No. 81195-9-I

Case #: 1036531

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

MARIANNE MEEKER, an individual,

Appellant,

vs.

TRUMBULL INSURANCE COMPANY, a foreign insurer and a member of the Hartford Fire and Casualty Group of Companies

Respondent,

JAMES H. ORR and LEONA ORR, individually and the marital community composed thereof; LIBERTY MUTUAL INSURANCE COMPANY AND/OR LIBERTY INSURANCE CORPORATION, foreign insurers and members of the Liberty Mutual group of companies;

Defendants

APPELLANT'S PETITION FOR REVIEW TO THE WASHINGTONSUPREME COURT

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I. IDENTITY OF PETITIONER

Marianne Meeker, Plaintiff and Appellant, asks this court to accept review of the decision of the Court of Appeals, Division One, designated in Part II of this Petition.

II. DECISION OF THE COURT OF APPEALS

Appellant seeks review of Division One's unpublished opinion filed October 28, 2024, affirming summary judgment in favor of defendant/respondent Trumbull Insurance Company. The court's opinion is attached at **Appendix A**, and the underlying judgment as **Appendix B**.

III. ISSUES PRESENTED FOR REVIEW

1. When Meeker asked the trial court to determine that her settlement with the Orrs was reasonable, she gave the court reasons why it should grant her motion. The reasons included telling the court that $150,000.00 of the amount compensated her for "general damages in emotional pain and suffering, as well as the pain and suffering associated with her bodily injury." Meeker served Trumbull with her pleadings and invited it to participate in the hearing. It declined. The court approved the settlement as Meeker proposed, and in doing so specifically found "that the type of damages alleged by plaintiff is potentially substantial and would be persuasive to a jury, creating a risk of a significant damage award against defendants." Judgment was entered accordingly. An issue this

case presents is whether the trial court's ruling in the reasonableness hearing precluded Trumbull from later disputing that Meeker's claims against the Orrs included a claim for bodily injury. On Trumbull's motion for summary judgment Meeker argued it did. The trial court agreed with Trumbull and decided it did not. The Court of Appeals did not address the issue.

2. Whether Meeker's complaint and amended complaint alleged bodily injury or property damage caused by an occurrence as required by Trumbull's policy.

3. Whether Trumbull's actions, including its failure to defend the Orrs, estopped it from denying coverage and obligated them to pay the consent judgment.

4. Whether the trial court erred in dismissing the Orrs' assigned claims against Trumbull for breach of contact, negligence, bad faith, violation of Washington's Consumer Protection Act, and violation of Washington's Insurance Fair Conduct Act.

IV. STATEMENT OF THE CASE

This is Plaintiff Meeker's action for Trumbull Insurance Company's breach of its duty to defend James and Leona Orr under a liability policy. The trial court dismissed Meeker's claims on summary judgment. The Court of Appeals affirmed that decision.

Statement of Facts

In 2011, James Orr gave Marianne Meeker a retired racehorse. Over the next five years, Meeker emotionally bonded with the horse, paid for its care, and repaired damage it caused. She also testified that she was thrown from the horse three times, all resulting in injury; thrown to the stable floor when the horse was spooked injuring her knee; suffered a hernia when he violently jerked after being scared by a yellow jacket nest while she was riding him; pushed against a fence, and stepped on. (CP 845-47)

In 2016, Orr abruptly took the horse back and kept it from her. By that time Meeker had bonded with the horse so strongly that she suffered what her therapist diagnosed as a trauma response when he was taken from her. Symptoms included a panic attack that resulted in elevated heart rate and blood pressure so severe that paramedics were called. (CP 847-48)

In March, 2016 (amended November, 2016), Meeker

sued Orr claiming alternatively (1) that she either owned the horse and it should be returned to her with damages for the wrongful taking, including her emotional distress, or, (2) if she didn't own the horse, for damages caused by Mr. Orr's inducing her to care for it for five years by representing that he was giving it to her. (CP 2-8, 9-17) Meeker would not have taken the horse, expended the time, money and effort to care for it, or incurred the risk of it without owning it. (CP 2 at lns. 19-21, 847)

Consistent with Washington's notice pleading rules, Meeker's complaint identified some specific items for which she sought compensation, but also alleged ongoing injury and prayed for general and special damages. (See generally CP 1-8, 9-17) Meeker would later testify and provide evidence that she sought damages for the loss of the horse, for the expenses she incurred caring for the horse, for physical damage caused by the horse, for physical injury she suffered while caring for it, and for her emotional distress which included medical treatment for

the physical manifestations of her distress. (CP 471-73, 845-48)

The Orrs tendered Meeker's lawsuit to the three insurers who insured them during the five year period. Farmers provided a defense and ultimately contributed towards a settlement. (CP 431) Liberty Mutual never responded. Trumbull denied that it had to do anything for the Orrs. (CP 455-56, 460) Without investigating the nature or extent of Meeker's claims, Trumbull simply claimed Meeker's complaint did not allege bodily injury or property damage as required by its policy. (CP 460)

After the trial court refused to dismiss Meeker's claim on summary judgment, she and the Orrs settled. The Orrs agreed to a consent judgment against them for $334,000.00 and assigned their claims against Trumbull and Liberty Mutual to Meeker. (CP 462-69)

Pursuant to *Besel v. Viking Ins. Co.*, 146 Wn.2d 730, 49 P.3d 887 (2002), Meeker presented the settlement to the trial court to determine whether it was reasonable. (CP 18-27)

Meeker represented that, of the $334,000.00 settlement, $150,000.00 compensated her for "general damages in emotional pain and suffering, as well as the pain and suffering associated with her bodily injury," and that she incurred over $100,000.00 in damages for feed, board and other items to care for the horse. (CP 21-22, 41-43)

Meeker notified Liberty and Trumbull of the reasonableness motion, served them with the pleadings filed in support of it, and invited them to participate. (CP 92-93, 95-114) Neither did. (CP 115-19)

The trial court affirmed the settlement as reasonable. (CP 120-23) In doing so, the judge specifically found "that the type of damages alleged by plaintiff is potentially substantial and would be persuasive to a jury, creating a risk of a significant damage award against defendants." (CP 121) Judgment was entered accordingly. (CP 134-39) No one appealed.

Procedural History

On November 28, 2018, Meeker sued Trumbull and

Liberty Mutual pursuant to the assignment of claims she received from the Orrs. (CP 142-50) The complaint asserted claims under their respective insurance policies and Washington law for declaratory judgment, breach of contract, bad faith, estoppel, and violation of Washington's Consumer Protection Act. *Id.*

On July 26, 2019, the trial court heard argument on the insurers and Meeker's cross-motions for summary judgment. The court granted the insurers' motions and denied Meeker's motions against the insurers. (CP 828-33) As to Trumbull, the court decided that Meeker had not alleged bodily injury or property damage, so the complaint did not trigger its defense obligation. (RP 58-59)

Meeker appealed, asserting the following assignments of error:

> 1. The trial court erred in granting the insurer's motions for summary judgment, and denying reconsideration of summary judgment for Trumbull.
>
> 2. The trial court erred in denying Meeker's motion for

summary judgment against the insurers.

3. The trial court erred in determining that Meeker's complaint and amended complaint did not trigger the insurers' duty to defend;

4. The trial court erred in dismissing the Orrs' assigned claims against the insurers for breach of contact, negligence, bad faith, violation of Washington's Consumer Protection Act, and violation of Washington's Insurance Fair Conduct Act.[1]

Brief of Appellant at 11-12. The Court of Appeals affirmed in an unpublished opinion.[2]

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Petitioner contends the Supreme Court should accept review pursuant to RAP 13.4(b)(1), (2) and (4).

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1. In its decision, the Court of Appeals states that Meeker did not assign error to the trial court's dismissal of Meeker's claims for violation of Washington's Consumer Protection Act and violation of Washington's Insurance Fair Conduct Act. Opinion at 6, fn. 4. That statement is incorrect. See Brief of Appellant at 13, Assignment of Error 5.

2. Liberty Mutual was a party to this action but has since settled with Meeker. As a result, further discussion of its arguments is not pertinent, and therefore is omitted.

1. The Court of Appeals decision conflicts with decisions of the Supreme Court and published decisions of the Court of Appeals.

The Court of Appeals decision conflicts with decisions of this Court in *Mutual of Enumclaw Ins, Co. v. T&G Constr., Inc.*, 165 Wn.2d 255, 259, 199 P.3d 376 (2008), and *Bird v. Best Plumbing Grp.*, 75 Wn.2d 756, 287 P.3d 551 (2013). In *Mutual of Enumclaw,* this Court held that the insurer could not relitigate a statute of limitations defense because it had been substantially resolved in a reasonableness hearing. *Id.* at 259. In *Bird*, this Court held that an insurer could not relitigate the application of treble damages because it was properly considered during a reasonableness hearing. 75 Wn.2d at 775 ("An evaluation of Bird's claims under RCW 4.24.630 was a necessary part of the trial court's determination.")

Trial courts must consider nine factors when determining whether a settlement is reasonable. The releasing party's damages and the merits of the releasing party's liability theory are two of them. *Mut. of Enumclaw*, 165 Wn.2d at 264. Here,

without objection from Trumbull, Meeker presented evidence in the reasonableness hearing on those two factors to the effect that a substantial portion of her claim was for bodily injury. Based on that evidence, and without objection from Trumbull, the trial court determined those elements, stating "that the type of damages alleged by plaintiff is potentially substantial and would be persuasive to a jury, creating a risk of a significant damage award against defendants." (CP 121) Under *Mut. of Enumclaw* and *Bird*, that determination should have barred Trumbull from disputing that Meeker had pled bodily injury in her lawsuit or received compensation for it.[3] The Court of Appeals did not address this issue.

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3. *Compare State Farm Fire & Cas. Co. v. Justus*, 199 Wn.App. 435, 398 P.3d 1258 (2017). There, State Farm intervened in a reasonableness hearing and argued that the court had insufficient basis for determining whether the defendant insured acted negligently or intentionally. As a result, in approving the reasonableness of the covenant judgment settlement, the settlement court recognized that State Farm had filed a separate declaratory action and stated that it "will not make findings as to whether or not or the degree to which Defendant [William]'s actions on June 9th, 2010, were intentional versus negligent...." Because the settlement court made clear it was not determining whether the defendant's actions were negligent or intentional, the Appellate Court refused to estop State Farm or the declaratory judgment court from determining that issue.

The decision of the Court of Appeals also conflicts with this Court's decisions in *State v. Adams*, 107 Wn.2d 611, 732 P.2d 149 (1987), *Edmonson v. Popchoi*, 172 Wn.2d 272, 256 P.3d 1223 (2011), *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 329 P.3d 59 (2014), and *Xia v. ProBuilders Specialty*, 188 Wn.2d 171, 393 P.3d 748 (2017). In *Adams*, this Court recognized that Washington's notice pleading rules require only a short, plain statement of the claim and that complaints are liberally construed. 107 Wn.2d at 620. In *Expedia*, the Court held that the duty to defend is triggered if the insurance policy conceivably covers allegations in the complaint and the complaint is to be liberally construed. 180 Wn.2d at 802. In *Edmonson*, this Court stated: "[I]f there is any reasonable interpretation of the facts or the law that could result in coverage, the insurer must defend." 172 Wn.2d at 282. In *Xia*, this Court stated: "Thus, an insurer takes a great risk when it refuses to defend on the basis that there is no reasonable interpretation of the facts or the law that could result

in coverage." 188 Wn.2d at 182. The effect of these rules is to prevent insurers from using notice pleading as a tool to deny their duty to defend, such that the duty is based on the true nature of the claim, not some magic words inserted into a complaint.

Here, in her complaint Meeker alleged that Mr. Orr negligently induced her to care for a 2000 pound animal for five years, that his actions were a proximate cause of damage to her, and for which she sought general and special damages. Within the context of her entire complaint, it is not only conceivable that her damage could have been personal – i.e., being thrown, kicked, hit, bitten, stomped, etc. – or included damage to property – i.e., damaged real estate, barn, stall, fence, trailer, or consumed goods like feed – but likely. And, under Washington law, tort damages, including physical injury and property damage which would have satisfied Trumbull's requirements for bodily injury and property damage, were permissible based on her claims. See *Bloor v. Fritz*, 143 Wn.

App. 718, 180 P.3d 805 (2008) (Allowing purchaser to recover for loss wages, damage to tools and emotional distress from seller's failure to disclose that house had been used as a meth lab); *accord Andersen v. Lewis McChord Communities LLC*, No. 3:21-cv-05391 at 13 (W.D. Wash. Mar. 24, 2022) ("[A] plaintiff in Washington may recover for emotional distress damages under a claim of negligent misrepresentation."); *Ward v. Bank of Am.*, No 2:19-cv-00185, at 11 (W.D. Wash. May 14, 2019)("Ward has plausibly alleged a causal connection between BANA's misrepresentation and his emotional distress."). Nevertheless, despite the fact that Meeker actually would have sought to recover for those types of damages had her suit gone to trial, the Court of Appeals decided that Meeker's complaint was not specific enough to assert covered bodily injury or property damage. Opinion at 13-14 ("Lacking specificity as to the injury in question, these are examples of general damages" not logically implied by her claims.) In reaching that conclusion the court acted contrary to the authorities cited

above.

The Court of Appeals decision also conflicts with this Court's decision in *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 802, 329 P.3d 59 (2014). In that case this Court held that "if coverage is not clear from the face of the complaint but coverage could exist, the insurer must investigate and give the insured the benefit of the doubt on the duty to defend." *Expedia*, 180 Wn.2d at 803.

Here, at worst, Meeker's allegations of injury and her prayer for general and special damages required Trumbull to investigate the nature and extent of her claim. It did nothing. Had it investigated, it would have learned, at a minimum, that Meeker was claiming many physical injuries as well as physical manifestations of emotional distress which would have satisfied Trumbull's bodily injury requirement. (See CP 846-48) The Court of Appeals neither addressed that duty nor what fulfilling it would have revealed.

The Court of Appeals decision also conflicts with this

Court's decision in *Woo v. Fireman's Fund Ins. Co*, 161 Wn.2d 43, 164 P.3d 454 (2007). In *Woo*, this Court held that insurers may not rely on equivocal interpretations of undetermined law as a basis for denying the duty to defend. 161 Wn.2d at ¶¶ 31-35.

Here the Court of Appeals reasoned that Meeker could not recover for physical injury or property damage because her claim based on negligent misrepresentation that caused ongoing injury and her prayer for general damages was based on a "business transaction" and Washington courts had not allowed physical harm as a basis for recovery on a claim for negligent misrepresentation. Opinion at 14. However, the record does not support the conclusion that Meeker's claim arose from a "business transaction," and whether negligent misrepresentation may give rise to damages for physical harm is, at worst, an open question. See *Bloor v. Fritz*, *supra*. By justifying its decision on this equivocal interpretation of the law, the court validated Trumbull's having done so, contrary to *Woo*.

Moreover, the court's justification actually begged the issue. The question was not "whether Meeker could recover those damages" but "whether she conceivably sought to recover those damages." As the *Woo* Court noted, the duty to defend is based on what the plaintiff alleges. 161 Wn.2d at ¶33. Indeed, insurers, including Trumbull, specifically address unfounded allegations in their policies. (CP 322: "[W]e will: . . . . 2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. . . .") That, of course, is at it should be. If it were otherwise, insurers could deny their defense obligation in lawsuits seeking to extend the law through novel interpretations which, if successful, ultimately give rise to covered damages.

The Court's analysis on this point misses another important fact: The scope of Meeker's recovery was already decided. In the reasonableness hearing, the trial court approved the settlement precisely because of Meeker's physical damages. Trumbull failed even to show up and argue to that it should not.

So, regardless of the state of the law, the facts of this case are that Meeker did claim general "physical harm" damages and actually recovered for them. Thus, as in *Bird v. Best Plumbing Grp.*, supra, 75 Wn.2d 756, 287 P.3d 551 (2013), where the insurer tried to dispute the legal basis for the plaintiff's recovery of treble damages, Meeker's right to recover for physical damage was a moot point by the time the Court of Appeals decided this case.

With regard to the emotional distress aspect of Meeker's claims specifically, the Court of Appeals decision also conflicts with *Trinh v. Allstate Ins. Co.*, 109 Wn. App. 927, 37 P.3d 1259 (2002). In *Trinh*, the court ruled that emotional distress that manifests itself in physical symptoms meets policy definitions of bodily injury. Here Meeker alleged she suffered emotional distress, mental pain and suffering, and loss of consortium. (CP 4-6, 13-14) During discovery, she contended that her emotional injuries required treatment with medications by a licensed physician and produced her medical records to the defense.

(CP 472-73) In testimony, she related physical manifestations of that distress that included elevated heart rate and blood pressure, and treatment by paramedics. (CP 847-88) Even though Trumbull had no basis for interpreting her complaint as excluding covered emotional distress, the Court of Appeals affirmed that interpretation. In doing so, it wrongly imposed pleading requirements beyond notice pleading, made insureds rather than insurers bear the burden of notice pleading, and narrowly construed Meeker's complaint instead of broadly and liberally construing it.

The Court of Appeals decision also conflicts with this Court's decisions in *Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC, Co.*, 200 Wn.2d 316, 516 P.3d 796 (2022). There, this court recognized that insurance policies should be construed to give the language "a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." Id. at ¶8 The Court also stated: "'[D]irect physical loss [or] ... damage' includes

the deprivation or dispossession of or injury to the insured property." Id. at ¶48.

Here, Trumbull's policy defined "property damage" to mean "physical injury to, destruction of, or loss of use of tangible property." (CP 305) A reasonable interpretation of these terms means "physical damage, total destruction, or total deprivation" of property. Here, Meeker alleged that Orr had deprived her of the horse, regardless of whether he physically damaged it. Under *Seattle Tunnel Partners*, that allegation should have been enough to satisfy the property damage element of Trumbull's policy.[4]

2. This case involves an issue of substantial public interest that should be determined by the Supreme Court.

---

4. Ironically, the Court of Appeals' decision on this issue contradicts Trumbull's own interpretation of it insurance policy. After initially denying a duty to defend because deprivation of the horse was not property damage, Trumbull reversed its decision saying:

> Upon further review of this matter, it appears possible there may be claims for "property damage" as the plaintiff is claiming loss of use of the horse, which is tangible property . . .. (CP 459)

This case also raises an issue of substantial public interest. That issue is whether or when a claim of emotional distress in a personal injury lawsuit constitutes bodily injury under liability policies sufficient to trigger the insurer's duty to defend. Trumbull and the Court of Appeals relied on this Court's decision in *E-Z Loader Boat Trailers, Inv. v. Travelers Indem. Co.*, 106 Wn.2d 901, 726 P.2d 439 (1987), for the proposition that a claim of emotional distress is never sufficient to trigger bodily injury coverage. But such a broad application of *E-Z Loader* is inappropriate for at least two reasons. First, unlike here, *E-Z Loader* did not arise in a context where physical injuries or physical manifestations of emotional distress were implicit within the claims. The case involved an insurer's duty to defend allegations of emotional distress resulting from class-based employment discrimination. Here, Meeker's claims were individual tort claims that reasonably gave rise to a broader scope of emotional distress injury (the loss of a beloved animal) to which the E-Z Loader decision

should have no application. Second, at the time of *E-Z Loader*, the law had not developed to the point of examining the realities of emotional distress injury. Since then, cases like *Trinh* have examined emotional distress injury more thoroughly and recognized that emotional distress can manifest itself through physical symptoms that are bodily injury as that term is used in insurance policies. By applying *E-Z Loader* as a per se rule precluding emotional distress claims from ever triggering the duty to defend, or by requiring plaintiffs to include some magic words in their complaint in order for a defendant's insurer to be obligated to defend their insured, the Court of Appeals gave insurers a ticket out of meeting their contractual obligations even when, as here, a plaintiff's emotional distress manifests itself through physical symptoms and treatments. Given the frequency with which emotional distress claims are made and the range of circumstances in which they could arise, it is imperative that this court resolve or clarify whatever conflict, if any, exists between its *E-Z Loader* decision and the

Court of Appeals decision in *Trinh*, or, at a minimum, identify the specificity with which a claim of emotional distress must be pled in order for it to trigger a duty to defend.

VI. CONCLUSION

Had Meeker's claims against the Orrs gone to trial, she would have sought all the damages the law allowed her to recover. Under her various theories, those would have included damages for the physical injury she suffered after being induced to care for the horse for five years under the guise of ownership, emotional distress resulting from her attaching to the horse then being deprived of it, for the loss of the horse if it was deemed to have been hers, for the cost of care including the food and other supplies the horse consumed, for the damage the horse caused to physical property like the stables where it was kept. Under notice pleading rules, her complaint allowed her to seek all those damages. And, as the trial court's ruling on Meeker's reasonableness motion found, her complaint actually placed Trumbull's insureds, the Orrs, at risk of paying those damages.

The irony here is that despite knowing that her claims sought those damages, having pled sufficiently to recover them, and having acknowledgment from the trial court that reviewed her claims, the Court of Appeals nevertheless decided that Meeker had not pled her claims sufficiently to allege bodily injury or property damage. Meeker respectfully contends that decision was in error.

Meeker asks that this Court grant review, reverse the trial court's grant of summary judgment to Trumbull and the Court of Appeals decision upholding it, hold that Trumbull breached its duty to defend and did so in bad faith, hold that Trumbull is estopped to deny coverage and is liable, at a minimum, for the judgment entered against its insureds, award attorney fees for this appeal, and remand to the trial court for trial to determine the full extent of damages and fees sustained as a result of Trumbull's actions.

Dated this 26th day of November, 2024.

Pursuant to RAP 18.17(b), the undersigned certifies that this brief contains 4051 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images.

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CERTIFICATE OF FILING AND E-SERVICE

I hereby certify that on November 26, 2024, I electronically filed the foregoing Petition for Review with the Clerk of the Court using the electronic filing system and a copy was served electronically through said filing system and by email on the following:

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

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Appendix A

FILED
10/28/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MARIANNE MEEKER, an individual,

Appellant,

v.

JAMES H. ORR and LEONA ORR, individually and the marital community composed thereof; LIBERTY MUTUAL INSURANCE COMPANY AND/OR LIBERTY INSURANCE COMPANY, foreign insurers and members of the Liberty Mutual group of companies; TRUMBULL INSURANCE COMPANY, a foreign insurer and a member of the Hartford Fire and Casualty Group of Companies,

Respondents.

DIVISION ONE

No. 81195-9-I

UNPUBLISHED OPINION

DWYER, J. — Marianne Meeker appeals from the orders of the superior court denying her motion for summary judgment and granting Trumbull Insurance Company's motion for summary judgment on her assigned breach of contract claim from insureds James and Leona Orr. On appeal, Meeker asserts that the trial court erred by dismissing her assigned claim because her amended complaint had set forth allegations of bodily injury and property damage against the Orrs that were conceivably covered by the Orrs' homeowner's insurance

policy with Trumbull Insurance, thereby triggering the insurance company's duty to defend the Orrs from her suit.[1] Finding no error, we affirm.

I

Prior to the time in question, the Orrs were the owners and possessors of a retired racehorse. In 2011, James Orr and Meeker reached an agreement—the terms of which the Orrs and Meeker later disputed—that resulted in Meeker taking possession of the horse. Between 2011 and 2016, Meeker cared for the horse, which included boarding, feeding, training, and obtaining medical treatment for it.

Between May 2014 and May 2015, the Orrs had a homeowner's insurance policy through Trumbull Insurance. As pertinent here, the personal liability coverage provision of that policy stated that Trumbull Insurance would provide coverage to the Orrs "[i]f a claim is made or a suit is brought" against them "for damages because of 'bodily injury' or 'property damage,'" coverage which included defending them against such a claim or suit.

The homeowners insurance policy defined "bodily injury" and "property damage" as follows:

> "Bodily injury" means bodily harm, sickness or disease, except a disease which is transmitted by an "insured" through sexual

[1] Meeker, in her reply brief, indicated that Liberty Mutual Insurance Company is "out of this appeal," having reached a settlement agreement after Meeker's appeal. Reply Br. of Appellant at 1. Additionally, the last page of Meeker's reply brief states that

> Meeker withdraws her appeal of the order granting summary judgment to the Orrs. The appeal is moot because the Orrs have abandoned their claim to part of any recovery Meeker obtained from Liberty Mutual or Trumbull, or any other fees. See Notation Ruling, Case No. 80823-1-1 (August 19, 2020). Those claims were the reason for Meeker's claims against the Orrs.

Reply Br. of Appellant at 30. Given that, we do not consider Meeker's claims against Liberty Mutual or against the Orrs on appeal.

> contact. "Bodily injury" includes required care, loss of services and death resulting from covered bodily harm, sickness or disease.
> . . . .
> "Property damage" means physical injury to, destruction of, or loss of use of tangible property.[2]

In February 2016, James Orr took possession of the horse without Meeker's knowledge or permission and moved it to another location. Meeker demanded that he return the horse, stating that he had gifted it to her and that she was its rightful owner and possessor. He refused, stating that he had only agreed to lease the horse to her.[3]

In March 2016, Meeker filed a complaint against the Orrs in King County Superior Court identifying six causes of action: replevin, declaratory judgment, breach of implied in fact contract, promissory estoppel, equitable estoppel, and unjust enrichment. As pertinent here, Meeker alleged the following facts: "Plaintiff in fact assumed the burden of caring for the [horse]. Between 2011 and 2016, Plaintiff expended over $100,000 in expenses that included, without limitation, veterinary care, boarding, feed, and training of the [horse]."

Meeker's complaint further reads as follows:

> **IV. FIRST CAUSE OF ACTION: REPLEVIN**
> . . . .
> 4.6 The approximate market value of the [horse] is between $10,500 and $15,000.
> 4.7 Defendants' wrongful and willful detention and conversion of Plaintiff's property has caused Plaintiff the following

---

[2] The bodily injury or property damage in question, according to the policy, must be "caused by an 'occurrence' to which this coverage applies." The term "[o]ccurrence" was defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in: a. 'Bodily injury', or b. 'Property damage.'" Given our resolution of this matter, infra, we need not address whether the conduct in this matter constituted an "occurrence."

[3] Leona Orr, for her part, averred that her husband did not have the authority to give possession of the horse to Meeker at the outset.

damages: economic loss in an amount to be established at the time of trial; emotional distress; mental pain and suffering; and loss of consortium.

. . . .

V. SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

. . . .

5.3 Plaintiff has suffered injury in fact as a result of Defendants' claimed legal ownership of the [horse].

. . . .

VI. THIRD CAUSE OF ACTION: BREACH OF IMPLIED-IN-FACT CONTRACT

. . . .

6.5 Defendants' breach has proximately caused Plaintiff the following damages: economic loss in an amount to be established at the time of trial; emotional distress; mental pain and suffering; and loss of consortium.

VII. FOURTH CAUSE OF ACTION: PROMISSORY ESTOPPEL

. . . .

7.4 Plaintiff did in fact change her position in response to Defendants' promise, assuming full responsibility for directing and paying for the cost of the care of the [horse], including extensive and expensive veterinary care.

. . . .

[VIII]. FIFTH CAUSE OF ACTION: EQUITABLE ESTOPPEL

. . . .

8.5 Plaintiff made reasonable reliance on Defendants' admissions, statements, and actions, to her detriment.

8.6 Ongoing injury will be caused to Plaintiff if the Court permits Defendants to contradict or repudiate the admissions, statements, and actions upon which Plaintiff reasonably relied, to her detriment.

[IX]. SIXTH CAUSE OF ACTION: UNJUST ENRICHMENT

. . . .

9.3 Defendants received a benefit from Plaintiff taking over the care of the [horse.]

9.4 The benefit that Defendants received from Plaintiff taking over the care of the [horse] was at the Plaintiff's expense.

. . . .

[X]. PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

. . . .

C. For an award of special and general damages. Plaintiff intends to seek damages in excess of $10,000.

The Orrs tendered Meeker's complaint to Trumbull Insurance, requesting that the insurance company defend them against Meeker's suit pursuant to their homeowner's insurance policy. Trumbull Insurance denied their request, stating that Meeker's complaint did not allege "bodily injury" or "property damage."

In November 2016, Meeker amended her complaint to add a claim for negligent misrepresentation against James Orr. Her amended complaint read, in pertinent part,

> **X. SEVENTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION (AS TO DEFENDANT JAMES H. ORR)**
>
> . . . .
>
> 10.2 Defendant James H. Orr supplied information for the guidance of Plaintiff in her business transaction regarding [the horse] that was false.
>
> 10.3 Defendant James H. Orr knew or should have known that the false information was supplied to guide Plaintiff in her business transaction regarding [the horse].
>
> 10.4 Defendant James H. Orr was negligent in obtaining or communicating the false information.
>
> 10.5 Plaintiff relied on the false information supplied by Defendant James H. Orr.
>
> 10.6 Plaintiff's reliance on the false information supplied by Defendant James H. Orr was justified.
>
> 10.7 The false information was the proximate cause of damages to Plaintiff.

The Orrs tendered Meeker's amended complaint to Trumbull Insurance, again requesting that Trumbull Insurance defend them against Meeker's lawsuit. The insurance company also denied this request, stating that "our coverage position stands as [formerly] asserted."

In May 2017, as part of a conditional settlement agreement, the Orrs assigned Meeker their rights under their homeowner's insurance policy with Trumbull Insurance.

In November 2018, Meeker amended her complaint again, adding Trumbull Insurance as a defendant. Through the Orrs' assigned claims, Meeker alleged that Trumbull Insurance was liable for, as pertinent here, damages for breach of contract and acting in bad faith toward an insured.[4]

Thereafter, Meeker moved for partial summary judgment contending that Trumbull Insurance had a duty to defend the Orrs, that it breached that duty, and that its breach was in bad faith. Trumbull Insurance, for its part, moved for summary judgment on Meeker's claims arguing, as pertinent here, that it did not have a duty to defend the Orrs because her allegations against them were not covered by the policy in question, and that, if it breached that duty, it was not done in bad faith.

In August 2019, the trial court granted Trumbull Insurance's motion and denied Meeker's motion. The court determined that, as pertinent here, "there was no coverage under the Trumbull policy" and, therefore, "Trumbull did not breach the policy." Meeker later filed a motion for reconsideration, which the trial court denied.

Meeker now appeals.

[4] Meeker does not assign error on appeal to the trial court's dismissal of her claims under the Consumer Protection Act, chapter 19.86 RCW, and the Insurance Fair Conduct Act, RCW 48.30.010- .015.

II

Meeker asserts that the trial court erred by granting Trumbull Insurance's motion for summary judgment and by denying her motion for summary judgment. This is so, Meeker contends, because Trumbull Insurance had a duty to defend the Orrs in her lawsuit against them. Such a duty arose, according to Meeker, because her first amended complaint conceivably alleged that the Orrs' conduct, as defined in their homeowner's insurance policy through Trumbull Insurance, caused her "bodily injury" and "property damage" and was, therefore, covered by that policy. We disagree.

A

We "review a summary judgment ruling de novo and consider the same evidence heard by the trial court, viewing that evidence in a light most favorable to the party responding to the summary judgment [motion]." Slack v. Luke, 192 Wn. App. 909, 915, 370 P.3d 49 (2016) (citing Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)). "Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Quadrant Corp. v. Am. States Ins. Co., 154 Wn.2d 165, 171, 110 P.3d 733 (2005).

An insurer's duty to defend an insured "arises at the time an action is first brought" against the insured. Truck Ins. Exch. v. VanPort Homes, Inc., 147 Wn.2d 751, 760, 58 P.3d 276 (2002). An insurer's duty to defend is triggered if its insurance policy with the insured "*conceivably covers* the allegations in the complaint" brought against the insured. Woo v. Fireman's Fund Ins. Co., 161

Wn.2d 43, 53, 164 P.3d 454 (2007). Accordingly, in order to determine whether an insurer has a duty to defend, we begin by reviewing "the 'eight corners' of the insurance contract and the underlying complaint." Expedia, Inc. v. Steadfast Ins. Co., 180 Wn.2d 793, 803, 329 P.3d 59 (2014).[5]

In reviewing a complaint against an insured, this court has stated that

> [t]he insurer must defend if "on the face of the complaint and the insurance policy, there is an issue of fact or law that could conceivably result in coverage under the policy." Xia[v. ProBuilders Specialty Ins. Co.], 188 Wn.2d [171,]182[, 400 P.3d 1234 (2017)]. "[I]f there is any reasonable interpretation of the facts or the law that could result in coverage, the insurer must defend." Am. Best Food[, Inc. v. Alea London, Ltd.], 168 Wn.2d [398,]405[, 229 P.3d 693 (2010)].
>
> When reviewing a complaint, we must give the insured the benefit of the doubt in determining the duty to defend, and a duty to defend will be found unless it is clear from the face of the complaint that the policy does not provide coverage. Woo, 161 Wn.2d at 64. If the complaint is ambiguous, it must be construed liberally in favor of triggering a duty to defend. Expedia, 180 Wn.2d at 803. In addition, any "legal ambiguity" must be resolved in favor of the insured. Am. Best Food, 168 Wn.2d at 411. The Supreme Court has expressly rejected the notion that an insurer can deny a duty to defend based on a questionable or equivocal interpretation of the law. Id. at 411-13; Woo, 161 Wn.2d at 60. An insurer cannot "[rely] on an equivocal interpretation of case law to give *itself* the benefit of the doubt rather than its insured." Woo, 161 Wn.2d at 60.
>
> An insurer's duty to defend applies to any allegation in a complaint that may result in a covered liability, even if other claims in the complaint are clearly outside the scope of coverage. See Grange Ins. Ass'n v. Roberts, 179 Wn. App. 739, 752, 320 P.3d 77 (2013) ("The obligation [to defend] encompasses any claim that might be covered under any permissible construction of the policy").

Webb v. USAA Cas. Ins. Co., 12 Wn. App. 2d 433, 445-46, 457 P.3d 1258 (2020) (alterations in original).

[5] We may, in certain circumstances, consider facts extrinsic to the complaint in determining whether an insurer has a duty to defend an insured. Expedia, 180 Wn.2d at 804. Given our disposition of this matter, we need not do so here.

In reviewing an insured's insurance policy with an insurer, "[i]nterpretation of an insurance contract is a matter of law." McDonald v. State Farm Fire & Cas. Co., 119 Wn.2d 724, 730, 837 P.2d 1000 (1992). In so doing,

> the entire contract must be construed together so as to give force and effect to each clause. If the language in an insurance contract is clear and unambiguous, the court must enforce it as written and may not modify the contract or create ambiguity where none exists. However, if a policy provision on its face is fairly susceptible to two different but reasonable interpretations, the policy is ambiguous and the court must attempt to discern and enforce the contract as the parties intended.

Transcontinental Ins. Co. v. Wash. Pub. Utils. Dists'. Util. Sys., 111 Wn.2d 452, 456-57, 760 P.2d 337 (1988) (citations omitted). "An interpretation which gives effect to all of the words in a contract provision is favored over one which renders some of the language meaningless or ineffective." Seattle-First Nat'l Bank v. Westlake Park Assocs., 42 Wn. App. 269, 274, 711 P.2d 361 (1985) (citing Wagner v. Wagner, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980)).

"'If terms are defined in a policy, then the term should be interpreted in accordance with that policy definition. *If terms are not defined, then they are to be given their "plain, ordinary, and popular" meaning.*'" Polygon Nw. Co. v. Am. Nat'l Fire Ins. Co., 143 Wn. App. 753, 767, 189 P.3d 777 (2008) (emphasis added) (quoting Kitsap County v. Allstate Ins. Co., 136 Wn.2d 567, 576, 964 P.2d 1173 (1998)). Indeed, "[t]erms undefined by the insurance contract should be given their ordinary and common meaning, not their technical, legal meaning." Allstate Ins. Co. v. Peasley, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). Moreover, insurance policies should be "construed as a whole, and 'should be

given a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.'" Grange Ins. Co. v. Brosseau, 113 Wn.2d 91, 95, 776 P.2d 123 (1989) (quoting Sears v. Grange Ins. Ass'n, 111 Wn.2d 636, 638, 762 P.2d 1141 (1988)). An insurance "'policy cannot be stretched to the point where it would cover . . . problems'" not within the policy's protection. Nw. Farm Bureau Ins. Co. v. Roberts, 52 Wn. App. 888, 891, 765 P.2d 328 (1988) (quoting E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co., 106 Wn.2d 901, 908, 726 P.2d 439 (1986)).

B

Meeker contends that the damages that she alleged in her complaint were covered by the Orrs' homeowner's insurance policy with Trumbull Insurance. This is so, Meeker avers, because her complaint conceivably alleged causes of action for damages due to "bodily injury" and "property damage" as set forth in that insurance policy. These contentions are unavailing.

Again, the personal liability coverage provision of the Orrs' homeowner's insurance policy stated that Trumbull Insurance would provide coverage to the Orrs "[i]f a claim is made or a suit is brought" against them "for damages because of 'bodily injury' or 'property damage.'" As defined therein,

> "Bodily injury" means bodily harm, sickness or disease, except a disease which is transmitted by an "insured" through sexual contact. "Bodily injury" includes required care, loss of services and death resulting from covered bodily harm, sickness or disease.
> . . . .
> "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

Therefore, in order for Meeker to establish Trumbull Insurance's duty to defend, her complaint must conceivably allege that she experienced "bodily injury" or "property damage." As discussed below, her complaint fails to conceivably allege either type of injury.

1

Meeker first contends that her complaint conceivably alleges that the Orrs caused her a "bodily injury" as covered by Trumbull Insurance's policy with the Orrs. Meeker is incorrect.

The insurance policy does not define "bodily." Therefore, we must determine the plain, ordinary, and popular meaning of "bodily." Polygon Nw. Co., 143 Wn. App. at 767 ("If [insurance policy] terms are not defined, then they are to be given their 'plain, ordinary, and popular' meaning." (internal quotation marks omitted) (quoting Kitsap County, 136 Wn.2d at 576)). To do so, we resort to Webster's Dictionary, which defines "bodily" as

> **1 :** having a body or a material form : PHYSICAL, CORPOREAL . . . **2 a :** of or relating to the body . . . **b :** concerning the body . . .
> **SYN** PHYSICAL, CORPOREAL, CORPORAL, SOMATIC: these words agree in referring to the human body and differ so little that they are often interchangeable. BODILY contrasts with *mental* or *spiritual*.

WEBSTER'S THIRD NEW INT'L DICTIONARY 245 (2002). Accordingly, the plain, ordinary, and popular meaning of "bodily" can be characterized as that which has to do with the physical and corporeal aspect of a body and stands in contrast with that which is mental or spiritual.

This understanding of "bodily" as limited to the physical or corporeal is consistent with Washington state appellate decisional authority interpreting the

meaning of that word as it appears in an insurance policy. See, e.g., Daley v. Allstate Ins. Co., 135 Wn.2d 777, 784-85, 958 P.2d 990 (1998) ("'Bodily injury' is defined in the Allstate [underinsured motorist] policy as 'bodily injury, sickness, disease or death.' . . . The clear majority of states, including Washington, have held that the term 'bodily injury' does not include damages for purely emotional injuries" (footnote omitted)); E-Z Loader, 106 Wn.2d at 908 (coverage for "bodily injury" "contemplated actual bodily injury, sickness or disease resulting in physical impairment, as contrasted to mental impairment"); Roberts, 52 Wn. App. at 891 (policy defining bodily injury as "physical harm, sickness or disease to a person" does not provide coverage for defending a claim of negligent infliction of emotional distress).

As set forth above, Meeker's first amended complaint alleged that she "assumed the burden of caring for the [horse]" and "[b]etween 2011 and 2016, [she] expended over $100,000 in expenses that included, without limitation, veterinary care, boarding, feed, and training of the [horse]." Meeker also alleged that the Orrs unlawfully took possession of the horse in question.

In the context of those facts, Meeker alleged the following damages: "economic loss in an amount to be established at the time of trial; emotional distress; mental pain and suffering; and loss of consortium," "injury in fact," damages arising from "directing and paying for the cost of the care of the [horse], including extensive and expensive veterinary care," "ongoing injury" by reasonably relying on certain of the Orrs' conduct to her detriment, the Orrs obtaining a "benefit" at her "expense," damages resulting from the Orrs giving her

false information in a business transaction and her justifiable reliance on such information, and "special and general damages."

The foregoing allegations of damages—emotional distress, mental pain and suffering, loss of consortium, paying for the cost of the horse's care—do not reasonably constitute "bodily injury" covered by that insurance policy. Rather, these specific damages constitute allegations of emotional, mental, or financial injury. As set forth above, the plain, ordinary, and popular meaning of bodily injury does not reasonably encompass those types of injuries. WEBSTER'S, supra, at 245; Daley, 135 Wn.2d at 784-85; E-Z Loader, 106 Wn.2d at 908; Roberts, 52 Wn. App. at 891. Moreover, an average person purchasing insurance would not give "bodily" a meaning as far-ranging as the meaning desired by Meeker. As noted above, an insurance policy "cannot be stretched to the point where it would cover" problems not within the policy's protection. Roberts, 52 Wn. App. at 891 (quoting E-Z Loader, 106 Wn.2d at 908). Thus, Meeker's specific allegations of damages in her amended complaint do not conceivably allege a bodily injury covered by the policy at issue.

Additionally, Meeker alleged general damages, including injury in fact, ongoing injury, and expense. Lacking specificity as to the injury in question, these are examples of general damages, which are

> [d]amages that the law presumes follow from the type of wrong complained of; specif., compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved. • General damages do not need to be specifically claimed.

BLACK'S LAW DICTIONARY 489 (12th ed. 2024).

As set forth above, Meeker's complaint alleged the following causes of action: replevin, declaratory judgment, breach of implied-in-fact contract, promissory estoppel, equitable estoppel, unjust enrichment, and negligent misrepresentation.

The causes of action set forth in Meeker's complaint do not conceivably allege a "bodily injury" covered by the insurance policy at issue. As an initial matter, the legal theories identified in her complaint do not logically imply bodily injury and the damages that follow from such causes of action are not presumed to be damages for bodily injury. To the contrary, her causes of action sound in equity, loss of possession, and contract. Furthermore, her negligent misrepresentation allegation, although sounding in tort, is specifically predicated on damages arising from a "business transaction" with the Orrs, rather than on physical injury arising therefrom.[6]

Thus, Meeker's allegations of general damages do not conceivably allege a bodily injury covered by the insurance policy at issue. Accordingly, Meeker's complaint fails to properly allege a "bodily injury" covered by the insurance policy at issue.[7]

---

[6] Even if Meeker had only generally alleged that she was damaged as part of her negligent misrepresentation cause of action, that general allegation would also fail to conceivably allege a "bodily injury." Indeed, this court has expressly declined to adopt a theory of negligent misrepresentation causing physical harm as an existing basis for a cause of action of negligent misrepresentation. Richland Sch. Dist. v. Mabton School Dist., 111 Wn. App. 377, 389, 45 P.3d 580 (2002) (declining to adopt section 311 of the Restatement (Second) of Torts—which "imposes liability on anyone who gives false information to another who reasonably relies on that information, and physical harm results" because "Washington has never adopted *Restatement (Second) of Torts* section 311 and no published case has discussed its applicability to Washington common law"). Meeker does not present argument or authority in support of adopting such a theory or in an attempt to establish legal ambiguity surrounding that theory.

[7] Meeker also asserts that, even if she did not conceivably allege "bodily injury" in her complaint, Trumbull still had a duty to defend the Orrs. This is so, Meeker contends, because the

Meeker next contends that her complaint conceivably alleges that the Orrs caused her "property damage" as covered by Trumbull Insurance's policy with the Orrs. Meeker is, again, incorrect.

To reiterate, the Orrs' insurance policy with Trumbull Insurance defined "Property damage" as "physical injury to, destruction of, or loss of use of tangible property." Meeker does not contend that the Orrs' taking possession of the horse caused physical injury to the horse nor that the Orrs destroyed the horse. Rather, Meeker avers that her complaint and amended complaint alleged that the Orrs' taking possession of and using the horse constituted a "loss of use of tangible property" covered by the policy in question.

The policy does not define "loss," "use," or "property." Accordingly, we give those terms their plain, ordinary, and popular meaning. Polygon Nw., 143 Wn. App. at 767 (quoting Kitsap County., 136 Wn.2d at 576). And, again, "[a]n interpretation which gives effect to all of the words in a contract provision is favored over one which renders some of the language meaningless or ineffective." Seattle-First Nat'l Bank, 42 Wn. App. at 274 (citing Wagner, 95 Wn.2d at 101).

---

insurance policy's personal liability coverage provision, set forth above, obligated Trumbull to defend the Orrs against lawsuits "even if the suit is groundless, false or fraudulent."

Meeker misreads the personal liability coverage provision. The predicate for Trumbull Insurance's obligation to defend the Orrs from a groundless, false, or fraudulent lawsuit is a complaint being filed against the Orrs that conceivably alleges a "bodily injury" or "property damage" arising from an "occurrence." As discussed herein, Meeker did not file a complaint that conceivably alleged such injury or damage. Thus, this assertion also fails.

With regard to "loss," our Supreme Court has indicated that loss "has many definitions, but is most pertinently defined as 'the act or fact of losing[;] failure to keep possession[;] deprivation,' and 'the harm or privation resulting from losing or being separated from something.'" Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC, 200 Wn.2d 315, 338, 516 P.3d 796 (2022) (alterations in original) (quoting WEBSTER'S, supra, at 1338).

"Use" is defined as "to put into action or service: have recourse to or enjoyment of : EMPLOY," and "to expend or consume by putting to use." WEBSTER'S, supra at 2523-24. We have defined the word "use" to also mean, "among other things, 'the act . . . of using something; . . . the privilege or benefit of using something.'" Prudential Prop. & Cas. Ins. Co. v. Lawrence, 45 Wn. App. 111, 118, 724 P.2d 418 (1986) (alterations in original) (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY (1969)).

"Property" is defined, in pertinent part, as

> **2 a :** something that is or may be owned or possessed . . . **b :** the exclusive right to possess, enjoy, and dispose of a thing **:** a valuable right or interest primarily a source or element of wealth . . . **c :** something to which a person has a legal title.

WEBSTER'S, supra, at 1818. Therefore, as pertinent here, the plain, ordinary, and popular meaning of "loss of use of property" involves deprivation of the ability to put something that someone owned or possessed into action or service or deprivation of the ability to consume something once owned or possessed.

Given this definition, Meeker's amended complaint must allege that the Orrs taking possession of the horse deprived her of the ability to put the horse

into some action or service or that she was deprived of the ability to employ or consume some resources that she had purchased for the horse.

As set forth above, Meeker's first amended complaint alleged the following facts: she agreed to "assum[e] the burden of caring for the [horse]," she "expended over $100,000 in expenses that included, without limitation, veterinary care, boarding, feed, and training of the [horse]." She also alleged that, "[i]n late February 2016, [James Orr] took the [horse] and hauled the horse to an undisclosed location, without [her] permission," "[t]he approximate market value of the [horse] is between $10,500 and $15,000," and she incurred damages of "economic loss in an amount to be established at the time of trial; emotional distress; mental pain and suffering; and loss of consortium."

Meeker's amended complaint does not conceivably allege a loss of use of property covered by the policy at issue. First, her amended complaint did not set forth a specific use of the horse that she had lost due to the Orrs' alleged conduct. Rather, she merely alleged injuries that are associated with loss of possession of the horse.

Moreover, in order to give meaning to the policy's language setting forth "loss of use of property," it follows that the word "loss" in that section does not modify the word "property" but, rather, modifies "use of property." Indeed, without invoking legal definitions, an average person looking for insurance coverage would reasonably interpret "loss of use of property" to mean something different than "loss of property," with the former signifying an inability to put one's

property to a desired action or service, and the latter signifying a deprivation of the property itself.

Furthermore, although she alleged a claim of conversion, which necessarily results in a loss of possession, she does not allege a loss of use arising from that loss of possession. Moreover, her remaining causes of action, discussed herein, are predicated in equity, tort, and contract. The damages that follow from those causes of action are not presumed to be damages for loss of use of property.

Finally, although Meeker's amended complaint alleged that she had spent considerable sums in purchasing resources for the horse in the past, this does not allege a loss of use of property conceivably covered by the policy. Indeed, she has not established that she was deprived of an opportunity to employ those resources toward another use or that she had purchased resources that she was unable to then employ due to the Orrs' actions in this matter. Given that, Meeker does not establish that her amended complaint alleged a loss of use of property conceivably covered by the policy at issue.[8]

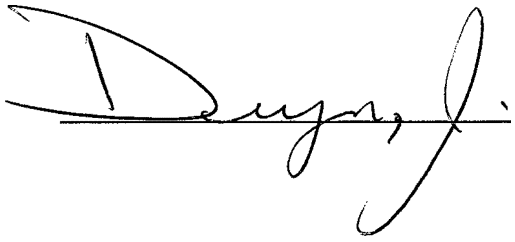
Therefore, Meeker's complaint did not set forth allegations that were conceivably covered by Trumbull Insurance's policy with the Orrs. Thus,

[8] Nevertheless, Meeker relies on our decision in Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC, 18 Wn. App. 2d 600, 492 P.3d 843 (2021), aff'd, 200 Wn.2d 315, 516 P.3d 796 (2022), for the proposition that physical loss and loss of use are synonymous.

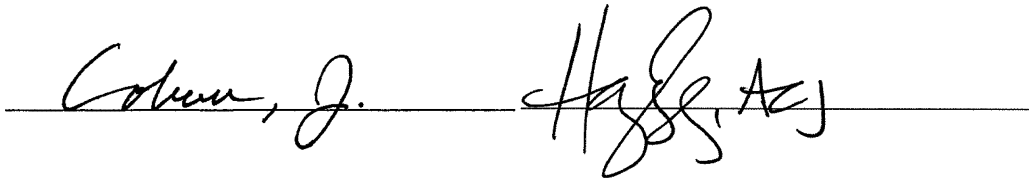
Meeker's reliance is unavailing. Neither we—nor the high court in the resulting appeal—held that "loss of use" and "physical loss" are coterminous. Rather, the matter therein regarded whether "physical loss" *encompassed* "loss of use." Both we and the high court held that, unless a loss of use arose out of—or was a result of—a physical loss, a physical loss did not encompass a loss of use. Seattle Tunnel Partners, 200 Wn.2d at 343-44; Seattle Tunnel Partners, 18 Wn. App. 2d at 621. Because our decisional authority has not held that "loss of use" and "physical loss" are coterminous, and because Meeker's complaint does not conceivably allege a loss of use arising out of—or as a result of—physical injury to the horse in question, Meeker's claim fails.

Trumbull Insurance did not have a duty to defend the Orrs from Meeker's suit.[9] Accordingly, the trial court did not err in its orders in response to the parties' summary judgment motions.[10]

Affirmed.



WE CONCUR:



[9] Because Trumbull Insurance did not have a duty to defend, we need not address Meeker's assertion that the insurance company's decision not to defend the Orrs against her lawsuit was made in bad faith.

[10] Meeker also assigns error to the trial court's denial of her motion for reconsideration. However, her appellate briefing does not provide us with persuasive argument, citation to legal authority, citation to the record, or identification of an issue associated with that assignment of error. RAP 10.3(a)(5), (6). She thus did not adequately present this alleged error for appellate review. Accordingly, we decline to consider it.

Appendix B

JUDGE AIMÉE SUTTON
Hearing date: Friday, July 26, 2019 at 9:00 a.m.
With Oral Argument

FILED
2019 AUG 06 11:49 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 16-2-06486-8 KNT

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

MARIANNE MEEKER, an individual, Plaintiff, vs. JAMES H. ORR and LEONA ORR, individually and the marital community composed thereof; LIBERTY MUTUAL INSURANCE COMPANY AND/OR LIBERTY INSURANCE COMPANY, foreign insurers and members of the Liberty Mutual group of companies; TRUMBULL INSURANCE COMPANY, a foreign insurer and a member of the Hartford Fire and Casualty Group of Companies, Defendants.	No. 16-2-06486-8 KNT ORDER ON PLAINTIFF'S AND INSURERS' CROSS-MOTIONS FOR SUMMARY JUDGMENT [Clerk's Action Required]

THIS MATTER having come on for hearing before the undersigned judge on four dispositive or partially dispositive motions and/or cross-motions between the parties, and the Court having reviewed the following pleadings:

1. Plaintiff's Motion for Partial Summary Judgment;

WILSON SMITH COCHRAN DICKERSON
901 Fifth Avenue, Suite 1700
Seattle, Washington 98164
Telephone: (206) 623-4100
Fax: (206) 623-9273

2. Declaration of Timothy R. Gosselin in Support of Plaintiff's Motion for Partial Summary Judgment (and exhibits thereto);

3. Trumbull Insurance Company's Opposition to Plaintiff's Motion for Summary Judgment;

4. Liberty Defendants' Response to Plaintiff's Motion for Partial Summary Judgment;

5. Plaintiff's Reply in Support of Plaintiff's Motion for Partial Summary Judgment;

6. Defendant Trumbull Insurance Company's Motion for Summary Judgment;

7. Declaration of Miles J.M. Stewart in Support of Defendant Trumbull Insurance Company's Motion for Summary Judgment (and exhibits thereto);

8. Plaintiff's Response to Trumbull's Motion for Summary Judgment;

9. Trumbull Insurance Company's Reply in Support of its Motion for Summary Judgment;

10. Defendants Liberty Mutual Insurance Company and Liberty Insurance Company's Motion for Summary Judgment;

11. Declaration of Katharine Houlihan in Support of Liberty Defendants' Motion for Summary Judgment (and exhibits thereto);

12. Plaintiff's Response to Liberty's Motion for Summary Judgment;

13. Declaration of Leona Orr;

14. Liberty Mutual Insurance Company's Reply in Support of Liberty Defendants' Motion for Summary Judgment;

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901 FIFTH AVENUE, SUITE 1700
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15. Declaration of Donna Fromm in Support of Liberty Defendants' Reply Supporting Summary Judgment (and exhibits referenced therein);

16. Declaration of John Silk in Support of Liberty Defendants' Reply Supporting Summary Judgment (and exhibit thereto);

17. Defendant Orrs' Reply to Plaintiff's Motion for Partial Summary Judgment; Co-Defendant Trumbull Insurance Company's Motion for Summary Judgment; and Co-Defendant Liberty Mutual Insurance Company's Motion for Summary Judgment;

18. Various Appendixes of Non-Washington Authorities submitted by the moving parties and the cases attached thereto; and

19. The pleadings and files herein;

And having heard argument of counsel,

IT IS HEREBY ORDERED as follows:

1. Plaintiff's Motion for Partial Summary Judgment (against Defendants Trumbull and Liberty) is DENIED;

2. Defendant Trumbull Insurance Company's Motion for Summary Judgment is GRANTED and the Court finds there was no coverage under the Trumbull policy, Trumbull did not breach the policy, there was no bad faith or estoppel, and no viable claims under Washington's Consumer Protection Act or Washington's Insurance Fair Conduct Act;

3. Defendant Liberty Mutual Insurance Company and Liberty Insurance Company's Motion for Summary Judgment is GRANTED and the Court finds that the Orrs never tendered a claim to Liberty, there was no coverage under the Liberty policy, Liberty did not breach the policy, there was no bad faith or estoppel, and no viable claims under Washington's Consumer Protection Act or Washington's Insurance Fair Conduct Act;

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4. All claims against Defendants Trumbull and Liberty are hereby dismissed with prejudice.

DATED this 6th day of August, 2019.

HONORABLE JUDGE AIMÉE SUTTON

Presented by:

s/John M. Silk
John M. Silk, WSBA #15035
Christopher Pierce-Wright, WSBA #52815
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Approved as to form:

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By *s/Matt Adams*
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By *s/James D. McBride, II*_____
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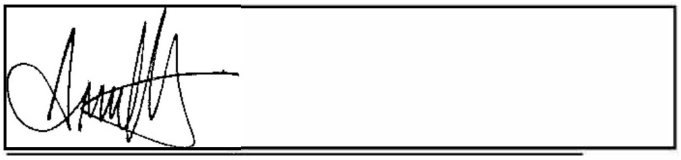
King County Superior Court
Judicial Electronic Signature Page

Case Number: 16-2-06486-8
Case Title: MEEKER VS ORR ET AL

Document Title: ORDER GRANTING SUMMARY JUDGMENT

Signed by: Aimee Sutton
Date: 8/6/2019 11:49:23 AM



Judge/Commissioner: Aimee Sutton

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GOSSELIN LAW OFFICE PLLC

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Appellate Court Case Number:	81195-9
Appellate Court Case Title:	Marianne Meeker, Appellant v. James H. Orr, et ux., et al., Respondents

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