

COLE | WATHEN | LEID | HALL

Insurance Law Newsletter

May 2016

Volume 6, Issue 1

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Highlights

- CWLH Proudly Announces New Partner
Kimberly Larsen Rider
- William L. Weber Mediation @ CWLH
- WA Supreme Court Liberally
Interprets "Arising Out Of" for
Purposes of UIM Coverage
- WA Supreme Court Rules that States'
Differing Statute of Limitations is Not a
Source of Conflict.

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*Proudly Announces Kimberly Larsen Rider's
Promotion to Partner*

Kimberly Larsen Rider, Esq. - Partner

Our clients deserve the skill, commitment and experience that Kimberly has demonstrated since joining our team. Attorney Rider will continue her practice of insurance defense in all aspects of insurance related litigation, including first party coverage, bad faith claims and third party defense claims.

Kimberly Larsen Rider graduated cum laude, from Villanova University with a B.A. in Political Science and English before receiving her J.D. from Roger Williams University School of Law. Prior to joining CWLH, Ms. Rider practiced civil litigation and criminal defense before the Rhode Island and Massachusetts Superior and District Courts, the Rhode Island and Massachusetts Family and Probate Courts, and the Massachusetts Court of Appeals. Her current practice focuses on all aspects of insurance defense including first party coverage, bad faith claims and third party defense claims.

Ms. Rider is admitted to the bars of Washington State, the State of Rhode Island, the Commonwealth of Massachusetts, the United States District Court for the District of Rhode Island, the United States District Court for the Western District of Washington, and the 9th Circuit Court of Appeals. She is a member of the Rhode Island Bar Association, the Washington State Bar Association and the King County Bar Association. Ms. Rider is also a board member of Work Force Development Center in Mukilteo, Washington, a non-profit organization committed to preparing at-risk and disadvantaged high school juniors and seniors in the field of specialized vocational training for their respective journeys into the future work force.

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Since 1908.**

Kimberly Larsen Rider
Partner

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Another New Addition:

CWLH Announces Senior Associate Bill Weber's Mediation Practice

Bill Weber has been practicing law for 17 years as a trial attorney doing primarily insurance defense work. For the past several years he has also been building a thriving mediation practice. Expanding his practice to include mediation work had been a goal and within his sights for some time. Bill grew up in Michigan and attended Michigan State University for both his undergraduate and law degrees. His father was a corporate litigation attorney in Detroit and in 2007 started his own mediation and arbitration service. Professional Resolution Experts of Michigan ("PREMi") has grown to now be the largest arbitration and mediation organization in Michigan, currently having 17 panelists, legal experts from nearly all civil areas of the law, working from three locations in Michigan. Forming and expanding this company was no small task. Mediation is much more ingrained in the litigation culture in Washington and enjoys far greater statutory and court rule support than in Michigan. Bill was instrumental as a consultant in offering guidance to PREMi regarding the structure of the organization, the panel to assemble, and helping to set the ADR goals of the organization from a state-wide perspective for ADR use and reform. He continues to serve as a consultant to PREMi.

Bill enjoys collaborating with other mediators. Bill worked for 8 years with well-known mediator Keith Kubik of Kubik Mediation. Aside from his father, Bill considers Keith to be his closest mentor, colleague and friend. The assistance and advice regarding skills of mediation practice and running the business of mediation he has provided has proven to be invaluable. In addition to consulting with other mediators, Bill is a member of the ADR section of the Washington State Bar and serves on a colloquy for change that is currently working to initiate court rule changes that promote early mediation in litigation to eliminate some of the problems associated with mandatory ADR dates in a case schedule weeks before trial as it currently stands.

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William L. Weber
Mediation
through
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William L. Weber
Mediation
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Bill's experience in working in-house for a large commercial insurance carrier for ten years and working with more than 20 different insurance companies over the other years allows him to have immediate rapport and trust with the defense counsel and adjusters. His reputation as being knowledgeable and reasonable in working with plaintiff's attorneys allows him to build trust in that room as well. Bill attended and completed the certified 40-hour intensive training clinic on mediation at King County Dispute Resolution Center and has been mediating ever since through his d/b/a Weber Mediation. He routinely offers mediation tips and practice case studies on the Weber Mediation website.

Typical cases or pre-litigation disputes Bill mediates include: personal injury, wrongful death, construction site accidents, medical malpractice, dental malpractice, allied healthcare provider malpractice, premises liability, product liability, insurance bad faith claims, and homeowners association and condo cases. He offers full day or half day mediation services and can hold these sessions at CWLH or is willing to travel to counsel's office if that is more convenient. In addition, he offers a 2-hour telephonic mediation service. Please feel free to contact CWLH at 206-622-0494 for scheduling availability.

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WA Supreme Court Liberally Interprets "Arising Out Of" for Purposes of UIM Coverage

Summary by,
Nicholas A. Reynolds
Heidi Kroeber v.
GEICO Insurance
Company – No.
91846-5

Plaintiff Heidi Kroeber became the victim of a drive-by shooting outside a bar. She sustained a gunshot wound after tortfeasor Matthew Atkinson opened fire from a pickup truck. Atkinson, who was driving an uninsured vehicle belonging to a friend, later pled guilty to Drive-By Shooting. Following the entry of his guilty plea, Atkinson asserted that it was not his intention to injure anyone when discharging his firearm. Atkinson claimed he was unaware people were present in the area where he was shooting from the truck.

Consequently, Kroeber sought UIM coverage from her automobile insurer, GEICO. GEICO denied her claim because her injuries did not arise out of the use of Atkinson's truck. Kroeber filed suit, and the case was removed to the United States District Court for the Western District of Washington (W.D. Wash).

The findings of the federal court stated that the shooting constituted an "accident" for the purposes of the plaintiff's policy and that the policy language unambiguously required GEICO's liability to "arise out of" the shooter's use of the truck since the truck was "in use" at the time of the shooting.

The W.D. Wash then turned to the Washington Supreme Court with two certified questions of Washington State law to be reviewed *de novo*:

- 1) When a driver drives to a location, momentarily stops or slows his vehicle, intentionally fires a gun, his bullet hits a pedestrian, and the driver drives away immediately thereafter, does this driver's liability to this pedestrian for the injuries he causes "arise out of" the driver's use of his vehicle, for purposes of UIM coverage?

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2) Is it material whether or not he actually intended to harm anyone?

The Supreme Court reasoned that, for the protection of the insurance-buying public at-large, the phrase “arise out of” is to be liberally construed when detecting the presence of a causal connection and specified that the phrase is “repeatedly described as ‘broader’ than the phrase ‘caused by’ the use of a vehicle” in citing a recent opinion published by the Oregon Court of Appeals. The Court recognized that the argument made by GEICO asserting that the vehicle was “a mere situs” of an accident was a question of fact to be determined by the trial court.

The Court concluded by holding that an injury arises out of vehicle use if some causal connection exists between a condition of, an attachment to, or some aspect of the vehicle’s use and the resulting injury. Conversely, it unanimously concluded that an injury does not “arise out of” vehicle use when the vehicle is merely the situs of the accident.

The second of the two certified questions regarding the materiality of the shooter’s intent to injure was found to be inconsequential because both parties stipulated the injury itself in this case was caused by “an accident.”

As seen in other recent Washington Supreme Court decisions, liberal construction of insurance statutes continue to trend where the Supreme Court, in *Kroeber*, had an opportunity to limit expansion but did not. In fact, under *Kroeber* the potential for UIM coverage is further expanded to potentially include injuries resulting from the independent actions of the vehicle’s operator at the time of the incident, though not directly caused by the vehicle.

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WA Supreme Court Rules that States' Differing Statute of Limitations is Not a Source of Conflict.

*Mark S. Cole -
Claire Woodward v.
Ava Taylor, et al -
No. 91270-0*

Mark Cole represented the Defendant in a recent decision handed down by the Washington Supreme Court involving conflict of laws in a tort action. In determining whether to apply Washington or Idaho law, the Court looked at the issue of whether there was an *actual conflict* in deciding which of the state's substantive laws to administer.

In March of 2011, Respondent Ava Taylor was driving passenger, Petitioner Claire Woodward, on a highway in Idaho through icy conditions. Taylor lost control of her vehicle resulting in a rollover accident in which Woodward was injured. Both Taylor and Woodward were Washington State residents.

Woodward filed suit against Taylor in May of 2013, alleging that Taylor's was the proximate cause of her injuries. Taylor moved to dismiss, arguing that Idaho's two-year statute of limitations applied and that Woodward's claims were time-barred. Conversely, Woodward argued that because the action was timely filed in King County Superior Court, and the parties were both Washington residents, that venue was proper and that the claim survived under Washington's three year statute of limitations.

The trial court agreed with Taylor that Idaho's substantive law applied, citing *Ellis v. Barto*, 82 Wn. App 454 (1996), in reasoning that a negligence action based on the rules of the road "is subject to the law of the state where the accident occurred." Hence, the Idaho two-year statute of limitations applied.

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Mark S. Cole -
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No. 91270-0

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The Supreme Court granted Woodward's petition, reviewing the dismissal under CR 12(b)(6) *de novo*. In reversing the decision of the lower courts, the Court reasoned that Washington substantive law including the statute of limitations, was properly applied because there was no actual conflict of laws. The Justices applied the analytical framework to ascertain which state law applied by 1) identifying an actual conflict of substantive law; 2) whether the most significant relationship test was the proper standard to apply; and 3) applying the statute of limitations of the authoritative jurisdiction.

The Court found that there was no actual conflict of laws. A difference between the two states' statutes of limitations may not be the basis for finding an actual conflict of law under *Rice v. Dow Chem. Co.*, 124 Wn.2d 205 (1994). The Court concluded that because Woodward pled only general negligence in her complaint, that Taylor was driving too fast for conditions, that differences in the motor vehicle codes and comparative fault standards for the respective states had no bearing on the claims of the petitioner and, therefore, there was no actual conflict of laws. Under Washington state law, in the absence of differing outcomes, there is no actual conflict of law. *Seizer v. Sessions*, 132 Wn.2d 642 (1997).

Because Washington courts have jurisdiction, Washington substantive law applies and that means the complaint is not time barred because it is within Washington's three-year statute of limitations.

Based on the Court's finding that the states' differing statute of limitations is not a conflict of laws, the Court remanded the matter back to the trial court, as Washington's three year statute of limitations did not time-bar the Plaintiff's claims.

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