

DISTRICT COURT

INSURANCE: Tortfeasor's and Decedent's policies cover "bodily injury" under consortium, emotional, and relationship injuries alleged by Estate, widow, 2 children . . . aggregate limits apply to these 4 claimants . . . medical/funeral expenses precluded as element of bad faith . . . other bad faith claims to go to jury . . . Baugh.

Richard Roebing was working in a construction zone closed to traffic when he was struck and killed by Chad Shipman in 6/04. Shipman had a Mid-Century policy with \$100,000/\$300,000 liability limits. Roebing had 2 policies with Farmers which provide coverage for his widow Kim and their 2 children for bodily injury up to \$100,000 above Shipman's insurance, limited to \$300,000 total on both policies. Kim claims that Shipman did not carry adequate liability insurance to compensate her, and that economic losses pursuant to Roebing's bodily injury clearly exceed the \$600,000 UIM sought. He incurred \$6,000 medical/funeral expenses. His Farmers policies each provided \$2,000 med-pay. She claims total losses of well in excess of \$1 million. She requests a declaratory judgment on Mid-Century's 3rd-party obligations and Farmers' 1st-party obligations, and asserts claims for bad faith, NEID, and consortium.

There is \$300,000 available in each of the 3 policies, 1/3 of which has been paid, 2/3 of which is still available. The only differences are that the Mid-Century policy is subject to the survivorship claim of Roebing's Estate, and the claims of the surviving plaintiffs are 3rd-party claims for wrongful death. Thus once the parties or a jury determines the amount of damages, Mid-Century will first pay up to \$100,000 per claimant up to \$300,000 total and Farmers will then pay up to an additional \$200,000 per claimant, up to an additional \$600,000 total, all reduced by the \$100,000 per policy already paid.

The foregoing is further impacted by the fact that despite how the claims are described, all 3 policies only provide coverage for "bodily injury." Obviously Roebing suffered bodily injury. The question, under the law and policy language, is did the surviving plaintiffs suffer bodily injury? Despite what the law may have been in days past, Montana clearly recognizes recovery for emotional injuries, consortium, and similar or related subjective, hard-to-measure, difficult-to-see-with-your-eyes, doesn't-show-up-on-MRIs and x-rays kinds of injuries. If these are not bodily injuries, neither the Legislature nor case law has clearly said they are not. The policies here define bodily injury as "bodily injury to or sickness, disease, or death of any person." This is not ambiguous. So coverage is provided for bodily injury to any person and for sickness of any person and for disease of any person and for death of any person. Plaintiffs are each of the "any person[s]." "Bodily" means of or pertaining to the body. The emotional, relationship, and consortium injuries claimed by the surviving plaintiffs all have to do with the functioning of their brains in dealing with Roebing's death. The brain is certainly a part of the body and if injured it is a bodily injury. Further, injuries of this sort could manifest as a sickness. Further, the policies under limits of liability each reference claims for loss of consortium or injury to the relationship as included in the \$100,000/person limit. Clearly, even though not in the definition of bodily injury in so many words, each of the policies contemplates bodily injury to include consortium and injury-to-relationship claims.

Because the claims against Mid-Century are 3rd-party survivorship and wrongful death, unless the policy specifies otherwise, there would only be the single \$100,000/person available since both claims derive from Roebing's death. That policy, like the others, says \$100,000 "is the maximum for bodily injury sustained by one person in any occurrence." The occurrence was Roebing's death. However, only if bodily injury is limited to broken & mangled physical bodies has bodily injury only been sustained by 1 person in this occurrence. If bodily injury also includes consortium, emotional, and relationship injuries, there are also 3 other persons alleging injury. It would not have been difficult to define bodily injury as Defendants interpret it. The Court has concluded that as written, these policies include and cover bodily injury under the consortium, emotional, and relationship injuries alleged by Plaintiffs. There are 4 claimants and the aggregate limits apply.

Plaintiffs also claim bad faith based on alleged violations of the UTPA. One has to do with medical & funeral expenses. This allegation cannot form a basis for bad faith as Farmers had a reasonable basis to not pay based on the policies. Newbury (Mont. 2008). As to the other alleged violations, the Court will let a jury decide.

Roebing, et al. v. Farmers Ins. Exchange, Mid-Century Ins., and Shipman, Yellowstone DV 07-86, 6/17/08.

Randall Nelson (Nelson & Dahle), Billings for Plaintiffs; William Gregoire (Smith, Walsh, Clarke & Gregoire), Great Falls, for Farmers and Mid-Century at hearing; Brendon Rohan (Poore, Roth & Robinson), Butte, for Farmers and Mid-Century after hearing; Donald Murray (Crowley, Haughey, Hanson, Toole & Dietrich), Billings, for Shipman.