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NO. ~~0-10000~~

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Janette Leding Ochoa,

Petitioner,

v.

PROGRESSIVE CLASSIC INSURANCE COMPANY, a foreign
corporation, THE PROGRESSIVE CORPORATION, a foreign
corporation and PROGRESSIVE CASUALTY INSURANCE
COMPANY, a foreign corporation,

Respondents.

APPELLANT
BRIEF OF PETITIONER OCHOA

Richard B. Kilpatrick, P.S.
Shannon M. Kilpatrick, WSBA #41495
Richard B. Kilpatrick, WSBA #7058
1750 – 112TH Ave. N.E.,
Ste. D-155
Bellevue, WA 98004
(425) 453-8161

Attorneys for Petitioner

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I. INTRODUCTION

This case arises out of a motor vehicle collision, in which plaintiff Janette Ochoa was struck by Dawnell Smith. Smith was believed to be working as a Domino's pizza delivery driver, driving her own car. Ochoa suffered significant injuries that required two surgeries. She has permanent difficulties. The owner/driver's personal insurance had only \$50,000 of liability coverage available. The employer was fully insured for its own liability with \$1.5 million limits, including coverage for its vicarious liability for the actions of its employees while driving personal vehicles. The employer's policy explicitly did not cover the delivery driver individually. Because the delivery driver did not have sufficient insurance coverage, Ochoa made a claim with Progressive under her UIM insurance policy. Even though it was to step into the shoes of the delivery driver, Progressive refused to recognize any UIM claim, arguing it was entitled to a threshold of both the delivery driver's limits and the employer's limits, \$1.55 million, ultimately because of the potential joint and several liability of the employer.

Ochoa sued Progressive for breach of contract, bad faith and breach of the Consumer Protection Act. After Ochoa stipulated that her damages did not exceed \$1.55 million, the trial court ruled

that Progressive was entitled to an offset of \$1.55 million before its UIM coverage began, essentially ending the case. Ochoa sought direct review with this Court. She now asks this Court to decide under the UIM statute, RCW 48.22.030, what liability insurance is “applicable” to create the threshold for when UIM coverage begins. Is Progressive, who as the UIM insurer steps into the shoes of the driver, entitled to a UIM coverage threshold of only the personal liability coverage that applied to the driver – \$50,000 – or does the threshold also include the potentially vicariously liable employer’s insurance coverage that does not protect the driver? Ochoa asks this Court to complete the work of *Allstate v. Batacan*, 139 Wn.2d 443, 986 P.2d 823 (1999), and extend the decision of *Finney v. Farmers Ins. Co. of Wash.*, 92 Wn.2d 748, 600 P.2d 1272 (1979), to the UIM context and hold that if any of the responsible parties have inadequate insurance covering themselves, UIM coverage is available and the UIM insurer may not aggregate the liability coverages of other potentially jointly and severally liable parties to raise the threshold for UIM coverage. To the extent it conflicts with those principles, *Allstate v. Dejbod*, 63 Wn. App. 278, 818 P.2d 608 (1991), should be disapproved.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it held the employer's Evanston policy limits of \$1.5 million was "applicable coverage" under the UIM statute, RCW 48.22.030, which together with the delivery driver's \$50,000 limits served as the threshold for when Ochoa's UIM coverage began for the delivery driver's liability; and the UIM statute requires aggregation of potentially joint and several defendants' liability coverages. See CP 326 (Appendix A).

III. STATEMENT OF THE CASE

A. The Collision

On June 24, 1999, Dawnell Smith blew threw a stop sign and t-boned plaintiff Janette Ochoa (then Janette Leding). CP 170-71. Smith was cited for failure to yield. CP 170. The collision was significant, and Ochoa suffered multiple injuries, including shoulder impingement syndrome that required surgery, a broken nose that required surgery, and back problems. CP 1006, 1018-26, 1061. As of 2000, her medical special damages totaled \$22,000. CP 1026. She has incurred significantly more medical expenses since then, and has some permanent difficulties.

At the time of the collision, Smith was driving her personal automobile back to the Snohomish Domino's, incorporated as Eastside Express, Inc., where she said she worked as a pizza delivery driver.¹ CP 324. Smith was personally insured with State Farm for \$50,000 liability limits for each injured person. *Id.* Smith was the only driver at fault in the collision. *Id.*

Ochoa carried her own underinsured motorist (UIM) coverage with Progressive for \$25,000.² CP 324; 340-381.

B. The Evanston Policy

Eastside Express was insured with Evanston Insurance Company for \$1.5 million in liability coverage.³ CP 324, 328. Eastside Express was the only named insured in its insurance policy. CP 328-29. While Domino's Pizza, Inc. was listed in the policy as an additional insured, none of the delivery drivers,

¹ The parties agreed in their Agreed Findings of Fact that Smith was delivering pizza for Domino's Pizza at the time of the collision. CP 324, ¶ 4. That is still what plaintiff believes and what was pleaded in the complaint against Eastside Express and Domino's. CP 995. However, Eastside Express always denied the allegation that Smith was within the scope of her employment when she struck Ochoa. CP 303, 516, 1100-01. Because Ochoa settled with Eastside Express and Domino's, that issue was never resolved.

² The entire Progressive policy is Exhibit B to the trial court's July 29, 2010 Findings of Fact and Conclusions of Law which is attached as Appendix A.

³ The entire Evanston policy is Exhibit A to the trial court's July 29, 2010 order, which is attached as Appendix A.

including Smith, was named in the policy, as either named insureds or additional insureds. CP 324, 328.

The Evanston policy explicitly covered damages caused by “non-owned motor vehicle[s], while used to deliver food on behalf of the named insured.” CP 332. In other words, Eastside Express had coverage for its vicarious liability for the acts of its delivery drivers who drove their own vehicles while on the job. CP 324.⁴

C. Ochoa Quickly Reached a Settlement for the Owner/Driver’s \$50,000 Liability Limits

In December 2000, Ochoa’s first lawyer, Ben Wells, sent a comprehensive settlement package to State Farm, detailing Ochoa’s injuries and past and future medical expenses. CP 1017-1027. State Farm quickly offered up its \$50,000 limits to Ochoa. CP 1028. Because Ochoa’s claim was worth significantly more than \$50,000, Ochoa informed her UIM insurer, Progressive, that she intended to accept the limits offer from State Farm, it would not make her whole, and gave Progressive the opportunity to “buy out” her claim pursuant to *Hamilton v. Farmers Ins. Co. of Wash.*, 107 Wn.2d 721, 733 P.2d 213 (1987). CP 91, 325. That letter also

⁴ For a more in-depth explanation of the Eastside Express policy and who it covers, see Section IV(A).

formally notified Progressive that Ochoa was filing a UIM claim. *Id.* Progressive declined the option to “buy out” State Farm’s position. CP 93.

After completing the settlement with State Farm and the delivery driver, Ochoa renewed her request for UIM benefits. CP 325. In early April 2001, Progressive wrote to Wells stating that it could not consider Ochoa’s UIM claim “until we have completed our investigation regarding the available coverage.” CP 95. Progressive did not explain what its investigation entailed or how long it would take to complete. Wells also sent a letter to Eastside Express to assert a claim for Ochoa. CP 183, 325. No offer was made. CP 325.

Progressive took the position that Ochoa could not collect UIM benefits unless the value of her claim exceeded the amount of both the driver’s State Farm policy and Eastside Express’ Evanston policy. CP 325.

Ochoa’s former attorney withdrew in June 2001. *Id.* Ochoa then hired this office, who wrote to Progressive to explain that the existence of a vicariously liable employer does not change the fact that the delivery driver, who both owned and operated the car, was an underinsured motorist. CP 97-98. Progressive did not respond

for over three months, and when it finally did, it only requested a copy of the State Farm release signed when Ochoa settled with the delivery driver. CP 100. Ochoa promptly provided the release, CP 100-02, and given its failure to respond substantively to her previous letter, again asked Progressive for an explanation about its position on her UIM claim. CP 100.

D. Ochoa Filed Suit Against Eastside Express and the National Domino's Entities, Who Promptly Contested that the Owner/Driver Was Acting Within the Scope of Her Employment

Neither Eastside Express nor Domino's offered anything in settlement and asserted that the State Farm release signed by Ochoa also released them. CP 325. Three days prior to the statute of limitations, Ochoa filed suit against Domino's, Eastside Express, and her former attorney Hammer & Wells.⁵ CP 316-19. Eastside Express and Domino's continued to argue that they had been released when Ochoa signed the State Farm release.⁶ CP 304.

⁵ Wells and his law firm unfortunately had to be included as defendants because Wells had Ochoa sign the State Farm release for the driver's limits that Domino's and Eastside Express were claiming released them. CP 101.

⁶ In 2004, Eastside Express and Domino's moved for summary judgment dismissing all claims against them because they had been released in the State Farm release. CP 1100-1106. The motion was rescheduled several times, but ultimately was not heard because Ochoa settled with Eastside Express and Domino's.

In their Answer, Eastside Express and Domino's denied Ochoa's allegations that the delivery driver was acting within the scope of her employment and for the benefit of Eastside Express. CP 995, 303. They continued to deny those allegations. CP 516, 1100-01. That issue was never resolved.

E. Even After Learning the Owner/Driver Was Not an Insured, Progressive Continued to Refuse to Pay Ochoa UIM Benefits

On June 24, 2002, Progressive wrote to Ochoa's counsel, stating that based on its conversation with Eastside Express' insurer, Eastside Express was vicariously liable for Smith's actions, and there was no UIM coverage until Ochoa first exhausted both the delivery driver's \$50,000 limits and Eastside Express's limits.⁷ CP 104.⁸ Three days later, Progressive received an email, not shared with Ochoa, from Eastside Express's insurer that stated: "There is a [sic] vicarious exposure for the delivery driver who is not an insured." CP 106 (emphasis added).

⁷ Eastside Express's limits were erroneously referred to in the letter as \$500,000 (CP 104), when in actuality the limits were \$1.5 million. CP 328.

⁸ Progressive refers to Eastside Express as Domino's in its correspondence, even though the entities are separate corporations. Eastside Express employed the delivery driver. There was no relationship between Domino's and the delivery driver.

After hearing nothing from Progressive for months, Ochoa's counsel obtained the Eastside Express policy and wrote to Progressive in November 2002, enclosing a copy of the Eastside Express policy. CP 172. The letter pointed out the policy did not cover delivery drivers individually and demanded immediate processing of Ochoa's UIM claim. CP 172, 178. In response, Progressive admitted that it had never actually received a copy of the Evanston policy until then and promised to look at the claim again. CP 109.

After reviewing the Eastside Express policy, Progressive again refused to pay anything on Ochoa's UIM claim, stating that the Evanston policy limits must be exhausted first. CP 111. This time, Progressive took the position that even though the delivery driver was not a named insured, the Eastside Express policy provided coverage for her because she was driving a non-owned motor vehicle. *Id.*

F. Ochoa Amended Complaint to Bring in Progressive

In June 2004, the complaint was amended to add the Progressive defendants, along with allegations of insurance bad faith, breach of contract, and breach of the Consumer Protection

Act (CPA) for Progressive's conduct in mishandling Ochoa's claim.
CP 298-302; 325.

G. The First Trial Judge Denied Progressive's Motion to Set the UIM Coverage Threshold at \$1.55 Million – Which Was Both the Employer and Driver's Limits.

In December 2004, the Progressive defendants moved for summary judgment, asking for a finding that it was entitled to a credit of \$1.55 million against plaintiff's damages before there is any UIM coverage. CP 283. Progressive argued that the Evanston policy applied individually to the driver, Smith, by virtue of the policy covering the delivery driver's vehicle, and thus it was entitled to a full offset of both policy limits. CP 287, 130, 132. Progressive also implicitly argued that it was entitled to aggregate the limits of the policies from both the delivery driver and the employer because both policies applied to the delivery driver's vehicle and Eastside Express is vicariously liable for the delivery driver. CP 131-32.

In opposition, Ochoa argued that the Evanston policy covered only Eastside Express's vicarious liability for the acts of its employees, not the personal liability of the delivery driver, Smith. CP 156, 159-62. Ochoa noted that the UIM statute is focused on each tortfeasor, rather than on the vehicle. CP 164-68. Additionally,

Ochoa argued that pooling or aggregating insurance policies for different tortfeasors was prohibited. CP 166-68. Ochoa pointed to *Finney v. Farmers*, 92 Wn.2d 748, 600 P.2d 1272 (1979) in which this Court already prohibited the aggregation of jointly and severally liable defendants' liability insurance limits in the uninsured motorist insurance context. CP 167-68. Further, in *Allstate v. Batacan*, this Court refused to allow aggregation of severally liable defendants' policies and left for another day the question of any aggregation of jointly and severally liable defendants' liability policies. CP 166-67.

On April 15, 2005, visiting King County Judge Mary Roberts⁹ denied Progressive's motion. CP 127-28. Progressive moved to certify the order denying its motion for partial summary judgment as immediately appealable. CP 877-83. Judge Roberts also denied that motion. CP 827-28.

H. Ochoa Settled with the Driver's Employer and Her Former Lawyer, Leaving Only the Progressive Defendants

After the summary judgment motion, Ochoa negotiated a settlement with the Domino's defendants and Wells and Hammer & Wells, all of whom were dismissed in January 2006. CP 817-19.

⁹ All of the Snohomish County judges recused themselves from hearing this case, and Judge Roberts from King County was assigned. CP 936-37.

Ochoa received \$25,000 from Evanston on behalf of Eastside Express's potential vicarious liability and \$32,500 from Ben Wells and Hammer & Wells for having impaired Eastside Express' potential vicarious liability when Wells had Ochoa sign the State Farm settlement agreement. CP 325, 550. Ochoa's recovery to this point was \$107,500. CP 325.

Meanwhile, discovery continued, and the case was administratively transferred to visiting King County Judge Brian Gain. In February, 2010, the caption was changed to include only the remaining defendants, the Progressive entities. CP 488-89.

I. The Second Trial Judge Denied Ochoa's Motion for Summary Judgment to Establish the Threshold for UIM Coverage at the Owner/Driver's Liability Limits of \$50,000

Given Judge Roberts' earlier ruling that the UIM threshold was not the combination of the limits, as trial approached Ochoa moved for summary judgment to affirmatively establish the UIM insurance threshold as the limits that covered the driver – \$50,000. CP 112-126. Judge Gain denied that motion, which seemingly overruled Judge Roberts' earlier ruling. CP 47-48. At oral argument, Judge Gain found that the Evanston policy was "primary" at the

time of the collision. 4/9/10 RP at 30. Ochoa moved for reconsideration, CP 27-46, which was denied. CP 466-68.

Due to the uncertainty created by two seemingly contradictory trial court rulings about when UIM insurance is triggered, Ochoa sought a pre-trial hearing to clarify the trial court's thinking about the UIM insurance threshold and the state of the case, which was conducted on June 25, 2010. 6/25/10 RP at 13-22. At the judge's urging, the parties agreed to stipulate to findings of fact, which would allow the trial judge to make his intended legal rulings on the UIM insurance threshold to get the case up on appeal. *Id.* at 22.

J. The Second Trial Judge Entered Findings of Fact and Conclusions of Law, Ruling Progressive is Entitled to a UIM Threshold of \$1.55 Million

The parties submitted proposed Findings of Fact to the trial court, which held another hearing. 7/29/10 RP at 2-26. Ochoa stipulated that her claim, while worth significantly more than \$75,000, was not worth \$1.55 million. CP 326. Based on that, the trial court entered Findings of Fact and Conclusions of Law on July 29, 2010. CP 323-384. Judge Gain ruled that the Evanston policy limits add to the threshold for Progressive's UIM benefits regarding the delivery driver's liability. CP 326. Given that Ochoa's bad faith

case was premised on the fact that Progressive refused to pay any UIM benefits when it should have done so, there were seemingly no more issues to be tried. 6/25/10 RP at 14. Ochoa timely filed her Notice of Direct Appeal to the Supreme Court. CP 1-7.

IV. ARGUMENT

A. Because the Driver Was Not an Insured Under the Evanston Policy, the Policy Covered Only Eastside Express for Its Vicarious Liability and Did Not Cover the Delivery Driver

The Evanston policy by its express terms does not cover the delivery driver – it covers only the vicarious liability for Eastside Express. Yet Progressive has continued to claim the Evanston policy does protect the driver. Progressive confuses the concepts of who is an insured with the question of what risks and vehicles will be covered for that insured.

The simple basic fact of insurance law is that only the people or groups of people stated to be insureds are protected for their liability. See *Farmers Ins. Co. of Washington v. Miller*, 87 Wn.2d 70, 73, 549 P.2d 9 (1976) (noting that courts must interpret insurance contracts according to the intent of the parties and cannot impose obligations not in the insurance contract to begin with).

There are two very important parts to every liability insurance policy: who is covered and what risks are covered. First,

who is covered as an insured is identified and can generally be found in both the declarations page and the policy. Insureds can be either named insureds or additional insureds. Who is an insured is a separate limitation on the coverage of every liability policy, appears in a separate section of the policy, and is not modified by the other parts of the policy that identify the risks for which those insureds will be protected.

Second, the policy also identifies what risks will be covered for those insureds. Regardless of which risks are taken on or rejected by the insurer, that insurer still covers only those risks with respect to the liability of the designated insureds. In short, insurers will not cover people who are not covered as insureds in the policy, even if the risk is covered. Nor will insurers pay for risks not covered in the policy even if caused by an insured.

In this case, who is covered by the Evanston policy for this collision is very simple: only Eastside Express. On page 1, Part IV, the Evanston policy is very clear:

A. We will pay:

1. We will pay all sums the insured legally must pay...caused by an accident and resulting from the ownership, maintenance or use of a covered auto...

CP 332 (emphasis added). In other words, even a person using a covered auto must also be “the insured” before Evanston would have to cover them.

On page 2, the policy addressed who is an insured, separately in section D, saying: “You are an insured for any covered auto.” CP 333. The term “You” was expressly defined on page 1 as: “The person or organization shown as the named insured in ITEM ONE of the Declarations.” *Id.* The organization shown in ITEM ONE of the Declarations page was “Named insured: Eastside Express, Inc.” *Id.* There are no other names. The policy defines an “auto” as a “non owned motor vehicle, while used to deliver food on behalf of the Named Insured(s).” CP 332.

Therefore, substituting the references creates: “D. Who is an insured: Eastside Express, Inc. is an insured for any non-owned motor vehicle, while used to deliver food on behalf of the Named Insured(s).”

Many policies have “additional insured” clauses that create other groups of insureds beyond the named insured. Most family auto policies, for example, extend coverage to any person driving the covered auto with the named insured’s permission. Those people are additional insureds, but only because the policy defines

them as such. Here, the Evanston policy defines Domino's Pizza, Inc. as an additional insured. CP 329. There are no other names listed.¹⁰

But coverage for those non-owned automobiles extends that risk only for the named insured, Eastside Express, and does not change that Eastside Express is the only insured covered for those risks. The inclusion of non-owned cars means that Evanston will cover the claims made against Eastside Express (but not Smith) and it will have to pay any judgment entered against Eastside Express (but not Smith). Had the policy not extended its risks to non-owned cars, Evanston would not have to pay judgments against Eastside Express for the acts of its employees in their personal vehicles while on the job.

Regardless, Evanston's policy promised to pay for only the insureds. Thus if Smith had not settled with Ochoa and was made a

¹⁰ Unlike the Evanston policy, many corporate insurance policies have additional insured coverages that make employees acting in the scope of their employment additional insureds. For example, the AIG insurance policy for the national Domino's has additional insured coverages for its employees. By a separate endorsement, that policy added "Employees as insureds while driving Non-owned vehicles" and even amended its "Who is an insured" provision to state "Owners of Non-owned autos are included as insureds." CP 176. Had Smith worked for the national Domino's, she would have been an insured under the AIG policy. But, Smith did not work for it, she worked for Eastside Express, Inc. The policy her employer paid for did not include such an additional insured endorsement, so we are left with the basic insuring language that simply does not extend coverage to drivers like Smith.

defendant in this suit, Evanston would not have paid any judgment against her - a fact that the Evanston adjuster made clear in his email to Progressive when he said there was vicarious liability for the delivery driver "who is not an insured." CP 106. Evanston's \$1.5 million coverage therefore did not protect the tortfeasor Smith individually; it protected Eastside Express and any liability it might have had for the actions of employees.

Because the Evanston policy did not cover the driver as an insured, the Evanston policy limits were not available to Ochoa for Smith's liability. As such, the driver was an underinsured motorist.

B. When Properly Understood the UIM Statute, RCW 48.22.030, Prohibits Aggregation of Different Tortfeasors' Limits; Thus, the Proper Threshold for Where Progressive's UIM Insurance Begins is the Total of Liability Limits Applicable to the Driver/Owner – \$50,000

The purpose of the UIM statute is to provide a broad layer of "floating" coverage in addition to the liability insurance. UIM insurance is intended to allow the same recovery an injured person would get if the responsible party carried insurance at the level of the injured person's UIM coverage. Given that background and this Court's previous decisions interpreting the UM statute as tortfeasor-oriented, the UIM statute should be interpreted as tortfeasor-centric

in this setting, too. Additionally, the aggregation of multiple tortfeasors' liability limits should be prohibited regardless of whether the various tortfeasors are severally or jointly and severally liable. To allow pooling of potentially jointly and severally liable tortfeasors' liability limits for UIM coverage purposes creates difficulties that do not exist for those injured parties who have gone through a trial and have a judgment. Accordingly, the delivery driver should be considered an underinsured motorist and the threshold for where Progressive's UIM coverage begins should be the delivery driver's limits of \$50,000.

1. The background and purpose of the UIM statute, RCW 48.22.030

In 1967, the Legislature enacted the predecessor to the UIM statute, the uninsured motorist (UM) statute, former RCW 48.22.030 (1967)¹¹:

On and after January 1, 1968, no new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued ... unless coverage is provided therein or supplemental thereto ... for the protection of persons insured thereunder who are legally entitled to recover damages from owners or

¹¹ The text of the 1967 statute is attached as Appendix B.

operators of uninsured motor vehicles ... because of bodily injury, sickness or disease, including death, resulting therefrom...

For the first time, automobile liability insurers were required to offer UM coverage as a supplement to every liability policy. *Britton v. Safeco Ins. Co. of America*, 104 Wn.2d 518, 522, 707 P.2d 125 (1985). The UM statute was designed to be a financial security measure to cut down the financial risk to the public from careless and insolvent drivers. *Touchette v. Northwestern Mut. Ins. Co.*, 80 Wn.2d 327, 332, 494 P.2d 479 (1972). While full compensation was not necessarily the intent, the UM statute was intended to provide an option to create some protection for innocent victims of uninsured motorists, not to protect vehicles. *Finney v. Farmers Ins. Co. of Wash.*, 92 Wn.2d 748, 751, 600 P.2d 1272 (1979) (quoting *Cammel v. State Farm Mut. Auto. Co.*, 86 Wn.2d 264, 543 P.2d 634 (1975)). Given its purpose, this Court consistently held that the UM statute was to be liberally and broadly construed to protect individuals against financially irresponsible motorists. *Touchette*, 80 Wn.2d at 334-35; *Finney v. Farmers Ins. Co. of Wash.*, 92 Wn.2d 748, 751, 600 P.2d 1272 (1979).

The intent of the UM statute was to allow injured parties to recover those damages they would have been entitled to receive

from any responsible party that purchased sufficient liability insurance. *State Farm Mut. Auto. Ins. Co. v. Bafus*, 77 Wn.2d 720, 724, 466 P.2d 159 (1970); *Touchette*, 80 Wn.2d at 335. In this way, a UM insurance carrier was said to stand in the shoes of the uninsured motorist to the extent of its policy limits. *Bafus*, 77 Wn.2d at 724. In other words, the UM statute sought to create the same level of insurance protection the injured party could obtain if the tortfeasor had the injured party's UIM policy limits as the tortfeasor's liability limits.

The courts effectuated this policy by recognizing that the UM statute was tortfeasor-oriented and rejecting the argument that UM insurance does not apply until all of the liability limits of various tortfeasors are applied against the UM insurance. *Finney*, 92 Wn.2d at 751-52. This Court held that the legislature intended to provide UM insurance where either responsible party had no insurance coverage, regardless of the liability limits of the other. *Id.* at 752-53.

Then, in 1980, the Washington Legislature extended the UM statute to include motorists who carried some, but not enough, liability insurance called underinsured motorists. *Britton*, 104 Wn.2d at 523. The Legislature did this by adding a section attempting to

define an underinsured motor vehicle. RCW 48.22.030(1) (1985)¹²

provided:

“Underinsured motor vehicle” means 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.

Section (2) of former RCW 48.22.030 (1980) included substantively the same language as the earlier UM version of the statute:

No new policy or renewal of an existing policy insuring 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 shall be issued ... unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles ... because of bodily injury, death, or property damage, resulting therefrom ...

Both uninsured and underinsured motorists were addressed collectively as underinsured motorists. *Id.* at 524-25. Since the

¹² The entire text of the 1985 statute in effect at the time of the collision is attached as Appendix C.

amendment this Court has recognized that the public policy underlying the UM statute and the body of law developed under the UM statute have both carried over into the new UIM statute. *Mut. of Enumclaw Ins. Co. v. Wiscomb*, 97 Wn.2d 203, 208, 643 P.2d 441 (1982); *Britton*, 104 Wn.2d at 530. Thus, this Court has held that the legislature also intended broad UIM coverage. *Greengo v. PEMCO*, 135 Wn.2d 799, 805-06, 959 P.2d 657 (1998). Similarly, the UIM statute allows the injured party to recover those damages which she would have received had the tortfeasor maintained liability insurance as broad as the injured party's UIM coverage limits. *Britton*, 104 Wn.2d at 531; *Hamilton v. Farmers Ins. Co. of Wash.*, 107 Wn.2d 721, 732, 733 P.2d 213 (1987). UIM coverage provides a "floating layer" of insurance protection to an injured insured which in effect adds a second liability layer on top of whatever liability limits a tortfeasor carried. *Elovich v. Nationwide Ins. Co.*, 104 Wn.2d 543, 550, 707 P.2d 1319 (1985); *Jain v. State Farm Mut. Auto. Ins. Co.*, 130 Wn.2d 688, 692, 926 P.2d 923 (1996); *Greengo*, 135 Wn.2d at 809.

2. When properly construed, RCW 48.22.030 still focuses on the liability limits “applicable” to each tortfeasor instead of all tortfeasors combined

The revised UIM statute should be interpreted here to keep the focus on each individual tortfeasor, instead of all tortfeasors collectively. UIM insurance is governed by RCW 48.22.030, specific policy language, and public policy. See *McIlwain v. State Farm Mut. Auto. Ins. Co.*, 133 Wn. App. 439, 446, 136 P.3d 135 (2006). Because this was a 1999 collision, former RCW 48.22.030 (1985)¹³ applies:

(1) “Underinsured motor vehicle” means a motor vehicle with respect to the ownership, maintenance, or use of which ... with respect to which the sum of the limits of liability under all bodily injury ... 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.

(2) No new policy or renewal of an existing policy insuring against loss ... suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued ... unless coverage is provided ... for protection of person insured thereunder who are legally entitled to recover

¹³ RCW 48.22.030 has been amended six times since Ochoa’s collision; however none of the changes affect sections (1) or (2) at issue in this case. Because the language in sections (1) and (2) is the same today as it was back in the 1985 version of the statute, this brief will refer to them interchangeably for simplicity’s sake. The current version of the statute is attached as Appendix D.

damages from owners or operators of underinsured motor vehicles.

The Progressive policy language is similar but seemingly narrower:

3. Underinsured motor vehicle means a land motor vehicle or trailer of any type:

(e) to which a liability bond or policy applies at the time of the accident, but the sum of the limits of liability under all applicable bonds and policies is less than the damages which the insured person is entitled to recover.

CP 367. In both the statute and the policy, the key is which liability policies are “applicable.”¹⁴

In construing statutes, the idea is to carry out the intent of the legislature. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). If the language of a statute is clear on its face, then that plain meaning must be given effect. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). In interpreting statutes, all words must be read in the context of the statute in which they appear and not in isolation. *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686

¹⁴ UIM insurers cannot contractually reduce statutorily-mandated UIM insurance requirement through policy language. *Britton*, 104 Wn.2d at 531. Because the Progressive policy cannot provide less coverage than the UIM statute requires, this brief focuses on the proper statutory interpretation rather than on the policy language. To the extent the policy language provides less coverage than would exist under the UIM statute, Progressive’s policy language would be void and unenforceable. See *Finney*, 92 Wn.2d at 751-52.

(2008). A court must, where possible, give effect to every word, clause and sentence of a statute, so that no portion is rendered meaningless or superfluous. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). As such, the “goal is to avoid interpreting statutes to create conflicts between different provisions so that we achieve a harmonious statutory scheme.” *Id.* (internal citation and quotation marks omitted).

RCW 48.22.030(1) & (2) are awkward and not grammatically perfect. Section (1) contains two “with respect to” clauses in the same sentence. Despite that, when properly parsed, the two sections should be interpreted as tortfeasor-oriented, prohibiting the pooling of any different tortfeasors’ liability limits.

Because all words in the statute must be given effect, one operative clause – “the sum of the limits of liability under all bodily injury ... liability ... insurance policies applicable to a covered person” – must therefore be harmonized with the earlier clause in the same sentence in section (1): “with respect to the ownership, maintenance or use.” Therefore, the sum of the limits of liability policies applicable must be “with respect to the ownership, maintenance or the use of the vehicle.” Unless the liability policy covers the owner, it cannot be “applicable” with respect to the

owner. In other words, the applicable policies are those that apply to either the ownership, or the maintenance, or use of the vehicle, each considered separately. If anyone has insufficient insurance there is an underinsured motor vehicle. The liability insurance of others is irrelevant under this understanding of the statute.

This result is further supported by the language of section (2), which provides:

No new policy or renewal of an existing policy insuring against loss ... suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued ... unless coverage is provided ... for protection of person insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles.

RCW 48.22.030(2) (emphasis added). This language is the same for our purposes as the former UIM statute, RCW 48.22.030 (1967). We already have the benefit of this Court's interpretation of that statute. In *Finney*, the plaintiff was struck and killed by a vehicle driven by an underinsured motorist and owned by an uninsured. 92 Wn.2d at 749-50. At the time the common law provided both would be jointly and severally liable. *Finney*, 92 Wn.2d at 754; *see also Seattle-Nat. Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 234-36, 688 P.2d 1308 (1978).

This Court rejected Farmers argument that plaintiffs could not recover under the UM policy because one defendant had a policy applicable to the vehicle even though the other did not and held that the Legislature intended UM coverage where either of the responsible parties is uninsured. *Id.* at 751-53. The unanimous decision focused on the language that provided UM protection to those “who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.” *Id.* at 750 (quoting RCW 48.22.030) (internal quotations omitted) (emphasis added). Because of the disjunctive “or,” the owner of the automobile was uninsured, even if the operator was insured. *Id.* at 753. It made no difference that the other policy applied to the automobile – the focus was on the individual tortfeasors. Accordingly, Progressive’s approach – that before a vehicle is underinsured, all responsible parties must be either uninsured or underinsured with the aggregate policies adding up to less than the injured party’s damages – has already been rejected.

If RCW 48.22.030 were to be interpreted to allow aggregation of different tortfeasors’ limits, it would completely conflict with *Finney* and render section (2) superfluous. Because conflicts between statutory provisions are to be avoided and

because section (2) has already been interpreted by this Court to mean the earlier statute is tortfeasor-centric, section (1) is properly construed as also being tortfeasor-centric, as well.

Further, there is no evidence the Legislature intended to change the focus of RCW 48.22.030 away from whether each specific tortfeasor is properly insured when it amended it in 1980 (or at any point thereafter) to add the requirement of underinsured motorist insurance. Instead, this Court has made it clear that the opposite occurred – that the same public policy underlying the UM statute carried over to the UIM statute. *Wiscomb*, 97 Wn.2d at 208. The Legislature intended broad UIM coverage to avoid a piecemeal whittling away of protections provided by the UIM statute. *Britton*, 104 Wn.2d at 522-23. It also intended the injured party to recover the damages which it would have received had the tortfeasor maintained his liability limits plus the injured party's UIM limits. *Id.* at 522. Had the Legislature intended to overrule *Finney*, it would have done so in clear terms; its failure to do so is deemed acquiescence to the court's construction. *Buchanan v. Int'l Brotherhood of Teamsters*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980).

Accordingly, the statutory language, this Court's previous case law and legislative intent all support the interpretation of the UIM statute as separately applied to each tortfeasor.

3. Pooling multiple tortfeasors' liability limits, even in situations involving potentially jointly and severally liable defendants, frustrates the underlying policy of the UIM statute – which is to provide broad UIM coverage and a floating layer of insurance above the liability policy

The public policy underlying the UIM statute supports a prohibition against pooling of the various tortfeasors' liability limits before UIM coverage begins. The whole purpose for the origin of UM/UIM insurance is protection from irresponsible drivers who do not to carry any or sufficient insurance. *Wiscomb*, 97 Wn.2d at 206, 208. That indicates an intention to focus on each tortfeasor separately.

The legislature also intended broad UIM coverage to avoid a piecemeal whittling away of protections provided by the UIM statute. *Britton*, 104 Wn.2d at 522-23. It intended the injured party to recover the damages which it would have received had the tortfeasor maintained his liability limits plus the injured party's UIM limits. *Id.* at 522. UIM coverage therefore provides a "floating layer" of insurance protection to an injured insured which in effect adds a

second liability layer on top of the tortfeasor's policy. *Elovich*, 104 Wn.2d at 550; *Jain*, 130 Wn.2d at 692.

In addition to *Finney*, this Court has already expressed disapproval of aggregating multiple tortfeasors' liability coverages in *Allstate v. Batacan*, 139 Wn.2d 443, 986 P.2d 823 (1999). There, the plaintiffs sued the drivers of both vehicles that had hit them. *Id.* at 445. Because one of the drivers was uninsured while the other was fully insured, the Batacans sought coverage under their UIM coverage with Allstate. *Id.* Allstate claimed that it got an offset for full value of all the responsible parties' liability policies, which was more than the Batacans' damages. *Id.* at 445-46. The Supreme Court disagreed.

This Court "easily resolved" in the affirmative the question of whether the driver without insurance was an underinsured motorist under the Allstate contract. *Id.* at 448. No liability policy applied to the driver of one of the vehicles, so by the definition in the Allstate policy, that driver was an underinsured motorist. *Id.* This Court emphasized that simply because one of the at-fault drivers had a liability policy did not affect the status of the other uninsured at-fault driver. *Id.* The uninsured driver is still uninsured despite the fact the other liability policy is available for the benefit of the Batacans. *Id.*

The court held that set-off was not appropriate. *Id.* It left for another day the question of whether liability coverages may be combined and set-off for the benefit of the UIM insurer in joint and several liability situations because there was no judgment against all at-fault drivers, which meant there could be no joint and several liability. *Id.* at 449-50. In reserving that question, however, this Court in dicta did indicate its approval of the *Finney* logic:

Whether liability coverages may be combined, and then set off, under the language of this policy is a question this court has yet to answer and one we need not answer today because there is no joint and several liability here “pursuant to RCW 4.22.070(1)” – which would require actual judgment against both tortfeasors. *But see Finney v. Farmers Ins. Co.*, 92 Wn.2d 748, 751-53, 600 P.2d 1272 (1979) (uninsured motorist coverage available where one jointly responsible person is insured but the other is not).

Progressive’s argument was adopted by the Court of Appeals, Division II, in *Allstate Ins. Co. v. Dejbod*, 63 Wn. App. 278, 818 P.2d 608 (1991), which fundamentally altered the UIM coverage compensation landscape. In that case, Dejbod was hit by two cars, one of which was underinsured. *Id.* at 280. Before paying out UIM benefits, Allstate argued it was entitled to an offset of both at-fault driver’s policy limits because of joint and several liability. *Id.* The Court of Appeals agreed with Allstate, holding that a UIM

insurer could offset all joint and several defendants' liability policies as long as the person insured under the liability policy is liable to the injured claimant who can legally recover from the liability carrier. *Id.* at 285. This meant that UIM coverage applied only after aggregating all insurance policies of all tortfeasors.

In agreeing with Allstate, the *Dejbod* Court misinterpreted RCW 48.22.030(1), and instead of harmonizing the entire statute, it narrowly focused on "the sum of the limits ... under all bodily injury ... liability ... insurance policies applicable to a covered person." It read "all" expansively without putting that into the context of the rest of the statute. When read in the context of the entirety of section (1), it is plain that the Legislature meant the sum of the liability policies "with respect to the ownership, maintenance, or use" of the vehicle. The disjunctive "or" means that the policies cannot be pooled.

Further, section (1) must be read in conjunction with section (2), which requires UIM insurance to protect injured people "who are legally entitled to recover damages from owners or operators of underinsured motor vehicles." Former RCW 48.22.030(2) (1985). Given that this Court already interpreted this language as prohibiting aggregation of the policies of an owner and an operator

of the same vehicle, in *Finney*, and the policies of two drivers of two different vehicles in *Batacan*, *Dejbod* is certainly at odds with the spirit, if not the letter, of those cases.

Further, the *Dejbod* Court changed the focus away from where this Court has stated it should be: on what the insured would have been able to recover had the tortfeasor carried sufficient liability insurance. See *Bafus*, 77 Wn.2d at 724; *Touchette*, 80 Wn.2d at 335; *Britton*, 104 Wn.2d at 531; *Hamilton*, 107 Wn.2d at 732. This shift means that an injured party becomes worse off under the *Dejbod* view of the UIM system.

To not prohibit pooling of all potentially jointly and severally liable tortfeasors' insurance policies in the UM context would turn the legislative purpose of affording broad UIM coverage on its head. If this Court adopts Progressive's interpretation, then injured parties will be treated differently depending on the vagaries of how many tortfeasors happen to be responsible for their injuries. Those with only one responsible party can access their UIM insurance, while those with multiple responsible parties will usually not be able to access UIM coverage. Instead of stepping into the shoes of any single underinsured tortfeasor, Progressive wants to step into the shoes of all the tortfeasors so it can raise the threshold of when

UIM coverage begins. This result unfairly penalizes those injured parties, like Ochoa, who are unlucky enough to have injuries caused by potential multiple tortfeasors, one or more of whom is underinsured, and it acts as a windfall to insurance companies, like Progressive. This is a result surely not intended by the Legislature.

There is no legal or policy reason to treat potentially jointly and severally liable defendants differently than severally liable defendants. The concept of joint and several liability was intended to make it easier on the party who had been injured by allowing that person to seek recovery from any one of the tortfeasors who proximately caused the injuries on the theory that each tortfeasor is responsible for fully compensating the injured party for the harm caused. *See Seattle-First Nat. Bank*, 91 Wn.2d at 236. If Progressive were allowed to pool the liability limits of both the delivery driver and the employer, it would force Ochoa to go after both specific tortfeasors for the harm each defendant caused.

Further, liability insurers of defendants are not allowed to aggregate other insurance policies in the tort liability system. Under normal rules a plaintiff with a joint and several judgment can collect from the liability policies of one defendant alone. Those insurers could not refuse to pay on the basis that the other defendants also

have insurance coverage. But *Dejbod* changed that concept and in essence would allow all UIM insurers to act as a hybrid insurance that does not exist in liability coverages and to force exhaustion of the limits of all other defendants' policies. This is also exactly what Progressive argues here. This fundamental change directly conflicts with the legislative intent and previous court decisions and should be disproved.

Under Progressive's interpretation, the injured party has more obstacles to receiving fair compensation, fewer options for pursuing compensation, and more delays, and attorneys are encouraged to find ways around joint and several liability.

The problems are well illustrated by examples. Assume two different parties, A and B, are injured in similar settings with similar claim values of \$100,000. Both had the foresight to purchase UIM coverage in the amount of \$50,000. A was hit by a driver who has no liability coverage. B was hit by a driver, who has the statutory minimum of \$25,000 in liability coverage. Each collision also has another potentially joint and several responsible party, which could be a second negligently driven car, a potentially vicariously liable employer, and a municipality that negligently obstructed the sight lines or others. Assume the other responsible party is fully insured.

First, under Progressive's formulation, B is worse off than A, even though the driver who hit A has no liability insurance and the driver who hit B has \$25,000. We already know that under *Finney*, when the responsible driver has no liability insurance, the injured party can access her own UIM coverage. The amount of liability insurance that other potential tortfeasors have, even another potentially joint and several tortfeasor, as was the case at the time of *Finney*, is simply irrelevant. Therefore, A can claim her UIM benefits because the driver has no coverage, and she should be quickly compensated by her UIM insurer and no suit is usually necessary.¹⁵

However, according to Progressive, B is in an entirely different situation with different rules, and does not get the benefit of his UIM coverage because of the combination of the driver's \$25,000 limits and the other responsible party who is fully insured. This creates a difficult situation for B. Even if the driver offers his

¹⁵ The UIM insurer is in a first party relationship with its insured and has good faith obligations toward its insured. *Ellwein v. Hartford*, 142 Wn.2d 766, 780-81, 15 P.3d 640 (2001), partially overruled on other grounds, *Smith v. Safeco*, 150 Wn.2d 478, 78 P.3d 1274 (2003). Under the Insurance Commissioner's Unfair Claims Practices Regulations, an insurer is required to quickly investigate and make a timely fair settlement offer. WAC 284-30-370; WAC 284-30-330(6). If the insurer does not act appropriately, it can be sued for the breach of the duty of good faith and for failing to comply with the Insurance Commissioner's regulations. See RCW 48.30.015.

low limits, suit could still be needed against the other responsible party. The necessity of a lawsuit can also force the injured party to sue the driver to preserve joint and several liability.

This posturing produces more and drawn out lawsuits with substantially higher costs, increased attorney fees, longer delays, and lower settlements due to the economic pressures. Under Progressive's analysis, these extra lawsuits with more parties, more lawyers and more out-of-pocket costs result in a greater burden on the courts.

All this is avoided where a UIM claim follows the same principles as UM claim – if one entity has insufficient liability coverage, insurance on other potentially responsible entities is irrelevant. In our hypothetical, because B's damages are \$100,000, B's UIM benefits would be available after \$25,000 – the driver's liability limits. If the liability insurer is not ready to settle or it offers a lowball amount, B can take the \$50,000 in UIM benefits and will then have the funds to pay for uncovered treatment, to fund litigation costs and to pursue one or more defendants through suit. Even if a lawsuit still occurred, the driver's insurance carrier no longer has the same economic leverage to sit on low ball offers and outlast the injured party, B.

Here, if Progressive had acknowledged its coverage as starting at the first dollar after the driver's \$50,000, it would have in good faith offered up the full \$25,000 limits. Ochoa, who had no medical insurance, could have paid for early and additional treatment such as fixing her broken nose, back treatment and better pain management. She could then have decided at that early juncture whether she wanted to be in a lawsuit with Eastside Express or anyone else, even though the \$75,000 probably was not full compensation. At that time she was far more hopeful that her injuries would fully heal. The delays have allowed the facts to prove otherwise. With the denials from Eastside Express about whether there was vicarious liability and questions about whether the potentially jointly and severally liable employer had been unintentionally released, it seems doubtful Ochoa would have proceeded past that stage. Either way the early UIM money for

which she had paid premiums would have materially aided her.¹⁶

Accordingly, the result in *Batacan* and *Finney* should expressly be extended to the UIM context even in situations involving multiple tortfeasors with potential joint and several liability because the language at issue in the UIM statute is the same as the former UM statute, and the underlying policies of the UM and UIM statutes – to provide broad protection and have the insurer step into the shoes of the underinsured motorist – are the same. Thus, the outcomes should be the same for injured parties regardless of the potential status of the tortfeasors, and Progressive should not be allowed a UIM threshold that credits the Evanston policy.

¹⁶ Still today Ochoa has not been made whole for the damages caused by the driver. As noted earlier, Ochoa received \$25,000 from Eastside Express for its vicarious liability for its delivery driver and \$32,500 from her former attorney. CP 325, 550. This does not equal what a jury is expected to award for her ordeal. Eastside Express continually denied that the delivery driver was in the course of her employment when she collided with Ochoa. Progressive's suggestion of full compensation is an irrelevant attempt to take advantage of the fact that Ochoa was forced to compromise the settlement value of her case for the substantial and increasing out-of-pocket costs and to account for the risk of loss. There were never any such liability risks against the owner/driver. The settlement with her former attorney was for the risk that he may have unintentionally released Eastside Express by the terms in the State Farm release. Progressive's threshold for when UIM coverage begins cannot change because of later payments by a different tortfeasor.

C. Assuming This Court Finds in Her Favor, Ochoa Requests an Award of Attorney's Fees Under *Olympic Steamship* Because She Was Forced to Sue to Obtain the Benefit of Her UIM Insurance Policy

Pursuant to RAP 18.1, Ochoa respectfully requests that this Court award her attorney's fees and costs for having to pursue this lawsuit against Progressive. In *Olympic Steamship v. Centennial Insurance Company*, 117 Wn.2d 37, 53, 811 P.2d 673 (1991), the Supreme Court held:

An award of attorney fees is required in any legal action where the insurer compels the insured to assume the burden of legal action, to obtain the full benefit of [the] insurance contract, regardless of whether the insurer's duty to defend is at issue.

This equitable rule recognized the broad disparity in bargaining power between an insured and an insurance company. *Id.* at 52. Whenever an insurance company refuses to honor its contract, that conduct imposes a burden on the insured who then has to compel the insurance company to act as it should have under the policy. *Id.* at 53. The threat of an attorney fee award therefore is designed to encourage the prompt payment of claims. *Id.* The *Olympic Steamship* rule was expressly extended to cover insureds who are forced to sue to receive the benefit of their UIM policies. *McGreevy*

v. Oregon Mut. Ins. Co., 128 Wn.2d 26, 28-29, 904 P.2d 731 (1995).

Here, Ochoa was forced to sue Progressive to obtain the benefit of her UIM policy. For nine years Progressive has claimed the UIM benefit threshold is the liability policies of two tortfeasors, instead of just the party (the delivery driver) in whose shoes it stands. Therefore, it argued there was no UIM coverage at all for Ochoa because her injuries did not exceed \$1.55 million. As such, this is not an argument over the value of the claim. See *Dayton v. Farmers Insurance Group*, 124 Wn.2d 277, 876 P.2d 896 (1994) (holding that being wrong about the value of a claim does not justify an award of *Olympic Steamship* fees). The value of the claim is a separate determination made at trial by first establishing the liability for and value of Ochoa's injuries. This case is an argument about where Progressive's UIM coverage begins. Because Ochoa was forced to avail herself of the court system to obtain her UIM benefits, this Court should award her attorney's fees and costs.

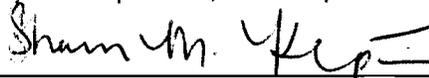
V. CONCLUSION

The Evanston policy plainly does not cover the delivery driver, and under a proper reading of the UIM statute, RCW 48.22.030, the delivery driver is an underinsured motorist.

Progressive's attempt to pool the liability coverages of both the delivery driver and the employer goes against the statutory language when read as a whole, prior case law, and contravenes all of the underlying policies of the UIM statute, including providing broad UIM coverage, UIM coverage as a floating layer, and providing compensation to the injured party to the extent the responsible party maintained liability insurance to the level of the injured party's UIM coverage. It also discourages settlement of disputes and increases lawsuits which burdens our courts. As such, Ochoa respectfully requests that this Court expressly hold the UIM statute is tortfeasor-centric, reject aggregation of multiple tortfeasors' liability limits as the threshold for UIM coverage, and disapprove *Dejbod* to the extent it conflicts with either of those principles. Ochoa should also be awarded her reasonable fees and costs.

RESPECTFULLY SUBMITTED this 14th day of April, 2011.

Richard Kilpatrick, P.S.



Shannon M. Kilpatrick, WSBA #41495
Richard B. Kilpatrick, WSBA# 7058
Attorneys for Petitioner
1750 – 112th Avenue NE, Suite D-155
Bellevue, WA 98004

CERTIFICATE OF SERVICE BY MAIL

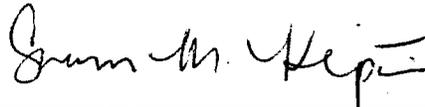
I certify that I mailed, or caused to be mailed, the foregoing
Brief of Petitioner Ochoa, postage prepaid, via US mail on April
14, 2011, to the following:

Clerk of the Court (original & 1 copy)

Clerk of the Court
Washington State Supreme Court
415 12th AVE SW
PO Box 40929
Olympia, WA 98504-0929

Counsel for Respondents (1 copy)

Douglas Foley, Esq.
Douglas Foley and Assoc.
13115 NE 4th Street, Suite 260
Vancouver, WA 98684



Shannon Kilpatrick, WSBA #41495
Co-counsel for Petitioner
Janette Leding Ochoa

APPENDIX A

FILED
KING COUNTY SUPERIOR COURT

JUL 29 2010

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

Visiting Judge Brian Gain

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

JANETTE LEDING OCHOA

Plaintiff

vs.

PROGRESSIVE CLASSIC INSURANCE
CO., a foreign corporation, THE
PROGRESSIVE CORPORATION, a foreign
corporation, and PROGRESSIVE
CASUALTY INSURANCE COMPANY, a
foreign corporation,

Defendants.

No.: 02-2-07712-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

ORIGINAL
COPY

Following the Court's suggestion at the pre-trial conference held June 25, 2010, the parties presented agreed Findings of Fact to the Court on July 29, 2010 (except Progressive requested one addition to Findings 2 and one addition to Finding 18). The Court resolved those two requests *by pm*

CP 323

1 In order to obtain appellate guidance before conducting an expensive trial,
2 the Court made the Conclusions of Law stated below.

3 I. FINDINGS OF FACT

4 1. The Plaintiff, Janette Leding Ochoa (hereinafter "Plaintiff"), was
5 struck by an auto operated by Dawnell Smith (hereinafter "Smith") on June 24,
1999 when Smith went through a stop sign.

6 2. Dawnell Smith was the only ^{driver} ~~person~~ at fault in the collision. *WMA RAC*

7 3. Plaintiff suffered injuries in the collision and retained attorney Ben
8 Wells of Wells & Hammer to represent her.

9 4. At the time of this accident, Smith was delivering pizza for
Domino's Pizza, Eastside Express in her own vehicle.

10 5. Smith carried a State Farm Mutual Automobile Insurance Company
11 policy that applied to this accident. It provided liability coverage in the amount
12 of \$50,000 for each person and \$100,000 for each occurrence.

13 6. Evanston Insurance Company had a policy of insurance with limits
14 of \$1,500,000 which insured Eastside Express, Inc. for its liability for any non-
owned vehicle driven on the job by an employee of Eastside Express, Inc. *The*
Evanston policy is Exhibit A. TM

15 7. The Evanston policy was applicable to the collision and the policy
16 covered the vehicle Dawnell Smith was driving at the time of the incident since
17 Dawnell Smith owned the vehicle and Dawnell Smith was operating the vehicle
within the course and scope of her employment with Eastside Express. Dawnell
Smith was not an insured under the Evanston policy.

18 8. Plaintiff Ochoa had a policy of insurance with Progressive Classic
19 Insurance Company which included Underinsured Motorist coverage for
Plaintiff in the amount of \$50,000. The complete policy is Exhibit B.

20 9. Ochoa made claims with Smith and Progressive.

1 10. On March 15, 2001, Plaintiff provided Progressive the opportunity
2 to buy out the tentative settlement with Smith for the State Farm limits of
\$50,000. Progressive declined by fax on March 20, 2001.

3 11. On March 21, 2001 Ben Wells had Ochoa sign a release provided
4 by State Farm and settled all claims against Smith and State Farm for \$50,000.

5 12. On March 21, 2001 Wells wrote Progressive providing a copy of
6 the State Farm settlement documents and renewed the UIM claim. After
7 confirming the Evanston policy applied Progressive thereafter took the position
8 that to have a UIM claim the value of Ochoa's damages had to exceed the
amount of both the State Farm policy and the Evanston policy combined,
regardless of whether the Evanston policy covered Smith as an insured.

9 13. Soon after providing the State Farm settlement information to
10 Progressive, Wells wrote to Domino's Pizza Eastside Express to assert a claim
for Ochoa. No offer was made.

11 14. Wells withdrew from Ochoa's representation by June 21, 2001

12 15. The release from State Farm Wells had Ochoa sign to settle with
13 Smith had language that Domino's Pizza Eastside Express claimed released it
14 from any claim. The Release is Exhibit C.

15 16. In June 2002 Ochoa sued and served Domino's Pizza Eastside
16 Express. Attorney Ben Wells and Hammer & Wells were also named for any
17 damages that may have been lost from Eastside Express by the release but the
attorney and law firm were not served. Ochoa served Wells in February 2004.

18 17. When the dispute on the issue of the threshold for a UIM claim
19 continued Plaintiff amended the complaint and added Progressive as a defendant
in June 2004.

20 18. In January 2005 Ochoa settled her claims against Eastside Express
21 for \$25,000 and against Ben Wells and Hammer & Wells for \$32,500 and both
22 defendants were dismissed. Progressive was the only remaining defendant.
Plaintiff's recovery at that point was \$107,500.

1 19. Ochoa has asserted the value of her damages always exceeded the
2 \$50,000 limits available to her from the State Farm policy and that her damages
3 most likely exceeded \$107,500. Ochoa always agreed and it is so found that her
4 claims do not remotely exceed \$1,550,000.

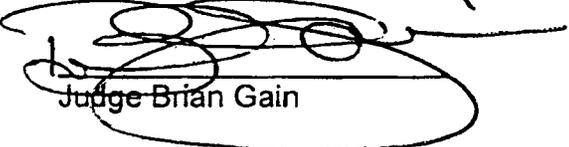
5 **II. CONCLUSIONS OF LAW**

6 1. The Evanston policy liability limit serves as an offset for the
7 threshold for Ochoa's UIM claim regarding Dawnell Smith's liability.

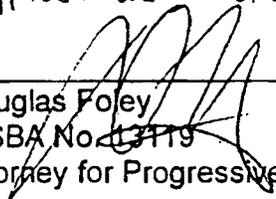
8 2. The appellate resolution of this issue is central to either the
9 necessity of any trial or one that is not useless. Pursuant to CR 54(b) there is no
10 just reason for delay of entry of a final order.

11 3. The pending trial date is stricken and stayed, and any other the
12 appropriate order regarding dismissal shall be entered.

13 DATED this 29th day of July, 2010.

14 
15 Judge Brian Gain

16 *Findings agreed, conclusions of law are disputed.*
Richard B. Kilpatrick
17 Richard B. Kilpatrick
WSBA No. 7058
Attorney for Plaintiff Ochoa

18 *Approved on the form.*
19 
20 Douglas Foley
WSBA No. 13119
21 Attorney for Progressive defendants

22
23 Findings of fact and conclusions of law
Page 4 of 5

24 f:\ochoa findings rbk.doc

25
Richard B. Kilpatrick, P.S.
1750 - 112th Ave. N.E., Ste. D-155
Bellevue, WA 98004
(425) 453-8161
Fax: (425) 605-9540
Kilpatrick.d@comcast.net

CP 326

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)

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open A



Evanston Insurance Company
 SHAND MORAHAN PLAZA
 EVANSTON, ILLINOIS 60201

Policy No. NO800064-84
 Prev. No. SK800265
 Prod. No. 24885

DECLARATIONS - BUSINESS AUTOMOBILE LIABILITY

PIZZA DELIVERY INDUSTRY ASSOCIATION

1. **NAMED INSURED:** EAST SIDE EXPRESS, INC.
2. **BUSINESS ADDRESS OF THE INSURED:**
 4002 53RD ST.
 TOCOMA, WA 98422
3. **POLICY PERIOD:** From April 1, 1999 To June 1, 2000
 12:01 a.m. standard time at address of insured stated above.
4. **COVERAGE AND LIMIT OF LIABILITY:**
 \$1,500,000 COMBINED SINGLE LIMIT BODILY INJURY
 AND PROPERTY DAMAGE EACH ACCIDENT
5. **DEDUCTIBLE:** DRIVER'S INSURANCE OR \$500 DEDUCTIBLE, WHICHEVER IS GREATER
6. **OPERATIONS TO BE COVERED:** PIZZA DELIVERY
7. **RATE:** \$1,700.00 PER STORE
8. **PREMIUM FOR POLICY PERIOD:**

MINIMUM & DEPOSIT	\$19,839.00
POLICY FEE	\$ 50.00
SURPLUS LINES TAX 4.85%	\$ 864.62
9. **ENDORSEMENTS ATTACHED:**
 ADDITIONAL INSURED
 SCHEDULE OF LOCATIONS

ALL CLAIMS TO BE REPORTED DIRECTLY TO

Shand Morahan & Company, Inc.
 Shand Morahan Plaza
 Evanston, Illinois 60201
 (847) 866-2800

(Authorized Representative)

CP 328



Evanston Insurance Company

MARKET. EVANSTON, ILLINOIS

Endorsement

Named Insured:
PIZZA DELIVERY INDUSTRY ASSOCIATION
EAST SIDE EXPRESS, INC.

Policy No.: NO800064-84
Endorsement No.: 1
Effective Date: April 1, 1999

ADDITIONAL INSURED

In consideration of the premium charged, it is understood and agreed that Domino's Pizza, Inc. is an additional insured hereunder but only with respect to claims and claim expenses arising from services indicated in Item 6 of the Declarations performed by the Named Insureds listed in Item 1 of the Declarations.

All other terms and conditions remain unchanged.

Authorized Representative

CP 329



Evanston Insurance Company

EVANSTON, ILLINOIS

Endorsement

Named Insured:
PIZZA DELIVERY INDUSTRY ASSOCIATION
EAST SIDE EXPRESS, INC.

Policy No.: NO800064-84
Endorsement No.: 2
Effective Date: April 1, 1999

SCHEDULE OF LOCATION

In consideration of the premium of \$19,839.00, it is understood and agreed that the following location is scheduled under the captioned named insured:

- | | |
|--|---|
| 1. 10575 NE 12 TH STREET
BELLEVUE, WA 98009
STORE# 7157 | 7. 500 NW MARKET
SEATTLE, WA 98107
STORE# 7148 |
| 2. 15920 NE 8 TH AVENUE, SUITE 5
BELLEVUE, WA 98007
STORE# 7130 | 8. 303 91 ST AVENUE N.E.
EVERETT, WA 98205
STORE# 7055 |
| 3. 7639 27 TH AVENUE, S.E.
MERCER ISLAND, WA 98040
STORE# 7026 | 9. 208 W. MAIN STREET
MONROE, WA 98272
STORE# 7050 |
| 4. 16690 REDMOND WAY
REDMOND, WA 98052
STORE# 7111 | 10. 22649 NE INGLEWOOD HILL
REDMOND, WA 98072
STORE# 7043 |
| 5. 10023 HOLMAN ROAD NW
SEATTLE, WA 98177
STORE# 7140 | |
| 6. 7320 35 TH STREET NE
SEATTLE, WA 98115
STORE# 7131 | |

All other terms and conditions remain unchanged.

Authorized Representative

CR 330



Evanston Insurance Company

MARKET. EVANSTON, ILLINOIS

Endorsement

Named Insured:
PIZZA DELIVERY INDUSTRY ASSOCIATION
EAST SIDE EXPRESS, INC.

Policy No.: NO800064-84
Endorsement No.: 3
Effective Date: April 1, 1999

ADDITIONAL LOCATION

In consideration of the additional premium of \$1,983.90, it is understood and agreed that the following additional location has been added to this policy:

- II. 15100 SE 38TH SPACE C
BELLEVUE, WA 98006
STORE# 7027

All other terms and conditions remain unchanged.

Authorized Representative

CP 331

Business Auto Policy (Ded)

In consideration of the payment of the premium, the undertaking of you to pay the deductible as described herein and in the amount stated in the declarations, in reliance upon the underwriting information submitted on behalf of you, and subject to the limits of liability shown in the Declarations, and subject to all the terms of this insurance, we agree with you as follows:

PART I - WORDS AND PHRASES WITH SPECIAL MEANING - READ THEM CAREFULLY

The following words and phrases have special meaning throughout this policy and appear in boldface type when used:

- A. "You" and "your" mean the person or organization shown as the named insured in ITEM ONE of the declarations.
- B. "We", "us" and "our" mean the company providing the insurance.
- C. "Accident" includes continuous or repeated exposure to the same conditions resulting in **bodily injury or property damage** the **Insured** neither expected nor intended.
- D. "Auto" means a non owned motor vehicle, while used to deliver food on behalf of the Named Insured(s).
- E. "Bodily Injury" means bodily injury, sickness or disease including death resulting from any of these.
- F. "Insured" means any person or organization qualifying as an insured in the WHO IS INSURED section of the applicable insurance. Except with respect to **our** limit of liability, the insurance afforded applies separately to each insured who is seeking coverage or against whom a claim is made or suit is brought.
- G. "Loss" means direct and accidental damage or loss.
- H. "Property damage" means damage to or loss of use of tangible property.

PART II - WHICH AUTOS ARE COVERED AUTOS

- A. The "SCHEDULE OF COVERED LOCATIONS" attached to the declarations shows the locations from which **auto(s)** as defined in D. above are covered.

PART III - WHERE AND WHEN THIS POLICY COVERS

We cover accidents or losses which occur during the policy period:

- A. In the United States of America, its territories or possessions, Puerto Rico or Canada; or
- B. While the covered **auto** is being transported between any of these places.

PART IV - LIABILITY INSURANCE

A. WE WILL PAY.

- 1. We will pay all sums the insured legally must pay as damages because of **bodily injury or property damage** to which this insurance applies, caused by an accident and resulting from the ownership, maintenance or use of a covered **auto**, in excess of the deductible amount stated in the declarations.
- 2. We have the right and duty to defend any suit asking for these damages. However, we have no duty to defend suits for **bodily injury or property damage** not covered by this policy. We may investigate and settle any claim or suit as we consider appropriate. Our payment of the LIABILITY INSURANCE limit ends our duty to defend or settle.

B. WE WILL ALSO PAY.

In addition to our limit of liability, we will pay for the insured:

1. Up to \$250 for cost of bail bonds (including bonds for related traffic law violations) required because of an accident we cover. We do not have to furnish these bonds.
2. Premiums on appeal bonds in any suit we defend.
3. Premiums on bonds to release attachments in a suit we defend but only for bonds up to our limit of liability.
4. All costs taxed to the insured in a suit we defend.
5. All interest accruing after the entry of the judgment in a suit we defend. Our duty to pay interest ends when we pay or tender our limit of liability.
6. Up to \$50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at our request.
7. Other reasonable expenses incurred at our request.

C. WE WILL NOT COVER - EXCLUSIONS.

This insurance does not apply to:

1. Liability assumed under any contract or agreement.
2. Any obligation for which the insured or his or her insurer may be held liable under any workers' compensation or disability benefits law or under any similar law.
3. Any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee.
4. Bodily injury to any fellow employee of the insured arising out of and in the course of his or her employment.
5. Bodily injury to any employee of the insured arising out of and in the course of his or her employment by the insured. However, this exclusion does not apply to bodily injury to domestic employees not entitled to workers' compensation benefits.
6. Property damage to property owned or transported by the insured or in the insured's care, custody or control.
7. Bodily injury or property damage resulting from the handling of property:
 - a. Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto, or
 - b. After it is moved from the covered auto to the place where it is finally delivered by the insured.
8. Bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto.
9. Bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

D. WHO IS INSURED.

1. You are an insured for any covered auto

E. OUR LIMIT OF LIABILITY.

1. Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, the most we will pay for all damages resulting from any one accident is the LIABILITY INSURANCE limit shown in the declarations excess of the deductible amount stated in the declarations.

2. All bodily injury and property damage resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident.

F. DEDUCTIBLE.

1. The deductible amount stated in the declarations shall be paid by you and shall be applicable to each Accident and shall include loss payments and claim expenses, whether or not loss payment is made.

Such amounts shall, upon written demand by us, be paid by you within ten (10) days. The total payments requested from you in respect of each Accident shall not exceed the deductible amount stated in the declarations.

The determination of us as to the reasonableness of the claim expenses shall be conclusive on you.

G. OUT OF STATE EXTENSIONS OF COVERAGE.

1. While a covered auto is away from the state where it is licensed we will:
 - a. Increase this policy's liability limits to meet those specified by a compulsory or financial responsibility law in the jurisdiction where the covered auto is being used.
 - b. Provide the minimum amounts and types of other coverages, such as "No-Fault", required of out of state vehicles by the jurisdiction where the covered auto is being used.
2. We will not pay anyone more than once for the same elements of loss because of these extensions.

PART V- CONDITIONS

The insurance provided by this policy is subject to the following conditions:

A. YOUR DUTIES AFTER ACCIDENT OR LOSS.

1. You must promptly notify us of any accident or loss. You must tell us how, when and where the accident or loss happened. You must assist in obtaining the names and addresses of any injured persons and witnesses.
2. Additionally, you must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or suit. No Insured shall, except at his or her own cost, voluntarily make any payment, assume any obligation or incur any expense.
 - b. Immediately send us copies of any notices or legal papers received in connection with the accident or loss.
 - c. Submit at our expense and as often as we require to physical examinations by physicians we select.
 - d. Authorize us to obtain medical reports and other pertinent medical information.

B. OTHER INSURANCE.

1. For any covered auto you don't own, the insurance provided by this policy is excess over any other collectible insurance.
2. When two or more policies cover on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the limit of our policy bears to the total of the limits of all the policies covering on the same basis.

C. OUR RIGHT TO RECOVER FROM OTHERS.

If we make any payment, we are entitled to recover what we paid from other parties. Any

person to or for whom we make payment must transfer to us his or her rights of recovery against any other party. This person must do everything necessary to secure these rights and must do nothing that would jeopardize them.

D. CHANGES.

This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change. If we revise this policy form to provide more coverage without additional premium charge your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

E. TRANSFER OF YOUR INTEREST IN THIS POLICY.

Your rights and duties under this policy may not be assigned without our written consent.

F. CANCELLATIONS.

This policy may be canceled by the Named Insured by surrender thereof to the Company or to Shand, Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 or by mailing to the aforementioned written notice stating when thereafter such cancellation shall be effective. If canceled by the Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be canceled by the Company or by Shand, Morahan & Company, Inc., by mailing to the Named Insured at the address stated in the Declarations, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Insured has failed to pay a premium or deductible when due, this policy may be canceled by the Company by mailing a written notice of cancellation to the Insured stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice to the Named Insured by the Company, or Shand, Morahan & Company, Inc. shall be equivalent to mailing. If canceled by the company or Shand, Morahan & Company, Inc., earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

G. Premium and Audit: Upon expiration of this policy, the Insured shall furnish to the person(s) specified for the purpose in the Declarations, on behalf of the Company, with a statement of the Insured's actual total sales or other premium base as specified in Item 7 of the Declarations for the policy period. The actual earned premium shall be computed thereon at the premium rate stipulated in the Declarations. If the actual earned premium is more than the deposit premium the Insured shall pay the difference to the Company; if less, the Company shall refund the difference to the Insured except that the Company shall be entitled to the minimum premium as stated in the Declarations. The Company or its authorized representatives shall have the right to require of the Insured, at any time within the said policy period or one year thereafter, a sworn statement of the entire amount (or number) of such total sales or other premium base during the whole or any specified part of the said period, and the Insured shall furnish said statement within ten (10) days after request. The statement referred to shall be subject to verification and audit by a duly authorized representative of the Company, who shall have the right and opportunity to examine the books and records of the Insured as respects such total sales or other basis of premium, and such examination may be made at any time during the said period and within three (3) years thereafter. The rendering of any estimate or statement or the making of any previous settlement shall not bar the examination herein provided for, nor the Company's right to additional premium.

H. Service of Suit. It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United

States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance or other official specified for that purpose in the statute, or his/her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations page by a duly authorized representative of the Company.

Secretary

President

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

This endorsement modifies the provisions of this policy.

It is agreed that:

1. This policy does not apply:

A. Under any Liability Coverage, to bodily injury or property damage

- (1) with respect to which an Insured under this policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
- (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

2. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

CP 339 **B**

PROGRESSIVE DIRECT
PO BOX 1088
RANCHO CORDOVA CA 95741

00122

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

FOR POLICY NUMBER:
30931541-0

Thank you for choosing Progressive.

Enclosed is your policy information. Please keep this with your important papers.

If you have any questions, please call us at:

Automated Billing Inquiry
1-800-999-8781

24 Hour Policy Service
1-800-888-7764

Immediate Response® claims service
1-800-274-4499

IF YOU HAVE AN ACCIDENT...

Please call Progressive's Immediate Response® claims service right away (from the accident scene if possible) at **1-800-274-4499**.

A Progressive claim representative will assist you with these services 24 hours a day, 7 days a week:

- Arrange for rental vehicle
- Arrange for towing
- Dispatch claims representative to your accident location in the event of a serious injury or upon request
- Explain coverages and the claims process

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.

BY Debra Henry
DATE 1/21/10

PROGRESSIVE DIRECT
PO BOX 1088
RANCHO CORDOVA CA 95741

PROGRESSIVE®

24 Hour Policy Service 1-800-888-7764
24 Hour Claims Service 1-800-274-4499
Automated Billing Inquiry 1-800-999-8781

PERSONAL AUTO POLICY DECLARATIONS PAGE
FOR NAMED INSURED:

00122

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251
POLICY NUMBER: 30931541 - 0
POLICY PERIOD: 10/15/98 TO 10/15/99

This policy inception the later of:
1. the time the application for insurance is executed on the first day of the policy period; or
2. 12:01 a.m. on the first day of the policy period.
This policy shall expire at 12:01 a.m. on the last day of the policy period.

The following coverages and limits apply to each described vehicle as shown below. Coverages are defined in the policy and are subject to the terms and conditions contained in the policy, including amendments and endorsements. No changes will be effective prior to the time changes are requested.

REASON FOR ISSUANCE: NEW BUSINESS

VEH#	YR	MAKE - MODEL	SERIAL NUMBER	STATED AMT	DRV#	LISTED DRIVERS	EXCLUDED	SR22	RATED
1	1994	GEO PRIZM/LSI	4D 1Y1SK5366RZ027420		1	JOSE OCHOA	NO	NO	NO
2					2	JANETTE LEDING	NO	NO	YES
3					3				
4					4				
					5				

COVERAGES AND LIMITS OF LIABILITY THE COVERAGE IS APPLICABLE ONLY IF A PREMIUM IS INDICATED.	PREMIUMS				
	VEH #1	VEH #2	VEH #3	VEH #4	TOTAL
BODILY INJURY LIABILITY \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT	\$564				\$564
PROPERTY DAMAGE LIABILITY \$25,000 NO DEDUCTIBLE					
UNDERINSURED MOTORIST \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT	\$101				\$101
COMPREHENSIVE ACV LESS \$500 DEDUCTIBLE	\$78				\$78
COLLISION OR UPSET ACV LESS \$500 DEDUCTIBLE	\$549				\$549
SEE REVERSE					
PREMIUM BY VEHICLE	\$1,292				

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.

BY Debra Aery
DATE 1/21/10

ATTACHMENTS IDENTIFIED BY FORM NO.
9798WA(1096)

TOTAL POLICY PREMIUM \$1,322
INCLUDES A NON-REFUNDABLE POLICY FEE OF \$30

UW 0002

ANY LOSS UNDER PART IV IS PAYABLE TO NAMED INSURED AND LIENHOLDER:

LIENHOLDER

VEH #1

VEH #2

BEUC
PO BOX 97050
SEATTLE WA 98124

VEH #3

VEH #4

ADDITIONAL INTEREST

FOR COMPANY USE ONLY

DISCOUNTS:	VEH 1	VEH 2	VEH 3	VEH 4
MULTIPLE CARS ON POLICY				
PREMIUM PAID IN FULL				
RESPONSIBLE DRIVER				
MATURE DRIVER COURSE				
DRIVER-SIDE AIRBAG				
DUAL AIRBAGS				
PASSIVE RESTRAINTS				
ASSOCIATION DISCOUNT				
SURCHARGES:				
VEHICLE USED FOR BUSINESS				

VEH	DR#	CL.	CL.	TERR	LIAB	COMP	COLL
1	2	23SF	05	30	02	02	08
2							
3							
4							

VEH	DR#	AGE	SEX	M/S
1	2	23	F	S
2				
3				
4				

COMPANY 19
MARKET MIDDLE MARKET
LEVEL SUPER-SAVER
PAY PLAN 14
R/R 9710
FACTOR % 1.000
FORM 9606
ED. 0696
AGENT CODE IC 94548
PREV POL #
PRORATER

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.

BY Debra New
DATE 1/21/10

E4 150320 WGV 98293 000

UW 0003



Notice of Underwriting Decision & Information Practices

Dear Progressive Customer,

In connection with your insurance transaction with us, we may collect or have collected consumer reports, such as driver history and credit reports, or personal or privileged information from the following consumer reporting agencies:

Driver History Report: Equifax Services Inc. Customer Service Center 1525 Windward Concourse Alpharetta, GA 30202 1-800-456-6004	Home Ownership Report: Metronet 360 East 22nd Street Lombard, IL 60148 1-800-456-6638	Credit Report: Trans Union P.O. Box 390 Springfield, PA 19064-0390 1-800-520-9444
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In certain circumstances, the information contained in consumer reports, and other personal or privileged information subsequently collected by us, may be legally disclosed to third parties without your consent, but it is not our practice to do so.

This information is used to underwrite your insurance, and any rate increase or other adverse underwriting decision may, in part, be attributable to use of this information. No consumer reporting agency made any decision to take any adverse action with respect to your insurance transaction, and will be unable to provide the specific reasons why any such action was taken.

At your request, we will: (1) confirm whether a consumer report was requested; (2) if so, provide the name and address of the consumer reporting agency that furnished it; (3) provide you more detailed information regarding our collection, use, and disclosure of personal information, and your rights to access and correct such information; (4) provide the specific reasons for, and supporting information related to, any change to your policy; and (5) identify any third parties to whom we may have disclosed this information. You may request this information by writing to us or by calling us at 1-800-888-7764.

You have the right to: (1) obtain information regarding the nature and substance of recorded personal information about you; (2) access this information; (3) dispute the accuracy or completeness and request the correction of this information; and (4) file a statement setting forth what you think is the correct information, and why you disagree with any refusal to correct the information. Also, for 60 days after you receive this notice, you may obtain a free copy of any consumer report resulting in any adverse action. To exercise any of these rights, simply call us or the appropriate consumer reporting agency identified above.

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.

BY Debra Henry
DATE 1/21/10

NOTICE OF ADVERSE UNDERWRITING DECISION

Insured JOSE OCHOA
Policy Number 30931541-0
Date: 10/20/98

Washington law requires that we give you this notice. Please read it carefully.

The policy premium you were originally quoted was incorrect. We apologize for the error and any inconvenience it may have caused. We will be happy to serve your insurance needs, but if you do not wish to continue your policy at the revised correct premium, please notify us within 30 days of the date of this notice. We will cancel your policy based on the original quoted premium, unless the additional premium is due entirely to undisclosed violations.* You will only be charged for the number of days your policy is in effect.

If we do not receive your request to cancel within 30 days of the date shown on this memo, your policy will continue at the revised correct premium as shown on your enclosed declarations page.

*If the additional premium is due entirely to undisclosed violations, and you request to cancel your policy, the cancellation will be based upon the revised correct premium for the number of days your policy is in effect.



I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.
BY *Debra Newy*
DATE 1/21/10

Agent: PROGRESSIVE DIRECT
 PO BOX 1088
 RANCHO CORDOVA CA
 Date: 10/20/98
 Named Insured: JOSE OCHOA
 Policy: 30931541-0

PROGRESSIVE®

Total policy premium is based on a variety of factors. The following information is presented to help you understand some of the specifics used in calculating the policy premium and to explain why your premium may be different from what was originally quoted.

We use the following sources of information to create and verify driving record:

1. Information provided on the insurance application
2. Motor Vehicle Reports (MVR) which are provided by state agencies
3. Claims History (CLUE) which is provided by Equifax

Source A = convictions/accidents reported on the insurance application
 Source B = ADDITIONAL convictions/accidents found on MVR or CLUE

• Note that the points listed below are specific to Progressive and have no correlation to the point system used by the state agencies.

JOSE OCHOA				JANETTE LEDING			
CONVICTION/ACCIDENT	DATE	PTS	SRC	CONVICTION/ACCIDENT	DATE	PTS	SRC
SPEEDING-LOW	09/01/96	02	A	LEAVING THE SCENE	08/09/96	05	B
SPEEDING-LOW	07/16/97	01	B				
TRAFFIC DEVICE/SIGN	10/06/97	01	A				

CONVICTION/ACCIDENT	DATE	PTS	SRC	CONVICTION/ACCIDENT	DATE	PTS	SRC
---------------------	------	-----	-----	---------------------	------	-----	-----

CONVICTION/ACCIDENT	DATE	PTS	SRC
---------------------	------	-----	-----

Contact Progressive at 1-800-888-7764 if you have any questions.

I CERTIFY THIS DOCUMENT TO BE
 A TRUE AND ACCURATE COPY.
 BY Debra Henry
 DATE 1/21/10

DMGAP160 E4 WGV 98293 150320

IMPORTANT!

IF YOU ARE INVOLVED IN AN ACCIDENT:
(REGARDLESS OF FAULT)

1. At the accident scene, detach the Accident Information Card and give it to the driver of the other vehicle.
2. Ask the other driver to immediately call Progressive and report the accident.
3. Call Progressive immediately to report the accident.

Place here and put folded Accident Information and Insurance Identification card in the glove compartment of your vehicle.

Detach and keep copy of Insurance Identification Card with your records.

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.
BY Debra Henry
DATE 1/21/10

PMWE0427981945L65301

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 1088
RANCHO CORDOVA, CA 95741-1088

PROGRESSIVE®

Name of Insured: Policy Number: AA 30931541-0

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Original Issue Date: 10/15/98 Expiration Date: 10/15/99

Additional Drivers: JANETTE LEDING

Year	Make/Model	Vehicle Identification Number
1994	GEO PRIZM/LSI 4D	1Y1SK5366RZ027420

Form L6530 (6-96)

ACCIDENT INFORMATION CARD
(Give to other driver at scene of accident)

PROGRESSIVE®

FOR IMMEDIATE ASSISTANCE CALL
1-800-274-4499
24 HOURS A DAY, 7 DAYS A WEEK

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 1088
RANCHO CORDOVA, CA 95741-1088

Name of Insured:

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Policy Number: AA 30931541-0

Original Issue Date: 10/15/98

Expiration Date: 10/15/99

Insurance Identification Card - WASHINGTON

PROGRESSIVE®

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 1088
RANCHO CORDOVA, CA 95741-1088

Name of Insured: Policy Number: AA 30931541-0

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Original Issue Date: 10/15/98 Expiration Date: 10/15/99

Additional Drivers: JANETTE LEDING

Year	Make/Model	Vehicle Identification Number
1994	GEO PRIZM/LSI 4D	1Y1SK5366RZ027420

Form L6530 (6-96)

UW 0002

Keep this card in your motor vehicle while in operation.

Report all accidents immediately.

(24 hours a day, 7 days a week) to Progressive:

(1-800-274-4499)

Call us immediately so we can go to work for you.

Instructions to the insured in case of accident or loss:

1. Obtain full names, addresses and license numbers of all persons involved and all witnesses.
2. Do not admit fault or discuss the accident with anyone except police or company representative.

Examine policy exclusions carefully. This form does not constitute any part of your insurance policy or bond.

Automated billing inquiries: 1-800-999-8781

Policy Service: 1-800-888-7764

Keep this card in your motor vehicle while in operation.

Report all accidents immediately.

(24 hours a day, 7 days a week) to Progressive:

(1-800-274-4499)

Call us immediately so we can go to work for you.

Instructions to the insured in case of accident or loss:

1. Obtain full names, addresses and license numbers of all persons involved and all witnesses.
2. Do not admit fault or discuss the accident with anyone except police or company representative.

Examine policy exclusions carefully. This form does not constitute any part of your insurance policy or bond.

Automated billing inquiries: 1-800-999-8781

Policy Service: 1-800-888-7764



RECEIVED BY DEPARTMENT TO BE
A TRUE AND ACCURATE COPY.
BY Debra Henry
DATE 1/21/10



PROGRESSIVE DIRECT
PO BOX 1088
RANCHO CORDOVA CA 95741

24 Hour Policy Service 1-800-888-7764
24 Hour Claims Service 1-800-274-4499
Automated Billing Inquiry 1-800-999-8781
PERSONAL AUTO POLICY DECLARATIONS PAGE
FOR NAMED INSURED:

00112

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251
POLICY NUMBER: 30931541 - 0
POLICY PERIOD: 10/15/98 TO 10/15/99

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

This policy inception the later of:
1. the time the application for insurance is executed on the first day of the policy period; or
2. 12:01 a.m. on the first day of the policy period.
This policy shall expire at 12:01 a.m. on the last day of the policy period.

The following coverages and limits apply to each described vehicle as shown below. Coverages are defined in the policy and are subject to the terms and conditions contained in the policy, including amendments and endorsements. No changes will be effective prior to the time changes are requested.

CONFIRMATION NUMBER # 2937A1541

REASON FOR ISSUANCE: POLICY CHANGE, NO CHANGE IN PREMIUM
THE FOLLOWING CHANGES WERE REQUESTED BY JOSE OCHOA ON 10/20/98 AT 09:06 PM EST
EFFECTIVE ON 10/15/98: CHANGED INFO - VEH 1,94 GEO ; LOSS PAYEE CHANGED .

VEH#	YR	MAKE - MODEL	SERIAL NUMBER	STATED AMT	DRV#	LISTED DRIVERS	EXCLUDED	SR22	RATED
1	1994	GEO PRIZM/LSI	4D 1Y1SK5366RZO27420		1	JOSE OCHOA	NO	NO	NO
2					2	JANETTE LEDING	NO	NO	YES
3					3				
4					4				
					5				

COVERAGES AND LIMITS OF LIABILITY THE COVERAGE IS APPLICABLE ONLY IF A PREMIUM IS INDICATED.	PREMIUMS				
	VEH #1	VEH #2	VEH #3	VEH #4	TOTAL
BODILY INJURY LIABILITY \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT	\$564				\$564
PROPERTY DAMAGE LIABILITY \$25,000 NO DEDUCTIBLE					
UNDERINSURED MOTORIST \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT	\$101				\$101
COMPREHENSIVE ACV LESS \$500 DEDUCTIBLE	\$78				\$78
COLLISION OR UPSET ACV LESS \$500 DEDUCTIBLE	\$549				\$549
SEE REVERSE	PREMIUM BY VEHICLE	\$1,292			
ATTACHMENTS IDENTIFIED BY FORM NO.	TOTAL POLICY PREMIUM				\$1,292

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.
BY Debra Henry
DATE 1/21/10

UW 0009

P.O. BOX 31686
TAMPA, FL 33631-3686

THIS DECLARATION DOES NOT SUPERSEDE ANY CANCEL NOTICES
THIS DECLARATION REPLACES DECLARATION EFFECTIVE 10/15/98

PROGRESSIVE®

PROGRESSIVE DIRECT
PO BOX 31686
TAMPA FL 33631

24 Hour Policy Service 1-800-888-7764
24 Hour Claims Service 1-800-274-4499
Automated Billing Inquiry 1-800-999-8781
PERSONAL AUTO POLICY DECLARATIONS PAGE
FOR NAMED INSURED:

01960



JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251
POLICY NUMBER: 30931541 - 0
POLICY PERIOD: 07/21/99 TO 10/15/99

This policy inception the later of:
1. the time the application for insurance is executed on the first day of the policy period; or
2. 12:01 a.m. on the first day of the policy period.
This policy shall expire at 12:01 a.m. on the last day of the policy period.

The following coverages and limits apply to each described vehicle as shown below. Coverages are defined in the policy and are subject to the terms and conditions contained in the policy, including amendments and endorsements. No changes will be effective prior to the time changes are requested.

CONFIRMATION NUMBER # 202SA1541
REASON FOR ISSUANCE: POLICY CHANGE, PREMIUM INCREASE \$137
THE FOLLOWING CHANGES WERE REQUESTED BY JOSE OCHOA ON 07/21/99 AT 09:04 PM EST
EFFECTIVE ON 07/21/99: ADDED VEH 1,99 CHRYS ; DELETED VEH 94 GEO ;
ADDITIONAL INTEREST ADDED .

VEH#	YR	MAKE - MODEL	SERIAL NUMBER	STATED AMT	DRV#	LISTED DRIVERS	EXCLUDED	SR22	RATED
1	1999	CHRYSLER CIRRUS LXI 4D	1C3EJ56H6XN617675		1	JOSE OCHOA	NO	NO	NO
2					2	JANETTE LEDING	NO	NO	YES
3					3				
4					4				
					5				

COVERAGES AND LIMITS OF LIABILITY THE COVERAGE IS APPLICABLE ONLY IF A PREMIUM IS INDICATED.	PREMIUMS				
	VEH #1	VEH #2	VEH #3	VEH #4	TOTAL
BODILY INJURY LIABILITY \$100,000 EACH PERSON - \$300,000 EACH ACCIDENT	\$797				\$797
PROPERTY DAMAGE LIABILITY \$25,000 NO DEDUCTIBLE					
UNDERINSURED MOTORIST \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT	\$101				\$101
COMPREHENSIVE ACV LESS \$500 DEDUCTIBLE	\$180				\$180
COLLISION OR UPSET ACV LESS \$500 DEDUCTIBLE	\$797				\$797
SEE REVERSE					
PREMIUM BY VEHICLE	\$1,875				
ATTACHMENTS IDENTIFIED BY FORM NO.	TOTAL POLICY PREMIUM				\$1,875

THIS POLICY IS TO BE
A TRUE AND CORRECT COPY.
BY Debra Henry
DATE 1/21/10

UW 0011

JOSE OCHOA
30931541-0

Dear Insured:

Congratulations on the purchase of your new car! New cars represent a big investment. We want to make you aware that you may be eligible to purchase Loan/Lease Payoff Coverage. It is an optional vehicle damage coverage that can be purchased by purchasers of new model year vehicles who have Collision or Comprehensive Coverage or Damage to a Vehicle. This coverage provides payment of the unpaid loan balance when we pay the actual cash value on a total loss of the covered vehicle.

Sometimes, in the event of a total loss on a new car, the loan amount is actually greater than the actual cash value of the car. If you do not purchase this additional coverage, your insurance will not pay more than the cash value. You will be required to pay any remaining balance to your lender, lienholder, or leaseholder. Loan/Lease Payoff Coverage can help you to avoid or minimize this dilemma. In a total loss, Loan/Lease Payoff Coverage, subject to the limitations and conditions listed in your policy contract and endorsements, will pay the owner of a covered vehicle the greater of the loan or lease balance legally due, or the actual cash value of the vehicle.

If you are the first time owner of a new model year vehicle and are interested in getting a quote for this very affordable coverage, please contact your agent or call our customer service department at 1-800-888-7764 .

Thank you for choosing Progressive.

BY Debra Henry
DATE 1/21/10

IMPORTANT!

IF YOU ARE INVOLVED IN AN ACCIDENT:
(REGARDLESS OF FAULT)

1. At the accident scene, detach the Accident Information Card and give it to the driver of the other vehicle.
2. Ask the other driver to immediately call Progressive and report the accident.
3. Call Progressive immediately to report the accident.

here and put folded Accident Information and Insurance Identification card in the glove compartment of your vehicle.

Detach and keep copy of Insurance Identification Card with your records.

RECEIVED BY
A FILE WITH ORIGINAL COPY.
BY Debra Henry
DATE 1/21/10

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 31686
TAMPA, FL 33631-3686

PROGRESSIVE®

Name of Insured:

Policy Number: AA 30931541-0

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Original Issue Date: 10/15/98

Expiration Date: 10/15/99

Additional Drivers: JANETTE LEDING

Year Make/Model
1999 CHRYS CIRRUS LXI 4D

Vehicle Identification Number
1C3EJ56H6XN617675

Form L6530 (6-96)

ACCIDENT INFORMATION CARD
(Give to other driver at scene of accident)

PROGRESSIVE®

FOR IMMEDIATE ASSISTANCE CALL

1-800-274-4499

24 HOURS A DAY, 7 DAYS A WEEK

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 31686
TAMPA, FL 33631-3686

Name of Insured:

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Policy Number: AA 30931541-0

Original Issue Date: 10/15/98

Expiration Date: 10/15/99

Insurance Identification Card - WASHINGTON

PROGRESSIVE®

Name of Insurer:
PROGRESSIVE CLASSIC INSURANCE COMPANY
P.O. BOX 31686
TAMPA, FL 33631-3686

Name of Insured:

Policy Number: AA 30931541-0

JOSE OCHOA
434 EVERGREEN PL
GOLD BAR WA 98251

Original Issue Date: 10/15/98

Expiration Date: 10/15/99

Additional Drivers: JANETTE LEDING

Year Make/Model
1999 CHRYS CIRRUS LXI 4D

Vehicle Identification Number
1C3EJ56H6XN617675

PMWE1006982405L65301

Form L6530 (6-96)

UW 0014 253

Keep this card in your motor vehicle while in operation.

Report all accidents immediately.

(24 hours a day, 7 days a week) to Progressive:

(1-800-274-4499)

Call us immediately so we can go to work for you.

Instructions to the insured in case of accident or loss:

1. Obtain full names, addresses and license numbers of all persons involved and all witnesses.
2. Do not admit fault or discuss the accident with anyone except police or company representative.

Examine policy exclusions carefully. This form does not constitute any part of your insurance policy or bond.

Automated billing inquiries: 1-800-999-8781

Policy Service: 1-800-888-7764

Keep this card in your motor vehicle while in operation.

Report all accidents immediately.

(24 hours a day, 7 days a week) to Progressive:

(1-800-274-4499)

Call us immediately so we can go to work for you.

Instructions to the insured in case of accident or loss:

1. Obtain full names, addresses and license numbers of all persons involved and all witnesses.
2. Do not admit fault or discuss the accident with anyone except police or company representative.

Examine policy exclusions carefully. This form does not constitute any part of your insurance policy or bond.

Automated billing inquiries: 1-800-999-8781

Policy Service: 1-800-888-7764



THIS IS NOT TO BE
 A TRUE AND ACCURATE COPY.
 BY Debra Henry
 DATE 1/21/10

UW 0015 250

"9606 696 46"



WASHINGTON MOTOR VEHICLE POLICY

PROGRESSIVE AMERICAN INSURANCE COMPANY
PROGRESSIVE CASUALTY INSURANCE COMPANY
PROGRESSIVE NORTHWESTERN INSURANCE COMPANY
PROGRESSIVE NORTHERN INSURANCE COMPANY
PROGRESSIVE PREFERRED INSURANCE COMPANY
PROGRESSIVE SPECIALTY INSURANCE COMPANY
CLASSIC INSURANCE COMPANY

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.
By Debra Chew
Date 1/21/10

Form No. 9606 (06/96) WA
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UW 0016
RD 255

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WASHINGTON MOTOR VEHICLE POLICY

If you pay your premium when due, we agree to provide this insurance, subject to all the terms and provisions of this policy, and up to the Limits of Liability described in this policy and shown on the Declarations Page.

YOUR DUTIES IN CASE OF AN ACCIDENT OR LOSS

Notice of Accident or Loss

If there is an accident or loss arising out of the ownership, maintenance or use of a vehicle, for which coverage may be provided under this policy, report it to us within twenty-four (24) hours or as soon as practicable by calling us at 1-800-274-4499.

You should report each accident or loss even if an insured person is not at fault.

The following accident information should be reported as it is obtained:

1. time;
2. place;
3. circumstances of the accident or loss;
4. names and addresses of any injured persons;
5. names and addresses of any witnesses; and
6. the license plate numbers of the vehicles involved.

You should also notify the police:

1. within seventy-two (72) hours if a phantom vehicle which has no physical contact with the insured person or the vehicle which the insured person is occupying at the time of the accident causes an accident, provided its operator and owner cannot be identified; and

2. within twenty-four (24) hours or as soon as practicable if:
 - i. a hit-and-run vehicle is involved; or
 - ii. theft or vandalism has occurred.

OTHER DUTIES

A person claiming coverage under this policy must:

1. cooperate with us in any matter concerning a claim or lawsuit;
2. provide any written proof of loss we may reasonably require;
3. allow us to take signed or recorded statements, including statements under oath, and answer all reasonable questions we may ask, when and as often as we may reasonably require;
4. promptly send us any and all legal papers relating to any claim or lawsuit;
5. attend hearings and trials as we require;
6. take reasonable steps after a loss to protect the covered vehicle or non-owned vehicle from further loss. We will pay reasonable expenses incurred in providing that protection. If you fail to do so, any further damages will not be covered under this policy;
7. allow us to inspect and appraise the damage to a covered vehicle or non-owned vehicle before its repair or disposal;
8. submit to medical examinations at our expense by doctors we select as often as we may reasonably require; and
9. authorize us to obtain medical and other records.

GENERAL DEFINITIONS

Except as otherwise defined in this policy, terms appearing in boldface will have the following meaning:

1. "Accident" means a sudden, unexpected, and unintended occurrence.

2. "Bodily injury" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
3. "Business" includes a trade, profession, or occupation.
4. "Covered vehicle" means:
 - a. any vehicle shown on the **Declarations Page**;
 - b. any additional vehicle on the date you become the owner if:
 - i. you acquire the vehicle during the policy period shown on the **Declarations Page**;
 - ii. we insure all vehicles owned by you; and
 - iii. no other insurance policy provides coverage for that vehicle.

For a vehicle you acquire in addition to any vehicle shown on the **Declarations Page**, we will provide the broadest coverage we provide for any covered vehicle shown on the **Declarations Page**. We will provide coverage for a period of thirty (30) days after you become the owner. We will not provide coverage after this thirty (30) day period, unless within this period you ask us to insure the vehicle;

- c. any replacement vehicle on the date you become the owner if:
 - i. you acquire the vehicle during the policy period shown on the **Declarations Page**;
 - ii. the vehicle that you acquire replaces one shown on the **Declarations Page**; and
 - iii. no other insurance policy provides coverage for that vehicle.

If the vehicle that you acquire replaces one shown on the **Declarations Page**, it will have the same coverage as the

covered vehicle it replaces. You must ask us to insure a replacement vehicle within thirty (30) days after you become the owner if you want to add or continue coverage under Part IV - Damage To A Vehicle; and

- d. any trailer owned by you while drawn by or attached to a vehicle described in a, b, or c above.
5. "Declarations Page" means the report from us listing:
 - a. the types of coverage you have elected;
 - b. the limit for each coverage;
 - c. the cost for each coverage;
 - d. the specified vehicles covered by this policy;
 - e. the types of coverage for each such vehicle; and
 - f. other information applicable to this policy.
6. "Loss" means sudden, direct, and accidental loss or damage.
7. "Non-owned vehicle" means any vehicle that is not owned by you, a relative, or the spouse of the named insured even if not residing in the same household as the named insured.
8. "Occupying" means in, on, entering, or exiting.
9. "Owned" means the person:
 - a. holds legal title to the vehicle;
 - b. has legal possession of the vehicle that is subject to a written security agreement with an original term of six (6) months or more; or
 - c. has legal possession of the vehicle that is leased to that person under a written agreement for a continuous period of six (6) months or more.

10. "Owner" means any person who, with respect to a **vehicle**:
- holds legal title to the **vehicle**;
 - has legal possession of the **vehicle** that is subject to a written security agreement with an original term of six (6) months or more; or
 - has legal possession of the **vehicle** that is leased to that person under a written agreement for a continuous period of six (6) months or more.
11. "Property damage" means physical damage to, or destruction or loss of use of, tangible property.
12. "Relative" means a person residing in the same household as you, and related to you by blood, marriage, or adoption, including a ward, stepchild, or foster child. Unmarried dependent children temporarily away from home will be considered residents if:
- they are under the age of twenty-five (25) years; and
 - they intend to continue to reside in your household.
13. "Trailer" means a vehicle designed to be towed on public roads by a **vehicle**. It includes a farm wagon or farm implement while being towed by a **vehicle**. It does not include a mobile home, or a trailer used as an office, store, display, or passenger conveyance.
14. "Vehicle" means a land motor vehicle:
- of the private passenger, pickup body, or sedan delivery type;
 - designed for operation principally upon public roads;
 - with at least four (4) wheels; and
 - with a gross vehicle weight of 10,000 pounds or less.
15. "We", "Us", and "Our" mean the company providing the insurance, as shown on the **Declarations Page**.

16. "You" and "Your" mean the person shown as the named insured on the **Declarations Page**, and that person's spouse if residing in the same household.

PART I - LIABILITY TO OTHERS

INSURING AGREEMENT - BODILY INJURY

Subject to the Limits of Liability, if you pay a premium for **bodily injury** liability coverage, we will pay damages, other than punitive or exemplary damages, for **bodily injury** for which an **insured person** becomes legally responsible because of an **accident** arising out of the ownership, maintenance, or use of a **vehicle**.

INSURING AGREEMENT - PROPERTY DAMAGE

Subject to the Limits of Liability, if you pay a premium for **property damage** liability coverage, we will pay damages, other than punitive or exemplary damages, for **property damage** for which an **insured person** becomes legally responsible because of an **accident** arising out of the ownership, maintenance, or use of a **vehicle**.

We will settle or defend, at our option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITION

When used in this Part I, "insured person" or "insured persons" means:

- you or a **relative** with respect to an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle**;
- any person, with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of you or a **relative**;
- a **relative** with respect to an **accident** arising out of the maintenance or use of a **non-owned vehicle** with the express or implied permission of the owner of the **vehicle**;

4. you with respect to an **accident** arising out of the maintenance or use of any **vehicle** with the express or implied permission of the **owner** of the **vehicle**;
5. any person or organization with respect only to vicarious liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in 1, 2, 3, or 4 above; and
6. any Additional Interest Insured designated by **you** in **your** application or by a change request agreed to by **us**, with respect to liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in 1, 2, 3, or 4 above.

ADDITIONAL PAYMENTS

In addition to our Limit of Liability, we will pay for an **insured person**:

1. all expenses that **we** incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until **we** have paid or tendered that portion of the judgment which does not exceed our Limit of Liability. This does not apply if **we** have not been given notice of suit or the opportunity to defend an **insured person**;
3. premiums on appeal bonds or attachment bonds required in any lawsuit **we** defend. **We** have no duty to purchase bonds in an amount exceeding our Limit of Liability, and **we** have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle** or **non-owned vehicle**. **We** have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$50 a day, incurred at our request.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including our duty to defend, does not apply to:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of a **vehicle** while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. any liability assumed by an **insured person** under any contract or bailment;
3. **bodily injury** to an employee of an **insured person** arising out of or within the course of employment, except for domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered vehicle**;
5. **bodily injury** or **property damage** resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. **bodily injury** or **property damage** due to nuclear reaction or radiation;

7. **bodily injury or property damage** for which insurance is afforded under a nuclear energy liability insurance contract;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury or property damage** caused by an intentional act of an **insured person** or at the direction of an **insured person**;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of an **insured person**. However, this exclusion does not apply to a rented residence or a rented garage damaged by a **covered vehicle**;
11. **bodily injury or property damage** resulting from a **relative's** operation or use of a vehicle, other than a **covered vehicle**, owned by a person who resides with you; or
12. **bodily injury or property damage** resulting from **your** operation or use of a vehicle owned by you, other than a **covered vehicle**.

LIMITS OF LIABILITY

The Limit of Liability shown on the **Declarations Page** is the most we will pay regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in an **accident**; or
6. premiums paid.

If the **Declarations Page** shows that "combined single limits" or "CSL" applies, the amount shown is the most we will pay for the aggregate of all damages resulting from any one (1) **accident**. We will apply the "each person" Limit of Liability for **bodily injury** as required by the law of the

state listed on your application as your residence. However, this provision does not change our total "each accident" Limit of Liability.

If your **Declarations Page** shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to a **bodily injury** to one (1) person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to a **bodily injury** to two (2) or more persons in any one (1) **accident**; and
3. the amount shown for "property damage" is the most we will pay for the aggregate of all **property damage** for which an **Insured person** becomes liable from any one (1) **accident**.

The **bodily injury** limit for "each person" includes the aggregate of claims made for such **bodily injury** and claims derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

No one will be entitled to duplicate payments for the same elements of damages.

Any payment under this Part I to a person other than **you** or a **relative** shall be reduced by any payment to that person under Part III - Underinsured Motorist Coverage.

A **vehicle** and attached **trailer** are considered one (1) **vehicle**. Therefore, the Limits of Liability will not be increased for an **accident** involving a **vehicle** which has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. You must reimburse us if we make a payment that we would not have made if this policy was not certified as Proof of Financial Responsibility.

OTHER INSURANCE

If there is other applicable liability insurance or bond, we will pay only our share of the damages. Our share is the proportion that our Limit of Liability bears to the total of all applicable limits. Any insurance we provide for a vehicle, other than a covered vehicle, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this policy applies occurs in any state or province other than the one in which a covered vehicle is principally garaged, and the state or province has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the Limits shown on the **Declarations Page**, this policy will provide the higher limit; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a **vehicle** in that state or province, this policy will provide:
 - a. the required minimum amounts and types of coverage; or
 - b. any higher limit you have elected, provided you have paid the premium for higher limits.

PART II - PERSONAL INJURY PROTECTION COVERAGE

INSURING AGREEMENT

Subject to the Limits of Liability, if you pay a premium for Personal Injury Protection Coverage, we will pay the following benefits for losses or expenses incurred because of **bodily injury** sustained by an **insured person** caused by an **accident** and arising out of the ownership, operation, maintenance, or use of an **automobile**:

1. **medical and hospital benefits** to or on behalf of each **insured person**;
2. **income continuation benefits** to or on behalf of each **insured person** engaged in a remunerative occupation at the time of the **accident**;
3. **benefits for funeral expenses**; and
4. **loss of services benefits** to or on behalf of you.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "**Automobile**" means a four-wheeled self-propelled land motor vehicle of the private passenger, station wagon, pickup body, utility, panel truck or sedan delivery type. It does not include a motor vehicle or trailer:
 - a. operated on rails or crawler treads;
 - b. located for use as a residence or premises; or
 - c. a farm type tractor or other self-propelled equipment designed for use principally off public roads while not on public roads.
2. "**Funeral expenses**" means payment for reasonable funeral expenses incurred because of **bodily injury** sustained by an **insured person** in the **accident**.
3. "**Income continuation benefits**" means payment of eighty-five percent (85%) of the **insured person's** loss of income from work

beginning fourteen (14) days after the date of the accident and ending:

- a. on the date which the insured person is reasonably able to perform the duties of his or her usual occupation;
- b. fifty-two (52) weeks from the fourteenth (14th) day after the date of the accident; or
- c. on the date of the insured person's death; whichever occurs first.

Income earned during the period income continuation benefits are being paid shall be deducted from income continuation benefits. Income continuation benefits shall be secondary to any employer-provided wage loss benefit plan, not including sick leave and vacation benefits.

4. "Insured automobile" means:

- a. any automobile shown on the **Declarations Page**;
- b. any additional automobile on the date you become the owner if:
 - i. you acquire the automobile during the policy period shown on the **Declarations Page**;
 - ii. we insure all vehicles owned by you; and
 - iii. no other insurance policy provides coverage for that automobile.

We will provide coverage for a period of thirty (30) days after you become the owner. We will not provide coverage after this thirty (30) day period, unless within this period you ask us to insure the automobile;
- c. any replacement automobile on the date you become the owner if:
 - i. you acquire the automobile during the policy period shown on the **Declarations Page**;
 - ii. the automobile that you acquire replaces one shown on the **Declarations Page**; and

- iii. no other insurance policy provides coverage for that automobile; and
- d. any trailer owned by you while used with an automobile described in a, b, or c above.

5. "Insured person" means:

- a. you or any relative sustaining bodily injury while using or occupying an automobile, or when struck by an automobile while not occupying an automobile; and
- b. any other person sustaining bodily injury while using or occupying the insured automobile with your permission or when struck by the insured automobile while not occupying an automobile.

6. "Loss of services benefits" means reimbursement for payment to persons other than members of your household for expenses reasonably incurred for essential services actually rendered in lieu of those you would have performed without income if you had not sustained bodily injury in the accident. We shall reimburse such expenses reasonably incurred beginning on the date of the accident and ending:

- a. on the date you are reasonably able to perform such services;
- b. fifty-two (52) weeks from the date of the accident; or
- c. on the date of your death; whichever occurs first.

7. "Medical and hospital benefits" means payment of the reasonable and necessary expenses incurred within three (3) years of the date of the accident for health care services provided by persons licensed by law to render such services and for pharmaceuticals, prosthetic devices, eyeglasses, and necessary ambulance, hospital, and professional nursing services. "Medical and hospital benefits" does not include expenses which are not reasonable and necessary. We may use any reliable service or reference

source in determining whether any expense is necessary or reasonable in the geographic area.

8. "Relative" means a person residing in the same household as you, and related to you by blood, marriage, or adoption, including a ward, stepchild, or foster child.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II does not apply to **bodily injury**:

1. to any person who intentionally causes their own **bodily injury**;
2. resulting from any pre-arranged or organized racing or speed contest, or in practice or preparation for any such contest;
3. due to war, whether or not declared, or to an act or condition incident to war;
4. resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;
5. to you or a **relative** while **occupying an automobile owned by you** but not shown on the **Declarations Page**;
6. to a **relative** while **occupying an automobile owned by the relative** but not shown on the **Declarations Page**; or
7. to any person who sustains **bodily injury** while using an **automobile** in the commission of a felony.

LIMITS OF LIABILITY

Our Limits of Liability for losses or expenses incurred by or on behalf of one (1) **insured person** because of **bodily injury** sustained in any one (1) **accident** shall be as follows:

1. \$10,000 for **medical and hospital benefits**;
2. \$10,000 for **income continuation benefits** subject to a limit of \$200 per week. The total weekly amount which an **insured person** may receive under any workers' compensation, disability benefits or other income continuation benefit insurance and this Part II shall not exceed eighty-five percent (85%) of the **insured person's** weekly income at the time of the **accident**;
3. \$2,000 for **funeral expenses**; and
4. \$5,000 for **loss of services benefits** subject to a limit of \$40 per day, not to exceed \$200 per week.

Our Limits of Liability are the most we will pay for all losses and expenses incurred because of **bodily injury** to one (1) **insured person** sustained in one (1) **accident**, regardless of the number of:

1. claims made;
2. **insured automobiles** or **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. **automobiles** involved in an **accident**; or
6. premiums paid.

Any amount payable under this Part II shall be reduced by any amount paid or payable because of **bodily injury** under any of the following or similar laws:

1. workers' compensation law; or
2. medical or disability benefits law.

Payments under this Part II are limited to the amount of the actual loss or expense incurred.

ADDITIONAL PERSONAL INJURY PROTECTION

If you pay a premium for Additional Personal Injury Protection, we agree with you that the Limits of Liability provision of this Part II is deleted and replaced by the following:

Our Limits of Liability for losses or expenses incurred by or on behalf of one (1) insured person because of bodily injury sustained in one (1) accident shall be as follows:

1. \$35,000 for medical and hospital benefits;
2. \$35,000 for income continuation benefits subject to a limit of the lesser of \$700 per week or eighty-five percent (85%) of the insured person's weekly income at the time of the accident;
3. \$2,000 for funeral expenses; and
4. \$40 per day for loss of services benefits for up to one (1) year from the date of the accident.

Our Limits of Liability are the most we will pay for all losses or expenses incurred because of bodily injury to one (1) insured person sustained in one (1) accident, regardless of the number of:

1. claims made;
2. insured automobiles or covered vehicles;
3. insured persons;
4. lawsuits brought;
5. automobiles involved in an accident; or
6. premiums paid.

Any amount payable under this Part II shall be reduced by any amount paid or payable because of bodily injury under any of the following or similar laws:

1. workers' compensation law; or
2. medical or disability benefits law.

Payments under this Part II are limited to the amount of the actual loss or expense incurred.

OTHER INSURANCE

If there is other applicable automobile medical payments insurance or personal injury protection coverage for medical and hospital benefits, we will pay only our share of the damages. Our share is the proportion that our Limit of Liability for medical and hospital benefits bears to the total of all applicable limits. Any insurance that we provide for an insured person while using, occupying, or when struck by an automobile, other than an insured automobile, shall be excess over any other medical payments or personal injury protection coverage.

Income continuation benefits shall be secondary to any employer-provided wage loss benefit plan, not including sick leave and vacation benefits.

APPORTIONMENT OF LEGAL EXPENSES

If we and an insured person both incur legal losses or expenses in recovering expenses which benefit both us and the insured person, whether incurred in an action for damages or otherwise, there shall be an equitable apportionment of such expenses.

ARBITRATION

If we and an insured person have agreed to arbitration, the decision shall be made by an arbitrator agreed to by the parties. If the parties cannot agree on an arbitrator within thirty (30) days, then on joint application by us and the insured person, the arbitrator will be appointed by a court having jurisdiction. Unless both parties agree otherwise, arbitration will take place in the county in which the insured person resides. Local rules of procedure and evidence will apply. The written decision of the arbitrator shall be binding on the parties as to the amount of

benefits payable under this Part II. The arbitrator shall have no authority to award an amount in excess of the Limit of Liability.

SETOFF

No payment shall be made for income continuation benefits or loss of services benefits unless the insured person to or for whom such payment was made agrees, in writing, that the amount of such payment shall be applied toward the settlement of any claim or the satisfaction of any award entered in the favor of the insured person under Part III - Underinsured Motorist Coverage of this policy or under the uninsured or underinsured coverage of any other policy issued by us or any of our affiliates.

PART III - UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT - UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Subject to the Limits of Liability, if you pay a premium for Underinsured Motorist Coverage, we will pay for damages, other than punitive or exemplary damages, which an insured person is entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury:

1. sustained by an insured person;
2. caused by accident; and
3. arising out of the ownership, maintenance, or use of an underinsured motor vehicle.

INSURING AGREEMENT - UNDERINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Subject to the Limits of Liability, if you pay a premium for Underinsured Motorist Property Damage Coverage, we will pay for damages, other than punitive or exemplary damages, which an insured person is entitled to recover from the owner or operator of an underinsured motor vehicle due to property damage:

1. caused by accident; and

2. arising out of the ownership, maintenance or use of an underinsured motor vehicle.

Determination of whether an insured person is legally entitled to recover damages, and the amount of damages, will be made by agreement between the insured person and us. If no agreement is reached, the decision may be made by arbitration if we and the insured person agree to arbitration. If we and the insured person do not agree to arbitration, the disagreement may be resolved in a court of competent jurisdiction.

An insured person must notify us in writing at least thirty (30) days before entering into any settlement with the owner or operator of an underinsured motor vehicle, or that person's liability insurer. In order to preserve our right of subrogation, we may elect to pay any sum offered in settlement by, or on behalf of, the owner or operator of an underinsured motor vehicle. If we do this, you agree to assign to us all rights that you have against the owner or operator of an underinsured motor vehicle. However, our rights of recovery shall be limited to sums paid or payable by us, plus our proportionate share of any costs and interest awarded by a court with respect to the recovery of such sums. We shall be entitled to recovery only after the insured person has been fully compensated for damages arising out of the accident.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "Insured person" and "insured persons" mean:
 - a. you or a relative;
 - b. any person occupying a covered vehicle; and
 - c. any person who is entitled to recover damages covered by this Part III because of bodily injury sustained by a person described in a or b above.

2. "Property damage" means physical damage to or destruction of a covered vehicle. "Property damage" does not include:

- a. damage to the contents of a covered vehicle; or
- b. any damages due to loss of use of a covered vehicle.

3. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type:

- a. to which no liability bond or policy applies at the time of the accident;
- b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
 - i. denies coverage; or
 - ii. is or becomes insolvent;
- c. that is a hit-and-run vehicle whose operator or owner cannot be identified and which strikes:
 - i. you or a relative;
 - ii. a vehicle that you or a relative are occupying; or
 - iii. a covered vehicle;provided that the insured person, or someone on his or her behalf, reports the accident to the police or civil authority within twenty-four (24) hours or as soon as practicable after the accident;
- d. that is a phantom vehicle whose operator or owner cannot be identified and which causes an accident resulting in bodily injury to an insured person or property damage, and has no physical contact with the insured person or the vehicle which the insured person is occupying at the time of the accident, if:
 - i. the facts of the accident can be corroborated by competent evidence other than your testimony or the testimony of an insured person having a claim under this Part III resulting from the accident; and
 - ii. the insured person, or someone on his or her behalf, reports the accident to the police or civil authority within

seventy-two (72) hours after the accident; or

- e. to which a liability bond or policy applies at the time of the accident, but the sum of the limits of liability under all applicable bonds and policies is less than the damages which the insured person is entitled to recover.

An underinsured motor vehicle does not include any vehicle or equipment:

- a. owned by you or a relative. However, this exclusion to the definition of underinsured motor vehicle does not apply to a covered vehicle with respect to bodily injury to you or a relative;
- b. owned by any governmental unit or agency. However, this exclusion to the definition of underinsured motor vehicle does not apply if the governmental entity is unable to satisfy a claim because of financial inability or its insolvency;
- c. operated on rails or crawler treads;
- d. designed mainly for use off public roads, while not on public roads;
- e. while used as a residence or premises; or
- f. not required to be registered as a motor vehicle.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

Coverage under this Part III is not provided for bodily injury sustained by any person while using or occupying:

1. a covered vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. a covered vehicle without the express or implied permission of you or a relative;

3. a **non-owned vehicle** without the express or implied permission of the owner; or
4. a **vehicle owned by you or a relative**, other than a **covered vehicle**.

Coverage under this Part III will not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:

1. workers' compensation law; or
2. disability benefits law.

Coverage under this Part III is not provided for **property damage**:

1. sustained while a **covered vehicle** is being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food or any other products. This exclusion does not apply to shared-expense car pools;
2. resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity or in practice or preparation for any such contest or activity;
3. due to nuclear reaction or radiation;
4. for which insurance is afforded under a nuclear energy liability insurance contract; or
5. to a **trailer**.

LIMITS OF LIABILITY

The Limit of Liability shown on the **Declarations Page** for the coverages under Part III is the most we will pay regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in an accident; or
6. premiums paid.

If the **Declarations Page** shows that "combined single limits" or "CSL" applies, the amount shown is the most we will pay for the aggregate of all damages resulting from any one (1) **accident**.

We will apply the "each person" Limit of Liability for underinsured motorist coverage as required by the law of the state listed on your application as your residence. However, this provision does not change our total "each accident" Limit of Liability.

If your **Declarations Page** shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to a **bodily injury** to one (1) person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to a **bodily injury** to two (2) or more persons in any one (1) **accident**; and
3. any amount shown for "property damage" is the most we will pay for the aggregate of all **property damage** caused by any one (1) **accident**.

The **bodily injury** Limit of Liability under this Part III for "each person" includes the aggregate of claims made for such **bodily injury** and all claims derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

In determining the amount we will pay for **bodily injury** sustained by an **insured person** under this Part III, the amount of **bodily injury** damages which an **insured person** is entitled to recover under this Part III shall be reduced by the sum of:

1. the limits of liability under all **bodily injury** liability insurance, self-insurance, or bonds applicable to the **owner** or operator of the **underinsured motor vehicle**;
2. any sums paid by or for any other liable persons or organizations due to **bodily injury** to the **insured person**; and
3. any sums paid under Part II - Personal Injury Protection Coverage due to **bodily injury** to the **insured person**.

However, for **bodily injury** to any **insured person** other than you or a **relative**, we will not pay more than the **Limits of Liability** shown on the **Declarations Page** for coverage under this Part III, reduced by all sums paid under Part I - **Liability To Others**.

Our **Limit of Liability** under this Part III for **property damage** to a **covered vehicle** arising out of one (1) **accident** is the lowest of:

1. the actual cash value of the **covered vehicle** at the time of the **accident**, reduced by the applicable deductible and by its salvage value if you retain the salvage;
2. the amount necessary to repair or replace the **covered vehicle** with property of like kind and quality, reduced by the applicable deductible; and
3. any **Limit of Liability** shown on the **Declarations Page** for "property damage" under this Part III.

The applicable deductible for **property damage** under this Part III for an **accident** with a hit-and-run vehicle or a phantom vehicle is \$300. The applicable deductible for **property damage** under this Part III for all other **accidents** is \$100.

Payments for **property damage** under this Part III are subject to the following provisions:

1. no more than one (1) deductible shall be applied to any one (1) **accident**;
2. an adjustment for depreciation and physical condition will be made in determining the amount paid; and
3. the amount we will pay for **property damage** shall be reduced by:
 - a. the limits of liability under all **property damage** liability insurance, self-insurance, and bonds applicable to the **owner** or **operator** of the **underinsured motor vehicle**;
 - b. all sums paid by or on behalf of any other persons or organizations who may be legally responsible because of **property damage**; and

- c. all sums paid because of **property damage** under Part IV - **Damage To A Vehicle**.

Any payment made for **bodily injury** under this Part III to an **insured person** other than you or a **relative** shall reduce any amount that the person is entitled to recover under Part I - **Liability To Others**.

No one will be entitled to duplicate payments for the same elements of damages.

Any judgment for damages against an operator or owner of an **underinsured motor vehicle** which arises out of a lawsuit brought without our written consent is not binding on us.

OTHER INSURANCE

If there is other applicable **underinsured motorist** coverage, the total amount of **underinsured** benefits recoverable from all sources by an **insured person** shall not exceed the amount provided by the one (1) policy with the highest limit of liability. Any insurance we provide shall be excess over any other **uninsured** or **underinsured motorist** coverage, except for **bodily injury** to you or a **relative** when **occupying a covered vehicle**. If there is other applicable **uninsured** or **underinsured motorist** coverage, we will pay only our share of the total benefits recoverable from all sources. Our share is the proportion that our **Limit of Liability** bears to the total of all available coverage limits.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

If any **insured person** is injured while not **occupying** a motor vehicle, the coverage provided under this policy shall be excess to any **uninsured** or **underinsured motorist** coverage provided by a policy under which that **insured person** is a named insured. If you are injured while not **occupying** a motor vehicle, and are also a named

insured under any other policy, our coverage will pay the proportionate share that our limits bear to the total available uninsured or underinsured motorist coverage limits.

ARBITRATION

If we and an insured person have agreed to arbitration, the decision shall be made by an arbitrator agreed to by the parties. If the parties cannot agree on an arbitrator within thirty (30) days, then on joint application by us and the insured person, the arbitrator will be appointed by a court having jurisdiction.

We will pay the costs and fees of the arbitrator. Attorney fees and fees paid to medical and other expert witnesses are not expenses of arbitration, and each party will pay these expenses it incurs. Unless both parties agree otherwise, arbitration will take place in the county in which the insured person resides. Local rules of procedure and evidence will apply.

A decision by the arbitrator will be binding as to whether the insured person is legally entitled to recover damages under the applicable liability law, and the amount of damages. The arbitrator shall have no authority to award an amount in excess of the Limit of Liability.

PART IV - DAMAGE TO A VEHICLE

INSURING AGREEMENT - COLLISION

If you pay a premium for collision coverage, we will pay for loss to a covered vehicle, non-owned vehicle, or trailer, when it collides with another object or overturns, subject to the Limits of Liability.

INSURING AGREEMENT - COMPREHENSIVE

If you pay a premium for comprehensive coverage, we will pay for comprehensive loss to

a covered vehicle, non-owned vehicle, or trailer, subject to the Limits of Liability.

A comprehensive loss is a loss to a covered vehicle, non-owned vehicle, or trailer, caused by any event other than collision, including, but not limited to, any of the following:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny; or
8. windstorm, hail, water, or flood.

If you pay a premium for comprehensive coverage under this policy, we will pay you up to \$20 per day, but not more than a total of \$600 per loss, for:

1. transportation expenses incurred by you if a covered vehicle is stolen; or
2. loss of use damages that you are legally liable to pay if a non-owned vehicle is stolen.

Transportation expenses and loss of use damages coverage begins forty-eight (48) hours after you report the theft to us, and ends when the covered vehicle has been recovered and repaired, replaced, or if the covered vehicle is deemed by us to be a total loss or unrecoverable, forty-eight (48) hours after we make an offer to pay the lesser of the actual cash value of the covered vehicle or any Stated Amount Vehicle Coverage elected by you.

You must provide us written proof of your transportation expenses and loss of use damages.

Duplicate recovery for identical elements of damages is not permitted under this policy.

If we can pay the loss under either comprehensive or collision coverage, we will pay under the coverage where you collect the most.

**INSURING AGREEMENT -
CUSTOM PARTS OR EQUIPMENT**

We will pay for loss to custom parts or equipment resulting from any loss for which comprehensive or collision coverage is provided under the terms of this policy, subject to the Limit of Liability. All payments for loss to custom parts or equipment shall be reduced by the applicable deductible; but only one (1) deductible may be applied to a loss in an accident which is covered by this Part IV.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "Custom parts or equipment" means equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which alter the appearance or performance of a **vehicle**. This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or play back recorded media, other than those which are original manufacturer installed, that are permanently installed in a **covered vehicle** or **non-owned vehicle** using bolts or brackets, including slide-out brackets.
2. "Non-owned vehicle" means any **vehicle** that is not **owned** by **you**, a **relative**, a resident of **your** household, or the spouse of the named insured even if not residing in the same household as the named insured, while in the custody of, or being operated by, **you** or a **relative** with the express or implied permission of the owner. A **non-owned vehicle** will be provided the broadest coverage applicable to any **vehicle** shown on the **Declarations Page**.
3. "Trailer" means a vehicle, including a farm wagon or farm implement, designed to be towed on public roads, that is:

- a. owned by you; or
 - b. not owned by you, while being towed by a **covered vehicle**.
- "Trailer" does not include a mobile home, or a trailer used as an office, store, display, or passenger conveyance.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV does not apply for loss:

1. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. to a **non-owned vehicle** or **trailer** rented by **you** or a **relative** if being maintained or used by a person while employed or engaged in any **business**;
3. to a **non-owned vehicle** or **trailer**, other than one rented by **you** or a **relative**, if being maintained or used by a person while employed or engaged in any **business** not described in exclusion 4 below. This exclusion does not apply to the use by **you** or any **relative** of a **non-owned vehicle** that is a private passenger vehicle or trailer;
4. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, while being used or driven by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered vehicle**;

5. to a **covered vehicle** or **non-owned vehicle** resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, due to nuclear reaction or radiation;
7. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, for which insurance is afforded under a nuclear energy liability insurance contract;
8. due to destruction or confiscation by governmental or civil authorities of a **covered vehicle**, **non-owned vehicle**, or **trailer**, because **you** or any relative engaged in illegal activities;
9. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, caused by an intentional act of a person entitled to payment under this Part IV, or caused by an intentional act at the direction of a person entitled to payment, to the extent of that person's interest in the **covered vehicle**, **non-owned vehicle**, or **trailer**;
10. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, that is due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion does not apply if the damage results from the total theft of a **covered vehicle**, **non-owned vehicle**, or **trailer**;

11. due to theft or conversion of a **covered vehicle**, **non-owned vehicle**, or **trailer**:
 - a. by **you**, a relative, or any resident of your household;
 - b. prior to its delivery to **you** or a relative; or

- c. while in the care, custody, or control of anyone engaged in the **business** of selling the **vehicle** or **trailer**;
12. to tapes, compact discs, cassettes, and other recording or recorded media;
13. to any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or other recording or recorded media;
14. to any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions;
15. to **custom parts** or **equipment** in excess of the applicable Limit of Liability; or
16. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, for diminution of value.

LIMITS OF LIABILITY

1. The Limit of Liability for loss to a **covered vehicle**, **non-owned vehicle**, or **trailer** will be the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the loss, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if **you** retain the salvage;
 - b. the amount necessary to repair or replace the stolen or damaged property with other property, reduced by the applicable deductible shown on the **Declarations Page**; or
 - c. any applicable Limit of Liability or Stated Amount Vehicle Coverage elected by **you**, reduced by its salvage value if **you** retain the salvage.

However, if the loss is to a **trailer**, the applicable Limit of Liability will be \$500.
2. Subject to Section 3 below, the Limit of Liability for loss to **custom parts** or **equipment** is the combined total of \$1,000, unless

you pay a premium for Additional Custom Parts Or Equipment Coverage, and it is shown on the Declarations Page.

Coverage for custom parts or equipment shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged vehicle.

3. Payments for loss covered under Collision, Comprehensive, and Custom Parts Or Equipment are subject to the following provisions:
 - a. no more than one (1) deductible shall be applied to any one (1) covered loss;
 - b. if coverage applies to a non-owned vehicle, the highest deductible on any covered vehicle shall apply;
 - c. if Stated Amount Vehicle Coverage is elected by you, that stated Limit of Liability will be the total Limit of Liability applicable for loss to a covered vehicle or non-owned vehicle, including its custom parts or equipment;
 - d. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of loss. Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount by which the resale value of the vehicle is increased by the repair or replacement;
 - e. in determining the amount necessary to repair damaged property to its pre-loss condition, our estimate will be based on:
 - i. the prevailing competitive labor rates charged in the area where the property is to be repaired, as reasonably determined by us; and

- ii. the cost of repair or replacement parts and equipment which may be new, refurbished, restored, or used, including, but not limited to:
 - a. original manufacturer parts or equipment; and
 - b. nonoriginal manufacturer parts or equipment;
 - f. the actual cash value is determined by the market value, age and condition of the vehicle at the time the loss occurs; and
 - g. any amount payable under this Part IV for loss to a covered vehicle shall be reduced by any amount paid for the same elements of loss under Part III - Underinsured Motorist Coverage.
4. If more than one (1) vehicle is shown on your Declarations Page, coverage will be provided as specified on the Declarations Page as to each vehicle.

INSURING AGREEMENT - ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

If you pay a premium for Additional Custom Parts Or Equipment Coverage, the Limit of Liability for loss to custom parts or equipment for this additional coverage will be the lowest of:

1. the actual cash value of such custom parts or equipment;
2. the declared value of such custom parts or equipment; or
3. the amount necessary to repair or replace such custom parts or equipment;

reduced by the applicable deductible.

Coverage for custom parts or equipment shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged vehicle.

Any deductible amount will apply separately to each loss.

**INSURING AGREEMENT -
EMERGENCY TOWING AND LABOR**

If you pay a premium for Emergency Towing And Labor coverage, we will pay for towing and labor costs incurred by you as a result of the disablement of a covered vehicle or non-owned vehicle, subject to the Limit of Liability shown on the **Declarations Page**, provided that:

1. the labor is performed at the place of disablement; and
2. the disablement does not occur at your residence.

**INSURING AGREEMENT -
RENTAL REIMBURSEMENT COVERAGE**

If you pay a premium for Rental Reimbursement Coverage, we will reimburse up to \$20 each day for thirty (30) days for any one (1) accident for rental charges incurred by you when you rent a vehicle from a rental agency or vehicle repair shop due to a loss to a covered vehicle, other than a total theft, that is payable under this Part IV. Rental charges will be reimbursed beginning:

1. when the covered vehicle cannot be driven due to a loss; or
2. if the covered vehicle can be driven, when you deliver the covered vehicle to a vehicle repair shop for repairs due to the loss;

and ending when the covered vehicle has been repaired, replaced, or if the covered vehicle is deemed by us to be a total loss, forty-eight (48) hours after we make an offer to pay the actual cash value of the covered vehicle.

You must provide us written proof of your rental charges.

Duplicate recovery for identical elements of damages is not permitted under this policy.

LOAN PAYOFF COVERAGE

If you pay a premium for Loan Payoff Coverage and we determine the covered vehicle is a total loss, the Limit of Liability is amended, and will be the greater of:

1. the actual cash value of the stolen or damaged covered vehicle at the time of the loss, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if you retain the salvage; or
2. the amount of your loan balance as of the date of the total loss, on the indebtedness incurred by you in conjunction with the purchase of the covered vehicle when new, reduced by:
 - a. unearned interest;
 - b. collection and repossession expenses;
 - c. the applicable deductible shown on the **Declarations Page**;
 - d. unpaid finance charges or refunds due on such charges;
 - e. premium refunds due from credit insurance; and
 - f. the salvage value of the covered vehicle if you retain the salvage.

PAYMENT OF LOSS

At our expense, we may return any stolen property to you or to the address shown on the **Declarations Page**, with payment for any damage resulting from the theft. We may keep all or part of the property at the agreed or appraised value. We may settle any loss with you or the owner or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYEE AGREEMENT

1. Loss or damage, if any, under this policy shall be payable first to the loss payee or

mortgagee (hereinafter called "secured party"), and, second, to **you** as the interests of each may appear; PROVIDED, that, upon demand for separate settlement by the secured party, the amount of said **loss** shall be paid directly to the secured party to the extent of its interest.

2. This insurance as to the interest of the secured party shall not be invalidated by any act or neglect of **you** or **your** agents, employees or representatives, nor by any change in the title or ownership of **your covered vehicle**, PROVIDED, HOWEVER, that the conversion, embezzlement or secretion by **you** or **your** agents, employees or representatives is not covered under said policy unless specifically insured against and premiums paid therefor.
3. In applying the pro rate provisions of the policy, the amount payable to the secured party shall be reduced only to the extent of pro rate payments receivable by the secured party under other policies.
4. **We** reserve the right to cancel the policy at any time as provided by its terms, but in such case **we** shall mail to the secured party a notice stating when such cancellation shall become effective as to the interest of said secured party. The amount and form of such notice shall be not less than that required to be given **you**, by law or by the policy provisions, whichever is more favorable to the secured party.
5. If **you** fail to render proof of **loss** within the time granted in the policy conditions, such secured party shall provide written proof of **loss** to **us** within sixty (60) days after having knowledge of a **loss**, and, further, shall be subject to the provisions of the policy relating to appraisal and the time of payment and bringing suit.
6. Whenever **we** shall pay the secured party any sum for **loss** or damage under such policy and shall claim that, as to **you**, no liability exists, **we** shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all collateral held to secure the debt, or may, at its option, pay the secured party the whole principal due or to grow due on the mortgage or other security agreement, with interest, and shall thereupon receive a full assignment and transfer of the mortgage or other security agreement and of all collateral held to secure it; but no subrogation shall impair the right of the secured party to recover the full amount due it.
7. All terms and conditions of the policy remain unchanged except as herein specifically provided.
8. All notices sent to the secured party shall be sent to its last reported address, which must be stated in the policy.

OTHER INSURANCE

If there is other applicable insurance, **we** will pay only **our** share of the **loss**. **Our** share is the proportion that **our** Limit of Liability bears to the total of all applicable limits of liability. However, any insurance that **we** provide for a **vehicle**, other than a **covered vehicle**, or for a non-owned **trailer**, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by the owner of the **non-owned vehicle** or **trailer**; and
2. any other applicable physical damage insurance.

APPRAISAL

If **we** cannot agree with **you** on the amount of a **loss**, then **we** or **you** may demand an appraisal of the **loss**. If so, each party shall appoint a competent and impartial appraiser. The

appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified and impartial umpire chosen by the appraisers. A decision agreed to by any two will be binding. You will pay your appraiser's fees and expenses. We will pay our appraiser's fees and expenses. Payment of the umpire and all other expenses of the appraisal will be shared equally between us and you. Neither we nor you waive any rights under this policy by agreeing to an appraisal.

GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses occurring during the policy period shown on the **Declarations Page** and which occur within any state, territory, or possession of the United States of America, or any province of Canada, or while a **covered vehicle, non-owned vehicle, or trailer** is being transported between their ports.

POLICY CHANGES

This policy, your application for insurance (which is made a part of this policy as if attached hereto), and endorsements issued by us to this policy contain all the agreements between you and us. Subject to the following, its terms may not be changed or waived except by an endorsement issued by us.

The premium for each vehicle is based on information we have received from you or other sources. You agree to cooperate with us in determining if this information is correct and complete, and you will notify us if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, we may adjust your premium during the policy period, or take other appropriate action. To properly insure your vehicle, you must promptly notify us when:

1. you change your address;

2. any resident operators are added or deleted; or
3. you acquire an additional or replacement vehicle.

Changes that may result in a premium adjustment are contained in our rates and rules. These include, but are not limited to:

1. changes in the number, type, or use classification of **covered vehicles**;
2. changes in operators using **covered vehicles**, their ages, or marital status;
3. a **relative** obtaining a driver's license or operator's permit;
4. changes in the place of principal garaging of any **covered vehicle**;
5. changes in coverage, deductibles, or limits of liability; or
6. changes in rating territory or discount eligibility.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform with the legal requirements of the state listed on your application as your residence, the provision shall be deemed amended to conform with such legal requirements. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on your application as your residence.

TRANSFER

This policy may not be transferred to another person without our written consent. If you die, this policy will provide coverage until the end of the policy period for your legal representative, while acting as such, and for persons covered under this policy on the date of your death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on your insurance application.

Notwithstanding anything to the contrary in this policy or on **your Declarations Page**, we may void coverage under this policy if **you** or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time application was made or at any time during the policy period.

Notwithstanding anything to the contrary in this policy or on **your Declarations Page**, we may void this policy or deny coverage for an accident or loss if **you** or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

We may void this policy for fraud or misrepresentation even after the occurrence of an accident or loss. This means that **we** will not be liable for any claims or damages which would otherwise be covered.

PAYMENT OF PREMIUM

If **your** initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy is conditioned upon the check, draft, or remittance being honored upon presentment. Notwithstanding anything to the contrary in this policy or on **your Declarations Page**, if the check, draft, or remittance is not honored upon presentment, this policy may, at **our** option, be deemed void from its inception. This means that **we** will not be liable under this policy for any claims or damages which would otherwise be covered if the check, draft, or remittance had been honored upon presentment.

If **you** tender a check to **us** for any full or partial payment of **your** premium, other than **your** initial payment, and the check is returned to **us** because of insufficient funds, a closed account, or a stop payment, a service charge will be added to **your** account balance.

CANCELLATION

You may cancel this policy by calling or writing **us**, and stating the future date that **you** wish the cancellation to be effective.

We may cancel this policy by mailing a notice of cancellation to the named insured shown on the **Declarations Page** at the last known address appearing in **our** records.

If **you** do not pay the required premium for this policy when due, we may cancel this policy at any time.

We may cancel this policy for any reason within the first sixty (60) days of the policy period shown on the **Declarations Page**. After this policy is in effect for more than sixty (60) days, or if this is a renewal or continuation policy, **we** may cancel only for one (1) or more of the following reasons:

1. **you** do not pay the required premium for this policy when due; or
2. loss of driving privileges during the policy period, or, if this is a renewal policy, during the policy period or the one hundred eighty (180) days immediately preceding the effective date of renewal, through suspension or revocation of the operator's license of the named insured shown on the **Declarations Page**, or of any other operator who customarily operates a **covered vehicle**; or
3. any other reason specified by law.

We will mail notice of cancellation to the named insured shown on the **Declarations Page** at the last known address for the named insured appearing in **our** records. Notice will be mailed at least ten (10) days before the effective date of cancellation if this policy is cancelled due to:

- a. nonpayment of premium at any time during the policy period; or
- b. any reason within the first thirty (30) days of the policy period.

After this policy is in effect for more than thirty (30) days, or if this is a renewal or continuation policy, and we cancel this policy for any reason other than nonpayment of premium, notice will be mailed at least twenty (20) days before the effective date of cancellation.

If we have issued a policy evidenced by a written binder which contains a stated expiration date, no additional notice of cancellation or nonrenewal shall be required with regard to the coverage evidenced by the binder.

Upon cancellation, you may be entitled to a premium refund. Our making or offering of a refund is not a condition of cancellation. We charge a fully earned policy fee for each policy term.

If we cancel this policy for a reason other than nonpayment of premium, any refund of the premium and policy fee due will be computed on a daily pro-rata basis. The effective date of cancellation shown in a notice will be the end of the policy period.

If cancellation is at your request, or if cancellation is for nonpayment of premium, you will be charged a policy fee. Any refund due will be computed on a daily pro-rata basis after deduction of the policy fee. Earned premium is calculated on a daily basis.

NONRENEWAL

If we decide not to renew or continue this policy, we will mail notice of nonrenewal to the named insured shown on the **Declarations Page** at the last known address appearing in our records. Notice will be mailed at least twenty (20) days before the end of the policy period. If the policy period is other than one (1) year, we will have the right not to renew or continue this policy only at each anniversary of its original effective date or earlier if permitted by state law.

PROOF OF NOTICE

Proof of mailing of any notice will be sufficient proof of notice.

COVERAGE CHANGES

If we make a change which broadens a coverage you have under this edition of your policy, without additional charge, you will receive the broadened coverage. The broadened coverage applies on the date the coverage change is implemented in your state. This provision does not apply to a general program revision or our issuance of a subsequent edition of your policy. Otherwise, this policy can be changed only by endorsement issued by us.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. We may not be sued for payment under Part I - Liability To Others until the obligation of an insured person to pay is finally determined either by final judgment against that person or by written agreement of the insured person, the claimant, and us. No one will have any right to make us a party to a lawsuit to determine the liability of an insured person.

OUR RIGHTS TO RECOVER PAYMENT

In the event of any payment under this policy, we are entitled to all the rights of recovery that the insured person to whom payment was made has against another. That insured person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after an accident or loss to prejudice our rights.

However, we may not assert rights of recovery against:

1. any person who was using a covered vehicle with your express or implied permission

for any payment made under Part IV - Damage To A Vehicle; or

2. the owner or operator of an underinsured motor vehicle, if the insured person under Part III - Underinsured Motorist Coverage provides us with written notice thirty (30) days prior to entering into a settlement that an offer of settlement has been made by, or on behalf of, the owner or operator of an underinsured motor vehicle, and we do not elect to pay to the insured person an amount equal to the amount offered in full settlement by, or on behalf of, the owner or operator of the underinsured motor vehicle.

When an insured person has been paid by us under this policy and also recovers from another person, entity, or organization, the amount recovered will be held by the insured person in trust for us and reimbursed to us to the extent of our payment. We shall be entitled to recovery only after the insured person has been fully compensated for damages arising out of the accident.

If recovery is made by an insured person under this policy from a responsible party without our written consent, the insured person's right to payment under Part II - Personal Injury Protection Coverage and Part IV - Damage To A Vehicle will no longer exist to the extent that our right of recovery against the responsible party has been adversely affected.

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve us of any obligations under this policy.

NAMED DRIVER EXCLUSION

If you have asked us to exclude any person from coverage under this Policy, then we will not provide coverage for any claim arising from an accident or loss involving a covered vehicle or non-owned vehicle that occurs while it is being

operated by the excluded person. THIS INCLUDES ANY CLAIM FOR DAMAGES MADE AGAINST YOU, A RELATIVE, OR ANY OTHER PERSON OR ORGANIZATION THAT IS VICARIOUSLY LIABLE FOR AN ACCIDENT ARISING OUT OF THE OPERATION OF A COVERED VEHICLE OR NON-OWNED VEHICLE BY THE EXCLUDED DRIVER.

NAMED OPERATOR - NON-OWNED VEHICLE COVERAGE

If you elect Named Operator - Non-owned Vehicle Coverage, you agree with us that this policy is amended as follows:

1. General Definitions:

- a. The general policy definition of "you" and "your" is deleted and replaced by the following:

"You" and "your" mean the person shown as the named insured on the **Declarations Page**.

- b. The general policy definitions of "covered vehicle" and "non-owned vehicle" are deleted and replaced by the following:

"Covered vehicle" and "non-owned vehicle" mean any vehicle that is not owned by you, a relative, or your spouse, even if not residing in the same household as you.

2. Part I - Liability To Others

- a. Additional Definition: When used in Part I, the definition of "insured person" and "insured persons" is deleted and replaced by the following:

"Insured person" and "insured persons" mean:

- i. you, when operating or using a covered vehicle or non-owned vehicle

with the express or implied permission of the owner; and

- ii. any person or organization with respect only to vicarious liability for an accident arising out of the use of a **covered vehicle or non-owned vehicle** by **you** with the express or implied permission of the owner.

- b. Exclusions: The following exclusion is deleted from Part I:

Coverage under this Part I, including our duty to defend, does not apply to:

bodily injury or property damage arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to **you, a relative, or an agent or employee of you or a relative, when using a covered vehicle;**

and replaced by the following:

Coverage under this Part I, including our duty to defend, does not apply to:

bodily injury or property damage arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.

- c. Other Insurance. The **Other Insurance** provision under Part I is deleted and replaced by the following:

OTHER INSURANCE

Any insurance **we** provide shall be excess over any other applicable liability insurance, self-insurance, or bond.

3. **Part II - Personal Injury Protection Coverage**

- a. Additional Definitions: When used in Part II, the definition of "**insured person**" and "**insured persons**" is deleted and replaced by the following:

"**Insured person**" and "**insured persons**" mean **you**, when **you** sustain **bodily injury** while using or occupying an **automobile** other than one **owned by you or a relative, or while not occupying an automobile.**

- b. If **you** pay a premium for Personal Injury Protection Coverage, and it is shown on the **Declarations Page**, any insurance **we** provide shall be excess over any other similar insurance or self-insurance.

4. **Part III - Underinsured Motorist Coverage**

If **you** pay a premium for Underinsured Motorist Coverage, and it is shown on the **Declarations Page**:

- a. When used in Part III, the Additional Definition of "**insured person**" and "**insured persons**" is deleted and replaced by the following:

"**Insured person**" and "**insured persons**" mean:

- i. **you**; and
- ii. any person who is entitled to recover damages covered by Part III, because of **bodily injury to you.**

- b. The **Other Insurance** provision under Part III is deleted and replaced by the following:

OTHER INSURANCE

If there is other applicable underinsured motorist coverage, the total amount of

underinsured benefits recoverable from all sources by an **insured person** shall not exceed the amount provided by the one (1) policy with the highest limit of liability. If there is other applicable uninsured or underinsured motorist coverage, any insurance **we** provide shall be excess over any other collectible uninsured or underinsured motorist coverage. If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the total benefits recoverable from all sources. **Our** share is the proportion that our Limit of Liability bears to the total of all available coverage limits.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

If **you** are injured while not **occupying** a motor vehicle, the coverage provided under this policy shall be excess to any uninsured or underinsured motorist coverage provided by a policy under which **you** are a named insured.

BROADFORM NAMED OPERATOR COVERAGE

If Broadform Named Operator Coverage has been elected, this policy provides coverage only to the first named insured shown on the **Declarations Page**. All definitions of "insured person" are deleted and replaced with:

"Insured person" means the first named insured shown on the **Declarations Page**.

CAUTION: If Broadform Named Operator Coverage has been elected, this policy does not provide any coverage to a spouse or relative of the first named insured, persons operating a **vehicle** with the permission of the named insured, or occupants of a **vehicle** operated by the named insured. However, this does not affect the rights of recovery under Part I of an occupant of a **vehicle** operated by the first named insured.

The following additional exclusions apply:

1. No coverage is provided for damages arising out of any **accident** or **loss** occurring while the named insured is operating a motorcycle, moped, all-terrain vehicle or motor home.
2. No coverage is provided for damages arising out of any **accident** or **loss** occurring while a **vehicle** is being used by the named insured in connection with a **business**.
3. No coverage is provided for damages arising out of any **accident** or **loss** occurring while the named insured is using a **vehicle** without the permission of the **owner**.
4. No coverage is provided to anyone other than the named insured when operating a **vehicle owned** by the named insured.

Any insurance **we** provide will be excess over any other collectible insurance, self-insurance, or bond.



Secretary

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CP. 382

RELEASE

For the Sole Consideration of

Fifty Thousand & 00/100 Dollars,

the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges

Donnell Smith

her heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the

24th day of June, (year) 1999 at or near Monroe, WA.

This release expressly reserves all rights of the parties released to pursue their legal remedies, if any, against the undersigned, their heirs, executors, agents and assigns.

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

Witness Whereof,

I have hereunto set my hand(s) and seal(s) this 21st day of March, (year) 2001

In presence of:

Christie Spurluck
Witness

Signed X Janette Leding

PO Box 1546, Everett WA 98206
Address

Signed X _____

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

As part of the consideration of our agreed settlement of the claims of the undersigned arising out of an accident which occurred on or about the 24th day of June 1997, at or near Medina, WA, Washington, and in further consideration of your not naming as payee on the settlement draft the persons or entities who may have a lien or claim to the settlement funds, the undersigned guarantee(s) that any and all persons, firms or corporations having or claiming to have liens under the statutes of the State of Washington for medical, dental, hospital, surgical, nursing or related services or facilities furnished to me, Jane XXe Leding, or any other type of lien claim rising out of the treatment and/or damages which are the subject matter of this claim, including all liens of the State of Washington, the United States or any other agency or department and any other government liens or subrogation claims, and any lien or subrogation rights of any kind or nature of any company or insurance company, will be paid and satisfied by the undersigned and the undersigned further agree(s) to hold State Farm Mutual Automobile Insurance Company and Danell Smith harmless and indemnify State Farm Mutual Automobile Insurance Company and Danell Smith from any claims and any expenses related thereto, including costs and reasonable attorney fees.

DATED this 21st day of March, 2001.

Janette Leding
Sign Here

Spouse

APPENDIX B

Former RCW 48.22.030 (1967) provides:

On and after January 1, 1968, no new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in RCW 46.29.490, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, except that the named insured may be given the right to reject such coverage, and except that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

Federated Am. Ins. Co. v. Raynes, 88 Wn.2d 439, 441 n.2, 563 P.2d 815 (1977).

A prior UM Statute

APPENDIX C

(b) A person who sustains bodily injury caused by accident while (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered, and ending the earliest of the following:

(a) The date on which the insured person is reasonably able to perform those services;

(b) The expiration of fifty-two weeks; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising out of the ownership, maintenance, or use of an insured automobile.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100.

[1993 c 742 § 1.]

Historical and Statutory Notes

Severability—1993 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 242 § 7.]

Effective date—1993 c 242: "Sections 1 through 5 of this act shall take effect July 1, 1994." [1993 c 242 § 8.]

Library References

Insurance ☞ 1220, 2645.
WESTLAW Topic No. 217.

48.22.020. Assigned risk plans

The commissioner shall after consultation with the insurers licensed to write motor vehicle liability insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan.

[1947 c 179 § .22.02; Rem. Supp. 1947 § 45.22.02.]

Historical and Statutory Notes

Source:

RRS § 45.22.02.

UIM Statute in effect at time of collision

Cross References

Fraternal mutual property insurers, assigned risk plan, operation pursuant to this section, see § 48.36A.390.

Rate modifications for assigned risks, see § 48.19.400.

Library References

Insurance ☞ 1221(1).
WESTLAW Topic No. 217.

48.22.030. Underinsured, hit-and-run, phantom vehicle coverage to be provided—Exceptions—Conditions—Deductibles

(1) "Underinsured motor vehicle" means 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.

(2) No new policy or renewal of an existing policy insuring 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 shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

[1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Historical and Statutory Notes

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

Law Review and Journal Commentaries

Retroactive effect of overruling decisions. 55 Wash.L.Rev. 833 (1980).

Survey of Washington law; absence of necessity of physical impact in order to recover for injuries caused by hit-and-run driver under uninsured motorists clauses. 10 Gonz.L.Rev. 231 (1974).

Underinsured motorist statute: balancing the interests of insurers and insureds. 55 Wash.L.Rev. 819 (1980).

Underinsured motorist statute: examining procedural issues. Lee M. Barns and Cheryl A. Smith, 17 Gonz.L.Rev. 269 (1982).

Washington underinsured motor vehicle insurance statute: Reading the legislature's mind. Dennis A. Dellwo and John S. Conniff, 23 Gonz.L.Rev. 235 (1987/88).

Library References

Insurance Ⓒ2775, 2778.
WESTLAW Topic No. 217.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

APPENDIX D

Current version of
UIM Statute

C
West's Revised Code of Washington Annotated Currentness
Title 48. Insurance (Refs & Annos)

Chapter 48.22. Casualty Insurance (Refs & Annos)

→ **48.22.030. Underinsured, hit-and-run, phantom vehicle coverage to be provided--Purpose--Definitions--Exceptions--Conditions--Deductibles--Information on motorcycle or motor-driven cycle coverage--Intended victims**

(1) "Underinsured motor vehicle" means 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.

(2) No new policy or renewal of an existing policy insuring 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 shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property

damage coverage that is less than the insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him or her under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles.

Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section.

CREDIT(S)

[2009 c 549 § 7106, eff. July 26, 2009; 2007 c 80 § 14, eff. July 22, 2007. Prior: 2006 c 187 § 1, eff. June 7, 2006; 2006 c 110 § 1, eff. June 7, 2006; 2006 c 25 § 17, eff. June 7, 2006; 2004 c 90 § 1, eff. June 10, 2004; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Current with 2011 Legislation effective through April 10, 2011

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