IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES AND DEBORAH SHARBONO, individually and the marital community comprised thereof, Respondents, v. UNIVERSAL UNDERWRITERS INSURANCE COMPANY, a foreign insurer, Appellants, and LEN VAN DE WEGE and "JANE DOE" VAN DE WEGE, individually and the marital community comprised thereof, Defendants, and CLINTON L. TOMYN, individually and as Personal Representative of the ESTATE OF CYNTHIA L. TOMYN, deceased; and as Parent/Guardian of NATHAN TOMYN, AARON TOMYN, and CHRISTIAN TOMYN, minor children, Intervenors.	No. 39781-1-II UNPUBLISHED OPINION

Armstrong, J. — James and Deborah Sharbono sued Universal Underwriters Insurance

Company to establish the amount of their coverage for an auto accident that a family member caused. The parties reached a proposed settlement following mediation. Intervenor Clinton Tomyn, whose wife died in the accident, moved to compel disclosure of the proposed settlement terms. The trial court granted the motion and Universal sought discretionary review, arguing that the disclosure order violated the mediation communication privilege under the Uniform Mediation Act (UMA), chapter 7.07 RCW. The Tomyns counter that this issue is moot because the settlement is now final and they have received a copy of the agreement. We agree and decline to review the issue because of the unique facts leading to the trial court's ruling compelling disclosure.

FACTS

On December 11, 1998, Cassandra Sharbono hit a car driven by Cynthia Tomyn, causing Cynthia's death. Her husband, Clinton Tomyn, sued Cassandra and her parents, James and Deborah Sharbono. Clinton sued individually, as the personal representative of his wife's estate, and as the guardian of their children. The Tomyns and the Sharbonos settled, with the Sharbonos agreeing to confess judgment for $4,525,000 and to sue Universal to recover insurance proceeds to satisfy the judgment amount. The Sharbonos prevailed against Universal at trial and Universal appealed. We reversed several trial court rulings on the extent of coverage and an award for bad faith damages. *See Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, 388-93, 424, 161 P.3d 406 (2007).

On remand, the Tomyns moved to intervene as a party in the action. Universal moved to limit the Tomyns' intervention to the ongoing dispute over the calculation of interest on a portion

of the judgment that we affirmed. *See Sharbono*, 139 Wn. App. at 424. Universal argued that the Tomyns had no standing to participate in the remaining dispute over bad faith damages because the Sharbonos had expressly retained bad faith claims for themselves in the Tomyn-Sharbono settlement. The trial court allowed the Tomyns to intervene to protect their interest in the affirmed judgment.

On August 11, 2009, the Sharbonos, the Tomyns, and Universal participated in an unsuccessful mediation session. On August 18, the Sharbonos and Universal separately mediated and agreed to a proposed settlement. The Sharbonos' counsel then notified the Tomyns' counsel that they were working on finalizing the settlement agreement. The Tomyns were surprised the Sharbonos would settle without including them in the negotiations and demanded full disclosure of the proposed agreement. Universal and the Sharbonos refused.

The Tomyns moved to compel disclosure of the negotiations and proposed settlement terms, expressing concern that the settlement might impact their interests. Universal opposed the motion, arguing that the settlement negotiations were protected from disclosure under the UMA. The trial court granted the Tomyns' motion, ruling:

> I understand that we are talking about settlement of the Sharbonos' claims. However, the Sharbonos' claims do arise from the wrongful death of Cynthia Tomyn. Under these circumstances, that substantially outweighs the interest in protecting the confidentiality under the mediation statute, and I will grant the request to compel disclosure of the settlement negotiations.

Report of Proceedings (RP) at 27. After further argument and requests to clarify the scope of the order, the trial court ruled: "I'll just require disclosure at this point of proposed settlement terms without drafts." RP at 37. The Sharbonos' counsel then orally disclosed the proposed settlement

terms on the record.

ANALYSIS

The parties agree that this case is now moot because the Sharbonos and Universal have finalized their settlement and provided a copy of the final agreement to the Tomyns. We may review a moot case if it presents issues of "'continuing and substantial public interest.'" *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 796, 225 P.3d 213 (2009) (quoting *In re Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004)). In deciding whether a case presents issues of continuing and substantial public interest, we consider three factors: "'(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.'" *Satomi*, 167 Wn.2d at 796 (quoting *Horner*, 151 Wn.2d at 892).

Due to the unique circumstances of this case, it is unlikely that this particular issue will recur or that an authoritative determination will be helpful in providing future guidance to public officers. The issue is not simply whether, in a multi-party case, the court can compel disclosure of a mediated settlement between fewer than all parties. Here, the Sharbonos were involved in a unique contractual relationship with the Tomyns arising out of the Tomyn-Sharbono settlement agreement. Because the Sharbonos were suing Universal to satisfy the confessed judgment they owed the Tomyns, the Sharbonos were not merely representing their own interests in this proceeding; it appears that they also had some duty to protect the Tomyns' interests as well. Because the issue of whether it was improper to compel disclosure under these unique

circumstances is unlikely to recur, we decline to review this moot issue.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.