Farmers"). CP 83-113. Rodriguez's insurance policy included UIM coverage with a bodily injury policy limit of \$30,000 per person and \$60,000 per incident. CP 86. Rodriguez's insurance policy also included UIM coverage for property damage. CP 86. Rodriguez provided Farmers with prompt notice that he was involved in a one-car crash, that his property was damaged, and that he suffered injuries. Farmers denied and continues to deny UIM coverage to Rodriguez. CP 1-56, 115-172, 190-194, 212-224.

After leave was granted by the trial court, Rodriguez filed and served his Second Amended Complaint for Personal Injuries which included a request for declaratory relief on the issue of UIM

coverage and multiple claims against Farmers for its unfair handling of Rodriguez's UIM claim. CP 1-11, 178-188. Farmers answered with a reaffirmation of the denial of UIM coverage to Rodriguez. CP 12-16, 190-194.

On April 30, 2010, both Rodriguez and Farmers presented dueling motions for summary judgment on UIM coverage to the trial court. On May 27, 2010, the trial court entered an order granting summary judgment in favor of Farmers. CP 232-34. Rodriguez filed a timely notice of appeal assigning error to this order. CP 235-41.

IV. ARGUMENT

A. Standard of Review

The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

Summary judgment is appropriate when there are no issues of material fact. CR 56(c). A material fact is one on which the outcome of the litigation depends. *Capitol Hill Methodist Church of Seattle v. Seattle*, 52 Wn.2d 359, 364, 324 P.2d 113 (1958). The burden of showing that there are no issues of material fact is on the moving party. *Jones*, 146 Wn.2d at 300. The admission of a party

may constitute substantial evidence of any fact in issue. *Faust v. Albertson*, 166 Wn.2d 653, 662, 211 P.3d 400 (2009). Moreover, questions of insurance coverage are for the court to determine as a matter of law. *Detweiler v. J.C. Penney Cas. Ins. Co.*, 110 Wn.2d 99, 113, 751 P.2d 282 (1988).

In this matter, the parties agree that no material facts are in dispute. CP 212-13. Thus, the issue before the Court is whether negligent maintenance by an uninsured that results in injury and damage gives rise to UIM coverage pursuant to the terms of Rodriguez's policy.

B. UIM Statute and Farmers Policy Coverage Language

In Washington, UIM coverage is auto insurance coverage designed to protect policyholders when they and/or their property are injured by persons who are either uninsured or underinsured. *Johnson v. Farmers Ins.*, 117 Wn.2d 558, 560, 817 P.2d 841 (1991). The UIM insurance carrier steps into the shoes of the negligent uninsured. *Jain v. State Farm Mut. Auto. Ins. Co.*, 130 Wn.2d 688, 692, 926 P.2d 923 (1996). The purpose of UIM coverage is to allow an injured party to recover those damages the injured party would have received had the responsible party been insured with liability limits as broad as the injured party's UIM limits. *Devany v. Farmers*

Ins. Co., 134 Wn. App. 204, 207, 139 P.3d 352 (2006), *review denied*, 160 Wn.2d 1011 (2007). Washington's UIM statute requires automobile insurance policies to insure "against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, *maintenance*, or use of a motor vehicle...." RCW 48.22.030(2) (emphasis added).

The UIM coverage language in the Farmers policy at issue here reads as follows:

We will pay for all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

CP 93 (emphasis in original). Eliminating the superfluous words, the relevant UIM coverage language reads as follows:

We will pay for all sums which an **insured person** is legally entitled to recover as **damages** from the operator of an **underinsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the maintenance of the **underinsured motor vehicle**.

The terms in bold are defined within the policy. The undisputed material facts clearly establish that an "insured person" sustained "bodily injury" caused by "accident" arising out of "maintenance."

The term "underinsured motor vehicle" is defined as:

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

CP 94 (emphasis in original). Reduced to the germane language, the definition of an “underinsured motor vehicle” is:

A **motor vehicle** with respect to the maintenance of which either no **bodily injury** or **property damage** liability bond or insurance policy applies at the time of an accident.

Since no liability insurance applied at the time of the crash with respect to the maintenance of the motor vehicle, Rodriguez’s vehicle fits the definition of an “underinsured motor vehicle.” “Under the [UIM] statute and common sense, one car can be both insured and underinsured.” *Tissell v. Liberty Mut. Ins. Co.*, 115 Wn.2d 107, 118, 795 P.2d 126 (1990). Farmers cannot deny UIM coverage simply because the injuries arise from a single-car accident. *Jain*, 130 Wn.2d at 693. “Such a denial of coverage was found to contravene the purpose behind UIM’s second layer of protection and was accordingly void.” *Id.*

While not defined by the Farmers policy, the definition of the term “operator” has been addressed by the Supreme Court:

The interpretation of insurance policy language is a question of law. Undefined terms in an insurance policy “must be given a fair, reasonable, and sensible construction as would be given by an average insurance purchaser.” “The terms of the policy must be understood in their plain, ordinary, and popular sense.” “To determine the ordinary meaning of an undefined term, our courts look to standard English language dictionaries.” ... [By] Webster’s Third New International Dictionary 1581 (1969): “Operator” is defined as “one that produces a physical effect or engages himself in the mechanical aspect of any process or activity as ... [a] driver.” A driver is “a person in actual physical control of a vehicle,” and control means the “power or authority to guide or manage.” ... However, an “operator” is not solely the person occupying the driver’s seat, but rather anyone who is “in actual physical control of a vehicle,” having the “power to guide” it. ... [T]hose definitions contain no suggestion that an “operator” must be a single person who is in command of all the controls of a car. ... The dictionary definitions do not impose limits on the “purpose, extent, or duration” of an operator’s control over a vehicle. ... From a practical standpoint, narrowing the scope of “operator” to a single person who is in sole command of all the controls of a vehicle does not sufficiently address the real-life situations that arise while driving. Auto mishaps rarely result when drivers are in total control of all the functions of their cars. Instead, accidents occur when there are failures to maintain complete control, including when a passenger unexpectedly grabs the steering wheel. Accidents can happen almost instantaneously when only one of the car’s critical controls is compromised.

North Pacific Ins. Co. v. Christensen, 143 Wn.2d 43, 48-50, 17 P.3d 596 (2001) (citations omitted) (emphasis added). In *Christensen*, the driver of a car was injured after a passenger grabbed the steering

wheel causing a crash. *Id.* at 45. The insurance carrier denied UIM coverage to the driver on the basis that the passenger's actions did not make him an "operator" of the vehicle. *Id.* at 46. The majority of the Supreme Court sided with the insured holding that while the passenger did not have sole and continuous control of all the car's functions, he was in "actual physical control" of the steering mechanism long enough to cause a collision and resulting injuries. *Id.* at 53.¹ While a "driver" is unquestionably an "operator," the Supreme Court adopted a definition of "operator" that is broader than the term "driver."

Here, both the policy coverage language and the UIM statute specifically use the broader term "operator" rather than the narrower term "driver." The distinction between the terms "driver" and "operator" is significant because the Farmers insurance policy at issue contains explicit language providing coverage for accidents arising from the "maintenance" of an underinsured motor vehicle. In the real-life situations that arise while driving, one who maintains a vehicle is not likely to be behind the wheel of that vehicle at the time

¹ The minority opinion authored by Chief Justice Alexander concurs with the majority's result, but differs in the analysis. *Id.* at 53. In particular, the minority opinion concludes that the term "operator" is an unresolved ambiguity. Where there is unresolved ambiguity in an inclusionary clause of an insurance contract, liberal construction in favor of coverage is given where possible. *Id.* at 56.

of a crash due to negligent maintenance. Thus, the term “operator” must be broad enough to include the unfortunate consequences arising from the “maintenance” of an underinsured motor vehicle.

Through its maintenance, the hand of Northgate Automotive set in motion a chain of events that acted to exert actual physical control over the mechanical operation of Rodriguez’s vehicle causing a crash. Just like the passenger in *Christensen*, Northgate Automotive did not have sole and continuous control of all the car’s functions, but was in “actual physical control” of the mechanical operation of the steering and braking functions enough to cause a crash. Thus, Northgate Automotive falls within the *Christensen* definition of an “operator” of Rodriguez’s car. Accordingly, Farmers must step into the shoes of uninsured Northgate Automotive and extend UIM coverage to Rodriguez for his injuries and other damages arising from the negligent maintenance.

C. Public Policy Favors UIM Coverage

Washington has a strong interest in protecting its citizenry from the financially irresponsible. *Clayton v. Grange Ins. Ass’n*, 74 Wn. App. 875, 877, 875 P.2d 1246 (1994), *review denied*, 125 Wn.2d 1018 (1995). While the fundamental public policy underlying the UIM statute is full compensation for victims of automobile

accidents, it also has a public safety component. *Touchette v. Northwestern Mut. Ins. Co.*, 80 Wn.2d 327, 332, 494 P.2d 479 (1972). This public policy imposes an obligation upon insurers to provide protection to their insureds against loss caused by wrongful conduct of an uninsured motorist. *Brummett v. Grange Ins. Ass'n*, 4 Wn. App. 979, 981, 485 P.2d 88 (1971). The courts have consistently held that RCW 48.22.030 is to be liberally construed in order to provide broad protection against financially irresponsible motorists. *Kenworthy v. Pennsylvania General Ins. Co.*, 113 Wn.2d 309, 313, 779 P.2d 257 (1989). While not a defined term, the word “maintenance” appears twice within the Farmers policy – in the UIM coverage language and in the definition of the term “underinsured motor vehicle.” The word also appears multiple times in the UIM statute. RCW 48.22.030. Thus, it is clear that both the Legislature and Farmers intended UIM coverage to flow from injuries arising from maintenance.

Here, Rodriguez suffered injuries and other damages arising from maintenance. Public policy considerations dictate that the Court should construe the Farmers UIM coverage language liberally to provide broad protection to Rodriguez and others similarly situated

from crash related losses caused by the financially irresponsible that perform maintenance on vehicles.

V. CONCLUSION

The Farmers insurance policy at issue contains UIM coverage language for claims arising from the “maintenance” of an underinsured motor vehicle. Since one who performs “maintenance” on a vehicle is not likely to be behind the wheel of the vehicle at the time of an accident, the policy must be construed broadly enough to include real-life situations that arise due to “maintenance” while driving. Rodriguez respectfully requests that this Court reverse the order of the trial court and grant summary judgment in favor of UIM coverage. Rodriguez further requests that this Court remand the case to the trial court for adjudication on the remaining issues. Costs on appeal, including reasonable attorney fees, should be awarded to Rodriguez. RAP 18.1.

Respectfully submitted this 3rd day of September, 2010.

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