

## SUMMARY STATEMENT

*Pena v. Viking Insurance Company*, Docket No. 48379

The Idaho Supreme Court reversed a district court's grant of summary judgment in favor of Viking Insurance Company of Wisconsin (Viking) after concluding that the automobile insurance policy Viking sold to Erick Pena included illusory underinsured motorist (UIM) coverage. The Court held that the UIM coverage Pena paid for was illusory because it was the same minimum amount as what is legally required for liability insurance in Idaho. The Court explained that because the legislature requires insurers to issue liability limits of \$25,000, UIM coverage limits must exceed \$25,000 to avoid a finding that they are illusory. The Court vacated the district court's judgment in Viking's favor and remanded the case with directions to enter judgment for Pena on his declaratory judgment claim.

The Court additionally abrogated *Vincent v. Safeco Ins. Co. of Am.*, 136 Idaho 107, 112, 29 P.3d 943, 948 (2001) and *Nat'l Union Fire Ins. Co. of Pittsburgh, P.A. v. Dixon*, 141 Idaho 537, 542, 112 P.3d 825, 830 (2005), to the extent they held that an underinsured motorist policy is not illusory if it "affords realistic protection to any group or class of injured persons." The Court determined that *Vincent's* pronouncement changed the focal point of the analysis from protecting injured *persons* who do not have *realistic* insurance protection, to protecting insurance carriers that issue policies under out-of-state requirements that do not measure up to the minimums required by Idaho. The Court reiterated and held that a policy is illusory if it appears that if any actual coverage does exist it is extremely minimal and affords no realistic protection to any group or class of injured persons.

**\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\***