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The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 22-cv-5023

FEDERATED MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

NICHOLAS M. WALL,

Defendant.

**ORDER GRANTING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT’S CROSS-MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

This case is an insurance declaratory judgment action arising from an underlying auto accident in which Defendant, Nicholas M. Wall, was operating a vehicle owned by his employer, Hudson Holding Co., Inc. (“Hudson”). Plaintiff, Federated Mutual Insurance Company (“Federated”), seeks a declaration that the Mr. Wall is not entitled to uninsured/underinsured motorist (“UIM”) coverage under the policy that Federated issued to Hudson. Mr. Wall has counterclaimed for breach of contract, asserting that he is entitled to coverage under the policy based on his interpretation of Washington’s UIM statute, RCW 48.22.030. Currently pending before the Court is Plaintiff’s Motion for Summary Judgment, ECF No. 13, and Defendant Nicholas M. Wall’s Cross Motion for Summary Judgment, ECF No. 15. Having reviewed the parties’ briefs

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1 and supporting materials filed in support of and opposition to the motions, and the relevant legal
2 authorities, the Court will GRANT Plaintiff’s motion and DENY Defendant’s cross-motion.

3 The reasoning for the Court’s decision follows.

4 **II. BACKGROUND**

5 The parties agree that there are are no factual disputes in this case; there is only a legal issue
6 to be resolved. Joint Status Report 1-2, ECF No. 10; Pl.’s Mot. 2, 8; ECF No. 13; Def.’s Mot. 2,
7 ECF No. 15. In brief, Mr. Hall’s employer, Hudson, purchased an automobile insurance policy
8 from Federated. Compl. ¶ 14, ECF No. 1. Hudson completed Federated’s Washington Commercial
9 Auto Underinsured Motorists Option Form, which provided multiple options including buying UIM
10 coverage for all persons who qualified as an insured, limiting coverage to “directors, officers,
11 partners or owners of the named insured and family members who qualify as insureds,” rejecting
12 UIM coverage, and selecting coverage amounts if not rejected. *Id.* ¶¶ 15-17; UIM Form, ECF No.
13 14-3. Hudson rejected property damage coverage, selected bodily injury coverage up to \$500,000
14 limit for directors, officers, partners or owners and family members, and rejected UIM coverage for
15 any other persons who qualify as an insured. *See* UIM Form.

16 Mr. Wall was operating a Hudson-owned vehicle on May 8, 2019, when he alleges being
17 injured in a motor vehicle accident with an uninsured motorist. Compl. ¶¶ 9-13. He filed suit
18 against the other driver in state court, and those issues are not a part of this case. *Id.* ¶ 12. Mr. Wall
19 is not one of Hudson’s directors, officers, partners or owners or a qualified family member. *Id.* ¶
20 21. Therefore, Federated rejected his claim for payment of benefits under Hudson’s UIM portion
21 of the policy. *Id.* ¶ 27; Counterclaim ¶¶ 46, 55, ECF No. 6.

1 Federated seeks a declaration from this Court that Mr. Wall is not entitled to Uninsured or
2 Underinsured Motorists coverage under Hudson’s policy in connection with the underlying
3 accident. Compl. ¶ 29. Mr. Wall asserts a breach of contract claim against Federated and seeks an
4 order declaring that he is entitled to all benefits of insurance available under the UIM policy and an
5 award of fees and expenses of this action. Counterclaim 6-7. Both parties have filed for summary
6 judgment in their favor.

7 III. STANDARD OF REVIEW

8 “Summary judgment is appropriate when, viewing the evidence in the light most favorable
9 to the nonmoving party, there is no genuine dispute as to any material fact” and the movant is
10 entitled to judgment as a matter of law. *Zetwick v. Cnty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017)
11 (quoting *United States v. JP Morgan Chase Bank Account No. Ending 8215*, 835 F.3d 1159, 1162
12 (9th Cir. 2016)); Fed. R. Civ. P. 56(a). The court has determined that this case is appropriate for
13 summary judgment as the legal issue involved may be resolved based on uncontroverted facts. *See*
14 *Retuta v. Holder*, 591 F.3d 1181, 1184 (9th Cir. 2010) (“Questions of law include not only pure
15 issues of statutory interpretation, but also application of law to undisputed facts.” (citation
16 omitted)).

17 IV. DISCUSSION

18 Mr. Hall contends that UIM coverage is mandatory in Washington and must be provided as
19 a component of any new automobile insurance policy issued in the state. Def.’s Mot 2 (citing RCW
20 48.22 *et seq.*). He argues that although RCW 48.22.030(3) permits full or partial rejection of
21 coverage, it does not authorize covered persons to be selectively excluded from the policy. *Id.* at
22 3. Federated argues that under RCW 48.22.030, UIM coverage is “purely optional.” Pl.’s Mot. 10.

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1 Federated contends that RCW 48.22.030(2) requires only that insurers offer UIM coverage, but
2 subsection (3) of RCW 48.22.030 allows rejection of all or part of the coverage. *Id.* at 10-11. To
3 resolve this issue, the Court will apply the traditional principles of statutory construction.

4 Under the familiar canon of statutory construction, “the starting point for interpreting a
5 statute is the language of the statute itself,” and “[a]bsent a clearly expressed legislative intention
6 to the contrary, that language must ordinarily be regarded as conclusive.” *Consumer Product Safety*
7 *Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). “The UIM statute is liberally construed
8 in order to provide broad protection against financially irresponsible motorists.” *McIllwain v. State*
9 *Farm Mut. Auto. Ins. Co.*, 133 Wn. App. 439, 446 (2006) (citations omitted). Consequently,
10 Washington courts consider contract principles, public policy, and legislative intent when deciding
11 UIM cases. *Id.*

12 RCW 48.22.030(2) requires every automobile policy issued in Washington State to provide
13 coverage to protect policyholders from injury or loss caused by uninsured motorists. *Diaz v. Nat’l*
14 *Car Rental Sys., Inc.*, 143 Wn.2d 57, 61 (2001). The statute provides, in pertinent part,

15 (3) Except as to property damage, coverage required under
16 subsection (2) of this section shall be in the same amount as the
insured’s third party liability coverage unless the insured rejects all
or part of the coverage as provided in subsection (4) of this section.

17 . . .

18 (4) A named insured . . . may reject, in writing, underinsured
19 coverage for bodily injury or death, or property damage, and the
requirements of subsections (2) and (3) of this section shall not
20 apply.

21 RCW 48.22.030. The plain language of the statute allows the named insured to reject “all or part”
22 of UIM coverage, provided the waiver is in writing. *Id.* Here, Hudson is the named insured. Hudson
23 rejected, in writing, part of the UIM coverage offered by Federated. *See* UIM Form.

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1 Mr. Wall argues that the statute does not allow for UIM coverage to be provided for directors
2 and officers, as here, but rejected for other employees. Def.’s Mot. 2-3. He does not offer any
3 authority to support his argument, and his argument is not supported by case law. *See Galbraith v.*
4 *Nat’l Union Fire Ins. Co. of Pittsburgh*, 78 Wn. App. 526, 531 (1995) (“Washington law does not
5 require employers to provide UIM coverage for their employees.”). As a result, employees, such
6 as Mr. Wall, may be left without UIM coverage. *See id.* Mr. Wall also argues that public policy
7 does not support an interpretation of the statute that allows for UIM coverage to be waived on the
8 basis of role in the company. Def.’s Mot. 5-6. But the statute gives the named insured the option
9 to waive “all or part” of UIM coverage. RCW 48.22.030 (3). And generally, “a contract which is
10 not prohibited by statute, condemned by judicial decision, or contrary to the public morals
11 contravenes no principle of public policy.” *State Farm General Ins. Co. v. Emerson*, 102 Wn.2d
12 477, 481 (1984).

13 Mr. Wall cites *Bishop v. Balagtas*, No. 79D02-0701-CT-00003, 2008 WL 7123046 (Ind.
14 Super. May 21, 2008), which found that the “directors and officers only” option—similar to the
15 option provided to Hudson in this case—was invalid. However, the option was found to be invalid
16 in Indiana because the Indiana statute includes wording that the named insured “has the right, on
17 behalf of all other named insured *and* all other insureds, in writing” to reject UIM coverage. *Id.*
18 (emphasis supplied by the Indiana court). The court determined that the use of the word “and”
19 “indicates that coverage cannot be declined for some insureds while selected for others.” *Id.* The
20 Washington statute does not contain similar wording, and there is no Washington case law to
21 support this position. “Underinsured motorist coverage is limited personal accident insurance
22 chiefly for the benefit of the named insured. Limiting the scope of the definition of who else is an

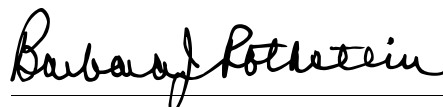
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1 ‘insured’ does not run afoul of the public policy behind Washington’s UIM statute.” *Vasquez v.*
2 *Am. Fire & Cas. Co.*, 174 Wn. App. 132, 138 (2013) (citing *Smith v. Continental Cas. Co.*, 128
3 Wash.2d 73, 83 (1995)). Because the named insured may reject all or part of UIM coverage, there
4 is no public policy violated by the named insured rejecting part of UIM coverage, as occurred here.
5 See *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 250 (1993) (“The UIM statute *does not*
6 *mandate* UIM coverage, but requires all insurers to make UIM coverage *available* to Washington
7 policyholders. Once the coverage is offered, the insured is free to waive it.” (emphasis added)).

8 **V. CONCLUSION**

9 For the foregoing reasons, Plaintiff’s Motion for Summary Judgment, ECF No. 13, is
10 GRANTED, and Defendant Nicholas M. Wall’s Cross Motion for Summary Judgment, ECF No.
11 15, is DENIED. Judgment shall be entered by separate order declaring that Federated has no
12 obligation to provide UIM coverage to Mr. Wall in connection with the underlying accident on May
13 8, 2019.

14 DATED this 22nd day of May, 2023.

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17 Barbara Jacobs Rothstein
18 U.S. District Court Judge
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