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NO. 72267-1-I

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

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
a foreign insurance company,

Appellant,

vs.

PHYLLIS GLOVER-SHAW AND JOHN DOE GLOVER-SHAW,
wife and husband and their marital community; et al.,

Respondents.

REPLY BRIEF OF APPELLANT
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

TODD & WAKEFIELD
By Scott C. Wakefield
WSBA #11222
Dan Kirkpatrick
WSBA #38674
Attorneys for Appellant
State Farm Mutual
Automobile Insurance Co.

Address:
1501 Fourth Ave., Suite 2000
Seattle, WA 98101
(206) 622-3585

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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	2
III. ARGUMENT.....	3
A. THE SUPERIOR COURT SHOULD HAVE GRANTED SUMMARY JUDGMENT.....	3
B. THE SPECIAL VERDICT FORM ASKED IRRELEVANT QUESTIONS	13
C. INSTRUCTION NUMBER SIX WAS ERRONEOUS.....	17
D. THE TRIAL WAS POINTLESS	20
IV. CONCLUSION	21

TABLE OF AUTHORITIES

Washington Cases

	Page
<i>Capers v. Bon Marche, Div. of Allied Stores</i> , 91 Wn. App. 138, 955 P.2d 822 (1998).....	15, 16, 17, 19
<i>Central Wash. Bank v. MendelsonZeller, Inc.</i> , 113 Wn.2d 346, 779 P.2d 697 (1989).....	6
<i>Dowler v. Clover Park Sch. Dist. No. 400</i> , 172 Wn.2d 471, 258 P.3d 676 (2011).....	3, 12
<i>Dwinell's Cent. Neon v. Cosmopolitan Chinook Hotel</i> , 21 Wn. App. 929, 587 P.2d 191 (1978).....	3
<i>Greengo v. Public Employees Mut. Ins. Co.</i> , 135 Wn.2d 799, 959 P.2d 657 (1998).....	7, 14
<i>Hoglund v. Raymark Indus., Inc.</i> , 50 Wn. App. 360, 749 P.2d 164 (1987).....	19
<i>Pemco Mut. Ins. Co. v. Utterback</i> , 91 Wn. App. 764, 960 P.2d 453 (1998).....	2, 5, 7, 9, 11, 14, 15,17, 18, 19
<i>Rothweiler v. Clark Cnty.</i> , 108 Wn. App. 91, 29 P.3d 758 (2001).....	5
<i>Seven Gables Corp. v. MGM/UA Entertainment Co.</i> , 106 Wn.2d 1, 721 P.2d 1 (1986).....	3, 5, 6
<i>State v. Jacobson</i> , 74 Wn. App. 715, 876 P.2d 916 (1994).....	19

Other Jurisdictions

	Page
<i>Nutrasweet Co. v. X-L Engineering Co.</i> , 227 F.3d 776, 785 (7th Cir. 2000)	6

Court Rules

	Page
RAP 9.1(a)	12
RAP 9.1(b)	12
RAP 9.2(c)	12

I. INTRODUCTION

Respondents fail to identify an issue of fact as to the three factors that the superior court was supposed to consider on summary judgment: that the multiple impacts occurred in a short amount of time (four to five seconds) and distance (about 160 feet), and that defendant Suzanna Suljic's negligent, out-of-control driving was the common cause of the collisions. Respondents' only evidence offered to justify Judge Judge's summary judgment denial are five eyewitness statements that do nothing more than confirm the accident happened quickly, in a short distance, and that Ms. Suljic's failure to regain a "full measure of control" undisputedly caused the collisions.

Respondents barely address the special verdict form, which did not ask about duration, distance, or whether Ms. Suljic's negligent, out-of-control driving was the common cause. Instead, it asked the jury if the first collision in the sequence (with the Maxwell vehicle) set off a "chain reaction"-style string of collisions with the other vehicles. This was never State Farm's theory of the case, nor is it the legal standard adopted in Washington case law for determining whether multiple vehicle impacts constitute a single accident for purposes of an automobile insurance policy's liability coverage. Washington Courts do

not require a chain reaction for multiple collisions to constitute “one accident,” a point State Farm emphasized over and over to the trial judge.

Instruction number six was unfairly prejudicial to State Farm because it did not define “control,” even though Judge Bowden quoted (and then rejected) the definition of control from *Utterback* when he was considering arguments on the instruction. Leaving “control” undefined prevented State Farm from arguing its theory of the case and allowed respondents to mislead the jury into believing that any evidence of volitional conduct by Ms. Suljic was evidence of her regaining control. That does not comport with Washington law and was reversible error.

Finally, the trial was pointless because it resolved nothing. Even respondents do not dispute this. For this reason alone, the Court of Appeals should decide the coverage issue by reversing the order denying State Farm’s summary judgment motion (and thereby resolve the case), or remand the case for a new trial with correct instructions this time.

II. STATEMENT OF FACTS

Respondents correctly state that Ms. Suljic’s blood alcohol concentration based on a blood draw was 0.14¹ and that “[s]he was likely

¹ Respondents’ Brief p. 1 and CP 531 (“The blood test conducted on the sample from Suljic indicated a .14 g/100mL of Blood Ethanol”). Ms. Suljic’s breathalyzer test result was 0.091. CP 521-524.

more intoxicated during the events of the separate collisions.”²
Respondents are also correct that “these were very violent and high
impact collisions.”³ State Farm agrees with these facts.

III. ARGUMENT

A. THE SUPERIOR COURT SHOULD HAVE GRANTED SUMMARY JUDGMENT

To avoid summary judgment, respondents were required to rebut
State Farm’s and its expert Mr. Moebes’s contentions with specific facts:

A nonmoving party in a summary judgment may not rely
on speculation, argumentative assertions that unresolved
factual issues remain, or in having its affidavits
considered at face value; for after the moving party
submits adequate affidavits, the nonmoving party must set
forth specific facts that sufficiently rebut the moving
party’s contentions and disclose that a genuine issue as to
a material fact exists.⁴

This same rule applies on appeal.⁵ The issue at the summary judgment
hearing and on appeal is whether there is a genuine issue of material fact
as to whether the collisions at Broadway and Everett Avenue happened

² Respondents’ Brief p. 4.

³ Respondents’ Brief p. 7.

⁴ *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986), citing *Dwinell’s Cent. Neon v. Cosmopolitan Chinook Hotel*, 21 Wn. App. 929, 587 P.2d 191 (1978).

⁵ *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011).

quickly, in a short period of time, in a confined location, and had one common cause (Ms. Suljic's failure to exercise a full measure of control). If there is no genuine issue of material fact on these questions, then State Farm's summary judgment motion should have been granted.

Respondents do not question that Ms. Suljic was very intoxicated at the time of the accident, even pointing out that although she had a blood alcohol concentration of 0.14% at the hospital after the accident, "[s]he was likely more intoxicated during the events of the separate collisions."⁶ Respondents do not question that Ms. Suljic was gesticulating wildly right after the accident⁷ or that she defecated on herself after the accident.⁸ Respondents do not dispute that all of the evidence shows that she was panicking while she caused the collisions.⁹ Because it is uncontroverted that Ms. Suljic was extremely intoxicated and panicking when she caused the collisions, the Court of Appeals should treat this as an undisputed fact. She was incapable of having or

⁶ Respondents' Brief p. 4.

⁷ CP 278.

⁸ CP 279.

⁹ See Appellant's Amended Brief pp. 9-10 for recitation of the evidence of Ms. Suljic panicking.

regaining “a *full measure* of control over the car’s injury-inflicting potential or the situation in general.”¹⁰

Mr. Moebes’s declaration was an “adequate affidavit”¹¹ to support summary judgment and respondents were required to rebut it with “specific facts.”¹² Instead, respondents only address his declaration by calling it “cryptic,”¹³ which is just the type of “argumentative assertion”¹⁴ that is insufficient to create an issue of fact on summary judgment. Mr. Moebes’s declaration supported summary judgment because he gave his opinions on a more probable than not basis and set forth the basis for his opinions, as required by Washington law.¹⁵ Based on his education, training and experience, and his review of the police report and accident and vehicle photographs,¹⁶ Mr. Moebes opined that all of the collisions occurred in about four to five seconds and that

¹⁰ *Utterback*, 91 Wn. App. at 772 (emphasis added).

¹¹ *Seven Gables Corp.*, 106 Wn.2d at 13.

¹² *Id.*

¹³ Respondents’ Brief p. 12.

¹⁴ *Seven Gables Corp.*, 106 Wn.2d at 13.

¹⁵ *Rothweiler v. Clark Cnty.*, 108 Wn. App. 91, 100, 29 P.3d 758 (2001) (“In the context of a summary judgment motion, an expert must support his opinion with specific facts, and a court will disregard expert opinions where the factual basis for the opinion is found to be inadequate.”).

¹⁶ CP 609 (Moebes Declaration ¶¶ 2-4).

Ms. Suljic's vehicle traveled about 160 feet (around 53 yards) from the first to the last collision.¹⁷ This meets the time and space criteria for determining whether separate impacts between vehicles nonetheless constitute a single accident for purposes of an automobile insurance policy under Washington law.¹⁸ Respondents presented no evidence to contradict Mr. Moebes's opinions, but they were required to present such evidence in order to survive summary judgment:

When a nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established.¹⁹

Unrebutted expert testimony is sufficient to support summary judgment in favor of the moving parties.²⁰ The Court of Appeals should consider Mr. Moebes's opinions as uncontroverted evidence.

In sum, the police report establishes that Ms. Suljic did not have, and never regained, a "full measure of control over either the car's injury

¹⁷ *Id.* (Moebes Declaration ¶¶ 4-11).

¹⁸ *See* Appellant's Brief pp. 44-45.

¹⁹ *Central Wash. Bank v. MendelsonZeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989).

²⁰ *See Nutrasweet Co. v. X-L Engineering Co.*, 227 F.3d 776, 785 (7th Cir. 2000) (upholding summary judgment regarding CERCLA liability where defendant's expert did "not address (much less contradict) several matters asserted by [plaintiff's] expert"); *see also Seven Gables Corp.*, 106 Wn.2d at 13 (after the moving party submits "adequate affidavits" the responding party is required to rebut the affidavits with specific facts).

inflicting potential or the situation in general.”²¹ She was very drunk, panicking, and undisputedly hitting other vehicles at the intersection. Mr. Moebes’s uncontroverted declaration establishes that the collisions occurred quickly and in a confined space. These are the three criteria established by *Greengo*,²² *Utterback*, and other cases for finding that multiple impacts constitute one accident under the liability coverage of an automobile insurance policy. The superior court should have granted State Farm’s summary judgment motion.

Respondents argue that five witness statements in the police investigation materials create unspecified “issues of fact” that supposedly precluded the superior court from granting State Farm’s summary judgment motion. But the witness statements do no such thing. They basically confirm that the multiple impacts took place in a short time span over a limited space and were due to a single cause—Ms. Suljic’s intoxicated, out-of-control driving.

Respondents quote the sworn statement from eyewitness and Sound Transit bus driver Donald Lord, who said he saw the “fast

²¹ Verbatim Report of Proceedings 6/11/2014 p. 104, ll. 3-5 (*quoting Pemco Mut. Ins. Co. v. Utterback*, 91 Wn. App. 764, 772, 960 P.2d 453 (1998)).

²² *Greengo v. Public Employees Mut. Ins. Co.*, 135 Wn.2d 799, 804, 959 P.2d 657 (1998).

moving” Suljic vehicle as it “swerved to avoid someone and the[n] collided with a *northbound* car”²³ In other words, Mr. Lords saw Ms. Suljic (who was going south) driving in the *wrong lane*. This is not evidence of her having a “full measure of control” over the situation in general or the car’s injury inflicting potential. It does not contradict Mr. Moebes’s opinions. And in a portion of his witness statement not included by respondents, Mr. Lord estimated the Navigator’s speed “at about 50 to 60 mph.”²⁴ Again, this accident was unquestionably fast.

Next respondents quote eyewitness Jason Tastad’s statement that the accident “happened too fast to tell,”²⁵ which does not help respondents and is more evidence that this accident occurred quickly, just like Mr. Moebes opined.²⁶

Respondents then quote Jamie Holman’s witness statement about a truck “speeding off” and “weaving through traffic.” Assuming that this

²³ Respondents’ Brief p. 11 (citing to CP 273).

²⁴ CP 273.

²⁵ CP 274.

²⁶ It probably happened quicker than the four to five seconds estimated by Mr. Moebes. Mr. Moebes testified that he conservatively calculated the speed of the accident at four to five seconds. Verbatim Report of Proceedings 6/10/2014 pp. 47-48.

is referring to the Suljic Lincoln Navigator,²⁷ the statement that a vehicle is “speeding off” and “weaving through traffic” at a busy intersection is not, as a matter of law, evidence that the driver has or has regained “a *full measure* of control over the car’s injury-inflicting potential or the situation in general,”²⁸ especially if the driver is drunk and panicking. Respondents do not explain how Ms. Holman’s statement supports Judge Judge’s order denying summary judgment.

Respondents also quote Michael Christoph’s witness statement, but again do not explain how this supports Judge Judge’s conclusion that “material issues of fact are present.”²⁹ Mr. Christoph’s version of the accident is perfectly consistent with an out-of-control vehicle quickly colliding with several other vehicles at an intersection. He wrote: “I saw a Jeep weaving in and out of traffic, hitting cars, and then he ran a red

²⁷ The Suljic vehicle was a silver SUV, not a blue/green truck as Ms. Holman wrote. *See e.g.*, CP 529 (Police report referring to the Suljic vehicle as “a silver SUV was S/B on Broadway . . .”). There is no dispute that the Suljic vehicle caused the collisions at the intersection. *See* CP 171, Jury Instruction no. 6 (“The parties agree that Suzanna Suljic was at fault for the injuries and damages that resulted to defendants, and others, on April 1, 2011 in Everett, Washington.”).

²⁸ *Utterback*, 91 Wn. App. at 772 (emphasis added).

²⁹ CP 454.

light and hit 3 more cars.”³⁰ That is a driver with *zero* control over her vehicle’s “injury-inflicting potential” and the “situation in general.”

Finally, respondents chose to include Michael Grove’s witness statement as evidence that summary judgment was properly denied, but it is hard to see why. Of all the witnesses, Mr. Grove most vividly depicts a quick, compressed accident caused by a supremely out-of-control driver. Sitting in his vehicle in the QFC parking lot and facing the scene of the accident, Mr. Grove “saw a light colored SUV type car speeding through the intersection when it hit a red Mustang. It hit the Mustang so hard that the ‘SUV [indecipherable] airborne[e] hitting a few more cars.’”³¹ Any SUV that goes airborne is out-of-control and traveling very fast. How can there be any question of fact that this was one accident?

These five statements are the only evidence that respondents could find to support Judge Judge’s order denying summary judgment. There is not one word in these witness statements that, when taken in the light most favorable to respondents, tends to show that Ms. Suljic at any

³⁰ CP 492. While Mr. Christoph called the Navigator a “Jeep” (an understandable mistake given that a Navigator resembles a Jeep SUV such as the Cherokee), there is no dispute that it was a Navigator causing the collisions. *See* CP 171, Jury Instruction no. 6 (“The parties agree that Suzanna Suljic was at fault for the injuries and damages that resulted to defendants, and others, on April 1, 2011 in Everett, Washington.”).

³¹ CP 494.

point “regained a full measure of control over either the car’s injury-inflicting potential or the situation in general.”³² If she regained control over the Navigator’s “injury-inflicting potential,” why did she keep hitting other vehicles? Rather than create an issue of fact, the witness statements submitted by respondents are just additional proof that Ms. Suljic never regained control (if regaining control was even possible for her). An SUV at an intersection rapidly hitting other vehicles, weaving through traffic, weaving in and out of traffic, speeding off, driving in the wrong lane, and even going airborne. And all of it happening very fast. Respondents contend that these statements “cast a great deal of doubt on time sequences [and] distances traveled.”³³ How so? According to the statements, these extremely chaotic collisions happened fast and at the intersection of Broadway and Everett Avenue. Under Washington law, they constitute one accident and no trial was necessary.

Finally, respondents argue that State Farm has not included enough of the appellate record for the Court of Appeals to review the order denying summary judgment. State Farm included in the Clerk’s

³² *Utterback*, 91 Wn. App. at 772 (emphasis added).

³³ Respondents’ Brief p. 12.

Papers all of the summary judgment briefing, declarations, and exhibits considered by Judge Judge, which is what the Court of Appeals considers when reviewing a summary judgment order.³⁴ Respondents contend that because the transcript of the summary judgment hearing is lacking, this precludes review under RAP 9.1(a). But RAP 9.1(a) only says, “The ‘record on review’ *may* consist of . . . a ‘report of proceedings.’”³⁵ It does not have to include a report of proceedings. Respondents point out that RAP 9.1(b) requires that a report of proceedings be typewritten but this is a formatting rule, not a requirement that the report of proceedings be included for appellate review. Respondents speculate that the report of proceedings would show that Judge Judge had good reasons for denying summary judgment but they did not bother to obtain and include the transcript.³⁶

³⁴ *Dowler*, 172 Wn.2d at 484.

³⁵ RAP 9.1(a).

³⁶ Respondents knew that State Farm was appealing the order denying summary judgment because that order was listed in and attached to the notice of appeal. CP 2-5. If respondents believed that the summary judgment hearing was important, it could have arranged for its transcription. RAP 9.2(c) (“Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court.”).

B. THE SPECIAL VERDICT FORM ASKED IRRELEVANT QUESTIONS

The superior court's special verdict form questions did not allow State Farm to argue its theory of the case, which was that the multiple collisions constituted one accident because they occurred close together in time and space and had a common cause (Ms. Suljic's negligent, out-of-control driving). More importantly, the special verdict form does not comport with Washington law concerning the issue of whether multiple impacts constitute a single accident for purposes of an automobile insurance policy's liability coverage. State Farm submitted verdict form questions that accurately stated Washington law on this issue and asked the jury if Ms. Suljic's vehicle was out-of-control.³⁷ The superior court rejected State Farm's questions and insisted on using its "chain reaction" verdict form questions, even after State Farm stressed that these questions did not permit State Farm to argue its theory of the case and were contrary to Washington law. The superior court also rejected a verdict form question that State Farm proposed that asked about Ms. Suljic's control of the vehicle,³⁸ even though the superior court

³⁷ CP 217.

³⁸ CP 176.

acknowledged that the jury's answer to the question would have resolved the issue of the number of accidents.³⁹

In their brief, respondents half-heartedly endorse the special verdict form, arguing that it was “consistent with the law of *Utterback* and *Greengo*”⁴⁰ The same *Utterback* decision that held, “[t]he interdependent nature of the two impacts and their continuity and proximity *in time* and *location* all require the conclusion that just one accident occurred”⁴¹ (Underscoring supplied.) How could the special verdict form be consistent with *Utterback* if it did not ask about time and location, or whether Ms. Suljic was out-of-control? It just asked if the first collision (with the Maxwell vehicle) caused the subsequent collisions. Respondents also state that the evidence at trial “allowed for very divergent conclusions to be drawn regarding the actions of Ms. Suljic as she drove the car she occupied, regarding the length of time sequences”⁴² but the jury was not asked to give its conclusions on either of these subjects.

³⁹ Verbatim Report of Proceedings 6/11/2014 p. 7, ll. 11-17 (emphasis added).

⁴⁰ Respondents' Brief p. 21.

⁴¹ *Utterback*, 91 Wn. App. at 772 (emphasis added).

⁴² Respondents' Brief p. 22.

To win at trial, State Farm was forced to change its theory of the case by convincing the jury that the Maxwell collision caused the subsequent collisions, with no further driver input from Ms. Suljic. That theory is simply not consistent with Washington law on this issue. Certainly Ms. Suljic could have, like the driver in *Utterback*, pressed a pedal or rotated the steering wheel during the five to six second period in which all the impacts occurred, and still been a very long ways from having regained the required “*full measure* of control over the car’s injury-inflicting potential or the situation in general.”⁴³ Again, the superior court inexplicably rejected State Farm’s proposed verdict form question about Ms. Suljic’s control of the vehicle.

State’s Farm’s theory of the case was that if the collisions occurred in a short distance over a short time and had a common cause (the “cause theory”), then there was one accident. That is consistent with Washington law on this issue. There is really no evidence that contradicts that. State Farm was entitled to special verdict form questions that permitted it to argue this theory, which is consistent with Washington law.⁴⁴ State Farm did not receive that, although it

⁴³ *Utterback*, 91 Wn. App. at 772 (emphasis added).

⁴⁴ *Capers v. Bon Marche, Div. of Allied Stores*, 91 Wn. App. 138, 142, 955 P.2d 822 (1998) (citations omitted).

strenuously objected to the superior court's special verdict form questions and submitted better ones.

Respondents argue that taken as a whole with the jury instructions, State Farm was allowed to argue its theory of the case. But juries answer verdict form questions, not instructions. Even if the jury instructions correctly stated the law (and they did not because they left "control" undefined), there was no way for the jury to put the instructions into action by answering the appropriate questions.

In *Capers*, the parties agreed that the jury instruction "accurately stated the applicable law"⁴⁵ but the special verdict form left out key language and, to further muddy the waters, opposing counsel made misleading arguments in closing statement. The Court of Appeals ordered a new trial because even though the jury instruction was correct, the flaws in the verdict form and the misleading closing argument by opposing counsel "undermined the efficacy of the jury instructions as a whole."⁴⁶

The same thing happened here. The verdict form left out any questions about time, space, and control and instead framed the issue as:

⁴⁵ *Capers*, 91 Wn. App. at 140.

⁴⁶ *Capers*, 91 Wn. App. at 138.

“was this a chain reaction collision?” And like in *Capers*, respondents made misleading arguments in closing⁴⁷ that, taken together with the flawed verdict form questions, “cloud[ed] the jury’s vantage point of the contested issues.”⁴⁸ State Farm could not argue its theory of the case because the superior court’s jury instructions did not correctly state Washington law on the issue of when multiple impacts constitute a single accident for purposes of an automobile insurance policy’s liability coverage. Consequently, State Farm did not receive a fair trial.

C. INSTRUCTION NUMBER SIX WAS ERRONEOUS

Respondents contend plaintiff State Farm waived the right to assign error to jury instruction number six because it did not propose a jury instruction that defined “control” in accordance with *Utterback*. This ignores what happened at trial. The superior court gave the parties the draft of instruction number six, which the superior court had written, and asked for input from the parties.⁴⁹ State Farm argued that the

⁴⁷ See Appellant’s Amended Brief pp. 21-22.

⁴⁸ *Capers*, 91 Wn. App. at 143.

⁴⁹ Verbatim Report of Proceedings 6/10/2014 p. 101, ll. 10-11 (the court stated “I’d invite you to go to the Court’s last effort at tackling that” and then listened to the parties argue about proposed edits). In its opening brief, State Farm erroneously cited to the Verbatim Report of Proceedings for “6/11/2014” for the hearing on instruction number six. It actually occurred on 6/10/2014.

language about “control” was contrary to *Utterback* and, as an undefined term, improperly invited the jury to mistakenly believe that just a millisecond of driver input could count as “regaining” control.⁵⁰ Judge Bowden responded by quoting to the parties the definition of “control” from *Utterback*⁵¹ but called this “awfully cumbersome language”⁵² and then rejected the idea of including that definition in the instruction, stating, “I am not persuaded that there is some better language that *any of us* haven’t come up with.”⁵³ Submitting a proposed written instruction after all this would have only asked the superior court to do what it had already said it would not do: instruct the jury on the definition of control from *Utterback*.

⁵⁰ Verbatim Report of Proceedings 6/10/2014 p. 102, l. 24 – p. 103, l. 7; *see also* p. 106, ll. 13-22.

⁵¹ Verbatim Report of Proceedings 6/10/2014 p. 104, ll. 1-6 (“[A]t the close of that opinion, Justice Kennedy quoted I think it was the *Welter* decision that the driver never regained a full measure of control over either the car’s injury inflicting potential or the situation in general. That’s awfully cumbersome language, but it still gets to the issue of control.”).

⁵² Verbatim Report of Proceedings 6/10/2014 p. 104, ll. 5-6.

⁵³ Verbatim Report of Proceedings 6/10/2014 p. 111, ll. 9-10 (emphasis added).

In the two cases cited by respondents, *Hoglund v. Raymark Indus., Inc.*⁵⁴ and *State v. Jacobson*,⁵⁵ it is not clear that the appellants brought up their complaints about the jury instructions at all during trial. Here, the superior court itself “propose[d] an appropriate instruction”⁵⁶ (i.e., the definition of “control” from *Utterback* read into the record), the parties debated this issue at length, and the superior court refused to define control in accordance with *Utterback*. This is not an issue being raised for the first time on appeal.⁵⁷

Jury instructions are insufficient if they are misleading, do not allow each party to argue its theory of the case, or do not properly inform the trier of fact of the applicable law.⁵⁸ Instruction number six fails all three criteria because, as State Farm pointed out to the superior court when it was taking comments on the instruction,⁵⁹ it allowed the jury to

⁵⁴ 50 Wn. App. 360, 368, 749 P.2d 164 (1987).

⁵⁵ 74 Wn. App. 715, 724, 876 P.2d 916 (1994) (“Jacobson did not ask the court to rule on the questions of law or otherwise instruct the jury on the question he now complains should not have been presented to the jury.”).

⁵⁶ *Hoglund v. Raymark Indus., Inc.*, 50 Wn. App. 360, 368, 749 P.2d 164 (1987).

⁵⁷ State Farm later took exception to jury instruction six. Verbatim Report of Proceedings 6/11/2014 p. 7, l. 22 – p. 8, l. 4.

⁵⁸ *Capers*, 91 Wn. App. at 142 (citations omitted).

⁵⁹ Verbatim Report of Proceedings 6/10/2014 p. 102, l. 24 – p. 103, l. 7 and p. 106, ll. 13-22 (emphasis added). For similar argument from State Farm, *see also* Verbatim

speculate about what “control” means in these types of cases, opening the door for respondents’ misleading closing argument that any hint of “volitional” driving by Suljic amounted to “control.”⁶⁰ Giving instruction number six was reversible error.

D. THE TRIAL WAS POINTLESS

Respondents apparently concede that the trial resolved nothing. Unless the Court of Appeals reverses the superior court’s denial of State Farm’s summary judgment motion, or grants a new trial, the coverage issue in this case will never be resolved. It cannot be resolved in the underlying tort case because Judge Bowden has already denied respondents’ motion to consolidate the two cases (and respondents declined to appeal that order). After the underlying tort case against Ms. Suljic ends and moneys are presumably owed by her, there will be no judicial resolution of the coverage issue to determine State Farm’s indemnity obligations because the superior court left the issue of the number of accidents “[t]wisting slowly in the wind.”⁶¹ At the very least, a new trial is needed to correct this.

Report of Proceedings 6/9/2014 p. 54, l. 20 – p. 57, l. 21 *and* Verbatim Report of Proceedings 6/10/2014 p. 9, l. 2 – p. 12, l. 18.

⁶⁰ See Appellant’s Brief pp. 21-23.

⁶¹ Verbatim Report of Proceedings 7/28/2014 p. 8, l. 24 – p. 9, l. 3 (emphasis added).

IV. CONCLUSION

The case law on “one accident versus multiple accidents” really just conforms to our common way of speaking about a traffic accident. When someone sees multiple collisions quickly occur at a confined space, he or she says “I saw a huge car accident today.” When the traffic reporter describes the inevitable back-up caused by the accident, she refers to it as a “multi-vehicle accident” at such and such location. This is the way we talk. Singular, not plural; “accident,” not “accidents.” Nobody says that they saw “five accidents” merely because there were five collisions. The courts wisely tailored the common law so that it reflects the way that everyone thinks about and refers to an event like the accident on April 1, 2011 at Broadway and Everett Avenue. State Farm looks to the Court of Appeals for relief from this overly long, expensive, and frustrating exercise in trying to state the obvious: this was one accident.

Respondents understandably want there to be more than one accident so that there is more than one insurance policy liability coverage limit in play. And they survived summary judgment because the superior court just assumed that somewhere in the record, “material issues of fact are present.” At trial, the superior court asked the jury the wrong

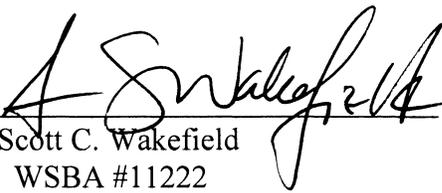
questions, so the parties never learned what the jury concluded about the alleged material issues of fact. The superior court left the term “control” undefined so that respondents could dilute the term to mean any volitional conduct behind the wheel by Ms. Suljic, even if no reasonable person could conclude that she had regained the required “full measure of control.” Faced with the reality that the trial had accomplished nothing, the superior court declined to enter findings of fact or conclusions of law and told the parties that it could leave coverage issue “[t]wisting slowly in the wind.”

State Farm respectfully requests that the Court of Appeals resolve this appeal in the most straightforward, efficient way possible: reverse Judge Judge’s order denying State Farm’s summary judgment motion and end this case. Short of that, State Farm requests a new trial with instructions that correctly state Washington law and verdict form questions that address the factual issues (if any) that need to be determined in order to resolve the legal issue of whether the multiple impacts at Broadway and Everett Avenue on April 1, 2011 constitute a

single accident for purposes of the State Farm liability insurance policy covering Ms. Suljic.

DATED this 22nd day of July, 2015.

TODD & WAKEFIELD

By 

Scott C. Wakefield

WSBA #11222

Dan Kirkpatrick

WSBA #38674

Attorneys for Appellant State Farm
Mutual Automobile Insurance Co.

1501 Fourth Avenue, Suite 2000
Seattle, WA 98101
206/622-3585