



### **Washington Court Of Appeals Reminds Insurers That Ambiguous Insurance Provisions Must Be Resolved In Favor Of the Insured**

**From the desk of Matthew G. Ukishima:** In Washington, insurance companies denying coverage are consistently challenged over ambiguous provisions in policies they issue. When provisions are ambiguous, courts have ruled in favor of the insured. When an underinsured motorist policy (“UIM”) specifically states it will pay compensatory damages for property damage, is it reasonable for an insured purchasing the insurance to interpret compensatory damages to include damages for loss of use, including covering rental car fees? Read on to find out.

**Case Pointer:** In this case revolving around disputed coverage for the reimbursement of rental car fees, the Washington Court of Appeals determined that an insurance provision was subject to two reasonable interpretations and was ambiguous as a matter of law, thus, *must* be construed against the insurer. Accordingly, it reversed the trial court’s denial of the insured’s motion for partial summary judgment. This case should serve as a reminder that, if and when a policy provision is reasonably susceptible to two different meanings, accepting coverage may be the safest route to avoid potential bad faith claims.

#### **[Kalles v. State Farm Mutual Automobile Ins. Co., Wash. Ct. App. No. 50827-3-II \(Jan 23, 2019\).](#)**

In this matter, Harold Kalles (“Plaintiff”) owned a new Land Rover that was damaged in an accident by an uninsured motorist. Plaintiff had obtained an insurance policy through State Farm (“Defendant”) which provided uninsured and underinsured motorist coverage. Defendant accepted coverage and paid to repair Plaintiff’s Land Rover, but declined to pay the fees Plaintiff incurred in renting a car while the Land Rover was in the repair shop. Plaintiff filed suit, arguing that his UIM coverage included compensation for the loss of use of his vehicle, which would have entitled him to compensation for the use of the rental car. He filed a motion for partial summary judgment, arguing that loss of use was included in his UIM coverage. Defendant responded, arguing that loss of use was not covered property damage under the UIM policy. The trial court denied the motion for summary judgment and Plaintiff appealed its denial.

The court of appeals accepted the appeal, determining that the trial court’s denial of Plaintiff’s summary judgment “effectively determined [Plaintiff’s] right to pursue his claim for [Defendant’s] refusal to pay for loss of use under the UIM policy.” In setting the stage for its review, the court reiterated “[i]nterpretation of an insurance contract is a question of law [it] review[s] de novo.” Further, and importantly in this matter, it identified that “[a] provision in an insurance contract is ambiguous only when ‘it is fairly susceptible to two different interpretations, both of which are reasonable.’” And, critically, “[a]ny ambiguity is resolved against the insurer and in favor of the insured.”

Because this matter existed wholly within the world of insurance policy interpretation, the pertinent portions of the policy identified by the court are reproduced below.



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The UIM provision is Plaintiff's policy stated:

[Defendant] will pay compensatory damages for **property damage** an **insured** is legally entitled to recover from the owner or driver of an **underinsured motor vehicle**.

The UIM policy defined "property damage" as:

physical damage to or destruction of: 1. [the insured's] car or a **newly acquired car**, or 2. Property owned by an **insured** while that property is in the passenger compartment of [the insured's] **car** or a **newly acquired car**.

Finally, the "Deciding Fault and Amount" section in the UIM policy stated:

1 a. The **insured** and [the insurer] must agree to the answers to the following two questions:

- (1) Is the **insured** legally entitled to recover compensatory damages from the owner or driver of the **underinsured motor vehicle**?
- (2) If the answer to 1.a.(1) above is yes, then what is the amount of compensatory damages that the **insured** is legally entitled to recover from the owner or driver of the **underinsured motor vehicle**.

The appeal, focusing on these provisions, revolved around whether the UIM provision should have covered Plaintiff's fees incurred in renting a car while the property damage of his Land Rover was repaired. State Farm argued that the UIM policy provided coverage *only for physical damage* because property damage in the provision is defined as "physical damage to...[the insured's car]." Under this definition, according to Defendant, coverage for rental car fees was plainly excluded.

Plaintiff argued that a reasonable person purchasing insurance in Washington would understand Defendant's obligation under the policy to pay "compensatory damages for **property damage**" to include *the same elements of damage* that would be recoverable from an at-fault tortfeasor under Washington law. That is, the provision entitling the insured to "compensatory damages for property damage" acted as triggering language rather than limiting language, and Plaintiff's interpretation was reasonable from the perspective of the average person buying insurance.

The court agreed with Plaintiff's position. It held that: "Compensatory damages' read together with the language 'legally entitled to recover from the owner or driver of an underinsured motor vehicle' would reasonably lead an average person purchasing insurance to believe that the policy covered all damages resulting from the property damage caused by the underinsured motorist—including loss of use." Accordingly, because an average person *could* believe that the policy covered loss of use, it was fairly susceptible to two different meanings, including Plaintiff's reading and Defendant's reading. Because ambiguous insurance provisions *must* be construed against the insurer, the court of appeals held that the trial court had erred in denying Plaintiff's motion for partial summary judgment. Instead, Plaintiff was entitled to judgment as a matter of law because the insurance provision was ambiguous.



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## Washington Case Update



This Washington Court of Appeals opinion illustrates one of the numerous protections insured drivers have in Washington when coverage disputes arise. This raises the issue of potential exposure to claims under the Washington Insurance Fair Conduct Act. For that reason, it is always advisable to discuss questionable coverage issues with counsel and determine whether it is plausible a provision may be reasonably construed as ambiguous.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/D2%2050827-3-1I%20Published%20Opinion.pdf>



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