CONCURRING OPINION BY NAKAMURA, J.

I concur in the result reached in this case because I believe it is required under a fair reading of Dawes v. First Ins. Co. of Hawai'i, Ltd., 77 Hawai'i 117, 883 P.2d 38 (1994). The exact parameters of the chain-of-events test adopted in Dawes are unclear. And the narrow holding of Dawes, which extended uninsured motorist (UM) coverage to injuries sustained as the result of the breakdown of an insured vehicle, does not compel a finding of UM coverage in this case. However, the analysis underlying the adoption of the chain-of-events test by the majority in Dawes and the tenor of the majority's opinion leaves little doubt that the Dawes majority would apply the chain-of-events test to find UM coverage in this case.

Although I feel constrained by Dawes to concur in this case, I write separately because I share the concern of the Dawes dissent that the chain-of-events test is overly broad and is difficult to apply in determining whether a person who previously occupied an insured vehicle is entitled to UM coverage. Id. at 133, 143, 883 P.2d at 54, 64 (Moon, C.J., dissenting). As noted by the Dawes dissent, "there is hardly any activity in our society which is not preceded by the use of an automobile." Id. at 143, 883 P.2d at 64 (brackets omitted). Under the chain-of-events test, it is unclear to what extent the chain of events must relate to the injured person's occupancy of the insured vehicle or how the chain of events can be broken. Thus, without

more guidance, the chain-of-events test could conceivably be construed as "afford[ing] virtually limitless coverage once a claimant has occupied an insured vehicle." Id. The uncertainty over the application of the test makes it difficult for parties to an insurance contract to understand the covered risks. Insurers typically respond to such uncertainty by raising premiums to all insureds to account for the increased risk. See id. at 138 n.5, 883 P.2d at 59 n.5.

If I were writing on a clean slate, I would adopt the analysis of the dissent in Dawes, and I would affirm the trial court's grant of summary judgment in favor of Defendants-Appellees First Fire & Casualty Insurance of Hawaii, Inc. and M. Nakai Repair Service, Ltd. Under the analysis of the Dawes dissent, this case would turn on whether Plaintiff-Appellant Lilivau Liki (Liki) was engaged in the "use" of his company's insured truck at the time of the accident resulting in his injuries. Id. at 136, 883 P.2d at 57.

Unlike the claimant in Dawes, whether Liki was in a reasonable physical proximity to his company's truck when he was struck by the uninsured motorist is subject to debate.[1] Thus, in

[1] In Dawes v. First Ins. Co. of Hawai'i, Ltd., 77 Hawai'i 117, 119-20, 883 P.2d 38, 40-41 (1994), the claimant was approximately one mile from the insured vehicle, which had broken down, when she was struck by an uninsured motorist. The Dawes dissent would have imposed a reasonable physical proximity limitation for uninsured motorist (UM) coverage and would have denied coverage to the claimant because she was not in a reasonable physical proximity to the insured vehicle at the time of the accident. Id. at 138, 144, 883 P.2d at 59, 65.

Liki's case, the imposition of a physical proximity restriction for UM coverage would not have been dispositive. Other jurisdictions have imposed requirements in addition to physical proximity that a claimant must satisfy to qualify for UM coverage. These requirements include that the claimant, at the time of the injury, was oriented toward the insured vehicle, Curry v. Huron Ins. Co., 781 A.2d 1255, 1258 (Pa. Super. Ct. 2001), and was engaged in a transaction essential to the use of the insured vehicle. Id.; U.S. Fire Ins. Co. v. Parker, 463 S.E.2d 464, 466 (Va. 1995); Butzberger v. Foster, 89 P.3d 689, 695 (Wash. 2004) (en banc). Such requirements provide reasonable guidelines for determining whether the claimant's injuries arise out of his or her use of the insured vehicle.

In this case, Liki had parked his company's truck, had exited it, and was engaged in his work of cleaning the gas station's sump when he was struck by the uninsured vehicle. There is no indication in the record that the truck itself was specially designed for use in cleaning sumps. He was not injured while walking back and forth between the truck and the sump to obtain or return tools. At the time of the accident, Liki was not oriented to the truck, but was working on cleaning the sump. He was not engaged in a transaction or activity that was essential to his use of the truck. Rather, he used the truck for

transportation to the job site and this use had been completed before he began performing his job of cleaning the sump.

Absent Dawes, I would have concluded that Liki was not entitled to UM coverage because he was not using the insured truck at the time of the accident, and thus, I would have affirmed the trial court. See Curry, 781 A.2d at 1256-59 (holding that there was no UM coverage for claimant who drove an insured company truck to an airport runway to perform a compaction study, used the truck's rotating beacon to demarcate his position, and was struck by another vehicle twenty feet from the truck while taking measurements for the study); Parker, 463 S.E.2d at 465-66 (holding that there was no UM coverage for claimant who drove an insured company truck to a worksite to plant cabbages, parked the truck to provide a safety barrier to protect against passing motorists, and was struck by an uninsured motorists twelve to fifteen feet from the truck while digging a hole to plant the cabbages); see also Chock v. Gov't Employees Ins. Co., 103 Hawai'i 263, 267-68, 81 P.3d 1178, 1182-83 (2003) (stating test for determining whether the injuries sustained by a claimant seeking UM benefits arise from the operation, maintenance, or use of an uninsured vehicle).

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