

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 25, 2000

Cornelia G. Clark
Clerk of Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1323

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

AUTO-OWNERS INSURANCE COMPANY,

PLAINTIFF-RESPONDENT,

v.

LINDA A. CLIFFORD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County:
MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Linda Clifford appeals a summary judgment that declared Auto-Owners Insurance Company's duties under Clifford's underinsured motorist coverage (UIM). Arbitrators found Clifford's actual damages from an auto accident to be \$358,145.56. She recovered \$80,895.56 from the tortfeasor's

liability insurer, and Auto-Owners paid her the \$277,250 balance. Auto-Owners sought a declaratory judgment that it owed her no more. Clifford sought to recover from Auto-Owners the \$80,895.56 she had already recovered from the tortfeasor's insurer. The trial court ruled that Auto-Owners had no duty to pay Clifford the \$80,895.56 under the policy's UIM provision. Clifford argues that Auto-Owners must pay the \$358,145.56 arbitration award in full if the award is less than the UIM coverage limits. She also argues that the UIM reducing clause violates public policy. We reject these arguments and affirm the summary judgment.

¶2 On summary judgment, we read UIM provisions de novo and must affirm the trial court if Auto-Owners was entitled to judgment as a matter of law. *See Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 141, 585 N.W.2d 893 (Ct. App. 1998). The Auto-Owners UIM provisions furnish two-tiered UIM coverage. First, the UIM coverage pays the insured the amount by which her total damages exceed the coverage available to the tortfeasor. Second, the UIM coverage has a \$750,000 cap, with the cap reduced dollar-for-dollar by amounts paid the insured by others on behalf of the tortfeasor. Read together, these provisions entitle Clifford to receive UIM coverage only for that portion of her actual damages not paid by the tortfeasor, up to a maximum of \$750,000. Clifford recovered \$80,895.56 from the tortfeasor's insurer, and the arbitrators set her actual damages at \$358,145.56. Her UIM coverage paid her the remainder of her actual damages—\$277,250, and the \$750,000 cap never came into play.

¶3 We need not consider Clifford's argument that the UIM reducing clause is illusory and violative of public policy. As noted above, Clifford's actual damages, as found by the arbitrators, were far below the UIM coverage cap, and the UIM reducing clause therefore had no bearing on her claim.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

