Progressive West Insurance Co. v. Bateman

128 Wash.App. 1051 (2005) | Cited 0 times | Court of Appeals of Washington | July 25, 2005

JUDGES Concurring: Faye Kennedy William Baker

UNPUBLISHED OPINION

Marjorie Bateman submitted an underinsured motorist (UIM) claim to her insurance company, Progressive West, after she injured herself getting out of her car on the shoulder of the freeway following a collision caused by Roger McCombs. Progressive sought a declaratory judgment that McCombs was not legally liable for Bateman's injuries, so that Progressive would not have a duty to pay her UIM claim. Bateman brought a cross-claim for bad faith, and the parties moved for summary judgment on both issues. The trial court granted Progressive's motion and Bateman appeals.

Because Bateman could not open her car door all the way as a direct result of the hazardous situation she was placed in by McCombs' negligence, her injuries are sufficiently causally connected to McCombs' negligence to submit the question of cause in fact to a jury. And because there is no public policy reason to deny recovery, we decline Progressive's invitation to hold there is not legal causation. Finally, there are genuine issues of fact about whether Progressive conducted its UIM claim investigation in a reasonable and prompt manner, so we reverse and remand for further proceedings.

FACTS

On August 17, 2002, 85-year-old Marjorie Bateman was driving northbound in the right lane on Interstate 5 near Bellingham. A vehicle driven by Roger McCombs entered the freeway from an on-ramp, failed to yield right of way, and collided with the passenger side of Bateman's car.[1] Both drivers then pulled onto the right shoulder of the freeway and got out of their vehicles to exchange information and inspect the damage. When Bateman got out, she did not fully open the driver's side door because she was parked very close to passing traffic. State Highway Patrol Officer Lance Engle arrived on the scene and cited McCombs, but he did not write a full report. Bateman told both McCombs and Officer Engle that she was not injured.

According to Bateman, she gouged the back of her left leg on the corner of the door when she got out of her car, but she did not realize it until she got back into her car and saw blood 'everywhere.' Bateman then drove to her hair appointment, where the owner of the salon looked at the cut and Bateman realized the severity of the injury. Bateman's daughter, Janet Ingham, picked Bateman up at the salon and took her to the hospital emergency room. Because the hospital was busy, Bateman went

across the street to a walk-in clinic where she got nine stitches to close the wound. The cut never properly healed, and eventually Bateman's left leg had to be amputated above the knee.[2]

At the time of the collision with McCombs, Bateman had car insurance through Progressive West Insurance Company (Progressive). McCombs was insured by State Farm. Bateman's policy included personal injury protection (PIP) and underinsured motorist bodily injury (UIM) coverage. The UIM provision contained standard language: Subject to the Limits of Liability, if you pay the premium for Underinsured Motorist Coverage, we will pay for damages, other than punitive or exemplary damages, which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury:

1. sustained by an insured person;

2. caused by an accident; and

3. arising out of the ownership, maintenance, or use of an underinsured motor vehicle.[3]

Progressive paid the PIP policy limit of $10,000 toward Bateman's medical expenses. State Farm paid Bateman $25,000, McCombs' liability policy limit. By September 15, 2003, Bateman submitted a claim to Progressive for payment of the UIM policy maximum of $500,000.

In March 2004, Progressive informed Bateman that it questioned whether her injuries were covered under the UIM policy because of the lack of connection between the collision and her injuries. It forwarded the issue to a coverage attorney and then, on March 25, 2004, filed a complaint for declaratory relief in Whatcom County Superior Court.

Progressive asked the court to conclude that Bateman was not legally entitled to recover from McCombs for her injuries. Bateman counterclaimed that Progressive acted in bad faith. The parties brought cross-motions for summary judgment on both issues. The trial court granted Progressive's motion, ruling that McCombs' negligence did not cause Bateman's injuries, and that there could be no bad faith if there was no coverage.

DISCUSSION

We review summary judgments de novo, performing the same inquiry as the trial court.[4] Summary judgment is proper only when there is no genuine issue about any material fact, and the moving party is entitled to a judgment as a matter of law.[5] We consider all facts and reasonable inferences in the light most favorable to the nonmoving party.[6] Questions of fact may be determined as a matter of law when reasonable minds can reach only one conclusion.[7]

The public policy behind UIM insurance is to provide a second layer of floating protection for the

insured.[8] An insurer providing UIM protection Ssteps into the shoes of a negligent third party to pay the insured the amount, up to policy limits, by which the damage caused to the insured by the negligent third party exceeds the third party's liability coverage.'[9] The UIM insurer 'undertakes a duty to pay that extends no farther than the legal liability of the involved tortfeasors, if any.'[10]

Here, Progressive's duty to pay depends on whether McCombs is legally liable for Bateman's injuries. In order to prove actionable negligence, a party must establish the existence of a duty, breach of that duty, resulting injury, and proximate causation between the breach and the resulting injury.[11] There is no dispute that McCombs breached a duty owed to Bateman when he sideswiped her car as he merged onto I-5; the issue is whether his breach was a proximate cause of Bateman's injuries. In Washington, proximate cause consists of two elements: cause in fact and legal causation.[12]

I. Proximate Cause

As an initial matter, Progressive claims that Greengo v. Public Employees Mutual Insurance Company[13] dictates that because the collision and the incident resulting in Bateman's cut were two separate and distinct accidents, each must have had its own proximate cause. In Greengo, the Washington Supreme Court held that '{w}here there were two collisions, we look to see if each has its own proximate cause. If so then there are two accidents.'[14] The court remanded to determine whether the two collisions resulted from separate proximate causes. In other words, the proximate cause determination must be made before the court can determine that two or more accidents were separate and distinct. But Greengo does not hold that negligence causing an initial accident cannot proximately cause another accident or injury.

A. Cause in Fact

At oral argument, Progressive conceded factual causation for purposes of summary judgment and our review on appeal. However, because both parties argued it in their briefs, we address factual causation anyway. Bateman argues that but for McCombs' negligence, she never would have cut herself on her car door. She claims that there was an unbroken sequence of events between McCombs' negligence and her injuries. This sequence included her pulling over on the shoulder of I-5 after the collision, not opening her car door very wide because of her proximity to traffic, then getting out of the car to exchange information with McCombs. Progressive argues that because Bateman's injuries occurred after the vehicles came to a stop following the collision, her injuries were caused by a separate and distinct accident. Progressive also argues that Bateman's injuries were caused by an intervening, superseding act.

Cause in fact concerns the 'but for' consequences of an act,[15] and 'requires proof that 'there was a sufficiently close, actual, causal connection between {the tortfeasor's} conduct and the actual damage suffered by {the injured party}.''[16] The accident that causes the injuries complained of must be ''part of the natural and continuous sequence of events which flowed from'' the original tortfeasor's

negligent act.[17] The tortfeasor's negligence must not be broken by any new independent cause.[18] Where an intervening act breaks the chain of causation, it is called a ''superseding cause.''[19] Normally the question of cause in fact is left to the jury, but if reasonable minds could not differ it may be determined as a matter of law.[20] Although this case presents a unique set of circumstances, several cases help determine whether the cause in fact determination should be left to a jury.

In Maltman v. Sauer, the defendant was involved in a serious auto accident and a helicopter was dispatched to the scene to rush him to the hospital.[21] While en route to the accident scene, the helicopter crashed, killing the crew. The crewmembers' families sued the defendant under the 'rescue doctrine,' which requires among other things that there be negligence by the defendant which is the proximate cause of the peril to the rescuers.[22] The Washington Supreme Court held that there was no proximate cause because the 'record fails to show a sufficiently close, actual causal connection between the tragedy which struck the decedents and the original negligence of the defendant in causing an automobile accident.'[23]

In Walton v. Tull, Tull was a passenger in Walton's car, which collided with a car Brigham was driving.[24] No one was injured in the collision. The cars came to a stop on the shoulder of the highway, with the rear of Walton's car angled slightly out into the highway. After about ten seconds, Tull opened his door and started to get out when a drunk driver, Glenn, hit the door and seriously injured Tull. Tull successfully sued all three drivers and Walton appealed, arguing that his negligence was not a proximate cause of Tull's injuries when Tull was later struck by a third car.[25] The court stated that '{a}s a direct result of Walton's carelessness{,} Tull was put in a position the jury were entitled to regard as hazardous.'[26]

In Sanders v. Wright, Sanders was a passenger in a car involved in a highway collision with Wright's car.[27] Both cars ended up completely off the roadway, and Sanders got out and stood for several minutes between the guardrail and the cars before another car struck him. Sanders relied on Walton in arguing that the question of proximate cause was one for the jury to decide because Wright's negligence placed him in a position of peril that ultimately led to his injuries.[28] But the court distinguished Walton because Sanders had gotten out of the vehicle at least one car width away from the traffic lanes and waited for several minutes out of harm's way before he was hit by another vehicle.[29] The primary negligence in Walton was still in motion when Tull was struck by the Glenn vehicle. In this case, however, the activity caused by the initial negligence had come to rest and appellant was standing and had been for five to ten minutes at least one car width away from approaching traffic when he was struck by the Jones vehicle.

On these facts, we conclude that proximate cause was lacking because although Wright created the situation with the initial collision, that negligence was not the proximate cause of appellant's injury.[30] Here, we consider the facts in the light most favorable to Bateman. There is no dispute that Bateman did what someone in an automobile collision is supposed to do: pull over to the right shoulder to check on and exchange information with the other driver[31] and check the condition of her vehicle.

Because the driver's door was close to the roadway, she did the appropriate thing and was careful not to open the door all the way so as to avoid danger from passing traffic.[32] All of these actions were part of the natural sequence of events flowing directly from the collision McCombs' negligent driving caused. By not opening the car door all the way, she could not get out of the car as she normally would and cut her leg on the door as a result. The cut only happened because she could not open the door in a normal manner. In turn, she could not open the car door all the way because of the hazardous situation in which McCombs' negligence placed her. Unlike in Sanders, the initial negligence had not come to rest because Bateman was still in the hazardous situation caused by McComb's negligence when the injury occurred. It was that hazardous situation that caused Bateman to only partially open her car door, resulting in her injuries.

Progressive also argues that Bateman's choice of parking location on the freeway shoulder was an intervening, superseding act that broke the causal connection between McCombs' negligence and Bateman's injuries. Because she did not pull far enough off the freeway to allow herself to freely open her car door, they assert Bateman's own negligence proximately caused her injuries.

An intervening act is considered a superseding cause sufficient to relieve the original tortfeasor of liability only when the intervening act is not reasonably foreseeable.[33] It is not foreseeable if it is "so highly extraordinary or improbable as to be wholly beyond the range of expectability."[34] Foreseeability is typically a question for the jury.[35]

Nothing in the record indicates that Bateman was negligent when she parked on the shoulder.[36] None of the statements from Bateman, McCombs, or Officer Engle indicate that Bateman parked in an unexpected place. Even if Progressive could show that Bateman did not pull off the freeway as far as she should have, her actions were not nearly as unforeseeable as those in the cases Progressive cites.

In Cramer v. Department of Highways, an untrained and intoxicated motorcycle driver injured himself when he sped through a turn.[37] The driver sued the State for negligence, arguing a crack in the road caused his fall. The court held that the driver's intervening recklessness was not foreseeable.[38] In Maltman, the court held that the helicopter crash was not a reasonably foreseeable consequence of the auto accident.[39] Here, even if there were an intervening act, the question of foreseeability should be left to a jury. Even if Bateman could or should have pulled farther off the freeway, we cannot rule that her conduct was a superseding cause as a matter of law.

The record shows a sufficiently close, actual, causal connection between Bateman's injuries and McCombs' negligence. Because reasonable minds could differ on the question of cause in fact in this case, and genuine issues of material fact remain,[40] this issue should be decided by a jury, not the court.

B. Legal Cause

The second element of proximate cause is legal cause, a concept that, unlike cause in fact, is not based on a fixed set of rules and is decided by the court as a question of law.[41] Legal cause is based on policy determinations of how far a tortfeasor's liability should extend.[42] Legal causation analysis focuses on ''whether, as a matter of public policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.''[43] Legal cause ''is always to be determined on the facts of each case upon mixed considerations of logic, common sense, justice, policy, and precedent. . . . The best use that can be made of the authorities on proximate cause is merely to furnish illustrations of situations which judicious {people} upon careful consideration have adjudged to be on one side of the line or the other.''[44]

The Maltman court reasoned the original accident was simply too remote to be the legal cause of the helicopter crash.[45] In Hartley v. State, the estate of a decedent killed by a drunk driver sued the State for failing to revoke the drunk driver's license before the fatal accident happened.[46] The court dismissed the action, reasoning that the State's failure was too remote a cause of the ultimate injury.[47] In McCoy v. American Suzuki Motor Corp., a motorist struck by a hit and run driver when he stopped to aid passengers in an overturned vehicle brought a products liability suit against the manufacturer of the overturned vehicle under the rescue doctrine.[48] The court distinguished Maltman and Hartley: Here, we do not find the alleged fault of Suzuki, if proved, to be so remote from these injuries that its liability should be cut off as a matter of law. Certainly the alleged fault of Suzuki is not as remote as the fault of the defendants in Maltman and Hartley and, thus, we must distinguish their results. Accordingly, we will not dismiss this case for lack of legal causation. . . .[49]

Here, McCombs' fault in causing the initial collision is certainly not as remote as the fault of the parties in Maltman or Hartley. And McCoy stands for the proposition that a court should not preclude liability as a matter of law simply because the injury did not occur during the original accident. There are no clear public policy grounds on which to deny recovery in this case.

Progressive argues that Bateman's injury was not related to the car accident and no reasonable person could foresee that Bateman would cut her leg on a car door while getting out of the car. But it is not extraordinary that after a freeway collision the drivers would pull onto the shoulder and park close to the freeway. Nor that an 85-year-old driver would injure herself under these circumstances.[50] It may be that the injury itself was less foreseeable than those in Walton, Sanders, or Suzuki where the victims were hit by vehicles on or adjacent to the highway after the original accident. However, that McCombs could not have foreseen the exact manner in which Bateman would be injured is not a sufficient reason for relieving McCombs of liability.[51]

Bateman's injuries were not too remote from McCombs' negligence in time or place or sequence of events. And because the facts and circumstances of this case are unusual, allowing recovery would not open the door to fraudulent claims or unreasonably burden users of the highway. Legal causation is not a basis on which to reject Bateman's UIM claim.

II. Bad Faith

Bateman argues that the trial court erred in granting Progressive's summary judgment motion on the issue of whether Progressive conducted a bad faith investigation because Washington allows bad faith claims regardless of whether coverage is ultimately correctly denied. She asserts that Progressive violated several WAC regulations by failing to investigate and make a decision on her UIM claim thoroughly and promptly. Progressive argues that summary judgment was appropriate because Bateman failed to establish that Progressive acted in an unreasonable, frivolous, or unfounded manner, and that communications with her leading up to and during the UIM claim investigation show that it acted reasonably.

The duty of good faith owed by an insurer to its insured is both legislatively and judicially imposed.[52] This duty is broad, and conduct not amounting to intentional bad faith or fraud may still breach the duty.[53] But an insurer acts in bad faith only if its conduct is unreasonable, frivolous, or untenable.[54] The determinative question is the 'reasonableness of the insurer's actions in light of all the facts and circumstances of the case.'[55] An insurer's violation of any subsection of WAC 284-30-330 is a breach of the duty of good faith and may also be an unfair or deceptive act under the Consumer Protection Act.[56]

The trial judge granted Progressive's motion for summary judgment, stating that '{t}here may be a material fact that may be open to dispute, but if there's no coverage, there can't be any bad faith . . . .' But in Coventry Associates v. American States Ins. Co., the Washington Supreme Court held that an insured may sue an insurer for bad faith investigation of a claim regardless of whether the insurer ultimately correctly determined there was no coverage.[57] The court agreed with the reasoning of one legal commentator:

'The implied covenant of good faith and fair dealing in the policy should necessarily require the insurer to conduct any necessary investigation in a timely fashion and to conduct a reasonable investigation before denying coverage. In the event the insurer fails in either regard, it will have breached the covenant and, therefore, the policy.'[58]

Because the trial court's basis for awarding summary judgment was legally incorrect, we reach whether there are questions of fact for trial on Bateman's bad faith allegations. The record shows that there are issues of fact about the reasonableness and promptness of Progressive's investigation.

Bateman argues that Progressive violated the following subsections of

WAC 284-30-330:[59]

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

(13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

WAC 284-30-370 requires that '{e}very insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed in such time.' Even though communications between Bateman and Progressive's UIM claim representative, Don Edwards, indicate that Bateman did not submit a formal UIM claim until September 15, 2003, it was still over six months later when Progressive filed a declaratory action in the trial court.[60] Once Bateman submitted the UIM claim, Progressive essentially investigated: (1) Bateman's medical expenses and lifestyle-change costs to determine total damages, and (2) whether Bateman's injuries were even covered under the UIM policy, in other words, whether McCombs was legally liable for her injuries. Both of these investigations were necessary based on the record and considering the unusual circumstances under which Bateman's injuries occurred. However, issues of fact remain about whether either of these investigations were conducted in a reasonable and prompt fashion, especially the liability investigation.

On September 22, 2003, in response to Bateman's UIM claim, Edwards sent Bateman a letter requesting cost documentation and a medical narrative from her treating physician. On October 27, 2003, Bateman sent Edwards the requested information, reiterated her September 15th request for policy limits, and requested arbitration if that amount was not acceptable. Edwards responded that because of the numerous settlement demands, Progressive's review would take more time.[61] Further communications through February 2004 show that Progressive was concerned only with the extent of Bateman's medical and lifestyle-change costs. Nothing indicated that Progressive questioned whether McCombs was liable for Bateman's injuries.

Over six months passed before Progressive took action to resolve the liability issue.[62] Considering that the determination of liability stemmed entirely from the facts of the August 17, 2002 events and Progressive knew all of these facts well before Bateman submitted her UIM claim, there is a question about why Progressive did not refer the liability issue to a coverage attorney, and then to a court, much sooner. Progressive provides no reason why it waited so long to evaluate the liability issue. There is a genuine issue of fact as to whether Progressive's conduct was unreasonable, frivolous, or untenable. Our review does not exhaustively identify every potential question of fact. Suffice it to say that viewed in the light most favorable to Bateman, genuine issues of material fact remain about whether Progressive acted in bad faith in investigating Bateman's UIM claim.

We reverse the trial court's grant of summary judgment on Progressive's behalf on both the legal liability and bad faith issues, and remand for further proceedings consistent with this opinion.

1. There is no dispute that McCombs was at fault in the collision.

2. Bateman had previously developed severe hardening of the arteries in her left leg, requiring a bypass, but she was functioning well before she cut herself.

3. (Emphasis omitted.)

4. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

5. CR 56(c).

6. Mountain Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

7. Hartley v. State, 103 Wn.2d 768, 775, 698 P.2d 77 (1985) (citing LaPlante v. State, 85 Wn.2d 154, 531 P.2d 299 (1975); Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963)).

8. Liberty Mut. Ins. Co. v. Tripp, 144 Wn.2d 1, 25 P.3d 997 (2001) (citing Greengo v. Pub. Employees Mut. Ins. Co., 135 Wn.2d 799, 810, 959 P.2d 657 (1998); Elovich v. Nationwide Ins. Co., 104 Wn.2d 543, 550, 707 P.2d 1319 (1985)).

9. Greengo, 135 Wn.2d at 804 (citing Jain v. State Farm Mut. Auto Ins. Co., 130 Wn.2d 688, 692, 926 P.2d 923 (1996)).

10. Allstate Ins. Co. v. Dejbod, 63 Wn. App. 278, 283, 818 P.2d 608 (1991).

11. Schooley v. Pinch's Deli Market, Inc., 134 Wn.2d 468, 474, 951 P.2d 749 (1998).

12. Hartley, 103 Wn.2d at 777.

13. 135 Wn.2d 799, 959 P.2d 657 (1998).

14. Id. at 813. The court was concerned with the number of accidents because it dictated the relevance of an insurance policy's anti-stacking clause. The insured victim was a passenger in a car that rear-ended another car on I-5. The victim's car was then rear-ended by a third car. The victim's UIM policy limit was $100,000 per accident, and the victim argued there were two separate accidents in order to recover more under her policy. Id. at 814.

15. Hartley, 103 Wn.2d at 778.

16. Maltman v. Sauer, 84 Wn.2d 975, 981, 530 P.2d 254 (1975) (quoting Rikstad v. Holmberg, 76 Wn.2d 265, 268, 456 P.2d 355 (1969)).

17. Kim v. Budget Rent A Car Sys., Inc., 143 Wn.2d 190, 203, 15 P.3d 1283 (2001) (quoting Pratt v. Thomas, 80 Wn.2d 117, 119, 491 P.2d 1285 (1971)).

18. Crowe v. Gaston, 134 Wn.2d 509, 519, 951 P.2d 1118 (1998) (citing Maltman, 84 Wn.2d at 982).

19. Id. (quoting Maltman, 84 Wn.2d at 982).

20. Kim, 143 Wn.2d at 203 (citing Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999)).

21. 84 Wn.2d 975, 530 P.2d 254 (1975).

22. Id. at 977.

23. Id. at 983.

24. 234 Ark. 882, 356 S.W.2d 20 (1962).

25. Id. at 885. The jury assigned the negligence as follows: Glenn 60 percent, Walton 20 percent, Brigham 10 percent, and Tull 10 percent.

26. Id. at 886. The court went on to address whether Glenn's and Tull's conduct was an intervening superseding cause.

27. 642 A.2d 847 (D.C. App. 1994).

28. Id. at 850.

29. Id. at 851.

30. Id.

31. Washington law requires that drivers exchange information following an accident, so Bateman had to get out of her car. RCW 46.52.020.

32. Bateman states 'I remember the cars and trucks whizzing by fast, as the speed limit on I-5 at the site of the accident was 60 m.p.h. I had difficulty getting out of my car because it was not safe to fully open my door. As I got out of my car, I gouged my leg down the back of my left leg on the corner of the front door.'

33. Crowe, 134 Wn.2d at 519 (citing Cramer v. Dep't of Highways, 73 Wn. App. 516, 520, 870 P.2d 999 (1994)).

34. Id. at 519-20 (quoting Christen v. Lee, 113 Wn.2d 479, 492, 780 P.2d 1307 (1989)).

35. Id. at 520 (citing Cramer, 73 Wn. App. at 521).

36. McCombs states 'Uh, we both pulled to the, uh, side of the road. And, uh, then we just got her out. I was concerned

about her. She got out on the highway, so I had to get her back off the, the road.' He also stated 'Then she got out and she started to give it to me, and she was standin' next to the highway and I just said, 'No, we can't do it here, you know, we need to get you away from the high . . . highway.'

37. 73 Wn. App. 516, 870 P.2d 999 (1994).

38. Id. at 521.

39. 84 Wn.2d at 982-83.

40. Progressive does not concede Bateman's version of how the cut occurred.

41. McCoy v. Am. Suzuki Motor Corp., 136 Wn.2d 350, 359, 961 P.2d 952 (1998).

42. Id. (citing Hartley, 103 Wn.2d at 779).

43. Kim, 143 Wn.2d at 204 (quoting Tyner v. Dep't of Soc. & Health Servs., 141 Wn.2d 68, 82, 1 P.3d 1148 (2000)).

44. McCoy, 136 Wn.2d at 359-60 (quoting King v. City of Seattle, 84 Wn.2d 239, 250, 525 P.2d 228 (1974)). The Wisconsin Supreme Court provided a concise summary of the policy considerations underlying legal causation: {E}ven where the chain of causation is complete and direct, recovery against the negligent tort-feasor may sometimes be denied on grounds of public policy because the injury is too remote from the negligence or too 'wholly out of proportion to the culpability of the negligent tort-feasor,' or in retrospect it appears too highly extraordinary that the negligence should have brought about the harm, or because allowance of recovery would place too unreasonable a burden upon users of the highway, or be too likely to open the way to fraudulent claims, or would 'enter a field that has no sensible or just stopping point.' Colla v. Mandella, 1 Wis. 2d 594, 598-99, 85 N.W.2d 345 (1957) (citing Waube v. Warrington, 216 Wis. 603, 613, 258 N.W. 497 (1935); Klassa v. Milwaukee Gas Light Co., 273 Wis. 176, 77 N.W.2d 397 (1956); Pfeifer v. Standard Gateway Theater, 262 Wis. 229, 240, 55 N.W.2d 29 (1952); Osborne v. Montgomery, 203 Wis. 223, 237, 234 N.W. 372 (1931); Restatement (Second) of Torts sec. 435(2) (1948 Supplement); Prosser on Torts, 2d ed., 265).

45. 84 Wn.2d at 982-83.

46. 103 Wn.2d 768, 698 P.2d 77 (1985).

47. Id. at 785.

48. 136 Wn.2d 350, 961 P.2d 952 (1998).

49. Id. at 360.

50. A tortfeasor takes a victim as he finds him or her. Buchalski v. Universal Marine Corp., 393 F. Supp. 246 (W.D. Wash.

1975).

51. Walton, 234 Ark. at 886 (citing Restatement (First) of Torts, sec. 435 (1934)). See also McEwen v. Ortho Pharm. Corp., 270 Or. 375, 396 n.21, 528 P.2d 522 (1974) (in order to hold defendant liable it is not necessary that the defendant be able to anticipate the exact consequences of their negligent conduct) (citing Danner v. Arnsberg, 227 Or. 420, 423, 362 P.2d 758 (1961)); Grant v. Ariz. Pub. Serv. Co., 133 Ariz. 434, 652 P.2d 507, 514 (1982) ('A party is not insulated from liability merely because it has not foreseen the exact manner in which the injury eventually occurs.') (citing Restatement (Second) of Torts sec. 435 (1965); W. Prosser, Law of Torts sec. 43, at 268-70 (4th ed. 1971)).

52. Am. Mfrs. Mut. Ins. Co. v. Osborn, 104 Wn. App. 686, 697, 17 P.3d 1229, review denied, 144 Wn.2d 1005 (2001) (citing RCW 48.01.030; Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 386, 715 P.2d 1133 (1986)).

53. Id. (citing Indus. Indem. Co. of the N.W., Inc. v. Kallevig, 114 Wn.2d 907, 916-17, 792 P.2d 520 (1990)).

54. Liberty Mut. Ins., 144 Wn.2d 1 (citing Kirk v. Mount Airy Ins. Co., 134 Wn.2d 558, 951 P.2d 1124 (1998)).

55. Kallevig, 114 Wn.2d at 920.

56. Osborn, 104 Wn. App. at 697 (citing Anderson v. State Farm Mut. Ins. Co., 101 Wn. App. 323, 333, 2 P.3d 1029 (2000), review denied, 142 Wn.2d 1017 (2001); Tank, 105 Wn.2d at 386, 394).

57. 136 Wn.2d 269, 279, 961 P.2d 933 (1998).

58. Id. at 281 (quoting 1 Allan D. Windt, Insurance Claims & Disputes: Representation of Insurance Companies and Insureds sec. 2.05, at 38 (3d ed. 1995)).

59. Bateman uses the language from WAC 284-30-330(2) and (5), but incorrectly cites to subsections (1) and (4).

60. Bateman argues that she submitted her UIM claim much earlier than September 15, 2003, but communications between the parties before September 15 consistently reference a 'potential' or 'pending' UIM claim. Bateman's attorney sent Edwards a letter on June 23, 2003, stating 'Our client's injuries exceed the amount of insurance policy limits available from the defendant and we will be making an underinsured motorist claim under your insured's underinsured motorist coverage.' (Emphasis added.) Bateman's attorney's September 15, 2003 letter to Edwards states in part: I have reviewed a copy of the Progressive Washington Motor Vehicle Policy. Mrs. Bateman's policy contains the provision providing UIM coverage . . . . Although we are still in the process of gathering the medical billings, the total is now approximately $78,000.00. The cost of remodeling her home was approximately $16,500.00. The family also had to purchase a new vehicle to accommodate her condition, which cost an additional $7,500.00 over the trade in value of her previous vehicle. Considering the above, this is a policy limit case, which I understand to be $500,000.00. I would hope that it won't be necessary to put Mrs. Bateman through an arbitration or litigation for this situation to be resolved.

61. The record is unclear as to why the information available to Progressive as of October 27, 2003, was insufficient for

them to evaluate Bateman's claim from a costs and expenses standpoint.

62. On March 16, 2004, Edwards called Bateman and informed her that the liability issue was being referred to a coverage attorney for a written opinion.