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Washington State Supreme Court

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No. 91510-5

(Court of Appeals No. 32109-6-III)

SUPREME COURT OF THE STATE OF WASHINGTON

PATRIOT GENERAL INSURANCE COMPANY, a foreign corporation,
Petitioner

v.

JORGE GUTIERREZ and JANE DOE GUTIERREZ, and their marital
community, and JAVIER GUTIERREZ,
Respondents,

**PATRIOT GENERAL INSURANCE COMPANY'S REPLY TO
JORGE GUTIERREZ'S ANSWER TO PETITION FOR REVIEW**

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In his answer to Patriot General Insurance Company's petition, respondent Jorge Gutierrez asks that if this Court grants Patriot's petition, then it should also grant review regarding whether the Patriot policy's definition of insured violates RCW 48.22 or public policy. While Patriot strongly disagrees with Jorge¹ on the merits of these issues, it agrees that review of those issues is justified.

1. Review is appropriate under RAP 13.4(b)(4) because interpretation of RCW 48.22.005 and RCW 48.22.030 presents an issue of substantial public interest.

If this Court accepts review of the issues in Patriot's petition, it should also accept review of whether the definition of "insured" in RCW 48.22.005 applies to underinsured motorist (UIM) policies issued under RCW 48.22.030. This presents an issue of substantial public interest because it affects the scope of coverage under UIM policies issued throughout the state.

Jorge maintains that the definition of "insured" in RCW 48.22.005(5), which includes a named insured's relatives residing in the same household, applies to the UIM statute, RCW 48.22.030, and thus all UIM policies issued in Washington. Although no Washington appellate case directly addresses this issue, Washington courts have long held that

¹ Because the respondents share a surname, this reply refers to Jorge Gutierrez as "Jorge." No disrespect is intended.

the UIM statute “does not mandate any particular scope for the definition of who is an insured in a particular automobile insurance policy”² and that parties to an insurance policy may determine the scope of who is insured.³

The definition of “insured” in RCW 48.22.005(5) does not modify RCW 48.22.030 because the latter statute does not use the term “insured” standing alone. Rather, RCW 48.22.030(2) uses the terms “person insured thereunder” and “named insured.” If the legislature had intended “insured” in RCW 48.22.005(5) and “persons insured thereunder” in RCW 48.22.030(2) to mean the same thing, it would have used the same term in both statutes.⁴ Giving both terms the same meaning would deviate from

² *Smith v. Cont'l Cas. Co.*, 128 Wn.2d 73, 83, 904 P.2d 749 (1995); *Farmers Ins. Co. v. Miller*, 87 Wn.2d 70, 75, 549 P.2d 9 (1976).

³ *Federated Am. Ins. Co. v. Raynes*, 88 Wn.2d 439, 443, 563 P.2d 815 (1977), *abrogated in other part by statute as stated in Vadheim v. Cont'l Ins. Co.*, 107 Wn.2d 836, 844, 734 P.2d 17 (1987); *Vasquez v. Am. Fire & Cas. Co.*, 174 Wn. App. 132, 138, 298 P.3d 94 (citing *Smith*, 128 Wn.2d at 83), *review denied*, 178 Wn.2d 1006, 308 P.3d 641 (2013); *see also Wheeler v. Rocky Mountain Fire & Cas. Co.*, 124 Wn. App. 868, 874, 103 P.3d 240 (2004) (stating that insurer may choose not to include certain persons in definition of “insured” in UIM policies); *Fin. Indem. Co. v. Keomaneethong*, 85 Wn. App. 350, 353, 931 P.2d 168 (1997) (“[W]hen the question revolves around the initial extension of coverage, that is, the definition of who is and is not an insured, public policy is not violated so long as insured persons are defined the same in the primary liability and UIM sections of the policy.”); *Dairyland Ins. Co. v. Uhls*, 41 Wn. App. 49, 53, 702 P.2d 1214 (1985) (“[T]he parties may agree to a narrow definition of insured so long as that definition is applied consistently throughout the policy[.]”) (quoting *Raynes*, 88 Wn.2d at 444).

⁴ *See Whatcom Cnty. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

the fundamental rule that statutes must be interpreted so that all the language used is given effect, with no portion rendered meaningless or superfluous.⁵

The legislative history of RCW 48.22.005 also makes clear that that statute applies only to personal injury protection (PIP) coverage, and not to UIM coverage. The bill passed in 1993 that was later codified in part as RCW 48.22.005 was entitled “Motor Vehicle Insurance—Personal Injury Protection Benefits.”⁶ That bill makes many references to PIP, but does not once mention “underinsured” or “UIM.”⁷ Moreover, the House Bill Report describes the bill as one “[r]egulating the mandatory offering of personal injury protection insurance.”⁸ The Report makes no mention of UIM. A 2003 amendment to RCW 48.22.005 also pertained exclusively to PIP coverage.⁹ Moreover, not one of the scores of cases interpreting the UIM statute¹⁰ relies on RCW 48.22.005 to define “insured” or any similar term in the UIM statute.

⁵ *Id.*

⁶ CP 36.

⁷ CP 36–39.

⁸ CP 41.

⁹ CP 44–51.

¹⁰ The annotations to RCW 48.22.030 have 82 sections.

2. Review is justified under RAP 13.4(b)(4) because the scope of the public policy expressed in RCW 48.22.030 presents an issue of substantial public interest.

The Court should also accept review of the issue of whether the Patriot policy's definition of insured comports with the public policy embodied in RCW 48.22.030.

This Court has held that public policy prohibits exclusions based on an injured party's status. In *Tissell v. Liberty Mutual Insurance Co.*,¹¹ this Court invalidated the so-called "family member exclusion" as against public policy because it was directed at a class of victims, rather than conduct that affected the insurer's risk. *Tissell* explained that, although an insurance company may define who is insured, once it has decided to insure a driver it cannot deny coverage based on the identity of a victim.¹²

While the UIM statute prohibits certain exclusions, it permits insurers and insureds to define the scope of who is insured by a UIM policy. Washington courts have long held that the UIM statute does not mandate any particular scope for the definition of who is an insured under an automobile policy.¹³ As explained in the petition, Washington courts

¹¹ 115 Wn.2d 107, 795 P.2d (1990).

¹² *Id.* at 108; *see also Mutual of Enumclaw Ins. Co. v. Wiscomb*, 97 Wn.2d 203, 208, 643 P.2d 441 (1982) (holding that insurer that agrees to indemnify against damage caused by the insured's negligence may not exclude "an entire class of innocent victims").

¹³ *Farmers Ins. Co. v. Miller*, 87 Wn.2d 70, 75, 549 P.2d 9 (1976).

consistently distinguish between grants of coverage and exclusions. The critical language in the Patriot policy defined who was covered, rather than excluding persons who came within the coverage grant. It therefore complied with public policy as stated by this Court.

Dated this 21st day of May, 2015.



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