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**DISTRICT II**

November 5, 2025

*To:*

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Circuit Court Judge  
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Clerk of Circuit Court  
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You are hereby notified that the Court has entered the following opinion and order:

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2024AP1301

Sloan Schmitz v. Auto-Owners Insurance Company  
(L.C. #2020CV291)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Sloan Schmitz seeks uninsured motorist coverage from Sheboygan Falls Insurance Company (SFIC) and appeals the circuit court's order granting summary judgment to SFIC, which was based on the premise that Schmitz's failure to notify SFIC of a settlement between her and the at-fault driver prejudiced SFIC's subrogation rights against the at-fault driver. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate

for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> For the following reasons, we reverse and cause remanded for further proceedings.

Summary judgment is a question of law that is reviewed de novo. *Behrendt v. Gulf Underwriters Ins. Co.*, 2009 WI 71, ¶11, 318 Wis.2d 622, 768 N.W.2d 568. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The material facts are not in dispute. Schmitz is a resident of Wisconsin who was injured in an auto accident in California in 2017. She settled her claim with the at-fault California driver for the liability coverage limits of his policy that was the statutory minimum required in California at the time of the accident, but which was less than the statutory minimum for Wisconsin. She signed a release of all claims with indemnification that stated, “This Release shall be bound by the laws of California.” She was covered through her mother’s auto insurance with SFIC. She did not provide notice of the settlement to SFIC. SFIC first learned of the accident and settlement when Schmitz brought an action seeking uninsured motorist coverage from SFIC. SFIC sought and was granted summary judgment based on the premise that it suffered prejudice because it was unable to pursue a subrogation claim against the at-fault driver due to the lack of notice and Schmitz’s signing of the release pertinent to her settlement with the at-fault driver.

Thus, the single issue in this case is whether SFIC suffered prejudice from Schmitz’s failure to provide SFIC notice of her settlement and concomitant release of the at-fault driver.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

SFIC argues that it was prejudiced when Schmitz failed to notify it of the accident or her settlement with the at-fault driver because it “was deprived of the opportunity to protect its subrogation rights and lost them” because of the settlement. Under Wisconsin law, “[f]ailure to give notice as required by the [insurance] policy ... does not bar liability under the policy if the insurer was not prejudiced by the failure, but the risk of nonpersuasion is upon the person claiming there was no prejudice.” WIS. STAT. § 632.26(2); see *Ranes v. American Fam. Mut. Ins. Co.*, 212 Wis. 2d 626, 636, 569 N.W.2d 359 (Ct. App. 1997), *aff’d*, 219 Wis. 2d 49, 580 N.W.2d 197 (1998). Schmitz overcomes the rebuttable presumption that SFIC was prejudiced by her failure to provide notice to SFIC at the time of her accident and subsequent settlement: the release at issue explicitly states that it “shall be bound by the laws of California.” Under California law, the at-fault driver in this case is considered to be “underinsured” for having liability coverage that is less than that provided provided by the SFIC policy. See CAL. INS. CODE § 11580.2(p)(2) (West 2025) (“‘Underinsured motor vehicle’ means a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person.”) Under California law, an insurer has no right of subrogation against an underinsured driver. *Hartford Fire Ins. Co. v. Macri*, 842 P.2d 112, 115 (Cal. 1992). In *Macri*, the Supreme Court of California clarified that under the California Insurance Code, “[t]he provisions governing uninsured and underinsured motorist coverage differ substantially in the area of settlement of claims, setoff, reimbursement, and procedures before settlement. For example, in contrast to the uninsured motorist provisions, there is no right to subrogation under the underinsured motorist provisions.” *Id.* (citing CAL. INS. CODE § 11580.2(p)(5)). Hence, the signed release does not prejudice SFIC, as SFIC does not have a right to subrogation against the at-fault underinsured driver in this case.

As SFIC had no right of subrogation against the at-fault driver regardless of the signing of the release, SFIC did not suffer prejudice and was not entitled to summary judgment.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded for further proceedings. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*