

WASHINGTON CASE UPDATE

UIM Coverage: A Broad Interpretation of Injuries “Arising out of” Vehicle Use

From the desk of Kyle Riley: When does an injury “arise out of” vehicle use for UIM coverage purposes?

Claims Pointer: In order to provide a clear rule to determine when an injury “arises out of” vehicle use for the purposes of insurance coverage, the Washington Supreme Court concluded that an injury arises out of vehicle use if there is some causal connection between the use of the vehicle and the resulting injury. A causal connection may be found through some aspect of vehicle use, where neither the vehicle itself nor an attachment of the vehicle directly caused the injury.

case in point...

Kroeber v. GEICO Ins. Co., No 91846-5 (January 14, 2016).

Plaintiff was shot outside a bar by Matthew Atkinson, who opened fire while he was driving an uninsured truck belonging to a friend. Atkinson claimed that he did not intend to injure anyone with his shot; and later claimed he did not know he was shooting where people were standing. There are factual disputes about whether Atkinson’s truck was stopped or in motion at the time he opened fire, and whether he accelerated rapidly away from the scene.

Plaintiff filed a claim with Defendant, GEICO Insurance Company, to recover damages under the UIM coverage provision of her own automobile insurance policy. The relevant parts of the policy provide that GEICO is liable to an insured where the insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle due to bodily injury sustained from an accident. The policy further states that liability of the owner or operator for these damages must arise out of the ownership, maintenance or use of the underinsured motor vehicle. GEICO denied Plaintiff’s claim, asserting that her injuries did not arise out of the use of Atkinson’s truck. Plaintiff sued GEICO, claiming that she was entitled to UIM coverage.

The case was removed to the United States District Court for the Western District of Washington, and the district court found that the shooting constituted an “accident” for purposes of plaintiff’s policy, and that the

vehicle was in use at the time of the shooting. The district court then certified questions to the Washington Supreme Court. We focus on the certified question regarding whether Plaintiff’s injuries, resulting from the shooter’s intentional firing of his gun out of his truck, “arose out of” the use of the underinsured vehicle.

Although the court did not specifically answer whether Plaintiff’s injuries “arose out of” the vehicle use in this case, the Washington Supreme Court established an important, and rather liberal, analysis for determining liability coverage under a UIM policy in these scenarios. According to the court, there must be some causal connection between the use of the vehicle and the resulting injury. A causal connection can exist when the events leading up to an injury involves vehicle use, unless the vehicle is merely the coincidental location or “mere situs” of the accident. Therefore, an injury arises out of vehicle use if some causal connection exists between a condition of, an attachment to, or some aspect of the vehicle’s use and the resulting injury.

In reaching this analysis, the court rejected GEICO’s argument that the test applied in Washington is between ‘but for’ causation and proximate causation, meaning that the vehicle itself or a permanent attachment to the vehicle causally contributed in some way to produce the injury. While the court also rejected Plaintiff’s suggestion for a ‘but for’ analysis, the court indicated that Washington cases have not required the vehicle or permanent attachment to the vehicle to be the direct cause



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of the injury.

The court revealed that finding a causal connection between vehicle use and a gunshot injury is not unique to Washington. Like Oregon, Washington insurance statutes are to be liberally construed for the benefit of the public. According to the court, the purpose of Washington UIM coverage is to protect innocent victims from motorists of underinsured vehicles. With this in mind, the court provided an expansive interpretation of causation, such that a causal connection may be found through some aspect of vehicle use, where the resulting injury is not directly caused by the vehicle or a permanent attachment of the vehicle.



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