

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STATE FARM MUTUAL AUTOMOBILE
9 INSURANCE COMPANY, an Illinois
10 corporation,

11 Plaintiff/Counterclaim Defendant,

12 v.

13 SOPHEAP PAN, individually; as Guardian of
14 SREILAK MAO, a minor; as Personal
15 Representative of the ESTATE OF DA NOUS
16 PAN; and on behalf of statutory beneficiaries
DAN PAN, a single person; DAWIE PAN, a
single person; VIRAK MAO, a single person;
and SREILAK MAO, a minor single person,

17 Defendants/Counter-Claimants.

No. C11-546-RSL

ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT,
DENYING DEFENDANTS'
CROSS-MOTION FOR
SUMMARY JUDGMENT

18
19 This matter comes before the Court on "Plaintiff's Motion for Summary
20 Judgment" (Dkt. # 18) and "Defendants'/Counterclaimants' Motion for Summary Judgment"
21 (Dkt. # 19). The Court has jurisdiction under 28 U.S.C. § 1332. Complaint (Dkt. # 1) at 1–2.
22

23 This case concerns an insurance coverage dispute. The material facts are
24 straightforward and undisputed. Defendants' Motion (Dkt. # 19) at 2–5 (quoting Plaintiff's
25 Motion, Exhibit 1 (Dkt. # 18-1) at 2–6 (Exhibit A: Stipulated Facts)). Da Nous Pan (the

26 ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, DENYING DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT - 1

1 “decendent”) died from injuries sustained in an automobile accident. Id. At the time of the
2 accident and his death, Pan had insurance coverage through Plaintiff under policy number L08
3 3796-F05-47F. Id. That policy included “underinsured” coverage with a \$100,000 “per person”
4 coverage limit and a \$300,000 “per accident” coverage limit. Plaintiff’s Motion, Attachment # 1
5 (Dkt. # 18-1) at 8 (Declarations Page for State Farm policy number L08 3796-F05-47F). This
6 “underinsured” coverage is the only coverage at issue. Plaintiff has already tendered \$100,000
7 to decendent’s estate.

8 The question before the Court is whether, given the undisputed stipulated facts,¹
9 the terms of the policy at issue require Plaintiff to pay more than the \$100,000 “per person”
10 coverage limit. Defendants’ Motion (Dkt. # 19) at 4–5 (quoting Plaintiff’s Motion, Exhibit 1
11 (Dkt. # 18-1) at 5–6 (Exhibit A: Stipulated Facts)). The parties agree that “if the \$300,000 ‘per
12 accident’ limits apply, [Defendants] are entitled to an additional payment from State Farm of
13 \$200,000 in underinsured motorist benefits.” Id. But, “[i]f the \$100,000 ‘per person’ limits
14 apply[,] then no further sums are due or owing from State Farm to [Defendants].” Id.

15 Because the Court concludes that no genuine issue of material fact exists,
16 summary judgment is appropriate. The Court concludes that the policy unambiguously limits
17 Plaintiff’s coverage liability to \$100,000. The Court therefore GRANTS Plaintiff’s motion and
18 DENIES the Defendants’ motion.²

21
22 ¹ The Court further adopts and incorporates by reference the remaining stipulated facts
23 contained at Plaintiff’s Motion, Exhibit 1 (Dkt. # 18-1) at 2–6 (Exhibit A: Stipulated Facts).

24 ² Having reviewed all of the motions, memoranda, and declarations filed in this case, the
25 Court finds that this matter can be decided on the papers. It thus DENIES the parties’ requests
26 for oral argument.

1 **THE POLICY**

2 The policy provisions at issue provide:

3 **Limits**

4 1. The Underinsured Motor Vehicle Bodily Injury Coverage limits are shown on
5 the Declarations Page under “Underinsured Motor Vehicle Bodily Injury
6 Coverage – Limits – Each Person, Each Accident”.

7 a. The most *we* will pay for all damages resulting from *bodily injury* to
8 any one *insured* injured in any one accident, including all damages
9 sustained by other *insureds* as a result of that *bodily injury* is the lessor
10 of:

11 (1) the *insured’s* compensatory damages for *bodily injury* reduced
12 by:

13 (a) the sum of all payments for damages resulting from that
14 *bodily injury* made by or on behalf of any *person* or
15 organization who is or may be held legally liable for that
16 *bodily injury*; or

17 (b) the sum of all limits of bodily injury liability bonds and
18 insurance policies that apply to the *insured’s bodily*
19 *injury*; or

20 (2) the limits of this coverage.

21 b. The limit shown under “Each Accident” is the most *we* will pay, subject
22 to the limit for “Each Person”, for all compensatory damages resulting
23 from *bodily injury* to two or more *insureds* injured in the same
24 accident.

25 Plaintiff’s Motion, Attachment # 1 (Dkt. # 18-1) at 31–32 (State Farm Policy Form 9847A). The
26 policy defines “bodily injury” as “bodily injury to a *person* and sickness, death, disease, or death
that results from it.” Id. at 14.

DISCUSSION

Summary judgment is appropriate when, viewing the facts in the light most
favorable to the nonmoving party, there is no genuine issue of material fact that would preclude
judgment as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 324

1 (1986). Factual disputes whose resolution would not affect the outcome of the suit are
2 irrelevant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

3 The Court reviews cross-motions for summary judgment individually to determine
4 whether any “present[] a disputed issue of material fact.” Fair Hous. Council of Riverside Cnty.,
5 Inc. v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir. 2001). The Court “must rule on each
6 party’s motion on an individual and separate basis, determining, for each side, whether a
7 judgment may be entered in accordance with the Rule 56 standard.” Id. (quoting 10A Charles
8 Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720, at
9 335–36 (3d ed. 1998)).

10 In the present case, the Court agrees with the parties that no genuine issue of
11 material fact exists. Because neither party has presented “specific facts showing that there is a
12 genuine issue for trial,” judgment is appropriate as a matter of law. Celotex, 477 U.S. at 324.
13 To resolve each of the motions, the Court must address three questions under Washington law:
14 First, the Court must consider the Defendants’ contention that the policy requires Plaintiff to
15 tender the full \$300,000 “per accident” limit to compensate the estate for decedent’s injuries,
16 regardless of the \$100,000 “per person” coverage limit. Second, the Court must consider
17 whether the Defendants’ statutory claims under RCW 4.20.010 (wrongful death statute) and
18 RCW 4.20.060 (survival statute), as well as their common law claims for loss of consortium,
19 amount to individual “per person” injuries recoverable under the policy. Finally, the Court must
20 determine whether Defendants are entitled to recover damages and fees claims under
21 Washington’s Insurance Fair Conduct Act, codified at RCW 48.30.015.

22
23 **A. The Policy Terms Limit the Availability of “Per Accident” Coverage**

24 The Court concludes first that the policy terms do not require Plaintiff to pay more
25

1 than the applicable \$100,000 “per person” coverage limit to compensate Plaintiff’s estate for
2 decedent’s bodily injuries. Compare Plaintiff’s Motion, Attachment # 1 (Dkt. # 18-1) at 8
3 (Declarations Page for State Farm policy number L08 3796-F05-47F), with id. at 31–32 (State
4 Farm Policy Form 9847A).

5 Under Washington law, insurance policies are construed as contracts. Nat’l Sur.
6 Corp. v. Immunex Corp., 162 Wn. App. 762, ____, 256 P.3d 439, 444 (2011). Courts must
7 “consider the policy as a whole” and “give it a ‘fair, reasonable, and sensible construction as
8 would be given to the contract by the average person purchasing insurance.” Id. (citation and
9 internal quotation marks omitted); accord No Boundaries, LTD v. Pac. Indem. Co., 160 Wn.
10 App. 951, 954 (2011) (“When interpreting a policy’s terms, words and phrases are not analyzed
11 in isolation. Instead, the policy is read in its entirety and effect is given to each provision.”
12 (citation omitted)). Only when a policy is “fairly susceptible to different, reasonable
13 interpretations” should the policy be construed in the insured’s favor. Id.

14 In the present case, the policy is not “fairly susceptible to different, reasonable
15 interpretations.” Subsection “a.” of the “Limits” section provides that the most Plaintiff “will
16 pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident,
17 including all damages sustained by other *insureds* as a result of that *bodily injury* is the lessor
18 of: . . . (2) the limits of this coverage.” Plaintiff’s Motion, Attachment # 1 (Dkt. # 18-1) at
19 31–32 (some emphasis added) (State Farm Policy Form 9847A). And the very next provision
20 caveats the availability of “per accident” coverage. Id. at 32. It explains that “[t]he limit shown
21 under ‘Each Accident’ is the most [Defendant] will pay, subject to the limit for ‘Each Person’,
22 for all compensatory damages resulting from *bodily injury* to two or more *insureds* injured in
23 the same accident.” Id. (some emphasis added).

1 Thus, considering the policy as a whole, “the average person purchasing
2 insurance” would not construe the policy to require that Plaintiff pay the \$300,000 “per
3 accident” limit in cases in which only one insured suffers bodily injury. See No Boundaries, 160
4 Wn. App. at 954. Neither would the average purchaser find the policy ambiguous on this point.
5 See id. Rather, the average purchaser would readily conclude that the policy allows him or her
6 to recover \$100,000 in bodily injury damages per injured insured up to the “per accident”
7 maximum of \$300,000.

8 **B. Defendants’ Other Claims Do Not Implicate the “Per Accident” Coverage**

9 The Court next concludes that Defendants’ other statutory and common law claims
10 for damages resulting from decedent’s injuries do not trigger the “per accident” provisions of the
11 policy.
12

13 The crux of this issue is not whether Defendants have a viable cause of action
14 under RCW 4.20.010, RCW 4.20.060, or the common law. Rather, as Plaintiff appropriately
15 contends, the question is whether any of those claims constitute “bodily injury” covered under
16 the policy. And, if so, whether the policy’s anti-stacking provision requires that those separate
17 injuries nevertheless be subject to the single “per person” coverage limit already paid. To
18 reiterate, the anti-stacking provision provides: “The most *we* will pay for all damages resulting
19 from ***bodily injury*** to any one *insured* injured in any one accident, including all damages
20 sustained by other *insureds* as a result of that ***bodily injury*** is” Cf. Plaintiff’s Motion,
21 Attachment # 1 (Dkt. # 18-1) at 31 (State Farm Policy Form 9847A) (some emphasis added)).

22 The Court has little trouble concluding that Defendants’ claims under RCW
23 4.20.060 fail to implicate the policy’s “per accident” provisions. “Washington’s survival
24 statutes, RCW 4.20.046 and 4.20.060, do not create a new cause of action; they preserve the
25

1 causes of action that the decedent could have maintained if still alive.” Otani ex rel. Shigaki v.
2 Broudy, 114 Wn. App. 545, 548 (2002). Thus, Defendants’ claims under RCW 4.20.046 and
3 4.20.060 do not amount to distinct injuries, let alone distinct “bodily injuries” covered under the
4 policy. Any claim under RCW 4.20.046 and 4.20.060 would be for the decedent’s bodily
5 injury—an injury for which Plaintiff has already tendered the full “per person” coverage limits.

6 Defendants’ claims under RCW 4.20.010 and the common law fare no better.
7 Both involve claims that, though vesting independently in individuals other than the decedent,
8 amount to “damages sustained by other *insureds* as a result of th[e] *bodily injury*” to decedent.
9 Zoda v. Mut. of Enumclaw Ins. Co., 38 Wn. App. 98, 100 (1984) (common-law consortium
10 claim); Root ex rel. Estate of Root, 109 Wn. App. 1016, 2001 WL 1407357, at *2–3 (2001)
11 (statutory wrongful death claim); see Plaintiff’s Motion, Attachment # 1 (Dkt. # 18-1) at 31–32
12 (State Farm Policy Form 9847A). This point was made clear in Zoda, where, in the context of a
13 common-law consortium claim, the court reiterated “the widely held rule that damages for loss
14 of consortium are consequential, rather than direct, damages. They necessarily are dependent
15 upon a bodily injury to the spouse who can no longer perform the spousal functions; it does not
16 arise out of a bodily injury to the spouse suffering the loss.” 38 Wn. App. at 100 (quoting
17 Thompson v. Grange Ins. Ass’n, 34 Wn. App. 151, 161–62 (1983)). Accordingly, under facts
18 strikingly similar to the one at hand, the court held “that Mr. Zoda’s claim for loss of consortium
19 must fail because Mrs. Zoda [had already] exhausted her single person [insurance coverage]
20 limit of \$100,000.”

22 Likewise, in Grange Insurance Ass’n v. Morgavi, the court considered whether a
23 loss of consortium claim amounted to a separate “per person” injury that would trigger the
24 relevant insurance policy’s “per occurrence” coverage. 51 Wn. App. 375, 376 (1988). Again,
25

1 the court explained that “the independent nature of a consortium claim for third party lawsuit
2 purposes d[oes] not control an insurer’s definition of a covered loss as including all injuries
3 flowing from the bodily injury of one person.” Burr v. Pemco Mut. Ins. Co., 129 Wn. App.
4 1014, 2005 WL 2065280, at *2 (2005) (emphasis added) (discussing Morgavi). Rather, the
5 court noted, “It has long been settled in this state that, absent different policy provisions,
6 insurance indemnity for a claim for loss of consortium is restricted to the same single person
7 limit of the policy available to indemnify for the spouse’s injuries that occasioned the claim.”
8 Morgavi, 51 Wn. App. at 376; accord Miller v. Pub. Emps. Mut. Ins. Co., 58 Wn. App. 870, 875
9 (1990).

10
11 In Root ex rel. Estate of Root, the court applied this same rationale in the context
12 of a wrongful death claim brought by family members of a single injured insured. 2001 WL
13 1407357, at *2–3; see also Christie v. Maxwell, 40 Wn. App. 40, 47–48 (1985) (“Yet there
14 would be no injury to her consortium rights without the accompanying physical injury to her
15 spouse, and the existence of the marital relationship. In this respect, the loss of consortium
16 action is very similar to the wrongful death action . . .”). There the court considered whether
17 the estate’s claims amounted to independent “each person” injuries that triggered the policy’s
18 “each accident” coverage. Root, 2001 WL 1407357, at *1. The court began its analysis by
19 noting the well-established principle that wrongful death claims, like loss of consortium claims,
20 vest independently of the injured individual’s claims. Id. at *2. The court went on to note,
21 however, that it was equally well-settled that a policy’s anti-stacking provisions could limit the
22 insurer’s liability for such claims if the policy “establish[es] a single applicable limit[] where
23 bodily injury to a single person results in multiple claims by separate claimants.” Id. at *3.
24 Because the policy at issue in that case contained such a limit, id. at *2, the court concluded that
25

1 the estate’s wrongful death claims remained “subject to the policy’s ‘each person’ limit of
2 \$100,000 since they all arise from the bodily injury to Mr. Root.” Id. at *3 (emphasis added).

3 The present case is no different from the circumstances at issue in Grange or Root.
4 The anti-stacking provision of the policy requires that Plaintiff’s liability for the Defendants’
5 wrongful death and common law consortium claims be “restricted to the same single person
6 limit of the policy available to indemnify for the [decedent]’s injuries that occasioned the claim.”
7 Morgavi, 51 Wn. App. at 376; see Root, 2001 WL 1407357, at *2–3.

8 In sum, Washington law forecloses the Defendants’ arguments. Plaintiff has
9 already tendered the required \$100,000 to satisfy its obligations arising from decedent’s bodily
10 injury. That tender resolves any payment obligations that might apply to Plaintiff on account of
11 Washington’s survival statutes, RCW 4.20.046 and 4.20.060. Moreover, as a result of the
12 policy’s anti-stacking provision, that tender also resolves any indemnification obligations that
13 might arise on account of the Defendants’ otherwise independent wrongful death and common-
14 law consortium claims. E.g., Zoda, 38 Wn. App. at 100; Root, 2001 WL 1407357, at *2–3.

16 **C. Plaintiff Did Not Violate Washington’s Insurance Fair Conduct Act**

17 RCW 48.30.015(1) provides that “[a]ny first party claimant to a policy of
18 insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer
19 may bring an action in the superior court of this state to recover the actual damages sustained,
20 together with the costs of the action, including reasonable attorneys’ fees and litigation costs
21” Because Plaintiff did not improperly deny a claim for coverage, Defendants have no
22 actionable claim under the statute.

23 **CONCLUSION**

24 For all of the foregoing reasons, Plaintiff’s Motion (Dkt. # 18) is GRANTED and
25

26 ORDER GRANTING PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT, DENYING DEFENDANTS’
CROSS-MOTION FOR SUMMARY JUDGMENT - 9

1 the Defendants' Motion (Dkt. # 19) is DENIED. The policy plainly provides that "per accident"
2 coverage is "subject to" the \$100,000 "per person" coverage limit, and the anti-stacking
3 limitation subjects the Defendants' other claims to the "per person" limit Plaintiff has already
4 paid. Accordingly, Washington's Insurance Fair Conduct Act is not implicated. The Clerk of
5 Court is directed to enter judgment in favor of Plaintiff and against Defendants.
6

7 DATED this 17th day of October, 2011.
8

9
10 

11 Robert S. Lasnik
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25