

WASHINGTON CASE UPDATE

PIP Coverage Requires Operation of Motor Vehicle

case in point...

From the desk of Kyle Riley: The typical policy provides PIP coverage for bodily injury caused by a motor vehicle accident. When the insured feels sick and pulls over temporarily and sustains injury by passing out and falling onto the street, how do the courts analyze whether PIP coverage applies? Read on to learn more.

Claims Pointer: In this case, the Washington Court of Appeals held that no motor vehicle accident occurred because the insured was not operating his motor vehicle as a motor vehicle when he felt sick, pulled over, and lost consciousness while leaning out of the car to vomit. The case provides a valuable discussion over what it means to operate a motor vehicle as a motor vehicle, a key consideration when

Ramm v. Farmers Insurance Co. of Washington, No. 34542-4-III, Washington Court of Appeals, Div. III (June 6, 2017) (unpublished)

Kelly Ramm (Ramm) was driving with his son in Spokane, WA, when he began to feel nauseous. He turned his vehicle onto a side street and pulled over. The vehicle was placed in park, but the keys remained in the ignition with the engine running. Ramm unbuckled his seatbelt and leaned out the driver's door to vomit onto the road, but he passed out and fell forward onto the pavement, striking his head and sustaining significant injuries. His head and upper body fell outside the vehicle, but his legs and feet remained inside near the pedals.

As a result of the injuries, Ramm accumulated over \$10,000 in medical bills. Ramm submitted a PIP claim under his policy with Farmers Insurance Company of Washington ("Farmers"), which provided that Farmers "will provide the benefits described [in the policy] for bodily injury to each Insured person caused by a motor vehicle accident." Farmers denied coverage, taking the position that under prior Washington case law, a "motor vehicle accident" only occurs when the covered motor vehicle is being operated as a motor vehicle, and a motor vehicle is not being operated as a motor vehicle while parked. Because Ramm sustained his injuries by falling from a parked vehicle, Farmers reasoned that the events leading to those injuries could not be considered a "motor vehicle accident," so Ramm was not entitled to PIP coverage.

Ramm filed suit against Farmers, alleging several claims including breach of contract for failure to pay PIP benefits. Both parties moved for summary judgment on the breach of contract claim, and after a hearing, the trial court granted Farmers' motion, denied Ramm's motion, and dismissed the breach of contract claim. Ramm appealed.

On appeal, the Washington Court of Appeals framed the issue before it as whether Ramm's injuries were caused by a motor vehicle accident as contemplated by the insurance policy. Previously, the Court of Appeals determined in *Farmers Ins. Co. of Wash. v. Grellis* that the term "motor vehicle accident" referred to an incident where one or more vehicles come in forceful contact with another vehicle or a person, causing physical injury. In another case, *Tyrrell v. Farmers Ins. Co. of Wash.*, the Washington Supreme Court further explained that a motor vehicle accident occurs when a motor vehicle is being operated as a motor vehicle, and that a motor vehicle is being operated as a motor vehicle when it is being driven or when it is stopped while being driven. As the Supreme Court explained, if a tree limb were to fall on the motor vehicle while a person was driving or had stopped while driving, that would constitute a "motor vehicle accident," but if a tree limb fell on the car while the car was parked, it would not constitute a "motor vehicle accident."

Ramm argued that the Supreme Court's standard in *Tyrrell* was broader than the Court of Appeals' standard in *Grellis*. The Court of Appeals acknowledged that this argument



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may be persuasive in an unusual case, but the argument did not sway the court for the simple reason that Ramm was not operating the motor vehicle as a motor vehicle when his injury occurred, nor had he merely stopped his vehicle while driving since he pulled the vehicle to a side road and put the transmission in park. The court explained that stopping while driving occurs, for example, when a vehicle stops at a traffic light. In such a circumstance, the driver must keep the vehicle under control by continuously stepping on the brake pedal or taking similar action.

Because Ramm was in no sense operating his vehicle at the time the injuries were sustained, the incident did not qualify for PIP coverage. The trial court's summary judgment order of dismissal was affirmed.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/741497.PDF>

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