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COURT OF APPEALS

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STANLEY W. GOSSELIN

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**No. 39881-8-II**

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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KIM A. HANN, individually

Appellant

vs.

PROGRESSIVE NORTHWESTERN INSURANCE COMPANY

Respondent

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BRIEF OF RESPONDENT

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## **NATURE OF THE CASE**

Plaintiff wants underinsured motorist benefits from her boyfriend's policy for injuries she suffered while riding in her own car. She claims the insurer's refusal to give her coverage constitutes marital discrimination. But the policy does not discriminate against her because of marital status, and the policy would not have covered her even if she was married.

## **STATEMENT OF THE CASE**

The parties agree on the material facts. On September 9, 2005, Ms. Hann and John Combs were traveling westbound on 6th Avenue in Tacoma. They were in Ms. Hann's 1998 Ford Expedition. Ms. Hann was a passenger; Mr. Combs was driving. The accident happened as the Hann vehicle was turning right onto Jackson Avenue through a green light. They were struck by Richard Squire, who had failed to stop at the red light controlling his lane. Both Ms. Hann and Mr. Combs were injured. *CP 4-5.*

Ms. Hann and Mr. Combs were living together at the time. They were not married or engaged to be married. *CP 64, 67.* They no longer live together. *CP 63.*

Ms. Hann insured the Explorer through Metropolitan Insurance Company. Her coverage included UIM coverage. *CP 3.* Mr. Combs owned vehicles of his own. He insured them through Progressive. His coverage also

included UIM coverage. *CP 71, 75.*

Following the accident, Mr. Combs made a claim for personal injury protection (PIP) benefits under his Progressive policy. *CP 71.* In June, 2006, Ms. Hann contacted Progressive to make a PIP claim under Mr. Combs' policy. *Id.* Progressive informed her that because she was riding in her own car when she was hit, her car was not an insured car under Mr. Combs' PIP coverage, she was not an insured person, and therefore she was not entitled to PIP benefits. *CP 107-08.*

In October of 2008, over two years later, Ms. Hann served Progressive with the complaint in this matter. *CP 71.* This time, she sought benefits of Mr. Combs' UIM coverage. She did not allege marital discrimination. *CP 3-8.*

Mr. Combs' UIM coverage obligates Progressive to pay benefits as follows:

Subject to the Limits of Liability, if **you** pay the premium for Underinsured Motorist Coverage, **we** will pay for damages, other than punitive or exemplary damages, which an **insured person** is legally 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 an **accident**; and
3. arising out of the ownership, maintenance or use of an **underinsured motor vehicle**

*CP 87.* Terms in bold face type are defined in the policy. The definition of

“insured person” is:

“Insured person” and “insured persons” means:

- 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.

*CP 88.* The definitions of “you,” “your” and “relative” are:

“You” and “Your” mean:

- a. a person or persons shown as a named insured on the **Declarations Page**; and
- b. the spouse of a named insured if residing in the same household.

“Relative” means a person residing in the same household as **you**, and related to **you** by blood, marriage or adoption, including a ward, step-child, or foster child. **Your** unmarried dependent children temporarily away from home will be considered residents if they intend to continue to reside in your household.

*CP 91.* Finally, the definition of “covered vehicle” is:

“Covered vehicle” means:

- a. any **vehicle** shown on the **Declarations Page**, unless **you** have asked **us** to delete that **vehicle** from the policy;
- 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**.

. . . .

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**.

. . . .

*CP 80-81.*

On October 22, 2008, Progressive Claims Representative Gregory Tidwell spoke to Ms. Hann about her claim. *CP 71.* Mr. Tidwell informed Ms. Hann that, just as with Mr. Combs' PIP coverage, she was not an insured under Mr. Combs' UIM coverage and was not entitled to UIM benefits. *Id.* On October 29, 2008, Mr. Tidwell memorialized their conversation by letter. Quoting specific policy language, he restated that Ms. Hann was not an insured under Mr. Combs' policy. *CP 71, 114-17.*

On July 10, 2009, Progressive filed a motion for summary judgment. *CP 48-56.* On July 28, 2009, Ms. Hann responded, raising for the first time the contention that Progressive's policy discriminated against her on the basis of marriage. *CP 123-42.* During argument on the motion, Progressive's

counsel pointed out that even if Ms. Hann and her boyfriend had been married, the policy would have excluded coverage for her.<sup>1</sup> *RP (8-7-09) at 8-10.* The policy states:

1. Coverage under this Part III is not provided for bodily injury sustained by any person while using or occupying:
  - d. a motorized vehicle or devise of any typ designed to be operated on the public roads that is owned by you or a relative, other than a **covered vehicle**.

*CP 89.* This exclusion precludes coverage for bodily injury sustained by “any person” while using or occupying a vehicle “owned by you or a relative” other than a “covered vehicle.” Progressive pointed out that assuming Ms. Hann was married to her boyfriend, she was “you” within the policy, she owned the vehicle she was using at the time of the accident, and the vehicle was not a covered vehicle under the policy. Therefore, exclusion 1.d. would have applied. *RP (8-7-09) at 8-10.* The trial court asked for additional briefing on that issue, which the parties submitted. *CP 206-210, 215-36.*

On September 11, 2009, the trial court granted Progressive’s motion.

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1. In her statement of facts, Ms. Hann contends Progressive raised this argument because it was “unable to successfully respond to Plaintiff’s position regarding the discriminatory nature of Progressive’s policy.” Brief of Appellant at 12. The contention is inaccurate. The argument was made in addition to the many other arguments Progressive offered, and well before the trial court decided which of the arguments it accepted. The argument was a direct response to Ms. Hann’s theory – not pled in her complaint, and raised for the first time just ten days before the hearing – that Progressive’s policy discriminated against her.

CP 239-40. Ms. Hann appeals. CP 241-43.

## ARGUMENT

### A. Standard of Review.

The Court of Appeals reviews an order granting summary judgment de novo, engaging in the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. CR 56(c). The moving party bears the initial burden of establishing its right to judgment as a matter of law. Once the moving party satisfies its initial burden, the burden then shifts to the nonmoving party to show that a triable issue exists. All reasonable inferences from the evidence must be construed in favor of the nonmoving party. *Jacob's Meadow Owners Association v. Plateau 44 II, LLC*, 139 Wn. App. 743, 752 n.1, 162 P.3d 1153 (2007).

The interpretation of an insurance policy is generally a question of law. *Adams v. Great Am. Ins. Co.*, 87 Wn.App 883, 886, 942 P.2d 1087 (1987). The issue in this case is whether the Plaintiff is entitled to recover under a UIM policy which does not belong to her nor does she meet the definition of insured as defined in the policy. According to Washington law,

the answer is no.

**B. Ms. Hann Is Not An Insured Person And Is Not Entitled To UIM Benefits Under The Policy Issued to Mr. Combs.**

Underinsured motorist policies typically divide “covered persons” into three separate classes: (1) “first party insureds” consisting of the person named in the policy and that person's family members, (2) “other insureds”, or any person who is injured while occupying a vehicle covered under the policy, and (3) individuals who are entitled to recover damages because of bodily injury sustained by either a first party or “other insured” (i.e., a spouse claiming damages for loss of consortium). *Stonewall Ins. Co. v. Denman*, 63 Wn. App. 123, 128-29, 816 P.2d 1252 (1991), quoting *Blackburn v. Safeco Ins. Co.*, 115 Wn.2d 82, 88-89, 794 P.2d 1259 (1990). In *Blackburn*, the court explained that underinsured motorist policies afford first party insureds “coverage that applies at all times, whatever may be the insured's activity at the time of the accident.” In contrast to first party insureds, “other insureds” are covered only while occupying a covered motor vehicle. 115 Wn.2d at 89.

Mr. Combs’ policy follows this typical pattern. The policy definition of “insured person ” states:

“Insured person” and “insured persons” means:

- 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.

*CP 88.* The policy defines “you,” “your” and “relative” as:

“You” and “Your” mean a person or persons shown as a named insured on the Declarations Page; and, the spouse of a named insured if residing in the same household.

“Relative” means a person residing in the same household as you, and related to you by blood, marriage or adoption, including a ward, step-child, or foster child. Your unmarried dependent children temporarily away from home will be considered residents if they intend to continue to reside in your household.

*CP 81.* Mr. Combs is the only person named as an insured. *CP 75.* Under this definition, he his relatives are first party insureds to whom coverage applies at all times, whatever may be their activity at the time of the accident. Ms. Hann is not a first party insured because she is not “you” or a “relative” of “you” – that is, she was neither named on the declarations or Mr. Comb’s spouse, nor was she related to Mr. Combs by blood, marriage or adoption. The testimony is clear: Mr. Combs was not married to Ms. Hann; she was his girlfriend. *CP 64, 67.*

Because she is not a first party insured, if coverage is to apply to Ms. Hann, she must qualify as an “other insured.” As the *Blackburn* court noted: In contrast to first party insureds, “other insureds” are covered only while

occupying a covered motor vehicle. 115 Wn.2d at 89. But Ms. Hann was not occupying a covered vehicle. The policy specifically limits covered vehicles to vehicles identified on the declarations page, certain newly acquired vehicles, and certain replacement vehicles. *CP 80-81*. Ms. Hann's Ford Expedition was none of those.<sup>2</sup> She is not, therefore, an insured person under Mr. Combs' policy and is not entitled to UIM benefits of that policy.

**C. Mr. Comb's Policy Does Not Discriminate Against Ms. Hann on the Basis of Marriage.**

Ms. Hann argues that applying the coverage to her as the policy is worded discriminates against her on the basis of her marital status. The argument is mistaken.

First, her argument already has been rejected when applied to the same provisions at issue here. Ms. Hann discusses *Edwards v. Farmers Ins. Co.*, 111 Wn.2d 710, 763 P.2d 1226 (1988), but not *State Farm Gen. Ins. Co. v. Emerson*, 102 Wn.2d 477, 687 P.2d 1139 (1984). *Emerson* in fact controls this case. In *Emerson*, the Supreme Court held that certain family exclusion clauses in homeowners insurance policies do not discriminate on the basis of marital status. The policy at issue in *Emerson* excluded coverage

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2. At various points in her brief, Ms. Hann tries to hint that perhaps an issue of fact exists whether her vehicle fell within one of the alternative types of covered vehicles, such as a temporary substitute vehicle or a replacement vehicle. No evidence supports such a contention, and she did not raise that argument in the trial court.

for bodily injury to any insured, and then defined “insured” as:

- (1) The Named Insured stated in the Declarations of this policy;
- (2) if residents of the Named Insured's household, his spouse, the relatives of either, and any other person under the age of twenty-one in the care of any Insured . . .”

The *Edwards* court discussed *Emerson*, noting that provisions like ones at issue there did not discriminate on the basis of marriage and did not violate RCW 48.30.300, because “the classification turned less on marriage than on the family.” 111 Wn.2d at 720. According to *Edwards*, the difference between the provisions at issue in its case and the ones at issue in *Emerson* was that despite the presence of the term “spouse” in both policies, the *Emerson* clause was not a marital exclusion but an exclusion of all family members. 111 Wn.2d at 719.

Despite the presence of “spouse” in the definition, the [Emerson] court treated the clause not as a marital exclusion but as an exclusion of all family members. Thus, even though a distinction along family lines also serves to classify married couples differently than unmarried couples, the court held that there was no discrimination on the basis of marital status. Although not expressed in that opinion, the reasoning behind *Emerson* is similar to that stated in *Cybyrke*: the discrimination in *Emerson* was not as closely related to the institution of marriage . . .

111 Wn.2d at 719. By contrast, the clause at issue in *Edwards* turned exclusively on marital status.

The policy provisions at issue here are the same as the provisions in

*Emerson*. Progressive’s policy defined “insured person” to include “**you** or a **relative**.” The policy defined “you” as “a person or persons shown as a named insured on the Declarations Page; and, the spouse of a named insured if residing in the same household.” (Emphasis added.) It defined relative as “a person residing in the same household as you, and related to you by blood, marriage or adoption.” (Emphasis added.) These definitions are just as focused on residency and just as unrelated to the institution of marriage as were the definitions in *Emerson*.

A more practical reason undermines Ms. Hann’s argument. The provisions at issue here go to who is insured, i.e., the persons for whom insurance is purchased. Who is insured is, at least partially, a decision for the premium payer. If the premium payer purchases insurance that only applies to him/her and spouse, that personal decision is not subject to discrimination analysis. Because Washington is a community property state, generally the money used to buy auto insurance belongs to both husband and wife. The insurance, therefore, justifiably applies to both. Moreover, as the court noted in *Tissell v. Liberty Mut. Ins. Co.*, 115 Wn.2d 107, 795 P.2d 126 (1990), husbands and wives typically cannot purchase separate insurance. 115 Wn.2d at 119 (Callow, J., concurring, for the majority). One policy must apply to a spouse or the spouse is left without protection. As a single person, Ms.

Hann was able to purchase her own insurance at the limits she chose. In fact, she did. Indeed, she could have bought that insurance from Progressive if she had wanted. But the law against discrimination does allow her to compel Mr. Combs to pay to protect her while she is using her car.

A third problem with Ms. Hann's analysis is that our courts have held the anti-discrimination statute does not apply to third persons in Ms. Hann's position. In *American Home Assur. Co. v. Cohen*, 124 Wn.2d 865, 881 P.2d 1001 (1994).

This statute's focus is to protect "the insured or prospective insured", as opposed to third parties who may benefit from the insurance agreement, and does not require the insurance company to determine the potentially discriminatory impact of each coverage provision upon all possible claimants.

124 Wn.2d at 877. Consequently, in all of the Washington cases applying that statute, the person claiming discrimination was married, was an insured, and was being deprived of benefits that an unmarried person would have received. That was true in *Edwards* where applying the policy would have deprived a married person of benefits she would have received if she was not married. As the *Edwards* court noted, the one court asked to apply the statute to an unmarried person, *Furlong v. Farmers Ins. Co.*, 44 Wn. App. 458, 721 P.2d 1010, *rev. denied*, 107 Wn.2d 1017 (1986), declined to do so. *Accord*, *Brown v. Superior Underwriters*, 30 Wn. App. 303, 632 P.2d 887

(1980)(refusal to issue homeowners coverage to unrelated co-owners of property under a single policy does not violate RCW 48.30.300); *Mutual of Enumclaw Ins. Co v. Human Rights Comm'n*, 39 Wn. App. 213, 692 P.2d 882 (1984)(Trial court ruled that refusal to issue homeowners insurance to unrelated co-owners was not marital status discrimination in violation of RCW 48.30.300.)<sup>3</sup> Ms. Hann is not the insured, nor is she a prospective insured. She is a third party trying to benefit from the agreement.

The Supreme Court's acceptance of the above reasoning is implicit in the companion cases of *Tissell v. Liberty Mut. Ins. Co.*, 115 Wn.2d 107, 795 P.2d 126 (1990), and *Blackburn v. Safeco Ins. Co.*, 115 Wn.2d 82, 88-89, 794 P.2d 1259 (1990). In *Tissell*, the policy excluded any vehicle owned by the named insured and used by a covered person from the definition of underinsured motor vehicle. Ms. Tissell was hurt in a one-car accident while riding as a passenger in her own car. Her husband was the driver. Applying the definition would have prevented her from obtaining any UIM coverage. The court concluded that this violated public policy and declared the provision invalid as applied to named insureds and family members.

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3. The Court of Appeals reversed the trial court's decision but not on the merits. The trial court made this decision in the context of issuing a writ of prohibition prohibiting the State Human Rights Commissioner from deciding the issue. The Court of Appeals held that the Superior Court's jurisdiction was limited to appellate review of the Human Rights Commission's decision, and did not have jurisdiction to prohibit the Human Rights Commission from acting in the first instance.

**Blackburn** involved the same circumstances and the same policy provision. The difference was that the passenger was not the driver's spouse. The court held that the provision did not violate public policy because the passenger could purchase his own UIM coverage which would protect him in that circumstance. **Blackburn** and **Tissell** could not have been decided as they were if RCW 48.30.300 prohibited treating spouses differently. In essence, Ms. Hann is asking this court to overrule **Blackburn**.

A fourth problem with Ms. Hann's argument is that our courts also already have recognized that legitimate risk-related reasons justify refusing to issue insurance to unrelated individuals as first party insureds. In **Brown v. Superior Underwriters**, 30 Wn. App. 303, 632 P.2d 887 (1980), Mutual of Enumclaw refused to issue homeowners coverage to unrelated co-owners of a home under a single policy. It would, however, issue separate policies to each owner charging separate premiums for each. In affirming the trial court's decision that this practice did not violate RCW 48.30.300, the court stated:

Generally, the insurer under a homeowners policy provides coverage for fire and casualty on the dwelling, for unscheduled personal property, theft, liability both on or off the premises and personal liability protection for the named insured both on and off the premises. By placing three named unrelated individuals on the policy, the risk to the insurer is substantially altered without the premium's being correspondingly increased. Enumclaw agreed to insure the

parties individually, but for an increased premium, which would have avoided increased exposure to additional liability claims. There is no evidence in the record which establishes that Enumclaw discriminated against Brown or refused to issue a homeowners insurance policy on the basis of marital status.

30 Wn. App. at 306. Ms. Hann, an individual unrelated to Mr. Combs, is asking the court to force Progressive to treat her as a named insured, and force Progressive to insure her as a first party insured “at all times, whatever may be [her] activity at the time of the accident.” *Blackburn, supra*, at 89. Noone, however, has paid a premium for Progressive to assume such a risk. Forcing Progressive to provide such coverage would substantially alter its risk without a corresponding premium increase. RCW 48.30.300 does not require that result.

A final reason is that Ms. Hann cannot show discrimination in the first instance. Put simply, Ms. Hann would not have been covered under Progressive’s policy even if she had been married to Mr. Combs at the time of the accident. As discussed above, Mr. Combs’ policy contained what is commonly known as an “owned vehicle” exclusion. *CP 89*. Owned vehicle exclusions “prevent an insured from receiving coverage on another household car by merely purchasing a single policy . . .” *Barth v. Allstate Ins. Co.*, 95 Wn. App. 552, 560, 977 P.2d 6 (1999) quoting *Brown v. United Pac. Ins. Co.*, 42 Wn. App. 503, 507, 711 P.2d 1105 (1986); *Mid-Century Ins. Co. v.*

*Henault*, 128 Wn.2d 207, 213, 905 P.2d 379 (1995). They are specifically authorized by Washington's underinsured motorist statute, RCW 48.22.030,<sup>4</sup> and have repeatedly been held not to contravene public policy. *Barth, supra*, at 560; *Schelinski v. Midwest Mut. Ins. Co.*, 71 Wn. App. 783, 790, 863 P.2d 564 (1993); *Anderson v. American Economy Ins. Co.*, 43 Wn. App. 852, 856, 719 P.2d 1345 (1986); *Brown, supra*, 42 Wn. App. at 507.

Washington courts have applied owned vehicle exclusions many times. On point is *Schelinski v. Midwest Mut. Ins. Co., supra*. The insured was injured while driving his wife's vehicle which was insured by another insurer. The court applied the exclusion and affirmed it did not violate public policy. In *Brown v. United Pac. Ins. Co., supra*, Nora Brown was driving a vehicle registered in her name and insured by Pemco when she and her husband, David Brown, were injured in an accident. David Brown had two other vehicles, insured with United Pacific. The court affirmed the trial court

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4. RCW 48.22.030 provides:

“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.” (Emphasis added).

ruling denying the Browns' coverage, and held that the exclusion was neither ambiguous nor contrary to public policy. In *Anderson v. American Economy Ins. Co.*, *supra*, David Anderson was injured in a collision with an uninsured driver while he was driving a Volkswagen owned by his wife. The court applied the exclusion. *Accord Barth v. Allstate Ins. Co.*, 95 Wn. App. 552, 560, 977 P.2d 6 (1999)(exclusion precluded UIM coverage under a mother's policy when the son was riding as a passenger in his own vehicle which was not insured under the policy); *Farmers Ins. Co. v. Clure*, 41 Wn. App. 212, 702 P.2d 1247 (1985)(exclusion applied to preclude the named insureds' son from obtaining UIM benefits for injuries he suffered when riding an uninsured motorcycle).

Here, assuming Ms. Hann is married to Mr. Combs, the owned vehicle exclusion would have applied. If she was married to Mr. Combs, Ms. Hann would be "you" within the policy. Ms. Hann acknowledges she owned the vehicle in which they were riding, and she was occupying the vehicle at the time of the accident. *CP 4*. That vehicle was not a covered vehicle under Mr. Combs' policy (i.e., it was not listed on the policy and was not a replacement vehicle or newly acquired vehicle). *CP 75*. Because "you" owned the vehicle, and because the vehicle was not a covered vehicle under the policy, the owned vehicle exclusion would have precluded UIM coverage

under Mr. Combs' policy for bodily injury to "any person." "Any person" includes Ms. Hann regardless of her marital status. Thus, Ms. Hann would not have been entitled to benefits of Mr. Combs' UIM insurance even if she had been married to him.

Ms. Hann offers some incendiary comments regarding interpretation of the policy in the context of sexual orientation. Sexual orientation has no impact on the analysis. Mr. Combs is unmarried and the policy paid for his loss. If he was married or gay, the policy still would have paid for his loss. If Ms. Hann had been riding in Mr. Combs' vehicle at the time of the accident, she too would have been covered by his policy despite the fact that she was not married to him. That would be true if Ms. Hann had been male and gay, regardless of whether she also cohabited with him. Ms. Hann is not entitled to UIM benefits from Progressive not because she is not married or because she has a particular sexual orientation, but because her car – the car she was riding in at the time of the accident – is not a covered vehicle under Mr. Combs' policy and therefore she is not an insured under that policy.

Under Washington law, language in an insurance policy is to be interpreted in accordance with how it would be understood by an average purchaser of insurance. *Kowal v. Grange Ins. Co.*, 110 Wn.2d 239, 246, 751 P.2d 306 (1988). A plain and unambiguous definition of insured will not be

read by the courts so as to reach a result not intended by the parties, nor are the rules of construction favoring the extension of coverage applicable when there is no ambiguity. *Swift v. American Assur. Co.*, 22 Wn. App 777, 779, 591 P.2d 1216(1979). If an insurance policy's terms have a clear and unambiguous meaning, the court must effectuate that meaning. *Barney v. Safeco Ins. Co.*, 73 Wn. App 426, 429, 869 P.2d 1093 (1994). Where the policy language is unambiguous, the court will give effect to that language unless it is contrary to public policy. *Dobosh v. Rocky Mt. Fire & Cas.*, 43 Wn.App 467, 472, 717 P.2d 793 (1986). The policy language at issue here is clear, unambiguous, and typical as recognized by Washington courts. The policy should be enforced as worded.

### CONCLUSION

Denying coverage for Ms. Hann under the Progressive policy does not deprive her of UIM coverage. She still has UIM coverage under her own policy with Metropolitan up to the limits she chose to purchase.

For the reasons set out above, Progressive asks that this court affirm the trial court's order granting summary judgment dismissing Ms. Hann's

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claim for benefits under Mr. Combs' UIM coverage.

Dated this 28th day of June, 2010.



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FILED  
COURT OF APPEALS

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

19 JUN 26 AM 10:36  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
TIMOTHY

KIM A. HANN, a single person,

Appellant,

vs.

PROGRESSIVE NORTHWESTERN  
INSURANCE COMPANY,

Respondent

NO. 39100-7 -II

DECLARATION OF  
SERVICE OF BRIEF OF  
RESPONDENT

I, TIMOTHY R. GOSSELIN, declare and state:

I am a citizen of the United States of America and the State of Washington, over the age of twenty-one (21), not a party to the above-entitled proceeding, and competent to be a witness therein.

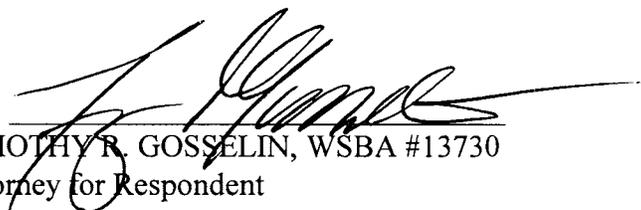
On the 28<sup>th</sup> day of June, 2010, I did deliver the BRIEF OF RESPONDENT and this declaration to:

Mr. Ben F. Barcus  
Mr. Paul A. Lindenmuth  
LAW OFFICES OF BEN F. BARCUS & ASSOC. PLLC  
4303 Ruston Way  
Tacoma, WA 98402

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

Signed this 28<sup>th</sup> day of June, 2010 at Tacoma, Washington.

By :

  
TIMOTHY R. GOSSELIN, WSBA #13730  
Attorney for Respondent

FILED  
COURT OF APPEALS  
DIVISION II

10 MAR 22 PM 3:51

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPITY

No: 39881-8-II

**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II**

**KIM A. HANN, individually,**

**Plaintiff/Appellant,**

**vs.**

**PROGRESSIVE NORTHWESTERN INSURANCE CO.**

**Defendant/Respondent.**

**DECLARATION OF SERVICE**

COMES NOW the undersigned, Paige Banks, under penalty of perjury under the laws of the State of Washington, to state and declare from personal knowledge as follows:

1. My name is Paige Banks. I am over the age of 18, competent to testify to the facts herein, and not a party to this claim/action.
2. On the 22<sup>nd</sup> day of March, 2010 at approximately 4:30 pm, I did provide service upon Mr. Timothy R. Gosselin, attorney at law, through personal service upon Mr. Gosselin, the following documents:
  - A. Amended Brief of Appellant

ORIGINAL

at the following location:

Gosselin Law Office  
1901 Jefferson Avenue, Ste. 304  
Tacoma, WA 98402

3. To my understanding Mr. Gosselin is not a member of the US military.

DATED this 22<sup>nd</sup> day of March, 2010 and signed at Tacoma, WA.

  
Paige Banks