95529-8

FILED
MAR 14 2018
WASHINGTON STATE
SUPREME COURT

FILED
Court of Appeals
Division III
State of Washington
3/14/2018 1:16 PM

No. 347231
(Spokane County Superior Court No. 15-2-04751-0)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

SVETLANA KOREN as parent and Guardian of ERIC KOREN,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY COMPANY, a foreign entity authorized to perform the business of insurance in Washington,

Respondent.

RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

Gregory S. Worden, WSBA #24262
William W. Simmons, WSBA #35604
LEWIS BRISBOIS BISGAARD & SMITH LLP
1111 Third Avenue, Suite 2700
Seattle, Washington 98101
(206) 436-2020
Attorneys for Respondent

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES .... ii-iii

I. IDENTITY OF RESPONDENTS 1

II. COURT OF APPEALS DECISION 1

III. COUNTERSTATEMENT OF ISSUE PRESENTED FOR REVIEW 1

IV. COUNTERSTATEMENT OF THE CASE 2

V. ARGUMENT WHY REVIEW SHOULD BE DENIED 6

A. Standards Governing Acceptance Of Review Compel Rejection Of The Petition 7

B. The Petition Should Be Rejected Because The Decision Of The Court Does Not Conflict With Any Decision Of The Supreme Court Or The Court Of Appeals 8

1. The Instant Decision Is Consistent With, And Relies Upon, *Grelis and Tyrrell* 8

2. The Instant Decision Is Based On Well-Reasoned Authority Mandating Adherence To The Plain And Unambiguous Policy Language 12

C. The Petition Should Be Denied Because the Decision Does Not Involve An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court 14

1. Mrs. Koren's Attempt To Create A Substantial Public Interest Should Be Rejected 14

2. Both The Trial Court And Court Of Appeals Properly Rejected Ms. Koren's Public Policy Argument 16

VI. CONCLUSION 18

TABLE OF AUTHORITIES

STATE COURT CASES

Allstate Ins. Co. v. Raynor,
93 Wn. App. 484, 969 P.2d 510 (1999) 16, 17

Barth v. Allstate Ins. Co.,
95 Wn. App. 552, 977 P.2d 6 (1999) 16

Brown v. United Pac. Ins. Co.,
42 Wn. App. 503, 711 P.2d 1105 (1986) 13, 17

Cary v. Allstate Ins. Co.,
130 Wn.2d 335, 922 P.2d 1335 (1996) 17

Farmers Insurance Company of Washington v. Grelis,
43 Wn.App. 475, 718 P.2d 812 (1986)............................5, 9, 10, 11

Grange Ins. Co. v. Brosseau,
113 Wn.2d 91, 776 P.2d 123 (1989) 12

Koren v. State Farm Fire & Cas. Co.,
1 Wn.App.2d 954, 408 P.3d 357 (2018).................................*passim*

Nevers v. Aetna, Ins. Co.,
14 Wn. App. 906, 546 P.2d 1240 (1976) 12

Quadrant Corp. v. Am. States Ins. Co.,
154 Wn.2d 165, 110 P.3d 733 (2005) 12

State Farm General Ins. Co. v. Emerson,
102 Wn.2d 477, 687 P.2d 1139 (1984) 17, 18

Tyrrell v. Farmers Insurance Company of Washington,
140 Wn.2d 129, 994 P.2d 833 (2000)..............................5, 9, 10, 11

FEDERAL COURT CASES

Anderson v. State Farm Mut. Auto. Ins. Co.,
2007 WL 1557870 *8, 2007 U.S. Dist. LEXIS 39769
(W.D. Wash.)..12

STATE STATUTORY AUTHORITIES

RCW 46.04.382 .... 6, 15
RCW 46.22.085 14
RCW 46.22.085(1).. 14, 15
RCW 48.22.005 .... 5, 13
RCW 48.22.005(1) 6, 15
RCW 48.22.005(8)... 15
RCW 48.22.085-100 .... 6, 15

STATE RULES AND REGULATIONS

RAP 13.4 7
RAP 13.4(b) 8

I. IDENTITY OF RESPONDENTS

Respondent is State Farm Fire and Casualty Company, a foreign entity authorized to perform the business of insurance in Washington ("State Farm").

II. COURT OF APPEALS DECISION

The Court of Appeals filed a published decision on January 9, 2018 that affirmed the Spokane County Superior Court's August 12, 2016 grant of partial summary judgment in the favor of State Farm. *See Koren v. State Farm Fire & Cas. Co.*, 1 Wn.App.2d 954, 408 P.3d 357 (2018).

III. COUNTERSTATEMENT OF ISSUE PRESENTED FOR REVIEW

On discretionary review, the Court of Appeals, Division Three, affirmed the August 12, 2016 order of the trial court that granted partial summary judgment in favor of State Farm. The issues to be decided by the petition are appropriately formulated as follows:

1. Did the Court of Appeals appropriately affirm the trial court's grant of summary judgment to State Farm and denial of Ms. Koren's summary judgment by enforcing the plain and unambiguous language of the policy as written and declining to create an ambiguity where none exists?

2. Did the Court of Appeals appropriately reject Ms. Koren's

public policy argument where the definition of "automobile" for the purpose of the PIP insuring agreement is nearly verbatim of the definition of "automobile" under the authorizing Insurance Title and the authorizing statute mandates PIP coverage only for automobiles not all motor vehicle accidents?

3. Note that neither the trial court, nor the Court of Appeals, addressed the "regular use" exclusion and therefore that issue is not ripe for consideration under this Petition for Review.

IV. COUNTERSTATEMENT OF THE CASE

The facts of this case are undisputed. Minor Eric Koren ("Eric") rode the bus to and from school several days per week for approximately five years. CP 9, 46. He rode in the same bus or in one of a fleet of buses provided by the school district. *Id.* Eric was injured in January 2011 when the school bus in which he was riding collided with another school bus in front of his elementary school. CP 9. Both buses were standard size and designed to carry more than 10 passengers.

At the time of the bus collision, Svetlana Koren ("Mrs. Koren") had an automobile insurance policy with State Farm. CP 49-91. Her policy provided both UIM and PIP coverage. CP 58-63, 68-72. As relevant here, the policy provided PIP coverage "for bodily injury

sustained by [the] insured and *caused by an automobile accident*."[1] CP 58 (*emphasis added*).

The policy defined an "automobile" as:

> every motor vehicle registered or designed for carrying ***ten passengers or less*** and used for the transportation of persons other than:
>
> 1. a motorcycle or a motor-driven cycle;
> 2. a farm-type tractor or other self-propelled equipment designed for use principally off public roads;
> 3. a vehicle operated on rails or crawler treads;
> 4. a vehicle located for use as a residence; or
> 5. a moped.

CP 58 (*emphasis added*).

Mrs. Koren tendered Eric's claim for PIP benefits to State Farm in May 2011. State Farm investigated the claim and denied it shortly thereafter. CP 40-47. State Farm explained the reasons for its denial. CP 46-47. State Farm concluded the collision in which Eric had been involved did not qualify as an automobile accident under the plain language of the policy[2]:

> In order for Personal Injury Protection Coverage to extend to this loss, the bodily injury must be caused by an automobile accident. It is our understanding that the school bus Eric Koren was occupying is

[1] Eric qualified for coverage under the policy as a resident relative. CP 58.

[2] State Farm also concluded that even if coverage existed, this claim would be excluded under the "regular use" exclusion, but again, neither the trial court, nor the Court of Appeals addressed the regular use exclusion because both held that coverage does not apply to his loss under the insuring agreement.

> designed to carry more than ten passengers at a time. The policy defines an automobile as a motor vehicle designed for carrying ten passengers or less. For this reason, we are unable to qualify the school bus Eric Koren was riding in as an automobile under the PIP Coverage. In addition, it is our understanding that the school bus Eric Koren was riding in struck another school bus in front of Eric's elementary school. For this reason, we are unable to qualify this loss as an automobile accident as required by the PIP insuring agreement.

CP 46.

Mrs. Koren filed suit on behalf of her son, including an Amended Complaint on November 25, 2015. CP 8-12. Both parties moved the trial court for an order summarily determining the contractual claims. CP 19-33, 92-103. The court issued a memorandum decision in August 2016 granting State Farm's motion and denying Mrs. Koren's motion after laying out a cohesive view of the facts and explaining its reasoning. CP 145-150. Looking at the language of the policy, the court concluded the definition of "automobile" was plain and unambiguous and did not encompass the two school buses involved in the collision that injured Eric. *Id.* As a result, Eric was not injured in an automobile accident and PIP benefits were not available. *Id.* The trial court did not reach the issue of whether the regular use exception applied because it concluded the school bus collision in which Eric was involved was not an insurable event. CP 150.

The court emphasized that it was duty bound to enforce the clear and unambiguous language of the policy unless doing so would violate public policy. CP 148. The court then concluded the language in the policy did not contravene public policy because it replicated RCW 48.22.005 nearly verbatim. CP 149. The court reduced its memorandum decision to an order on August 12, 2016. CP 151-152. The court entered an order certifying its earlier order for immediate review in September 2016. CP 215-216.

The Court of Appeals affirmed the trial court's grant of summary judgment on January 9, 2018. *See Koren v. State Farm Fire & Cas. Co.*, 1 Wn.App.2d 954, 408 P.3d 357 (2018). In the holding, the Court of Appeals first noted that the grant of summary judgment was consistent with the decisions in *Grelis*[3] and *Tyrrell*[4], in finding the word automobile is attached to and modifies the word accident in the State Farm policy. *Id.* at 959-60. This compels the conclusion that this claim does not qualify for PIP coverage:

> It is not enough that Eric's injuries were sustained in an accident. For PIP coverage to apply, Eric's injuries must have been sustained in an accident that was causally connected to an automobile. Under the plain terms of the policy, they were not.

[3] *Farmers Insurance Company of Washington v. Grelis*, 43 Wn.App. 475, 718 P.2d 812 (1986).

[4] *Tyrrell v. Farmers Insurance Company of Washington*, 140 Wn.2d 129, 994 P.2d 833 (2000).

Id.

The Court of Appeals then rejected Mrs. Koren's public policy argument, correctly noting that "Washington law only contemplates PIP coverage for 'automobiles.' *See* RCW 48.22.085-100." *Id.* at 960. Both Washington law and the State Farm policy expressly define automobile "as a passenger car designed for carrying 10 passengers or less." *Id. citing* RCW 48.22.005(1) and RCW 46.04.382. By the plain and express terms of the statute, Washington does not require mandatory PIP coverage for large capacity vehicles, such as school buses. *Id.*

Finally, in rejecting the public policy argument, the Court of Appeals also noted:

> To the extent Mrs. Koren believes the public would be better served by requiring insurers to offer PIP coverage for all motor vehicle accidents, not just those involving an 'automobile,' her concerns must be raised with the legislature. Our court can offer no relief.

Id.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

Petitioner seeks to turn the law governing the interpretation of insurance contracts in Washington on its head by asking the courts to consider public policy first, before interpreting the clear and unambiguous language of the policy. The courts must first look to the policy language,

and enforce its clear and plain meaning where no ambiguity exists. That is precisely what occurred at the trial court level and with the Court of Appeals. The petition should be denied because the decision is not in conflict with, but rather, is consistent with existing Washington law.

Further, despite Petitioner's strenuous attempts to create a public policy concern, the decision does not involve an issue of substantial public interest that needs to be addressed by this Court. Under the express language of the statute requiring mandatory PIP offering, the statute only contemplates PIP coverage for automobiles, not for all motor vehicle accidents. To the extent any public policy concern is raised, it must be addressed to the legislature, not the courts.

A. Standards Governing Acceptance Of Review Compel Rejection Of The Petition.

RAP 13.4 sets forth the considerations governing acceptance of review:

> **(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a published decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the

Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Petitioner does not address those considerations. Instead Petitioner simply argues that the matter was wrongly decided by both the trial court and Court of Appeals, and that it is in the public interest for the court to take the case. The problem for Petitioner is that nothing in the petition shows that the Court of Appeals incorrectly interpreted the policy language or the relevant Washington authority. Furthermore, her argument contravenes the express language of the authorizing statutes. To the extent she has any legitimate public interest concern, it is for the legislature to address.

B. The Petition Should Be Rejected Because The Decision Of The Court Of Appeals Does Not Conflict With Any Decision Of The Supreme Court Or The Court Of Appeals.

1. The Instant Decision Is Consistent With, And Relies Upon, *Grelis* and *Tyrrell*.

Petitioner does not address either of the first two considerations for granting appeal. This is likely because the Court of Appeals already considered and rejected any argument that could be made by Petitioner. Before the Court of Appeals, Mrs. Koren argued that the Court should turn

a blind eye to the language in her insurance policy and instead rely on inapposite cases involving criminal conduct in and around automobiles to establish that Eric was involved in an "automobile accident."

Both of the cases cited by Petitioner in support of her argument, *Grelis* and *Tyrrell* are consistent with the instant Court of Appeals decision. In fact, the Court of Appeals relied upon both decisions as support for the conclusion that the word "automobile" modifies the word "accident" in the State Farm policy and compels the conclusion that Ms. Koren's claim does not qualify for PIP coverage. *Koren, supra* at 959-60.

Petitioner's reliance on *Grelis* is misplaced. In *Grelis*, the Court of Appeals, Division II was tasked with deciding whether a stabbing incident that occurred in a parked automobile qualified as an "automobile accident." *Grelis,* 43 Wn. App. at 477-78. Neither party disputed the fact that the insured's injuries were the result of an accident from the standpoint of the insured. The court affirmed Farmers' denial of coverage because the stabbing incident only incidentally occurred in a parked automobile, and did not result from an "automobile accident." *Id.*

The issue was rather whether the word "accident" was ambiguous when modified by the word "automobile." Division II found that the words "automobile accident" were not ambiguous and that it would have required a strained interpretation of the words to find an ambiguity

because the insured's injuries were caused by a robbery rather than a collision. Although the policy defined an "injured person" as an insured person who was injured by accident while occupying or being struck by an automobile, that language did not broaden the scope of coverage. Division II affirmed the declaratory judgment finding no coverage existed.

In deciding *Grelis* the Court of Appeals was not led astray by the insured's attempt therein to conjure up ambiguity where none existed. Likewise there is no ambiguity in this case and Eric was not involved in an automobile accident because neither one of the buses involved in the collision that caused his injuries fits the policy definition or the legislative definition of an automobile.

Likewise, the decision is consistent with *Tyrrell*. In *Tyrrell*, the question involved whether the term "motor vehicle" modified the word "accident" in such a way that would exclude Mr. Tyrrell's accident from coverage. The *Tyrrell* Court "cited *Grelis* with approval and held that the sensible and popular understanding of what is meant by a 'motor vehicle accident' necessarily involved a motor vehicle being operated as a motor vehicle:"

> The Washington Supreme Court expanded on Grelis's analysis in Tyrrell. Mr. Tyrrell was injured while stepping down from his truck. Farmers denied PIP coverage under a "motor vehicle accident" policy. The policy defined the terms "motor

> vehicle" and "accident," but not "motor vehicle accident." accident" necessarily involves a motor vehicle being operated as a motor vehicle. Tyrrell, 140 Wn.2d at 136-37.

See Koren, supra at 959.

The Court of Appeals in the instant decision noted that both of those cases focused their analysis on the word accident and whether using "automobile" or "motor vehicle" to modify accident had an impact on coverage. *Id.* The result of both decisions was that those modifiers in the insurance policy limited the scope of an accident that could form the basis for recover. *Id.* The Court of Appeals ultimately concluded:

> Consistent with *Grelis* and *Tyrrell*, the modifier 'automobile' attached to the word 'accident' in State Farm's policy compels us to conclude that Eric's injuries do not qualify for PIP coverage. It is not enough that Eric's injuries were sustained in an accident. For PIP coverage to apply, Eric's injuries must have been sustained in an accident that was causally connected to an automobile. Under the plain terms of the policy, they were not. Eric's injuries may have been the result of a 'motor vehicle accident,' but the PIP coverage in Mrs. Koren's policy was limited to an 'automobile accident.' Because neither vehicle in this accident was an 'automobile,' Eric's injuries cannot be considered to have been sustained in an 'automobile accident.'

Id.

Rather than address the first two considerations for acceptance of review, Petitioner ignores them hoping that it will be overlooked that the

Court of Appeals affirmatively noted the instant decision is consistent with the two primary cases that Petitioner has repeatedly attempted to rely upon.

2. The Instant Decision Is Based On Well-Reasoned Authority Mandating Adherence To The Plain And Unambiguous Policy Language.

The Court of Appeals correctly determined that coverage does not exist in this case based on the plain and unambiguous policy language. When interpreting an insurance policy, it must be considered as a whole and given its "fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." *Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 171, 110 P.3d 733 (2005) (*citations omitted*). When the policy language is clear and unambiguous, the policy must be enforced as written and Courts are not permitted to modify or create ambiguity where none exists. *Id.*; *see also Anderson v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 1557870 *8, 2007 U.S. Dist. LEXIS 39769 (W.D. Wash.) ("[I]f the plain language of the policy does not provide coverage, courts will not rewrite the policy to do so." *citing Grange Ins. Co. v. Brosseau*, 113 Wn.2d 91, 100, 776 P.2d 123 (1989)).

Further, contrary to Petitioner's argument "the expectations of the insured cannot override the plain language of the contract." *Id.*; *see also*

Nevers v. Aetna, Ins. Co., 14 Wn. App. 906, 908, 546 P.2d 1240 (1976) (when ambiguity does not exist the "...policy should be enforced according to its clear meaning and purpose, regardless of the coverage insured thought he had."). The Court should not be tempted to adopt Mrs. Koren's suggested reinvention of the well-established rules for resolving the straightforward coverage questions presented by this matter.

The plain meaning of "automobile" as defined in the State Farm policy is not difficult to discern because it is premised on the statutory definition established by the legislature in RCW 48.22.005. The definition of "automobile" provided in State Farm's policy is thus clear and unambiguous, encompassing only a motor vehicle designed to carry less than ten passengers. As the trial court and Court of Appeals correctly recognized below, they could not eviscerate that plain language in favor of creating an ambiguity that did not exist. They were required to enforce the policy definition in the absence of an ambiguity unless doing so would violate public policy. *Brown v. United Pac. Ins. Co.*, 42 Wn. App. 503, 506, 711 P.2d 1105 (1986).

There is no ambiguity in the definition of "automobile" in the State Farm PIP insurance agreement. Likewise, ambiguity is not created when that word is used to modify the word "accident" in the policy. Large passenger vehicles do not meet the definition of automobile under

Washington PIP statutes or the State Farm PIP insurance agreement. When two full-size school buses collide, there is no automobile accident under the State Farm policy or under Washington statute. Therefore no PIP coverage is available for such an event. The Petition should be rejected.

C. <u>The Petition Should Be Denied Because The Decision Does Not Involve An Issue of Substantial Public Interest That Should Be Determined By The Supreme Court</u>.

1. <u>Mrs. Koren's Attempt To Create A Substantial Public Interest Should Be Rejected</u>.

The Petition should be denied because there is no issue of substantial public interest that requires determination by this Court and Mrs. Koren has no legitimate public policy argument. In her Petition, Mrs. Koren asks the Court to create some non-existent ambiguity as to the intent of the Legislature when it enacted the mandatory PIP provisions. The problem is she attempts to expand what the Legislature enacted by the express terms of the statute to support her public interest argument. Her argument fails.

RCW 48.22.085 requires mandatory offering of PIP coverage for all "new automobile liability policies," not for "all motor vehicle accidents." The intent of the Legislature is contained in the express language of RCW 48.22.085(1) and it states:

> (1) No **new automobile liability insurance**

> **policy** or renewal of such an existing policy may be issued unless personal injury protection coverage is offered as an optional coverage.

RCW 48.22.085(1) (*emphasis added*).

The Legislature, also by express language, intended that the definition of automobile for the purpose of Title 48 **excludes** large passenger vehicles designed for carrying more than ten passengers. *See* RCW 48.22.005(1) and RCW 46.04.382 (RCW 48.22.005(1) adopts the definition contained in RCW 46.04.382 for automobile "as a passenger car designed for carrying 10 passengers or less"). Furthermore, RCW 48.22.005(8) defines "automobile liability insurance policy" by express and unequivocal language:

> (8) 'Automobile liability insurance policy' means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person **and arising out of the ownership, maintenance, or use of an insured automobile. ...**

RCW 48.22.005(8) (*emphasis added*).

Based on these express provisions of the authorizing statute, the Court of Appeals concluded:

> Excluding Eric's school bus accident from PIP coverage does not violate public policy. **Consistent with State Farm's insurance policy, Washington law contemplates PIP coverage only for 'automobiles.'** *See* RCW 48.22.085-100. Like State Farm, Washington defines an 'automobile' as

> a passenger car designed for carrying 10 passengers or less. RCW 48.22.005(1); RCW 46.04.382. . **By its plain terms, Washington law does not require insurance companies to offer PIP coverage for large capacity vehicles, such as the school buses involved in this case**
>
> To the extent Mrs. Koren believes the public would be better served by requiring insurers to offer PIP coverage for all motor vehicle accidents, not just those involving an 'automobile,' her concerns must be raised with the legislature. Our court can offer no relief.

Koren, supra at 960 (*emphasis added*).

2. <u>Both The Trial Court And Court Of Appeals Properly Rejected Ms. Koren's Public Policy Argument</u>.

State Farm's definition of "automobile" unequivocally tracks the statutory definitions provided by the legislature; accordingly, the definition cannot contravene public policy. *See id.; See also Barth v. Allstate Ins. Co.*, 95 Wn. App. 552, 560, 977 P.2d 6 (1999) (holding that when the language of an insurance provision closely tracks the authorizing statute it does not contravene public policy). Mrs. Koren's disappointment that her loss was not a covered loss does not implicate public policy notwithstanding her complaints to the contrary.

Washington Courts "rarely" invoke public policy to override express insurance contract provisions, even in instances where those express terms may "seem unnecessary or harsh in their effect." *See*

Allstate Ins. Co. v. Raynor, 93 Wn. App. 484, 499, 969 P.2d 510 (1999) quoting *Cary v. Allstate Ins. Co.*, 130 Wn.2d 335, 340, 922 P.2d 1335 (1996). The Washington Supreme Court has made clear that insurers are permitted to limit their contractual liability so long as those limitations are not contrary to public policy and statute:

> We have said that limitations in insurance contracts which are contrary to public policy and statute will not be enforced, but otherwise insurers are permitted to limit their contractual liability. **While questioning the wisdom of certain exclusion clauses, we have been hesitant to invoke public policy or limit or avoid express contract terms absent legislative action.** 'In general, a contract which is not prohibited by statute, condemned by judicial decision, or contrary to public morals contravenes no principle of public policy.'

State Farm General Ins. Co. v. Emerson, 102 Wn.2d 477, 481, 687 P.2d 1139 (1984) (*citations omitted*) (*emphasis added*).

The definition of "automobile" under the PIP coverage could not be more clear or less technical. It is a motor vehicle designed for carrying less than ten passengers. This unambiguous provision "must be enforced unless against public policy." *Brown, supra*, 42 Wn. App. at 506.

Mere dissatisfaction and disappointment that a loss falls outside the scope of coverage offered by a policy does not constitute a public policy violation. Mere listing of hypothetical fact patterns where some trigger coverage and some do not does not illustrate a public policy. Mrs.

Koren fails to articulate a specific legitimate public policy of the State of Washington which she contends is violated by a provision expressly limiting PIP benefits to an automobile accident, defined in a way that does not include a school bus versus school bus collision.

The outcome at the trial court level and the Court of Appeals are well-reasoned and based on the express intent of the statutory provisions adopted by the Legislature and the plain language of the insurance contract. This Petition should be denied, and if Mrs. Koren believes that the outcome here is not what the Legislature intended then she must take that up with the Legislature.

VI. CONCLUSION

The Petition should be denied because Petitioner has failed to establish any of the considerations governing acceptance for review. The decision is not contrary to any decision of the Court of Appeals or Supreme Court and the petition does not raise an issue of substantial public interest that must be addressed by the Supreme Court.

State Farm is permitted by well-established Washington law to limit its' contractual liability unless those limitations are contrary to public policy or statute. *See Emerson, supra* at 481. The definition of automobile contained in Mrs. Koren's insurance policy with State Farm is not only plain and unambiguous, but copied nearly verbatim from the

authorizing Insurance Title. That authorizing statute mandates PIP coverage for automobiles not all motor vehicle accidents. Based on the plain, express terms of the statute and policy term PIP coverage under the policy is not triggered for this loss.

No significant public interest exists and as noted by both the trial court and the Court of Appeals, any concern Petitioner has should be addressed to the Legislature, not the courts. This Court should reject the Petition for Review and allow enforcement of the plain and unambiguous terms of the policy.

DATED this 14th day of March, 2018.

Respectfully submitted,

s/Gregory S. Worden

Gregory S. Worden, WSBA #24262
William W. Simmons, WSBA #35604
LEWIS BRISBOIS BISGAARD & SMITH LLP
1111 Third Avenue, Suite 2700
Seattle, Washington 98101
(206) 436-2020
Attorneys for Respondents

DECLARATION OF SERVICE

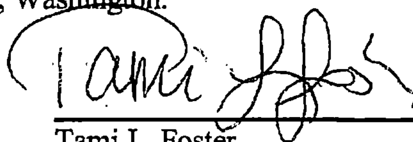
The undersigned certifies under penalty of perjury under the laws of the State of Washington that on March 14, 2018 she caused a true and correct copy of the foregoing **Respondent's Answer to Appellant's Petition for Review** in Court of Appeals Cause No. 347231-III to be served on the parties below via email per agreement of parties.

Marshall Casey M CASEY LAW, PLLC 1106 N. Washington, Ste. B Spokane, WA 99201 marshall@mcaseylawfirm.com matt@mcaseylawfirm.com larisa@mcaseylawfirm.com	☐ ☐ ☐ ☐ ☒	via U.S. Mail via Legal Messenger via Overnight Mail via Facsimile via Electronic Mail

Original e-filed with:

Court of Appeals, Division III
Clerk's Office
500 N Cedar St
Spokane, WA 99201

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed this 14th day of March, 2018 at Seattle, Washington.



Tami L. Foster

LEWIS BRISBOIS BISGAARD & SMITH

March 14, 2018 - 1:16 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	34723-1
Appellate Court Case Title:	Svetlana Koren, et al v. State Farm Casualty & Fire Co.
Superior Court Case Number:	15-2-04751-0

The following documents have been uploaded:

- 347231_Other_20180314131149D3987117_4370.pdf
  This File Contains:
  Other - Answer to Appellant's Petition for Review
  The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Gregory.Worden@lewisbrisbois.com
- drew.cass@lewisbrisbois.com
- larisa@mcaseylawfirm.com
- marshall@mcaseylawfirm.com
- matt@mcaseylawfirm.com
- silvia.webb@lewisbrisbois.com
- vicki.milbrad@lewisbrisbois.com

Comments:

Sender Name: William Simmons - Email: William.Simmons@lewisbrisbois.com
Address:
1111 3RD AVE STE 2700
SEATTLE, WA, 98101-3224
Phone: 206-876-2971

Note: The Filing Id is 20180314131149D3987117