

OREGON LAW UPDATE

UIM Coverage: Determining Whether There Were One or Two Accidents

case in point ...

From the Desk of Jeff Eberhard: In this UIM coverage dispute, the plaintiff contended two accidents occurred and that two policy limits applied. The insurer argued that only one accident occurred and only one policy limit applied. This case discusses how the court determined the number of accidents and the number of available policy limits.

Claims Pointer: When claiming two accidents occurred instead of one, the plaintiff must prove that the collisions were separated in space and time and that each collision arose from distinct causation. If the evidence is insufficient to prove two accidents occurred, only one accident occurred and a single UIM policy limit applies.

Wright v. Turner, et al., in the Court of Appeals of the State of Oregon, A144126, --- P3d ---- (October 24, 2012).

Martha Wright driven by her friend Lorenz was travelling northbound on Interstate 5 in the Siskiyou Pass when John Turner suddenly lost control of the sedan he was driving 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 since 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 Sherri Oliver struck the back-end of Wright's truck. The impact pushed Wright's truck into Turner's sedan. The collision drug 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 also sought UIM benefits to the extent the other

drivers were underinsured. Wright settled with Turner and Oliver for a total of \$175,000. However, Wright and the insurer providing UIM coverage disputed the amount of her damages and the extent of defendant's coverage.

The insurer requested a jury trial to determine the monetary value of Wright's claims. Wright claimed there were two accidents and sought the full policy limits of \$500,000 per accident. During trial, the number of accidents became an issue when determining the policy limits – were the defendant's liability policy limits \$500,000 because there was only one accident or \$1 million because there were two accidents. The insurer contended that the number of accidents needed to be established to determine: (1) whether Turner was underinsured and if so, by how much, and (2) whether Wright intended to split those and make two \$500,000 claims. The insurer requested the court submit a verdict form to the jury that would apportion damages among the alleged two accidents. The trial court rejected the insurer's request deferring the issue of one versus two accidents for 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. The insurer claimed the verdict was insufficient to determine the insurer's total liability because there was no determination



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whether there were one or two accidents or whether two policy limits were available. Over the insurer's objection, the trial court entered the general judgment and the insurer appealed.

On appeal, the insurer argued that the trial court erred because Wright failed to prove more than one accident occurred; therefore, only one \$500,000 policy limit applied. Wright continued to argue that two accidents occurred and 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 Wright failed to prove two accidents occurred that were separated in space and time and that the two collisions arose from distinct causation. The first collision was not a proximate cause of the second collision; thus, there was only one accident. Since evidence was insufficient to prove two accidents occurred, only one accident occurred and a single policy limit of \$500,000 in UIM coverage applied.



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