IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RYAN E. MILLER, individually, Respondent, v. PATRICK J. KENNY, individually, Defendant, and SAFECO INSURANCE COMPANY, Appellant.	)	NO. 64003-8-I DIVISION ONE UNPUBLISHED OPINION FILED: December 6, 2010

Lau, J. — While driving a Safeco-insured vehicle, Patrick Kenny rear-ended a truck. His three passengers, including Ryan Miller, sued Kenny for injuries and damages caused by the accident. The parties subsequently executed a settlement agreement that included assignment and reservation provisions. Miller and Safeco dispute the meaning of these provisions. Safeco appeals the order denying summary judgment dismissal of the assigned claims asserted against it by Miller as Kenny's assignee. Because these provisions are susceptible to two reasonable but competing meanings and the parties' intent is a fact question, we affirm the order

denying summary judgment dismissal.

FACTS

On August 23, 2000, Patrick Kenny rear-ended a truck in Alberta, Canada. The collision severely injured his three passengers—Ryan Miller, Ashley Bethards, and Cassandra Peterson. Kenny was driving Peterson's parents' car with their permission and was therefore insured under the Petersons' Safeco policy. Kenny admitted responsibility for the accident and the injuries and damages sustained by the passengers.

Eventually all three passengers filed separate lawsuits against Kenny. Safeco provided a defense and indemnified Kenny without a reservation of rights. In 2002, the plaintiffs made settlement demands against Kenny that exceeded the amount available under both the automobile liability and personal liability umbrella policies. In May 2003, Miller, Bethards, and Peterson entered into a settlement agreement with Kenny in which Kenny agreed to (1) pay through his insurers $1.8 million under the combined insurance coverage limits,[1] (2) entry of a reasonable judgment approved by the court and covenant not to execute (covenant judgment),[2] and (3) assignment of "all rights,

[1] The $1.8 million includes the Petersons' $500,000 automobile and $1,000,000 umbrella policies, as well as $300,000 in coverage from Kenny's parents' State Farm policy.

[2] Covenant judgments arise where an insured assigns a bad faith claim to the injured party and typically involve three components: "(1) the third-party claimant issuing a legally binding covenant in which she promises not to execute against the insured tortfeasor, (2) the insured-tortfeasor assigning his coverage and bad-faith claims against his insurer to the claimant, and (3) the injured claimant and the insured entering into a consent judgment. A consent judgment is one to which the parties stipulate." See Thomas V. Harris, Washington Insurance Law § 10-2 (2d. ed. 2006)

privileges, claims and causes of action that he may have against his insurers or affiliated companies." The agreement provides in part,

> b. Assignment: In further consideration, defendant Patrick Kenny agrees to cooperate and assign to Plaintiffs all rights, privileges, claims and causes of action that they may have against his insurers or affiliated companies, and their agents. This assignment includes, but is not limited to, all of Mr. Kenny's privileges, and claims or causes of action arising out of the insurance contract, obligations or otherwise, as well as claims or actions for insurance protection, claims handling, investigation, evaluation, negotiation, settlement, defense, indemnification, along with any claims for breach of contract, negligence, fiduciary breach, Consumer Protection Act, bad faith, punitive damages and/or otherwise.
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> c. Reservation: Defendant Kenny hereby reserves to himself claims for damages for his personal emotional distress, personal attorneys' fees, personal damages to his credit or reputation and other non-economic damages which arise from the assigned causes of action.
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> d. Cooperation and Pursuit of Remaining Claims: In further consideration, defendant Kenny agrees to cooperate with pursuit of any claims for legal negligence if requested as a result of any allegations of same by Safeco or State Farm as well as any claims for punitive damages or any of the other above claims which at any time may or may not be assignable. Defendant Kenny agrees not to settle said claims without the consent of the parties hereto and to hold in trust any proceeds or judgment for later execution or assignment to the Plaintiffs except as to damages reserved in paragraph C above. If this paragraph or any part thereof is determined to be unenforceable, the remaining provisions of this agreement shall remain in full force and effect.

Settlement agreement and assignment of rights, judgment and covenant at 4.

On October 28, 2004, Safeco moved to intervene for the limited purpose of determining the reasonable covenant judgment amount. On May 12, 2005, the settling parties and intervenor Safeco agreed to entry of a stipulated order setting out a "reasonable covenant judgment" for each claimant.[3]

(footnotes omitted).

Claimant	Gross Amount	Net Amount
Miller	$3,450,000	$2,575,000
Bethards	$2,100,000	$1,425,000
Peterson	$400,000	$150,000

Safeco's counsel signed the stipulated order, and Miller's counsel signed it as "Attorneys for Miller and Assignees of Kenny, Bethards, and Petersons claims." In accordance with the settlement agreement, the insurance proceeds were paid and no judgment was entered against Kenny.

Then, on June 10, Miller amended his complaint to assert, as Kenny's assignee,[4] causes of action against intervenor Safeco for negligence, bad faith,[5] Consumer Protection Act (CPA) violations, breach of contract, breach of fiduciary duty, and breach of regulatory/statutory violations.[6] In April 2006, Miller filed a second amended complaint and cross claims against Safeco.[7] Kenny remained a named defendant in

[3] The "gross amount" represents the total covenant judgment amount for each claimant, while the "net amount" represents the outstanding judgment after apportioned insurance payments are applied.

[4] The amended complaint states that the claims are brought by "Patrick Kenny, by and through Ryan Miller as assignee and individually," and specifically alleged, "The injuries and damages to assignor Patrick Kenny were sustained as a direct result of the conduct of Safeco Insurance Company in its failure to disclose the underlying liability policy limits thereby forcing a lawsuit to be initiated, and in the investigation, evaluation, negotiation, handling, settlement, indemnity, and/or adjustment of the claims arising from the automobile collision and injuries complained about herein."

[5] Although the complaint asserted several causes of action, on appeal, the parties focus on the bad faith claim.

[6] The complaint also asserted, "Defendant Safeco is estopped from denying or limiting coverage as a result of its actions or conduct described herein."

[7] The second amended complaint states that the claims are brought by "Ryan Miller, as assignee and individually." And Safeco filed its initial answer on July 20,

the first and second amended complaints, which sought an "an award of all economic, noneconomic, compensatory and exemplary damages" resulting from Safeco's conduct.[8]

On December 22, 2008, Safeco moved for summary judgment dismissal of Miller's bad faith[9] claim, arguing the assignment and reservation provisions reserved in Kenny the essential harm element of a bad faith claim. Safeco specifically asserted, "An assignee is not entitled to a presumption of harm from a covenant judgment where the assignor retained the predicate claims for harm, i.e., claims for 'personal emotional distress, personal attorney's fees, personal damages to his credit or reputation [or] other noneconomic damages.' " (quoting Settlement Agreement). In essence, Safeco claimed that as a matter of law, Miller could not establish an essential element of his bad faith claim—harm.

After the January 30, 2009 summary judgment hearing, the trial court denied the motion. Safeco then moved the trial court to certify the question for discretionary review under RAP 2.3(b)(4), arguing that the reservation of harm issue involved a controlling issue of law and "reversal of this motion for summary judgment would result in dismissal of Miller's claims predicated on Kenny's assignment." Miller opposed certification, pointing to Safeco's pleading deficiencies, dilatory conduct, waiver,

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2005, which was later stricken by the court. Safeco then filed an answer on Feb. 7, 2008, and an amended answer on March 5, 2008.

[8] Miller also brought an action as the assignee of Cassandra Peterson's claims for bad faith in the handling of the uninsured motorist claim arising out of the motor vehicle accident. Peterson's assigned claims are not at issue in this appeal.

[9] Safeco's motion also requested dismissal of any claim "predicated upon an assignment of rights from Patrick Kenny."

alternative relief under CR 17(a), and finally, appealability questions. Nevertheless, the trial court certified the matter for discretionary review under RAP 2.3(b)(4). The certification order provides in part,

> 1. The Order Re: Motion for Summary Judgment on Harm/Damages involves a controlling issue of law as to which there is substantial ground for a difference of opinion. Neither party was able to locate persuasive Washington authority on the issue of whether a partial assignment of a claim against an insurer that includes a covenant judgment but excludes all harm that could arise as a result of the insurer's alleged wrongful acts is legally sufficient. The question is therefore one of first impression requiring resolution by the Court of Appeals.
> 2. Immediate review of the order and resolution of this issue will materially advance the ultimate termination of one of the causes of action.

A commissioner of this court granted discretionary review, and a panel of this court denied Miller's subsequent motion to modify the commissioner's ruling.

ANALYSIS

Standard of Review

When reviewing a summary judgment order, an appellate court engages in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Jones, 146 Wn.2d at 300–01. "A material fact is one upon which the outcome of the litigation depends in whole or in part." Atherton Condo. Apt.-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990) (citing Morris v. McNicol, 83 Wn.2d 491, 494, 519, P.2d 7 (1974)).

Butler and the Presumption of Harm

Safeco first argues Miller cannot, as a matter of law, establish his bad faith claim because the assignment reserved in Kenny an essential element of that claim—actual harm. Miller counters that personal noneconomic damages are not the only measure of harm from a covenant judgment[10] and, regardless, the terms of the assignment here did not reserve those claims.[11]

Insurers have a duty of good faith to their policyholders. Smith v. Safeco Ins. Co., 150 Wn.2d 478, 484, 78 P.3d 1274 (2003). "To succeed on a bad faith claim, the policyholder must show the insurer's breach of the insurance contract was 'unreasonable, frivolous, or unfounded.'" Smith, 150 Wn.2d at 484 (quoting Overton v. Consol. Ins. Co., 145 Wn.2d 417, 433, 38 P.3d 322 (2002)). In addition, the policyholder must establish "'the same principles as any other tort: duty, breach of that duty, and damages proximately caused by any breach of duty.'" Mut. of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc., 161 Wn.2d 903, 916, 169 P.3d 1 (2007) (quoting

[10] We decline to address this question because we conclude that issues of fact regarding the meaning of the assignment and reservation and the parties' intent preclude summary judgment.

[11] Miller advances several theories, including standing, waiver, and a CR 17 argument, to urge this court not reach the merits of Safeco's appeal. But the trial court limited its discretionary review certification to "the issue of whether a partial assignment of a claim against an insurer that includes a covenant judgment but excludes all harm that could arise as a result of the insurers alleged wrongful acts is legally sufficient." Accordingly, we will limit our review to this certified question.

Smith, 150 Wn.2d at 485.) While "harm is an essential element of an action for bad faith handling of an insurance claim," a rebuttable presumption of harm arises once the insured meets the burden of establishing bad faith. Butler, 118 Wn.2d at 389–90. The presumption of harm relieves the insured of the "'almost impossible burden of proving that he or she is demonstrably worse off because of [the insurer's actions]'" Butler, 118 Wn.2d at 390 (quoting Allan D. Windt, Insurance Claims and Disputes: Representation of Insurance Companies and Insureds § 2.09, at 40–41 (2d ed. 1988)). Recoverable damages in a bad faith action include the insurer's policy limit and any excess judgment amount against the insured above that limit. Besel v. Viking Ins. Co. of Wisconsin, 146 Wn.2d 730, 735, 49 P.3d 887 (2002).

Our Supreme Court first imposed a rebuttable presumption of harm in Butler. There, Butler had established bad faith by showing that Safeco had delayed investigation, comingled defense and coverage files, and delayed over two months in notifying the insured of its reservation of rights. Butler, 118 Wn.2d at 395–400. Butler entered into a covenant judgment with the injured party, and Safeco argued that he could not show harm because the judgment could not be executed. In analyzing Safeco's attempt to distinguish relevant precedent as based on negligence and breach of the contractual duty to defend and not bad faith, the court stated,

> [I]t seems meaningless in this context to distinguish between a breach of the contractual duty to defend and a breach of the duty to act in good faith. If a covenant not to execute does not relieve an insurer of liability for its breach of contract, then it should not relieve the insurer from liability for breaching its "enhanced obligation" to act in good faith.
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> Second, even though the agreement insulates the insured from liability, it still
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> constitutes a real harm because of the potential effect on the insured's

> credit rating . . . [and] damage to reputation and loss of business opportunities[.]

Butler, 118 Wn.2d at 399 (emphasis added) (quoting Barr v. Gen. Accident Group Ins. Co. of N. Am., 520 A.2d 485, 489 (Pa. Super 1987)). "In the more than 15 years that have elapsed since Butler, the legislature has not altered the Butler presumption [of harm], nor has this court retreated from it." Dan Paulson, 161 Wn.2d at 921. The presumption of harm represents a "policy choice to protect third-party insured and dissuade insurer bad faith." Dan Paulson, 161 Wn.2d at 921.

Post-Butler, Washington courts have consistently held that "the amount of a covenant judgment is the presumptive measure of an insured's harm caused by an insurer's tortious bad faith if the covenant judgment is reasonable under the Chaussee criteria."[12] Besel, 146 Wn.2d at 738; see also Dan Paulson, 161 Wn.2d at 924–25 (quoting Besel, 146 Wn.2d at 738) ("Where coverage by estoppel applies,[13] 'the amount of a covenant judgment is the presumptive measure of an insured's harm caused by an insurer's tortious bad faith if the covenant judgment is reasonable.'"). The Besel court so held because "[i]f a reasonable and good faith settlement amount of a covenant judgment does not measure an insured's harm, our requirement that such settlements be reasonable is meaningless." Besel, 146 Wn.2d at 739. Furthermore,

[12] Safeco does not dispute the reasonableness of the covenant judgment, nor could it, as it signed a "Stipulated Order Re: Reasonableness of Settlements" that stated, "Safeco relinquishes its right to contest the reasonableness of the settlement amounts agreed to . . . ."

[13] Coverage by estoppel applies where an insured prevails on a bad faith claim. See Butler, 118 Wn.2d at 394.

Washington courts have recognized that in the covenant judgment context, an insured's relinquishing control of the underlying case also constitutes harm. See Butler, 118 Wn.2d at 392 ("loss of control of the case is in itself prejudicial to the insured"); Dan Paulson, 161 Wn.2d at 921.

Interpretation of Settlement Agreement

Safeco principally contends that although Kenny assigned his right to pursue the bad faith claim to Miller, the settlement agreement's "reservation provision" retained in Kenny the harm element of that claim. Safeco consequently argues that as a matter of law, Miller's assigned claims must be dismissed for failure to establish an element essential to his claims. Miller responds that the "reservation provision" retained only an interest in any damages recovered.

"In the contract interpretation context, '[s]ummary judgment is not proper if the parties' written contract, viewed in light of the parties' other objective manifestations, has two 'or more' reasonable but competing meanings.'" Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 83, 60 P.3d 1245 (2003) (quoting Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)). Courts interpret contract terms as a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence or (2) if extrinsic evidence is used, only one reasonable interpretation can be drawn from it. Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996); see also Go2Net, 115 Wn. App. at 85. Generally, the parties' intentions present questions of fact. Paradise Orchards Gen. P'ship v. Fearing, 122 Wn. App. 507, 517, 94 P.3d 372 (2004). And summary judgment is rarely appropriate

when extrinsic evidence is needed. Hearst Commc'ns, Inc. v. Seattle Times Co. 120 Wn. App. 784, 791, 86 P.3d 1194 (2004), aff'd, 154 Wn.2d 493, 115 P.3d 262, (2005). Even if evidentiary facts are not in dispute, summary judgment is improper where intent is unclear. Wash. Hydroculture, Inc. v. Payne, 96 Wn.2d 322, 635 P.2d 138 (1981).

"'The touchstone of contract interpretation is the parties' intent.'" Go2Net, 115 Wn. App. at 83–84 (quoting Tanner, 128 Wn.2d at 674). Washington courts follow the objective manifestation theory of contracts, looking for the parties' intent as objectively manifested rather than their unexpressed subjective intent. Hearst, 154 Wn.2d at 503. Thus, a court considers only what the parties wrote, giving words in a contract their ordinary, usual, and popular meaning unless the agreement as a whole clearly demonstrates a contrary intent. Hearst, 154 Wn.2d at 504. And a court reads a contract as an average person would, giving it a practical and reasonable meaning, not a strained or forced meaning that leads to absurd results. Allstate Ins. Co. v Hammonds, 72 Wn. App 664, 667, 865 P.2d 560 (1994). This meaning may be ascertained by reference to standard English dictionaries. Queen City Farms, Inc. v. Cent. Nat'l Ins. Co., 126 Wn.2d 50, 77, 882 P.2d 703, 891 P.2d 718 (1994). The court harmonizes clauses that seem to conflict in order to give effect to all the contract's provisions. Nishikawa v. U.S. Eagle High, LLC, 138 Wn. App 841, 849, 158 P.3d 1265 (2007). And we interpret settlement agreements in the same way we interpret other contracts. Riley Pleas, Inc. v. State, 88 Wn.2d 933, 937–38, 588 P.2d 780 (1977).

Here, the assignment provision gives Miller "all rights, privileges, claims and causes of action" that Kenny had against Safeco. And that "assignment includes . . . all

of Mr. Kenny's . . . causes of action arising out of the insurance contract, obligations or otherwise, as well as claims or actions for . . . bad faith . . . . The "reservation provision" retains in Kenny "claims for damages for his personal emotional distress, personal attorneys' fees, personal damages to his credit or reputation and other non-economic damages which arise from the assigned causes of action." (Emphasis added.)

Safeco argues that the reservation provision's retention of "claims for damages" means "that Ken[]ny reserved to himself the 'claims' for his personal damages resulting from the alleged bad faith, and not merely an unspecified interest in any amounts Miller might recover." Br. of Appellant at 14–15. We first consider the provision's plain meaning by reference to standard English dictionaries. See Queen City Farms, 126 Wn.2d at 77 (undefined contract terms are given their "plain, ordinary and popular meaning" which "may be ascertained by reference to standard English dictionaries"). Black's Law Dictionary defines "claim" as "[a] demand for money, property, or a legal remedy which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for." Black's Law Dictionary 282 (9th ed. 2009). This definition supports a reasonable interpretation that the reservation provision reserved a "cause of action" for harm—a "civil action specifying what relief the plaintiff asks for." Black's Law Dictionary 282 (9th ed. 2009). See Wm. Dickson Co. v. Pierce County, 128 Wn. App. 488, 494, 116 P.3d 409, (2005) (relying on Black's Law Dictionary to ascertain meaning of "third party"). And the reservation provision here lacks any express reference to Kenny's interest in damages recovered by Miller.

But Black's also defines "claim" as "[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse's claim to half of the lottery winnings>." Black's, supra, at 281–82. That definition supports a contrary but reasonable interpretation that the reservation provision retained only a right to payment of damages recovered. And while Safeco relies on the phrase "claims for damages," the "reservation provision" emphasizes that those claims "arise from the assigned causes of action."[14]

Further, Safeco's reading fails to harmonize the assignment and reservation provisions. It is neither logical nor reasonable that the parties would intend to assign "all rights, privileges, claims and causes of action," including the bad faith claim, and then defeat the assignment's purpose by retaining an essential element of the bad faith cause of action in the reservation provision. See Nishikawa, 138 Wn. App. at 849 (courts harmonize provisions that seem to conflict with goal of interpreting the agreement "in a manner that gives effect to all the contract's provisions"). Safeco's interpretation gives no effect to the reservation provision and renders it superfluous. Finally, the "cooperation provision" makes no reference to the reservation of "claims," to which Safeco attaches so much importance.[15] Instead, it provides that Kenny would

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[14] We also note that the assignment provision refers to "claims and causes of action." Yet the reservation provision only refers to "claims for damages" . . . "which arise from the assigned causes of action."

[15] See Brief of Appellant at 14 ("Kenny's Incomplete Assignment and Reservation of His Claims for Harm from the Judgment Mandates the Dismissal of Miller's Assigned Claims from Kenny. . . . But the reservation states that Kenny reserved to himself the 'claims' for his personal damages . . ."); Safeco's Motion for Summary Judgment at 4 ("The assignment executed here—where the assignor retains

"hold in trust any proceeds or judgment for later execution or assignment to the Plaintiffs except as to damages reserved in paragraph C [the reservation provision] above." Miller's interpretation that Kenny retained only an interest in damages recovered gives effect to the cooperation provision, thus harmonizing the agreement's assignment, reservation, and cooperation provisions.

We next consider the relevant extrinsic evidence. Our review of the extrinsic evidence here shows reasonable but competing interpretations of the "reservation provision." Thus, the evidence fails to establish the parties' intent as a matter of law. In Washington, "extrinsic evidence is admissible to aid in ascertaining the parties' intent 'where the evidence gives meaning to words used in the contract.'" McCausland v. McCausland, 129 Wn. App. 390, 402, 118 P.3d 944 (2005) (quoting Hollis v. Garwall, Inc., 137 Wn.2d 683, 695, 974 P.2d 836 (1999)), rev'd on other grounds, 159 P.2d 607, 152 P.3d 1013 (2007). Miller relies on his first and second complaints to establish the parties' intent. He argues that these amended complaints support a reasonable inference that Kenny intended to reserve an interest in any damages recovered by Miller because they seek an award of "all economic, non-economic, compensatory and exemplary damages." (Emphasis added). It is specifically those noneconomic damages that Safeco now asserts Miller and Kenny intended to reserve to Kenny. Miller's amended complaints support a reasonable inference that the parties intended to assign the cause of action for those damages to Miller, but reserve an

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the claims for actual harm . . .").

interest in the proceeds to Kenny.[16] Peterson v. Pac. First Fed. Sav. & Loan, 23 Wn. App. 688, 598 P.2d 407, 409 (1979) (party's motion for summary judgment need not be accompanied by supporting affidavit and may be based on the pleadings, and when a pleading is properly made and uncontradicted, it may be taken as true for purposes of deciding summary judgment).

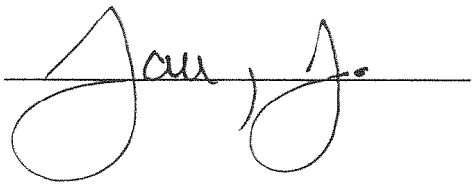
In response, Safeco relies on the October 26, 2005 letter from Kenny's personal counsel to Safeco's counsel in which Kenny's counsel states, "However, in the settlement agreement Mr. Kenny did reserve to himself claims for his personal emotional distress, personal attorney's fees, personal damages to his credit or reputation, and other non-economic damages which arise from the assigned causes of action." Safeco contends that this statement from Kenny's personal counsel shows that Kenny reserved in himself all personal damages. According to Safeco, this evidence conclusively establishes that Kenny reserved the essential harm element of the bad faith claim. But when read in context, Kenny's counsel also wrote, "Mr. Kenny personally has asserted no claims against Safeco because he assigned them to Mr. Miller in settlement of the underlying case."[17] And this letter was written before Miller

[16] In essence, Miller claims that these complaints filed soon after executing the settlement agreement and before Safeco moved for summary judgment dismissal, demonstrate Kenny and Miller's mutual intent to reserve an interest in Miller's recovery to Kenny. Otherwise, Miller would not have amended his complaints to seek noneconomic damages if they had intended to reserve those damages in Kenny.

[17] In opposing discretionary review, Kenny submitted a declaration that purports to explain the parties' intent. We decline to consider this unilateral, unexpressed, and subjective view of Kenny's intent. See W. Wash. Corp. of Seventh-Day Adventists v. Ferrellgas, Inc., 102 Wn. App. 488, 495, 7 P.3d 861 (2000) (extrinsic evidence cannot be used "to establish a party's unilateral or subjective intent as to the meaning of a

filed his second amended complaint realleging damages sought—"all economic, non-economic, compensatory and exemplary damages . . . ." (Emphasis added.)

We conclude that the record demonstrates genuine material fact issues related to the meaning of the settlement agreement's assignment and reservation provisions. And the essential question on Miller and Kenny's intent depends, in part, on disputed extrinsic evidence, which leads to two or more reasonable but competing interpretations. Anderson Hay & Grain Co., Inc. v. United Dominion Indus., Inc., 119 Wn. App. 249, 76 P.3d 1205 (2003). (If there are two or more reasonable meanings to contract language, a question of fact is presented and summary judgment is improper. And intent can be decided as a matter of law on summary judgment in a contract dispute only when interpretation of a contract does not depend on extrinsic evidence or when extrinsic evidence leads to only one reasonable interpretation.) Accordingly, we affirm the order denying Safeco's summary judgment dismissal motion.[18]



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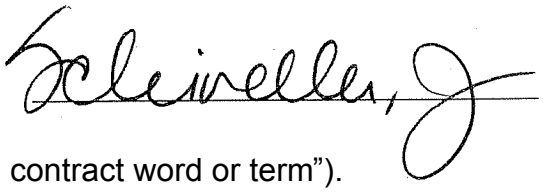

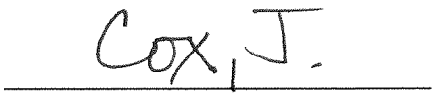

contract word or term").

We also note that Miller's discretionary review brief acknowledges, "At best, whether Mr. Miller had a full or partial assignment involves factual issues . . . ."

[18] And because the dispositive issue rests on the existence of material facts, we conclude that the parties' supplementation provides no assistance to the court on this narrow question.