SMITH FREED & EBERHARD P.C.

OREGON LAW UPDATE

case in point...

UIM Coverage: Determining Whether There Were One or Two Accidents

From the desk of Joshua Hayward: In a case update from 2012, Wright v. Turner, 253 Or App 18, 289 P3d 309 (2012), we reviewed a case in which the Court of Appeals discussed how the court determines the number of accidents for purposes of determining the amount of available coverage under an Underinsured Motorist Claim ("UIM"). The Court of Appeals ruled there was only one accident as a matter of law. In a recent decision by the Oregon Supreme Court in the same case, the Court ruled there was some evidence that there were two separate accidents and therefore two separate policy limits could apply. Read on to find out why.

Claims Pointer: When determining whether there are one or two "accidents" for purposes of determining potential exposure under an insurance contract, there must be evidence that there is more than one event, happening, or occurrence. In other words, there must be evidence that the original event was interrupted in some way – such as by time or replaced by another event – permitting a jury to conclude there was more than one distinct event, happening, or occurrence, and therefore more than one "accident" under an insurance policy.

Wright v. Turner, CC 060403958, 2014 WL 662164 (Or. Feb. 20, 2014)

Wright was a passenger in a truck driven by her friend, Lorenz, when a sedan driven by Turner suddenly lost control and collided with the front end of Wright's truck. The two vehicles separated and collided again before both vehicles slowed to a stop against a center barrier on the highway median. Lorenz pulled herself out of the truck through the driver's window as the door was pinned shut against the barrier and walked to Turner's sedan to check on its occupants. She noticed they needed medical attention so she returned to Wright's truck to get her cell phone and call 911. While standing outside the truck, Lorenz leaned into the truck and saw her purse on the floorboard. She asked Wright to reach over and grab her purse. Wright unbuckled her seatbelt and proceeded to lean over to retrieve the purse when a sports utility vehicle driven by Oliver struck the back end of Wright's truck. The impact pushed Wright's truck into Turner's sedan. The collision dragged Lorenz forward and knocked Wright about the truck's cab. Both impacts caused Wright personal injuries.

Wright filed a lawsuit against Turner and Oliver seeking recovery for her injuries. Wright settled with Turner and Oliver for a total of $175,000. Wright also sought UIM benefits to the extent the other drivers were underinsured. The relevant insurance policy limited such benefits to $500,000 per accident. Wright and the insurer providing UIM coverage disputed the amount of her damages and the extent of defendant's coverage.

At trial, Wright claimed there was two accidents and sought the full UIM policy limits of $500,000 per accident, or $1 million aggregate. The insurer requested that the number of accidents needed to be established by the jury to determine how much, if any, the at-fault drivers were underinsured. The trial court rejected the insurer's request deferring the issue of the number of accidents for a post-verdict determination. The jury determined Wright's total damages were $979,540. The insurer objected to Wright's proposed general judgment in that amount minus the $175,000 offset from Turner and Oliver settlement. The insurer claimed the verdict was insufficient to determine the insurer's total liability because there was no determination whether there were one or two accidents and therefore whether two policy limits were available. Over the insurer's objection, the trial court entered the general judgment proposed by Wright and the insurer appealed.

On appeal, the insurer argued that the trial court erred because Wright failed to prove that more than one accident occurred; therefore, only one $500,000 policy limit applied. Wright continued to argue that two accidents occurred and that two policy limits were available. The Court of Appeals referred to the language of the insurance policy and determined that qualifying language stating that $500,000 is the most the insurer would pay per accident regardless of the number of vehicles involved in the accident made clear that multiple vehicles with potentially tortious impacts could be involved in one accident. The court concluded as a matter of law that Wright failed to prove that two accidents occurred that were separated in space

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and time and that the two collisions arose from distinct causation. Since evidence was insufficient to prove that two accidents occurred, only one accident occurred and only a single policy limit of $500,000 in UIM coverage applied.

Wright appealed. The Oregon Supreme Court held that because the contractual provision at issue is statutorily required, the legislature's intention of enacting that statute controls the meaning of the term "accident" rather than its contractual interpretation. The Court then interpreted "accident" in accordance with its plain meaning and determined that one "accident" means one event, happening, or occurrence. Finally, the Court held that whether more than one accident occurred is ordinarily a question of fact reserved for the fact-finder. Here, Wright presented evidence that was at least sufficient to give rise to a jury question on whether one or two accidents occurred. Therefore, the trial court erred in not presenting that question to the jury. The case was reversed and remanded to the circuit court for further proceedings.

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