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United States Court of Appeals
Tenth Circuit

March 29, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PROGRESSIVE NORTHERN INSURANCE COMPANY,

Plaintiff - Appellee,

v.

MARK PIPPIN,

Defendant - Appellant.

No. 17-6182
(D.C. No. 5:16-CV-01254-HE)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BRISCOE**, **KELLY**, and **BACHARACH**, Circuit Judges.

Defendant-Appellant Mark Pippin appeals from the district court's judgment in favor of Plaintiff-Appellee Progressive Northern Insurance Company in this insurance coverage dispute. Having jurisdiction under 28 U.S.C. § 1291, we affirm.

Background

This appeal arises out of a declaratory judgment action involving uninsured/underinsured motorist (UM) coverage. In 2012, Mr. Pippin purchased a Yamaha golf cart. He also purchased an insurance policy (the Policy) from

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Progressive Northern Insurance Company (Progressive) for the golf cart, which included UM coverage up to $500,000. Unlike normal UM policies, the golf cart policy excluded UM coverage for injuries sustained while using any "motor vehicle that is owned by or available for [Mr. Pippin's] regular use." 2 Jt. App. 164.

In 2014, Mr. Pippin was involved in an accident while he was driving a 2013 Infiniti QX56. The Infiniti was owned by Pippin Investments, LLC and leased to Pippin Brothers, Inc., Mr. Pippin's business. The Infiniti was insured under a business auto policy. Mr. Pippin drove the Infiniti every day as his primary vehicle for both business and personal use. Mr. Pippin sustained injuries in the collision that exceeded the limits of the other driver's liability insurance. The business policy on the Infiniti did not include UM coverage, although Mr. Pippin was covered by a UM policy issued for his wife's car.

Months after the accident, Mr. Pippin submitted a claim to Progressive for UM coverage under the golf cart policy for the accident involving the Infiniti. In the course of investigating the claim, Progressive filed the underlying declaratory judgment action seeking a declaration that the medical payments and UM coverage provisions in the Policy excluded coverage for the 2014 auto accident. It also sought a declaration that Oklahoma law did not compel it to provide UM coverage for the accident or that Oklahoma law compels coverage only to the extent of statutory minimum limits. Mr. Pippin counterclaimed, seeking reformation of the policy and a declaration that the Policy's UM coverage applied. Progressive then filed a motion for summary judgment.

On July 19, 2017, the district court granted summary judgment to Progressive. Progressive N., Ins. Co. v. Pippin, No. CIV-16-1254-HE, 2017 WL 4334229, at *1 (W.D. Okla. July 19, 2017). It concluded that the Policy did not provide coverage for the 2014 accident because the medical payments provision only covered injuries sustained while operating the golf cart and the UM coverage excluded injuries sustained while occupying a motor vehicle available for the insured's regular use. Id. The court also held that because a golf cart was not a "motor vehicle" as defined by statute, Okla. Stat. tit. 36, § 3636 did not prevent the exclusion from being written into the policy. Id. at *2. The district court finally found there was no constructive fraud and the doctrine of estoppel did not apply as there was no mistake in the drafting of the policy. Id. at *2–3. Mr. Pippin filed this timely appeal.

Discussion

A grant of summary judgment is reviewed de novo. Jencks v. Modern Woodmen of Am., 479 F.3d 1261, 1263 (10th Cir. 2007). Mr. Pippin makes three arguments on appeal: (1) Progressive's UM policy on the golf cart provided statutorily deficient coverage under Oklahoma's UM statute, Okla. Stat. tit. 36, § 3636, and case law, (2) the Policy is contrary to Oklahoma public policy, and (3) the Policy should be reformed to provide UM coverage based on theories of constructive fraud and estoppel.

Oklahoma law, Okla. Stat. tit. 36, § 3636(A), requires that UM coverage with respect to "motor vehicles" include certain coverage as outlined in § 3636(B). Both

parties agree that if § 3636 applied, then Progressive's UM coverage would likely be statutorily deficient because it excludes UM coverage for certain vehicles. Section 3636, however, by its very terms only applies to "motor vehicles." Okla. Stat. tit. 36, § 3636(A). A "motor vehicle" is defined as a vehicle "designed for use principally upon public roads or streets." Id. § 3635. As the district court found, a golf cart does not fit this definition as it is designed principally for use on a golf course rather than public roads. Pippin, 2017 WL 4334229, at *2. Mr. Pippin concedes this fact: "[Mr.] Pippin's golf cart [is] not a motor vehicle." Aplt. Br. at 10. Therefore, § 3636 and its statutory requirements for coverage do not apply to this case. Because there is no statute that requires UM coverage be applied outside the context of "motor vehicles," Progressive argues, and we agree, that it was free to write the golf cart policy as it saw fit. See Siloam Springs Hotel, LLC v. Century Sur. Co., 392 P.3d 262, 270 (Okla. 2017) ("[O]utside of statutory requirements, this Court has previously noted we are mindful that an insured and insurer are free to contract for that quantum of coverage which one is willing to extend and the other is willing to purchase.").

Despite § 3636 not applying to this case, Mr. Pippin still argues that when Progressive offered him a UM policy, it was obligated to provide coverage in accordance with the statute because "Oklahoma law provides for only a single kind of UM coverage."[1] Aplt. Br. at 16. Unfortunately, the cases Mr. Pippin cites to support this argument, as well as his argument concerning Oklahoma's UM public

[1] Section 3636, even if it were applicable to this case, does not state that there is only one type of UM coverage in Oklahoma but instead merely prohibits a UM policy for motor vehicles from refusing to provide certain coverage.

policy, are all interpreting § 3636 and concern motor vehicles, making them inapplicable to this case. See Morris v. Am. First Ins. Co., 240 P.3d 661, 662 (Okla. 2010) (interpreting § 3636 as applied to a semi-truck); State Farm Mut. Auto. Ins. Co. v. Wendt, 708 P.2d 581, 582 (Okla. 1985) (same, as applied to pickup truck); Cothren v. Emcasco Ins. Co., 555 P.2d 1037, 1038 (Okla. 1976) (same, as applied to motorcycle).

Mr. Pippin next argues that Progressive, through its agents, perpetrated a constructive fraud because "the coverage [was] offered, described, and billed as 'Uninsured Motorist Coverage,'" and "uninsured motorist coverage . . . has a particular meaning under Oklahoma law" that would normally cover Mr. Pippin but did not here. Aplt. Br. at 22. He contends that Progressive mistakenly issued the Policy and should reform the Policy or, in the alternative, be estopped from denying coverage because it rescinded the Policy but did not refund him the premiums he paid. But Progressive did sell Mr. Pippin UM coverage — that coverage just excluded any "motor vehicle that is owned by or available for [Mr. Pippin's] regular use." 2 Jt. App. 164. As UM coverage is not defined in § 3636 except when concerning motor vehicles, which a golf cart is not, Progressive was not required to offer Mr. Pippin certain coverage as part of the Policy, nor is it estopped from denying that coverage because it never rescinded the coverage. As Mr. Pippin has not pointed to any mistake on the part of Progressive in crafting the Policy, nor has Progressive rescinded the Policy, he is not owed a refund of his premiums.

The dissent argues, despite agreeing that § 3636 is not applicable to this case, that because Progressive called the Policy "uninsured motorist coverage," it must comply with the requirements of § 3636. But § 3636 does not define UM coverage; it just defines what type of UM coverage insurers must provide when, and only when, the coverage applies to a "motor vehicle." Cf. Bernal v. Charter Cty. Mut. Ins. Co., 209 P.3d 309, 316 (Okla. 2009). The dissent cites no case to support its novel theory but instead relies on the fact that "the Oklahoma Legislature most certainly did not envision [this type of agreement] when it enacted § 3636." Dissent at 10. But whether the Oklahoma Legislature could have anticipated this type of agreement is a question for the Oklahoma courts, not this court.

The dissent also argues that Progressive committed a constructive fraud by "suggesting or implying that the UM coverage in the policy was the same as in any other policy." Id. at 11. But the record simply does not support this inference. Regardless of which, the policy itself is clear — Mr. Pippin maintains UM coverage except when he uses a "motor vehicle that is owned by or available for [Mr. Pippin's] regular use." 2 Jt. App. 164. The dissent may wish there was a public policy in Oklahoma prohibiting these types of agreements, but as it can point to no Oklahoma case saying otherwise, our hands are tied and Mr. Pippin is out of luck.

Pursuant to 10th Cir. R. 27.2, the parties[2] also ask this court to certify multiple questions to the Oklahoma Supreme Court concerning the legality of the Policy under Oklahoma law.[3] We may, in our discretion, certify a question to a state supreme court when the legal questions are novel and the applicable state law is unsettled. Lehman Bros. v. Schein, 416 U.S. 386, 391 (1974). We generally "apply judgment and restraint before certifying," though, and "will not trouble our sister state courts every time an arguably unsettled question of state law comes across our desks." Pino v. United States, 507 F.3d 1233, 1236 (10th Cir. 2007). Rather, "[w]hen we see a reasonably clear and principled course, we will seek to follow it ourselves." Id. Here, the answer is easily resolved through the "clear and principled course" of statutory interpretation. This case is well within the province of this court and gives due "respect to the federal character of our judicial system." Id.

AFFIRMED. The motion to certify is DENIED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

[2] The motion to certify was filed by Progressive and Mr. Pippin proposed adding an additional question. At oral argument, Progressive indicated that, other than for the court's convenience, it saw no need to certify.

[3] Mr. Pippin also requested the district court certify the question, which the court did not do. Response to Motion for Summary Judgment at 8, Progressive N., Ins. Co. v. Pippin, No. CIV-16-1254-HE (W.D. Okla. July 6, 2017), ECF No. 51.

No. 17-6182, Progressive Northern Ins. Co. v. Pippin
BRISCOE, Circuit Judge, dissenting.

The majority makes quick work of this case, concluding simply that the policy sold by Progressive Northern Insurance Company (Progressive) to Pippin was not covered by Okla. Stat. tit. 36, § 3636, and that, consequently, Progressive "was free to write the . . . policy as it saw fit." Maj. Op. at 4. The majority also, for essentially the same reasons, summarily rejects Pippin's claims of constructive fraud and estoppel.

I respectfully dissent. As a matter of Oklahoma public policy, the policy at issue here, which Progressive voluntarily sold and by its own terms purported to offer "uninsured motorist coverage," must comply with the requirements of § 3636. Additionally or alternatively, I agree with Pippin that the undisputed facts of this case support his claim of constructive fraud and that, consequently, the policy must be reformed to comply with the requirements of § 3636.

I therefore vote to reverse the district court's grant of summary judgment in favor of Progressive and remand this case to the district court for further proceedings.

I

Although the underlying facts in this case are essentially undisputed, the majority opinion recounts only some of those facts. Therefore, I begin by outlining all of those facts.

a) Pippin's golf cart

On March 31, 2012, Pippin purchased a 2012 Yamaha golf cart (the golf cart). Pippin obtained from the City of Lawton a permit and a 3-inch identification number for

the golf cart for purposes of operating it on certain city streets and non-paved areas around nearby Lake Lawtonka. The golf cart was never registered or titled with the Oklahoma Tax Commission or the State of Oklahoma, nor was it registered for use on any roads other than those around Lake Lawtonka.

b) The Progressive Policy

Shortly after purchasing the golf cart, Pippin procured from Progressive an insurance policy covering the golf cart (the Policy). The Policy was actually a motorcycle insurance coverage policy that was modified by an Off-Road Vehicle Coverage Endorsement to cover the golf cart. The initial effective dates for the Policy were April 3, 2012, to April 3, 2013. Pippin subsequently renewed the Policy in 2013 and 2014.

The Policy, on its Declarations Page, identified a single vehicle: Pippin's 2012 Yamaha golf cart. The Policy purported to provide a $500,000 combined single limit of "uninsured motorist coverage" (UM coverage) for which Pippin paid an annual premium of approximately $90.00 (which amounted to one-third of the total premium). Aplt. App. at 273. The Policy also provided $10,000 of Medical Payments coverage, for which Pippin paid an annual premium of approximately $67.00.

When he initially purchased the Policy, Pippin did not request that it include UM coverage. Instead, the insurance agent who assisted him in procuring the policy silently added it to the coverage. Pippin first realized that the Policy included UM coverage only after he received a bill for the policy. Pippin contacted his insurance agent about the UM

coverage, and she informed him "that he could never have too much UM." Aplt. App. at 351.

c) Pippin's automobile accident

On October 6, 2014, Pippin was involved in a motor vehicle accident while driving in the town of Lawton. At the time of the accident, Pippin was driving a 2013 Infiniti QX56 that he regularly drove for both personal and business use. The Infiniti was struck by a vehicle driven by non-party Erika Swain. Pippin sustained significant injuries as a result of the collision.

d) Insurance coverage for Pippin's automobile accident

Swain, at the time of the accident, was covered by an automobile liability insurance policy issued by Allstate that provided a $50,000 per person limit of coverage. Swain tendered the $50,000 per person limit of liability coverage to Pippin.

The Infiniti that Pippin was driving was owned by Pippin Investments, LLC and leased to Pippin Brothers, Inc. (Pippin Brothers).[1] At the time of the accident, the Infiniti was identified on a "Schedule of Covered Autos You Own" that was part of a commercial automobile policy issued by Acadia Insurance Company (the Acadia Policy) to Pippin Brothers with the effective dates of February 1, 2014, to February 1, 2015. Id. at 166. The Acadia Policy did not, however, provide UM coverage.

[1] Pippin is a fifty percent stockholder and principal of Pippin Brothers and a fifty percent member and principal of Pippin Investments. Further, Pippin was the person primarily responsible for procuring insurance on behalf of Pippin Brothers and Pippin Investments.

Pippin recovered approximately $100,000 of UM benefits from a policy issued by Liberty Insurance Company covering an automobile driven by his wife.

e) Progressive's filing of this lawsuit

On March 9, 2016, an attorney representing Pippin submitted to Progressive a claim for UM benefits under the Policy

After investigating Pippin's claim, Progressive initiated this diversity action by filing a complaint in federal district court against Pippin. The complaint sought a declaration that Progressive was not obligated to provide UM coverage to Pippin for his accident under the terms of the Policy. Pippin responded by filing counterclaims seeking reformation of the Policy and a declaration that UM coverage for his accident exists under the Policy.

Progressive moved for summary judgment in May of 2017. On July 19, 2017, the district court issued an order granting summary judgment in favor of Progressive.

Judgment was entered in the case on July 19, 2017. Pippin filed a notice of appeal on August 10, 2017.

II

The relevant provisions of the Progressive Policy

As noted, the Policy was a motorcycle insurance coverage policy that was amended by Progressive by way of endorsement to make it applicable to Pippin's golf cart. More specifically, the Policy included an "Off-Road Vehicle Coverage Endorsement" that stated:

For purposes of the Off-Road Vehicle Coverage Endorsement, your Motorcycle Policy and any endorsements to your policy are amended as follows:

1. General Definitions

(a) The General Definition of "covered motorcycle" is deleted and all references throughout the policy to "covered motorcycle" are deleted and replaced by "covered off-road vehicle."

(b) The General Definition of "motorcycle" is deleted and all references throughout the policy to "motorcycle" or to "motorcycle" are deleted and replaced by "off-road vehicle."

(c) The remainder of the General Definitions section is deleted in its entirety, as are all references throughout the policy to those definitions, and replaced by the following:

General Definitions

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form.

* * *

4. "**Covered off-road vehicle**" means:

a. any off-road vehicle shown on the declarations page for the coverages applicable to that off-road vehicle;

b. any additional off-road vehicle;

c. any replacement off-road vehicle.

* * *

7. "**Golf cart**" means any land motor vehicle designed principally for use on a golf course.

* * *

9. "**Off-road vehicle**"" means any ATV, dirt bike, golf cart, Segway®, or snowmobile that is designed for operation principally off public roads.

* * *

19. "You" and "your" mean:

(i) a person shown as the named insured on the declarations page;

(ii) the spouse of the named insured if residing in the same household.

Aplt. App. at 293-94.

The Policy purported to include what it characterized as 'UNINSURED MOTORIST COVERAGE." That coverage was outlined in the Policy in the following manner:

> **PART III - UNINSURED MOTORIST COVERAGE**
>
> **INSURING AGREEMENT**
>
> If you pay the premium for this coverage, we will pay for damages that an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury:
>
> 1. sustained by an insured person;
> 2. caused by an accident; and
> 3. arising out of the ownership, maintenance, or use of an uninsured motor vehicle.
>
> * * *
>
> **ADDITIONAL DEFINITIONS**
>
> When used in this Part III:
>
> 1. "Insured person"" means:
>
> a. you or a relative;
>
> * * *
>
> 2. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:
>
> * * *
>
> d. to which a bodily injury liability bond or policy applies at the time of the accident, but the sum of all applicable limits of liability for bodily injury is less than the insured person's damages.
>
> * * *
>
> **EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.**
>
> Coverage under this Part III will not apply:
>
> 1. to bodily injury sustained by any person while using or occupying:
>
> * * *
>
> b. a motor vehicle that is owned by or available for the regular use of you or a relative. This exclusion does not apply to a [covered off-road vehicle] that is insured under this Part III . . . .

Aplt. App. at 273-75.

Did 36 Okla. Stat. § 3636 require the Policy to include UM coverage?

Oklahoma's "Uninsured motorist coverage" statute, 36 Okla. Stat. § 3636, provides, in pertinent part, as follows:

> A. No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection B of this section.
> B. The policy referred to in subsection A of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom. Coverage shall be not less than the amounts or limits prescribed for bodily injury or death for a policy meeting the requirements of Section 7-204 of Title 47 of the Oklahoma Statutes, as the same may be hereafter amended; provided, however, that increased limits of liability shall be offered and purchased if desired, not to exceed the limits provided in the policy of bodily injury liability of the insured. * * *
> * * *
> E. For purposes of this section, there is no coverage for any insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the named insured, a resident spouse of the named insured, or a resident relative of the named insured, if such motor vehicle is not insured by a motor vehicle insurance policy.
> * * *

Okla. Stat. tit. 36, § 3636. The term "motor vehicle," for purposes of § 3636, "means and includes a self-propelled land motor vehicle designed for use principally upon public roads or streets but does not mean or include . . . , if not subject to motor vehicle registration, any equipment which is designed for use principally off public roads and streets." Okla. Stat. tit. 36, § 3635.

The majority concludes, and I agree, that Pippin's golf cart is not a "motor vehicle" within the meaning of §§ 3635 and 3636. It is true that Pippin obtained

permission from the City of Lawton to operate the golf cart on certain streets around Lake Lawtonka. But the existence of that permit does not mean that the golf cart was "designed for use principally upon public roads or streets," as required by the definition of "motor vehicle" contained in § 3635. Indeed, a review of the applicable City of Lawton ordinances governing such permits indicates that (a) no valid driver's license is required to operate such golf carts (and, indeed, a person as young as age fourteen can legally operate one), and (b) no proof of insurance is required to obtain a permit. All of which bolsters the conclusion that the golf cart was not meant to be used "principally upon public roads or streets." Lastly, it is undisputed that the golf cart was not subject to registration with the Oklahoma Tax Commission or the State of Oklahoma, as are other motor vehicles such as automobiles and motorcycles. Thus, because the golf cart is not a "motor vehicle," § 3636 did not require Progressive to include UM coverage in the Policy.

The public policy of the State of Oklahoma requires the Policy's "Uninsured Motorist Coverage" to comply with § 3636

Pippin argues that because Progressive voluntarily chose to offer UM coverage as part of the Policy, the UM provisions of the Policy must comply with the provisions of § 3636. Otherwise, Pippin argues, Progressive will be allowed to "create[] a new insurance product, which it calls 'Uninsured Motorist Coverage'" but that "is different from uninsured motorist coverage under Oklahoma law." Id. at 11.

In my view, Pippin's position finds support in the public policy of the State of Oklahoma. As the Oklahoma Supreme Court has noted, "the freedom of individuals to

contract is an important part of our society," but "that freedom is not absolute" and "may be limited by the public policy of the state of Oklahoma." Siloam Springs Hotel, LLC v. Century Surety Co., 392 P.2d 262, 267 (Okla. 2017). Public policy "inhibits that which has a tendency to be injurious to the good of all." Id.

Of course, "[o]nly a specific Oklahoma court decision, state legislative or constitutional provision, or a provision in the federal constitution that prescribes a norm of conduct for the state can serve as a source of Oklahoma's public policy." Id. at 268. Thus, we must "look to [the] will of the [Oklahoma] Legislature as embodied in the statutes to determine the public policy of the state of Oklahoma." Id.

Section 3636 expresses the public policy of the State of Oklahoma regarding both the necessity of and the minimum requirements for UM coverage. See, e.g., Morris v. America First Ins. Co., 240 P.3d 661, 662-64 (Okla. 2010). As previously noted, there is no question in this case that, because the Policy covered a golf cart rather than a "motor vehicle," § 3636 did not obligate Progressive to include UM coverage in the Policy. But it is also undisputed that Progressive, of its own accord, sold to Pippin a form of coverage that it voluntarily chose to describe as "UNINSURED MOTORIST COVERAGE," and also billed Pippin to pay for it. Aplt. App. at 273. By doing so, Progressive effectively conveyed to Pippin that it was selling a product that complied with Oklahoma's statute of the exact same name. In my view, any such product—i.e., an insurance product sold in the State of Oklahoma that covers any type of vehicle and that the insurer self-describes as "uninsured motorist coverage"—must comply with the requirements of § 3636,

regardless of whether or not the vehicle being insured falls within the definition of "motor vehicle" outlined in § 3635.

To conclude otherwise would be to encourage insurers in the State of Oklahoma to employ the same "bait and switch" maneuver that Progressive used in this case, i.e., selling a product with a name that suggests a specific scope of coverage, but that, in substance, is actually much narrower in scope and, indeed, essentially worthless. It would also effectively create two types of "uninsured motorist coverage" in the State of Oklahoma—the type outlined in § 3636 that covers "motor vehicles," and another, ill-defined type that covers all other vehicles—something that the Oklahoma Legislature most certainly did not envision when it enacted § 3636.

Constructive fraud

Additionally or alternatively, I agree with Pippin that the Policy should be reformed "under [his] theor[y] of constructive fraud." Aplt. Br. at 11. Under Oklahoma law, "[a]n insurance policy, like any other contract, can be reformed." May v. Mid-Century Ins. Co., 151 P.3d 132, 141 n.43 (Okla. 2006). "When clear and convincing evidence is presented reformation of a contract is permitted to reflect the understanding of the parties in situations where there is fraud, accident or mutual mistake." Id. The Oklahoma Supreme Court has "defined constructive fraud as 'a breach of a legal duty or equitable duty to the detriment of another, which does not necessarily involve any moral guilt, intent to deceive or actual dishonesty of purpose.'" Horton v. Hamilton, 345 P.3d 357, 363 (Okla. 2015) (quoting Croslin v. Enerlex, Inc., 308 P.3d 1041, 1046 (Okla. 2013)). "Constructive fraud 1) may be based on a negligent misrepresentation or an

innocent misrepresentation where there is an underlying right to be correctly informed of the facts, 2) may be based on the silence by one who has a duty to speak, or 3) may be invoked to prevent harm or to extend protection to recognized public interests." Croslin, 308 P.3d at 1046.

Pippin argues that a claim of constructive fraud is supported here because, "[i]n light of the exclusion at issue, the policy actually delivered cannot, fairly, be called uninsured motorist coverage, which has a particular meaning under Oklahoma law." Aplt. Br. at 22. Pippin further argues that "[i]f the exclusion at issue were enforceable due to inapplicability of . . . § 3636, then it would be a mistake for Progressive's agent to offer such a policy as 'Uninsured Motorist Coverage.'" Id.

Pippin's arguments are, in my view, compelling. An insurer's offer to provide an Oklahoma resident with "uninsured motorist coverage" clearly implies that such coverage is consistent with the Oklahoma statute of the exact same name, i.e., §3636. Further, Progressive's agent, when questioned by Pippin about the inclusion of UM coverage in the Policy, stated to Pippin that he could "never have too much UM coverage," thereby suggesting or implying that the UM coverage included in the policy was the same as in any other policy. In substance, however, the Policy's UM coverage effectively operated to provide lesser coverage than otherwise would have been required under § 3636. Notably, neither Progressive nor its agent informed Pippin of this fact, and instead readily accepted his premiums and encouraged him to purchase as much UM coverage as possible.

Progressive argues that Pippin never read the Policy "or even knew what UM coverage was before [his] October 6, 2014, accident." Aplee. Br. at 29. Progressive further argues that "at no point between [his] initial purchase of the Policy and the . . . accident did any employee of Insurica [(the insurance agency that sold the Policy to Pippin)] say anything to him about UM coverage other than to comment he could never have too much UM insurance." Id. The problem, however, is that neither Progressive nor its agent explained to Pippin that the "uninsured motorist coverage" offered under the Policy differed, and in fact was substantially less robust than, typical uninsured motorist coverage in the State of Oklahoma. Surely Progressive was obligated, as part of its duty of good faith and fair dealing, to inform Pippin of this important fact.

Under these circumstances, I conclude that Pippin has established that he was the victim of constructive fraud and that the proper remedy is to reform the Policy so that the "Uninsured Motorist Coverage" contained therein complies with the requirements of § 3636. See Gentry v. Am. Motorist Ins. Co., 867 P.2d 468, 472 (Okla. 1994) ("Where the evidence establishes constructive fraud that induced the defrauded party to agree to the contract, the instrument may be reformed to conform to the representations of the parties.").

Validity of the UM exclusion in the Policy

Having concluded that the Policy must comply with the requirements outlined in § 3636—both as a matter of public policy and as reformed pursuant to Pippin's claims of constructive fraud and estoppel—I in turn conclude that the Policy's exclusion of uninsured motorist coverage for "bodily injury sustained by any person while using or

occupying . . . a motor vehicle that is owned by or available for the regular use of [the insured] or a relative," other than the covered golf cart, cannot stand. That is because this exclusion effectively attempts to tie the Policy's uninsured motorist coverage to the use of a specific vehicle, i.e., the covered golf cart, rather than tying it to the insureds listed in the Policy (Pippin and his wife). In both Cothren v. Emcasco Ins. Co., 555 P.2d 1037 (Okla. 1976), and State Farm Mut. Auto. Ins. Co. v. Wendt, 708 P.2d 581 (Okla. 1985), the Oklahoma Supreme Court held that such exclusions are impermissible under § 3636.

III

I vote to reverse the district court's grant of summary judgment in favor of Progressive and remand to the district court for further proceedings.