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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 KATIE MCLAUGHLIN,

9 Plaintiff,

10 v.

11 JOHN DOE,

Defendant.

C17-974 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable  
13 Thomas S. Zilly, United States District Judge:

14 (1) Defendant American Family Mutual Insurance Company's Motion for  
15 Partial Summary, docket no. 11 (the "Motion"), is DENIED. The subject insurance  
16 policy in this lawsuit, policy no. 2020-4857-02-64, docket no. 12-1 (the "Carson  
17 Policy"), extends Personal Injury Protection (PIP) and Underinsured Motorist (UIM)  
18 coverage to specified categories of "insured persons." Relevant to the Motion, the  
19 Carson Policy expressly provides PIP coverage to "any other person who sustains  
20 bodily injury while . . . using the insured automobile . . . ." Carson Policy, Personal  
21 Injury Protection Coverage, at 1. Although the Carson Policy does not contain similar  
22 language extending UIM coverage to other persons "using" the insured automobile,  
23 "those words are deemed contained in the endorsement 'by force of the UIM statute and  
judicial construction.'" *Butzberger v. Foster*, 151 Wn.2d 396, 401-02, 89 P.3d 689  
(2004) (quoting *Rau v. Liberty Mut. Ins. Co.*, 21 Wn. App. 326, 331, 585 P.2d 157  
(1978)). As a matter of law, Plaintiff, who is not a named insured on the Carson Policy,  
is therefore entitled to either PIP or UIM coverage if she was "using" the insured  
vehicle at the time of the accident. *Id.* at 402; Carson Policy, Personal Injury Protection  
Coverage, at 1; *see also Anderson v. State Farm Mut. Auto. Ins. Co.*, No. C06-  
1112RSM, 2007 WL 1577870, at \*4 (W.D. Wash. May 30, 2007) ("Washington courts

1 regularly apply the same analysis to both types of coverage without distinguishing  
2 them.”). The Carson Policy does not define the term “using” and the Court gives the  
3 word its ordinary meaning, with guidance from the multifactor test articulated in  
4 *Butzberger*. 151 Wn.2d at 402–13. Although Defendant is correct that the  
5 interpretation of the Carson Policy language is a question of law, summary judgment is  
6 only appropriate if there are no genuine issues of material fact. *Id.* at 401. The Court  
7 concludes that genuine issues of material fact preclude summary judgment.

8 (2) Defendant’s “Motion to Strike” contained on pages 8–10 of its reply brief,  
9 docket no. 14, is DENIED as moot.

10 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
11 record.

12 Dated this 19th day of December, 2017.

13  
14 William M. McCool  
15 Clerk

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17 s/Karen Dews  
18 Deputy Clerk