



# SUPREME COURT

## Media Release

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Cases decided October 23, 2008

*Jose Gonzales v. Farmers Insurance Company of Oregon, et al.*, (TC 9910-11479)  
(CA A128598) (SC S054486)

On review from the Court of Appeals in an appeal from the Multnomah County Circuit Court, Frank L. Bearden, Judge. 210 Or App 54, 150 P3d 20 (2006). The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court by Justice Robert D. Durham.

Today, the Oregon Supreme Court interpreted a collision insurance policy and concluded that that particular policy's use of the term "repair" obligated the insurer to restore a damaged insured vehicle to its condition prior to the collision, or to compensate the insured for any reduction of the vehicle's value resulting from the collision.

Defendants Farmers Insurance Company of Oregon, Farmers Insurance Exchange, Farmers Group, Inc., and Mid-Century Insurance Company issued an automobile insurance policy to plaintiff Jose Gonzales. Plaintiff's vehicle suffered damage in an accident, and defendants paid for repairs, but the repairs did not restore the vehicle to its pre-accident condition. Plaintiff filed suit against defendants to recover compensation for the diminished value of his vehicle. Defendants acknowledged that the policy obligated them to "repair or replace" the vehicle, but argued that the term "repair" did not incorporate a duty to pay for a loss in value. The trial court agreed, and granted summary judgment to defendants. The Court of Appeals reversed and held that, under the terms of the policy, defendants were obligated to compensate plaintiff for his vehicle's diminution in value due to the accident.

In a unanimous opinion written by Justice Robert D. Durham, the Supreme Court affirmed the decision of the Court of Appeals. The court noted that in two prior cases, *Dunmire Co. v. Or. Mut. Fire Ins. Co.*, 166 Or 690, 114 P2d 1005 (1941), and *Rossier v. Union Automobile Ins. Co.*, 134 Or 211, 297 P 498 (1930), it had held that policies using the terms "repair" obligated the insurer to restore the vehicle to its

condition prior to an accident. If attempted repairs did not restore the vehicle to its pre-loss condition, the insurer was required to compensate the insured for the resulting reduction in the value of the vehicle. The court held that *Dunmire* applied to the provision in the instant case. The court also noted that other features of the policy supported plaintiff's claim, including the policy's broad definition of the "loss" that defendants would pay for; the statement that defendants would repair or replace the vehicle "with other of like kind and quality"; and the absence of provisions expressly excluding compensation for a loss in value. According, the court concluded that the term "repair" required defendants to restore plaintiff's vehicle to its pre-loss physical condition, or, if such restoration was not possible, to compensate plaintiff for the diminished value of the vehicle. The court emphasized that its holding dealt with the term "repair" as it was used in the context of the policy at issue.

*State v. Fernando Dominguez-Coronado*, (TC 04C50555) (CA A128779) (SC S056256)  
*State v. Marc Mealey Holcomb*, (TC 99122871) (CA A116966) (SC S055025); *State v. Jess Monro Watts/Mark Monro Rosenthaw*, (TC C040170CR; C0402446CR)  
(CA A128644; A128645) (SC S055324)

On petitions for review from the Court of Appeals. The petitions for review are denied. Opinion of the Court Per Curiam. Justice W. Michael Gillette filed a concurring opinion, in which Justice Martha L. Walters joined.

Today, the Supreme Court denied three petitions for review of decisions of the Court of Appeals denying reconsideration of earlier decisions affirming the criminal defendants' convictions. In a concurring opinion, Justice W. Michael Gillette stated that, while he agreed with the Court's decision to deny review in each case, in his view, the reason that the Court of Appeals gave for denying reconsideration was based on a misunderstanding of that court's authority under ORAP 6.25(1).

In each of the cases for which the defendants seek review, the defendant had been convicted of offenses based at least in part on evidence of the result of scientific tests. In each case, the state had offered the evidence through a laboratory report prepared by a criminalist but the criminalist did not testify. In no case did the defendant object at the time to that procedure. In each case, the defendant appealed his convictions to the Court of Appeals, and in each case, the Court of Appeals affirmed.

Shortly thereafter, the Supreme Court issued its opinion in *State v. Birchfield*, 342 Or 624, 157 P3d 216 (2007), in which the Court held that a trial court's admission of a laboratory report without requiring the state to produce at trial the criminalist who prepared the report violated a defendant's right to confront witnesses against him or her under Article I, section 11, of the Oregon Constitution. Each defendant then sought reconsideration in the Court of Appeals of the earlier opinions

affirming their convictions, arguing that reconsideration was appropriate under ORAP 6.25(1)(d), which provides for reconsideration when there has been a change in statutes or case law since the Court of Appeals' decision. The Court of Appeals denied reconsideration, holding that ORAP 6.25(1)(d) does not provide a basis for asserting an entirely new claim of error not previously asserted.

The Supreme Court denied review in each case. In a concurring opinion, Justice W. Michael Gillette stated that he agrees with the Court's decision to deny review in each case, but that the Court of Appeals probably erred in refusing to reconsider the defendants' petitions for review on the grounds stated, because, in his view, the "reconsideration" contemplated by ORAP 6.25(1) is a reconsideration of the decision of the Court of Appeals and not, as the Court of Appeals appears to believe, a reconsideration of arguments that already had been made to that court, but which had acquired new legitimacy due to changes in statutes or case law.