

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 51902

ANGIE FORESEE,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 METROPOLITAN GROUP PROPERTY)
 AND CASUALTY INSURANCE)
 COMPANY,)
)
 Defendant-Respondent.)
)
 and)
)
 DOES I-V, individuals and/or entities of)
 unknown origin,)
)
 Defendants.)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Nancy A. Baskin, District Judge.

BGN Attorneys; Scott G. Boyce, Spokane, Washington, for appellant.

Elam & Burke, P.A.; Julianne S. Hall, Boise, for respondent.

Foresee was injured in an automobile accident and alleged damages in excess of \$100,000. At the time of the accident, Foresee maintained a liability auto insurance policy through Metropolitan Casualty Insurance Company (Metropolitan) with \$50,000 of underinsured motorist coverage (UIM) subject to an offset provision. Foresee received a \$100,000 settlement from the at-fault driver’s insurer which exceeded the \$50,000 UIM coverage and acted as a complete offset. As a result, Foresee took nothing from her UIM coverage.

Foresee sued Metropolitan. Foresee argues that the reduction in her recovery under the UIM coverage to \$0 based solely on her \$100,000 settlement from the at-fault driver’s insurance is against public policy. Foresee also argues that, pursuant to *Pena v. Viking Ins. Co. of Wis.*, 169 Idaho 730, 503 P.3d 201 (2022), she should benefit from her UIM policy in the amount of at least \$25,000; otherwise, the UIM coverage would be deemed illusory.

The district court granted summary judgment in favor of Metropolitan, holding that UIM policies with offset provisions that ultimately reduce the possible recovery to \$0 are permissible and enforceable so long as the amount of UIM coverage exceeds the \$25,000 minimum liability required by Idaho law. The district court also awarded attorney fees to Metropolitan.

On appeal from the judgment, Foresee argues the district court erred in dismissing the case and contends that the first \$25,000 of all UIM offset policies in Idaho are illusory and against public policy.