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WASHINGTON STATE
SUPREME COURT

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 347231

(Spokane County Superior Court No. 15-204751-0)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

SVETLANA KOREN as parent and Guardian of ERIC KOREN

Petitioner,

vs.

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

Respondents.

PETITIONER FOR CERTIFICATION OF REVIEW BY THE
SUPREME COURT

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Appendix B- House Bill Report, HB 1233, February 4, 1993

Appendix C- ESHB 1223 as passed out of the House of Representatives

Appendix D- Senate Bill Report on ESHB 1233, April 1, 1993

Appendix E-ESHB 1233 – Senate Amendment, adopted April 16, 1993

Appendix F- Chapter 242, Laws of 1993

Appendix G- Chapter 242, Laws of 1993 Synopsis as Enacted,

Appendix H- Final Bill Report HB1084, Laws of 2003, Chapter 115

I. Identity of Petitioner: Mrs. Svetlana Koren as the guardian of Eric Koren on the time of filing the Superior Court matter, and Eric Koren as direct party in interest who turned 18 during the pendency of this appeal.

II. Citation to the Court of Appeals Decision: *Koren v. State Farm Fire & Casualty Co.*, No. 34723-1-III, filed January 9, 2018 in the Court of Appeals, Division Three.

III. Issues Presented for Review:

A. What type of injuries did the Legislature intend to cover when it mandated in 1993 that insurance companies offer personal injury protection (“PIP”) insurance to consumers?

1. Was the Appellate Court correct that the legislative policy adopted in 1993 only intended PIP coverage to protect insureds if the insured was injured in an accident that involved a “passenger vehicle designed to carry ten (10) people or less,” or was the legislative intent to use of the term “automobile accident” to adopt the then case law definition of *Farmers Ins. Co. of Washington v. Grellis*, 43 Wn. App. 475, 478, 718 P.2d 812, 813 (1986), a forceful collision of one or more vehicles, causing injury to a person?

2. Does the Appellate Court ruling improperly limit the PIP insurance a consumer can purchase for the purpose of protecting themselves, and their resident family members?

B. Does the Appellate Court improperly use the defined term of “automobile” to interpret the undefined term of “automobile accident?” Should the undefined term “automobile accident” be interpreted based upon “plain, ordinary, and popular” meaning of the whole term “automobile accident” in a way that looks at the use of the vehicle and its relation to the injuries, rather than the type of the vehicle as the Court of Appeals did here?

C. [Not addressed by the Court of Appeals, but briefed by all parties], Was Eric Koren excluded from coverage when he was in the school bus, because he rode a school bus to and from school on a regular basis?

IV. Statement of the Case

State Farm sold Svetlana Koren automobile liability insurance, and with that sale offered her PIP insurance as required by Washington Law.

CP 53. Eric Koren¹ is Svetlana's son who was residing in her home, and is an insured under the PIP insurance policy.

The insurance contract covered injuries that were caused by an "automobile accident." The contract defined "automobile" as a vehicle designed to carry ten (10) passengers or less.

When Eric was 11 years old, he was in a school bus going to school. The school bus collided with another school bus, and Eric was injured from that collision. CP 40; 9,14.

Svetlana submitted a claim to State Farm for PIP coverage. State Farm acknowledged that Eric was an insured under the policy, but denied coverage because his injuries did not come from an "automobile accident." State Farm said that because neither school bus was designed to carry ten (10) passengers or less it was not an "automobile accident" that caused his injuries. CP 46-47.

State Farm said that it also reserved the right to decline coverage because Eric rode a school bus to and from school on a regular basis. State Farm determined that this fit within in the exclusion of "a family member occupying a vehicle available to that family member for his/her regular use." *Id.*

¹ Eric Koren was referred to as E.K. in the Court of Appeals' briefs because of his minority, but now is referred to by his first name only instead of using "Mr. Svetlana" and "Ms. Svetlana" to avoid confusion when two people share the same last name.

Svetlana filed suit against State Farm in November of 2015. She requested declaratory relief finding that Eric was covered by PIP, as well as breach of contract and extra contractual claims (IFCA, Bad Faith, and CPA). CP 8-12. Both sides brought cross summary judgment motions on the issue of coverage. CP 19-34; CP 92-104. The trial court granted summary judgment in favor of State Farm, but noted in the memorandum ruling: “I cannot imagine that the legislature ever intended to limit an insured's PIP protections when two buses are involved.” CP 150.

The Court of Appeals granted discretionary review of the ruling. On January 9, 2018 the Court of Appeals ruled that two school busses colliding did not constitute an “automobile accident,” and the Washington’s PIP statutes and public policy only contemplates coverage for accidents that involve at least one “automobile” designed to carry ten (10) passengers or less. *Koren v. State Farm Fire & Casualty Co.*, No. 34723-1-III, filed January 9, 2018.

IV. Argument

The Court of Appeals ruling holds that Washington consumers are only guaranteed coverage for PIP if they are injured in an accident that involved at least one “automobile.” An “automobile” as defined in State Farm’s insurance contract, and RCW 48.22.005(1) is a passenger vehicle

designed to carry ten (10) passengers or less. The Appellate Court ruling judicially limits the minimum coverage of PIP so that it no longer covers certain accidents, some examples of which are

- Pedestrian versus bus
- Bicyclist versus twelve (12) passenger van
- Bus versus bus

Yet, in 1993 when the Legislature mandated the sale of PIP insurance to consumers, the case law defined “automobile accident” as the forcible collision of one or more vehicles causing injury to the insured. *Farmers Ins. Co. of Washington v. Grellis*, 43 Wn. App. 475, 478, 718 P.2d 812, 813 (1986). The Legislature decided that consumers should be able to buy insurance that would cover the named insured and their resident family members, even when they were not in the insured automobile. RCW 48.22.085; RCW 48.22.005(5)(a). PIP coverage was meant to provide the insured and their family members “adequate and prompt reparation for certain economic losses” when they were “victims of motor vehicle accidents.”² *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 62, 322 P.3d 6, 12 (2014). “Washington insurance statutes are to be liberally construed for the benefit of the public.” *Certification From United States Dist. Court ex rel. W. Dist. of Washington v. GEICO*

² The case law in 1993 found “automobile accident” to mean the same as “motor vehicle accident.” *Grellis*, 43 Wn. App. at 478.

Ins. Co., 184 Wn.2d 925, 933, 366 P.3d 1237, 1241 (2016).

Under the Appellate Court's ruling, an insurance company must still offer the consumer a chance to buy PIP to cover themselves and their family members when they are not in the insured automobile, but this coverage is now limited. Now the insurance company does not have to offer PIP coverage for injuries where the consumer is a pedestrian, bicyclist, or bus rider when they are hit by something other than a passenger vehicle.

The Korens urge the Supreme Court to hear this matter because (A) whether or not the Legislature intended to limit PIP coverage for only accidents that involve a passenger vehicle is an important public interest. (B) The other important public interest is whether or not consumers should be able to purchase PIP insurance that broadly covers them and their family when they are not in the insured automobile.

(C) Lastly, the Supreme Court should review this case because This Appellate Court ruling abrogates the arc of Washington case law on what injuries are covered by PIP. Previous case law, much like the case law on underinsured motorist ("UIM") coverage, triggered coverage by the looking at how the vehicle was used and whether or not that caused the complained of injuries. This follows the pattern of "automobile accident" and "motor vehicle accident" being interpreted as a regular consumer of

insurance would interpret them; based on the image they evoke. The Appellate Court ruling abrogates those cases, to focus on the type of vehicle in the accident rather than the usage of the vehicle. The Supreme Court's opinion, either approving or changing this focus, is important for the arc of Washington case law on insurance.

A. The legislative history on PIP shows that it was the intent of the Legislature to adopt the case law definition of “automobile accident” as it then was, rather than to limit coverage to only accidents that included the defined “automobile”

Insurance coverage mandated by statute becomes part of the insurance contract. *Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 672, 852 P.2d 1078, 1080 (1993). In interpreting a statute, the court's objective is to ascertain and carry out the Legislature's intent. *AllianceOne Receivables Mgmt., Inc. v. Lewis*, 180 Wn.2d 389, 393, 325 P.3d 904, 906 (2014).

There is no dispute the PIP statutes define the term “automobile,” but not “automobile accident.” RCW 48.22.005. In 1993 the Legislature took the permissive offering of PIP insurance, and made it mandatory for insurance companies to offer PIP insurance every time the insurer sold automobile liability insurance. Laws of 1993, ch. 242 §2. At that time the

case law in *Grelis* had defined “automobile accident” as the forcible collision of one or more vehicles that causes injury to a person. *Grelis*, 43 Wn. App. at 478.

The question is whether or not the Legislature used “automobile accident” to adopt the case law as it stood on PIP in 1993, or whether the Legislature intended to limit coverage to only accidents that included at least one defined “automobile”? Since the Legislature is presumed to know the case law of the area in which it legislates, the history of the 1993 legislation will show that the Legislature was attempting to adopt the case law definition from *Grelis*. *Woodson v. State*, 95 Wn.2d 257, 262, 623 P.2d 683, 685 (1980).

1. The PIP bill passed out of the House as ESHB 1233 only contained “accident” as the triggering event for coverage

After going through committees the House of Representatives passed ESHB 1233 in a 97 to 0 vote. See Appendix A- Legislative History of ESHB. The House Committee on Financial Insurance & Institutions noted that most companies offered PIP insurance, and that this bill was to make PIP insurance a mandatory offering any time automobile liability insurance was sold. Appendix B- House Bill Report, HB 1233, February 4, 1993.

When ESHB 1233 passed the House it provided that a consumer could buy PIP coverage for themselves and their resident family members, even when they and their family members were not in the “insured automobile.” Appendix C- ESHB 1223 as passed out of the House of Representatives §1(5)(a). It also provided that a consumer could purchase PIP to coverage passengers occupying an insured automobile, drivers using the insured automobile, and pedestrians hit by the insured automobile. *Id.* at §1(5)(b).

ESHB 1233 provided medical benefits for injuries that were the result of an “accident.” *Id.* at §1(7). Under ESHB 1233 passed by the House, the term “automobile” was used to define the term “insured automobile” and later the “automobile liability insurance” that triggered PIP to be sold to the consumer. *Id.* at §1(1),(4),(8), §2(1). This limited the mandatory sale of PIP to only when a person was purchasing automobile liability insurance for a passenger vehicle designed to carry ten (10) passengers or less.

At this time the *Grelis* case had litigated whether or not a person accidentally knifed in a vehicle was covered by PIP. *Grelis*, 43 Wn. App. at 476-477. In *Grelis*, a mugger had tripped over a van seat and stabbed the insured. *Id.* There was no dispute that this injury was caused by an “accident,” but the question was whether or not it was caused by an

“automobile accident.” *Id.* at 477. The *Grelis* court found that “automobile accident” evoked an image of one or more vehicles in forceful contact with another vehicle or person causing physical injury. *Id.* at 478. Based on that, the *Grelis* held, “Here, Grelis's injuries were caused by the robbery. The fact that the van seats were incidentally involved does not convert this incident into an ‘automobile accident.’” *Id.*

At the time ESHB 1233 passed the House of Representatives, it would have modified *Grelis* to mandate PIP so that it covered accidental knifings in vans as “accidents”. It is within this context that ESHB 1233 passed to the Senate.

2. The Senate amended ESHB 1233 for clarification purposes, and in doing so added “automobile accident.”

The Senate amended ESHB 1233 with various “clarifying amendments.” Appendix D- Senate Bill Report on ESHB 1233, April 1, 1993. While the Senate did some substantive changes, those “concern[ed] claim procedures, including access to medical records.” *Id.* It was during this process that the term “automobile accident” was used for medical benefits coverage in PIP. Appendix E-ESHB 1233 – Senate Amendment, adopted April 16, 1993.

The changes to the ESHB 1233 do not impact the use of

“automobile” as a term to limit mandatory PIP offering to consumers. The Senate report does not reflect any intent to limit the scope of PIP coverage to only accidents that include defined “automobiles”; or passenger vehicles designed to carry ten (10) passengers or less.

Instead, the Senate changes adopted *Grelis*, by limiting PIP to only accidents that the term “automobile accident” evokes in the average consumer buying PIP insurance. Since tESHB 1233 prior to the amendment would have overturned *Grelis*, and the Senate is presumed to be aware of *Grelis*, the most reasonable conclusion is that the Senate intended to adopt *Grelis* by using the same “automobile accident” used in *Grelis*. There is no basis to find Senate amendments to ESHB 1233 were an attempt to limit the mandatory insurance coverage of PIP, like the Court of Appeals did in its *Koren v. State Farm* opinion.

3. The post Senate amendment law supports that the “automobile accident” was meant as a clarification and not a major change in the scope of PIP coverage like the Appeals Court has judicially done in this ruling

Four days after the Senate adopted its amendments, the House of Representatives again unanimously passed ESHB 1233. Appendix E-ESHB 1233 as passed by Legislature. This was signed by the governor

into law on May 7, 1993, becoming the Laws of 1993, Chapter 242, and into the RCW's in chapter 48.22 of the RCWs. Appendix F- Chapter 242, Laws of 1993.

The final synopsis on the law summarizes their work as follows:

Automobile liability insurance companies must provide PIP coverage under nonbusiness auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes or motorcycles, for intentional injuries, for injuries arising from war, from toxic waste exposure or from accidents while the insured is occupying an owned but uninsured auto, or from accidents to the insured's relative while occupying an auto owned by the relative.

Appendix G- Chapter 242, Laws of 1993 Synopsis as Enacted, emphasis added.

The last change to the PIP legislative policy³ was in 2003. These changes were “technical revisions” that included the addition of “automobile accident” throughout the legislation. The substantive changes were clarifications that PIP limits were minimum offerings and not maximums. The purpose of the substantive changes were to “[allow] insurers to offer more extensive PIP benefits should they so choose.” This bill unanimously passed the House and Senate, without any discussion of limiting PIP coverage to the named insured or their resident family members. Appendix H- Final Bill Report HB1084, Laws of 2003, Chapter

³ In 2015 the PIP laws were modified to accommodate commercial ride sharing programs such as Uber, but that is outside the scope of this matter.

115.

This legislative history shows that the intent of the Legislature was not to limit coverage to accidents that involved a defined “automobile,” but rather to adopt the limitation *Grelis* put on “accident.” “Automobile accident” was meant to cover what that term evoked in the normal purchaser of PIP, a forcible collision of vehicles that caused personal injury. Anything else violates the legislative intent of the mandatory PIP offering.

B. Consumers should be allowed to buy the PIP coverage intended by the Legislature

The Legislature clearly intended consumers to be able to buy PIP that would cover themselves and their family members even when they were not in the “insured automobile.” Laws of 1993, ch. 242 §1(5)(a); RCW 48.22.005(5)(1). The purpose of PIP is “to provide victims of motor vehicle accidents adequate and prompt reparation for certain economic losses at the lowest cost to both the individual and the no-fault insurance system.” *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 62, 322 P.3d 6, 12 (2014).

The mandatory PIP offering of 1993 was very similar to the mandatory UIM offering that had been law in Washington since 1967.

Exhibit D- Senate Bill Report on ESHB 1233, Testimony for.

When insurance companies tried to limit UIM coverage that was mandated by the UIM laws, this Court struck that down as being against public policy. *Tissell By & Through Cayce v. Liberty Mut. Ins. Co.*, 115 Wn.2d 107, 116, 795 P.2d 126, 130 (1990). In particular the *Tissell* court noted that it violated public policy if a consumer could not buy the mandated coverage for themselves or their family members, since that was a main requirement of the statute. *Id.*

The Appeals Court ruling in this matter judicially limits the consumers' ability to buy coverage to protect themselves and their family members as pedestrians, bicyclists, or bus riders. Under this ruling a consumer can still buy coverage when their family members are pedestrians, bicyclists or bus riders, but only if they are hit by a passenger vehicle designed to carry ten (10) passengers or less.

In an interesting contrast, the consumer can still buy insurance that will always cover pedestrians they hit with their "insured automobile." Since the pedestrian hit by an "insured automobile" will always be in the judicially defined "automobile accident," they are always covered. This means that consumers are offered more coverage for the stranger they hit with their vehicle, than for themselves or their family members when they are pedestrians.

This limitation on consumers to cover themselves and family members is an important public interest that needs to be addressed by this Court.

C. The arc of Washington Law on PIP insurance disagrees with the Appellate Court's ruling

The arc of Washington case law has been to give the terms “automobile accident” and “motor vehicle accident” “a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.” *Tyrrell v. Farmers Ins. Co. of Washington*, 140 Wn.2d 129, 136, 994 P.2d 833, 837 (2000); *Grelis*, 43 Wn. App. at 478. Based on this common understanding, the *Grelis* court gave automobile accident the meaning described above, of forceful collision of one or more vehicles causing injury. *Grelis*, supra. *Tyrrell* gave “motor vehicle accident” the meaning of an accident that occurs when operating a motor vehicle, such as driving it. *Tyrrell*, 140 Wn.2d at 137.

The limitation term “automobile accident” and “motor vehicle accident” have been used to describe a type of accident, rather than a type of vehicle that must be involved in the accident, like the Appellate Court decision did here. There was no dispute that *Grelis* involved the van seats where he was “accidentally” knifed, but such an “accident” would not strike

the average consumer as an “automobile accident.” *Grelis*, 43 Wn. App. at 477 (the robber tripped on the van seats and stabbed Grelis). In *Tyrrell*, question was whether or not falling off his motor vehicle was a “motor vehicle accident.” *Tyrrel*, 140 Wn.2d at 136. Both the courts did not look at the type of vehicle involved, but instead noted that the terms invoked a certain type of accident, rather than an accident that involved a certain type of vehicle. These cases have not merely used the “automobile” or “motor vehicle” as the modifier of “accident,” but have instead looked at the entire term to see kind of accident it conveys to the average consumer buying insurance.

On PIP’s older brother of mandatory offering, UIM (mandated in 1967), our case law on what types of accidents triggers coverage is much more robust. Even so, as late as last year, this Court said the case law still did not offer a clear rule to determine whether an injury was covered by UIM. *Certification From United States Dist. Court ex rel. W. Dist. of Washington v. GEICO Ins. Co.*, 184 Wn.2d 925, 930, 366 P.3d 1237, 1239 (2016). After going through the UIM case law, this Court found that a vehicle could not be the mere situs, or coincidental location of the injury. *Id.* at 934. Instead there must be some causal connection between the events leading up to the injury, and the use of the vehicle. *Id.*

The PIP case law is headed down the same trajectory as UIM, of

looking at the causal connection between the injury and the use of the vehicle. The case law in *Tyrrell* and *Grelis* both take this track by looking at the relationship of the use of the vehicle to the injury.

Recently the *Ramm* court, also a Division III appellate decision like the current *Koren v. State Farm* matter, also focused on the relationship between the use of the vehicle and the injury, rather than the type of vehicle involved in the injury. *Ramm v. Farmers Ins. Co. of Washington*, 200 Wn. App. 1, 6, 401 P.3d 325, 327 (2017), published with modifications at 199 Wn. App. 1020 (2017). In *Ramm* the court found that a driver passed out sick, and then falling out of his vehicle was not covered because his injury did not come from the use of the vehicle. *Id.*

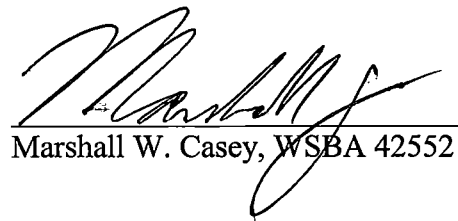
The Court of Appeals ruling in *Koren v. State Farm* is an abrogation of where the case law on PIP is heading. It does not look at what the term “automobile accident” would evoke in an average consumer like *Grelis* did. Nor does the opinion look at the “sensible and popular understanding” like the *Tyrrell* court did for “motor vehicle accident.” Instead this Court of Appeals ruling gives “automobile accident” a pedantic, legalistic, and technical approach that focuses on the type of vehicle involved in the accident. This interpretation, especially focusing on the type of vehicle rather than the usage of the vehicle, is contrary to the way case law is progressing on PIP as well as UIM. It is important for this

Court to weigh in on whether or not this is a correct approach to PIP insurance in Washington.

V. Conclusion

This matter involves important public interests of whether or not Washington consumers will be offered PIP insurance to cover themselves and their family members as pedestrians, bicyclists, and bus riders. The Court of Appeals has judicially limited the PIP insurance coverage a consumer can purchase to protect their child on a school bus, their husband on a bicycle or themselves as a pedestrian. Ms. Koren urges this Court to decide whether or not this is good law for Washington.

M Casey Law, PLLC



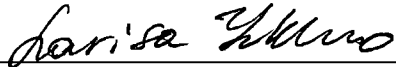
Marshall W. Casey, WSBA 42552

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 8th day of February, 2018, I caused a true and correct copy of the foregoing document to be delivered in the manner indicated below to the following court reporter and counsel of record:

<u>Counsel for Defendant:</u> LEWIS BRISBOIS BISGAARD & SMITH LLP V. Andrew Cass William W. Simmons Emmelyn Hart 1111 Third Avenue, Suite 2700 Seattle, WA 98101	SENT VIA: <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Eastern WA Attorney Services <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
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Dated this on 8th February of ~~June~~, 2017.



Larisa Yukhno-Legal Assistant
M CASEY LAW, PLLC

Appendix A

HB 1233 - 1993-94

Regulating the mandatory offering of personal injury protection insurance.

Sponsors: Meyers, R., Zellinsky, Dellwo, Johnson, R., Scott, Riley, Kessler, Dunshee, Dorn, Foreman, Grant, Kremen, Johanson

Bill History

1993 REGULAR SESSION

- Jan 20 First reading, referred to Financial Institutions & Insurance.
- Feb 4 **FII - Majority; 1st substitute bill be substituted, do pass.**
- Feb 10 Passed to Rules committee for second reading.
- Feb 12 Made eligible to be placed on second reading.
- Feb 18 Placed on second reading by Rules committee.
- Feb 26 **1st substitute bill substituted (FII 93).**
AMENDED.
Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 95; nays 0, absent, 3.

IN THE SENATE

- Mar 1 First reading, referred to Labor & Commerce.
- Apr 2 LAB - Majority; do pass with amendment(s).
Passed to Rules committee for second reading.
- Apr 9 Made eligible to be placed on second reading.
- Apr 14 Placed on second reading by Rules committee.
- Apr 16 Committee amendment not adopted.
AMENDED.
Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 35; nays 10, absent, 4.

IN THE HOUSE

- Apr 20 House concurred in Senate amendments.
Passed final passage; yeas, 97; nays 0, absent, 1.
- Apr 23 Speaker signed.

IN THE SENATE

- Apr 24 President signed.

OTHER THAN LEGISLATIVE ACTION

- Apr 25 Delivered to Governor.

May 7 Governor signed.
Chapter 242, 1993 Laws

Appendix B

HOUSE BILL REPORT

HB 1233

As Reported By House Committee On:
Financial Institutions & Insurance

Title: An act relating to mandatory offering of personal injury protection insurance.

Brief Description: Regulating the mandatory offering of personal injury protection insurance.

Sponsors: Representatives R. Meyers, Zellinsky, Dellwo, R. Johnson, Scott, Riley, Kessler, Dunshee, Dorn, Foreman, Grant, Kremen and Johanson.

Brief History:

Reported by House Committee on:
Financial Institutions & Insurance, February 4, 1993,
DPS.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Zellinsky, Chair; Scott, Vice Chair; Mielke, Ranking Minority Member; Dyer, Assistant Ranking Minority Member; Anderson; Dellwo; Dorn; Grant; R. Johnson; Kessler; Kremen; Lemmon; R. Meyers; Reams; Schmidt; and Tate.

Staff: John Conniff (786-7119).

Background: Most automobile insurance companies offer medical coverage, also referred to as personal injury protection (PIP) coverage, as part of a comprehensive auto insurance policy. PIP coverage includes disability, wage loss, and death benefit coverage. The Insurance Commissioner has adopted limited rules setting basic standards for the amount of coverage to be offered by insurers who market PIP coverage.

Summary of Substitute Bill: Automobile liability insurance companies must provide PIP coverage under nonbusiness auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes or motorcycles, for intentional injuries, for injuries arising from war, from toxic waste exposure or from accidents while the insured is occupying an owned but

uninsured auto, or from accidents to the insured's relatives while occupying an auto owned by the relative.

Coverage must extend to reasonable and necessary medical and hospital expenses incurred within three years from the date of the insured's injury up to \$10,000. Funeral expenses must be covered up to \$2,000. Loss of income benefits must be provided up to \$10,000 subject to certain limits. Loss of services benefits must be provided up to \$40 per day and not exceeding a total of \$5,000. Insurers must offer higher limits for all such benefits as provided.

Insurers and policyholders must adhere to the claim procedures outlined.

Insurance companies may not settle subrogation claims through intercompany arbitration until the policyholder's claim has been settled.

An insurer may not incorporate any exclusion, condition, or other provision in a policy that limits the PIP benefits required without the approval of the Insurance Commissioner.

Substitute Bill Compared to Original Bill: Many technical changes are made to clarify requirements for offering PIP coverage and several substantive changes are made to satisfy insurance company objections. Among these substantive changes: the deletion of rules requiring insurance companies to pay for plaintiff's attorney's recovery of amounts owed to the company; further limitations on the required PIP benefits including a weekly limit on loss of services coverage; and authority to condition or limit coverage as permitted by the Insurance Commissioner.

Fiscal Note: Requested January 28, 1993.

Effective Date of Substitute Bill: The bill takes effect July 1, 1994.

Testimony For: None.

Testimony Against: (Original Bill): Insurers should not be required to pay the policyholder's attorney a share of amounts owed to the insurer simply because such amounts were included in the settlement of the policyholder's claim. Required PIP benefits should be clarified in several sections to prevent benefit payments and limit benefit payments for persons not intended as beneficiaries of PIP coverage. (No testimony on substitute bill).

Witnesses: Craig McGee, PEMCO (Con); Jean Leonard and Paul Danner, State Farm Insurance Company (Con); Clark Sitzes,

Independent Agents (Con); Mike Kupphahn, Farmers Insurance
(neither pro nor con but amend); and Melodie Bankers,
Insurance Commissioner's Office (with some concerns).

Appendix C

ENGROSSED SUBSTITUTE HOUSE BILL 1233

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives R. Meyers, Zellinsky, Dellwo, R. Johnson, Scott, Riley, Kessler, Dunshee, Dorn, Foreman, Grant, Kremen and Johanson)

Read first time 02/10/93.

1 AN ACT Relating to mandatory offering of personal injury protection
2 insurance; adding new sections to chapter 48.22 RCW; creating a new
3 section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Automobile" means a passenger car as defined in RCW 46.04.382
9 registered or principally garaged in this state other than:

10 (a) A farm-type tractor or other self-propelled equipment designed
11 for use principally off public roads, while not upon public roads;

12 (b) A vehicle operated on rails or crawler-treads;

13 (c) A vehicle located for use as a residence;

14 (d) A vehicle primarily used in the occupation, profession, or
15 business of the insured;

16 (e) A motor home as defined in RCW 46.04.305; or

17 (f) A moped as defined in RCW 46.04.304.

1 (2) "Bodily injury" means bodily injury, sickness, or disease,
2 including death at any time resulting from the injury, sickness, or
3 disease.

4 (3) "Income continuation benefits" means payments of at least
5 eighty-five percent of the insured persons' loss of income from work,
6 because of bodily injury sustained by him or her in the accident,
7 during the period commencing fourteen days after the date of the
8 accident and ending at the earliest of the following:

9 (a) The date on which the insured person is reasonably able to
10 perform the duties of his or her usual occupation;

11 (b) The expiration of not more than fifty-two weeks from the
12 fourteenth day; or

13 (c) The date of the insured person's death.

14 (4) "Insured automobile" means an automobile of which the named
15 insured is the owner, to which the automobile liability insurance
16 policy applies.

17 (5) "Insured person" means:

18 (a) The named insured or a person who is a resident of the named
19 insured's household and is either related to the named insured by
20 blood, marriage, or adoption, or is the named insured's ward, foster
21 child, or stepchild; or

22 (b) A person, other than the named insured or a relative, who
23 sustains bodily injury caused by accident while: (i) Occupying the
24 insured automobile as a guest passenger; (ii) using the insured
25 automobile with the permission of the named insured; or (iii) a
26 pedestrian struck by the insured automobile.

27 (6) "Loss of services benefits" means reimbursement for payment to
28 others, not members of the insured person's household, for expenses
29 reasonably incurred for essential services in lieu of those the insured
30 person would have performed without income, provided the services are
31 actually rendered, and ending the earliest of the following:

32 (a) The date on which the insured person is reasonably able to
33 perform the duties of his or her usual occupation;

34 (b) The expiration of not more than fifty-two weeks; or

35 (c) The date of the insured person's death.

36 (7) "Medical and hospital benefits" means payments for all
37 reasonable and necessary expenses incurred by or on behalf of the
38 insured person for injuries sustained as a result of an accident for
39 health care services provided by persons licensed under Title 18 RCW,

1 including pharmaceuticals, prosthetic devices and eye glasses, and
2 necessary ambulance, hospital, and professional nursing service.

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

7 (9) "Named insured" means the individual named in the declarations
8 of the policy and includes his or her spouse if a resident of the same
9 household.

10 (10) "Occupying" means in or upon or entering into or alighting
11 from.

12 (11) "Pedestrian" means a natural person not occupying a motor
13 vehicle as defined in RCW 46.04.320.

14 (12) "Personal injury protection" means the benefits described in
15 sections 1 through 8 of this act.

16 NEW SECTION. **Sec. 2.** (1) No new automobile liability insurance
17 policy or renewal of an existing policy may be issued unless personal
18 injury protection coverage benefits for the reasonable and necessary
19 medical and hospital expenses, funeral expenses, income continuation,
20 and loss of services sustained by an insured because of bodily injury
21 caused by a motor vehicle accident are provided therein.

22 (2) A named insured may reject, in writing, personal injury
23 protection coverage and the requirements of subsection (1) of this
24 section shall not apply. If a named insured has rejected personal
25 injury protection coverage, such coverage shall not be included in any
26 supplemental or renewal policy unless a named insured or spouse
27 subsequently requests such coverage in writing.

28 NEW SECTION. **Sec. 3.** (1) Personal injury protection coverage need
29 not be provided for vendor's single interest policies, general
30 liability policies, or other policies, commonly known as umbrella
31 policies, that apply only as excess to the automobile liability policy
32 directly applicable to the insured motor vehicle.

33 (2) Personal injury protection coverage need not be provided to or
34 on behalf of:

35 (a) A person who intentionally causes injury to himself or herself;

1 (b) A person who is injured while participating in a prearranged or
2 organized racing or speed contest or in practice or preparation for
3 such a contest;

4 (c) A person whose bodily injury is due to war, whether or not
5 declared, civil war, insurrection, rebellion, or revolution, or to an
6 act or condition incident to such circumstances;

7 (d) A person whose bodily injury results from the radioactive,
8 toxic, explosive, or other hazardous properties of nuclear material;

9 (e) The named insured or a relative while occupying an automobile
10 owned by the named insured or furnished for the named insured's regular
11 use and not insured for personal injury protection;

12 (f) A relative while occupying an automobile owned by the relative
13 or furnished for the relative's regular use; or

14 (g) An insured whose bodily injury results or arises from the
15 insured's use of an automobile in the commission of a felony.

16 NEW SECTION. **Sec. 4.** At a minimum, personal injury protection
17 coverage must provide:

18 (1) Medical and hospital benefits for expenses incurred within
19 three years after the date of the insured's injury up to ten thousand
20 dollars;

21 (2) Benefits for funeral expenses in an amount up to two thousand
22 dollars;

23 (3) Income continuation benefits covering income losses incurred
24 within one year after the date of the insured's injury in an amount up
25 to ten thousand dollars, subject to a limit of the lesser of two
26 hundred dollars per week or eighty-five percent of the weekly income,
27 but the combined weekly payment receivable by the insured person under
28 any other disability or loss of income benefit, and this insurance may
29 not exceed eighty-five percent of the insured person's weekly income;
30 and

31 (4) Loss of services benefits in an amount of up to five thousand
32 dollars, subject to a limit of forty dollars per day not to exceed two
33 hundred dollars per week.

34 NEW SECTION. **Sec. 5.** Insurers shall provide, upon request,
35 maximum personal injury protection coverage limits of at least:

36 (1) Thirty-five thousand dollars for medical and hospital benefits
37 incurred within three years of the accident;

1 (2) Thirty-five thousand dollars for one year's income continuation
2 benefits, subject to a limit of the lesser of seven hundred dollars per
3 week or eighty-five percent of the weekly income; and

4 (3) Forty dollars per day for loss of services benefits, for at
5 least a year.

6 NEW SECTION. **Sec. 6.** (1) In the event of an accident, written
7 notice containing particulars sufficient to identify the insured
8 person, and also reasonable obtainable information respecting the time,
9 place, and circumstances of the accident must be given by or on behalf
10 of each insured person to the insurer or its authorized agent as soon
11 as practicable. If an insured person or his or her legal
12 representative initiates legal action to recover damages for bodily
13 injury against a person or organization who is or may be liable in
14 tort, a copy of the summons and complaint or other process served in
15 connection with the legal action must be forwarded as soon as
16 practicable to the insurer by the insured person or his or her legal
17 representative.

18 (2) As soon as practicable, the insured person or someone on his or
19 her behalf shall give to the company written notice of claim, under
20 oath if required, and such other information as may assist the company
21 in determining the amount due and payable.

22 (3) The insured person, or in the event of his or her incapacity or
23 death, his or her legal representative, shall, upon each request from
24 the company, execute authorization to enable the company to obtain
25 medical reports, copies of records, and written information relating to
26 bodily injury or loss of income arising out of the accident giving rise
27 to the personal injury protection coverage claim. The company may
28 require that the insured person, as a condition for receiving income
29 continuation benefits, cooperate in furnishing the company reasonable
30 medical proof of his or her inability to work. The insured person
31 shall submit to physical examinations by physicians selected by the
32 company at the expense of the insurer when and as often as the company
33 may reasonably require.

34 (4) If any person making a claim and the first party insurer
35 disagree as to the benefit amount owed under the personal injury
36 protection coverage limits provided in the policy, then arbitration
37 shall begin upon the written demand by either party. Upon such
38 disagreement and if the parties agree in writing, the matter shall be

1 decided by a single arbitrator selected by the parties. If the parties
2 fail to agree on the selection of a single arbitrator, then each party
3 shall, upon written demand of either, select a competent and
4 disinterested arbitrator. The two arbitrators so named shall select a
5 third arbitrator. The decision of any two arbitrators shall be binding
6 on the person and the company. Such person and the company each agree
7 to consider itself bound and to be bound by any award by the arbitrator
8 or arbitrators.

9 (5) Except to the extent that the insured's total damages exceed
10 the amount of underinsured benefits available to pay those damages, all
11 payments made under income continuation benefits or loss of services
12 benefits shall be credited toward settlement of a claim or the
13 satisfaction of an award entered for the insured under the underinsured
14 motorists coverage in this or any other policy of the company.

15 (6) The limit of liability under the policy for personal injury
16 protection coverage may be defined as the maximum limit of liability
17 per person for all injuries resulting from any one accident regardless
18 of the number of persons covered, claims made, or vehicles or premiums
19 shown on the policy, or premiums paid, or vehicles involved in the
20 accident.

21 NEW SECTION. **Sec. 7.** An insurer may not proceed to intercompany
22 arbitration for the purpose of settling any claim to a right of
23 reimbursement or subrogation of personal injury protection benefits
24 paid until the payment or resolution of the underlying third-party
25 claim of its insured.

26 NEW SECTION. **Sec. 8.** An insurer may not incorporate an exclusion,
27 condition, or other provision in an insurance policy that has the
28 effect of limiting benefits provided under sections 1 through 8 of this
29 act without the approval of the commissioner.

30 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act are each
31 added to chapter 48.22 RCW.

32 NEW SECTION. **Sec. 10.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 11.** Sections 1 through 8 of this act shall take
2 effect July 1, 1994.

3 NEW SECTION. **Sec. 12.** The commissioner may adopt such rules as
4 are necessary to implement sections 1 through 8 of this act by July 1,
5 1994. Nothing in this act restricts the existing rule-making authority
6 of the commissioner.

--- END ---

Appendix D

SENATE BILL REPORT

ESHB 1233

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, APRIL 1, 1993

Brief Description: Regulating the mandatory offering of personal injury protection insurance.

SPONSORS: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives R. Meyers, Zellinsky, Dellwo, R. Johnson, Scott, Riley, Kessler, Dunshee, Dorn, Foreman, Grant, Kremen and Johanson)

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, McAuliffe, Pelz, Sutherland, Vognild, and Wojahn.

Staff: Benson Porter (786-7470)

Hearing Dates: March 19, 1993; April 1, 1993

BACKGROUND:

Most automobile insurance companies offer medical coverage, often referred to as personal injury protection (PIP) coverage, as part of an auto insurance policy. PIP coverage includes medical, wage loss, and death benefit coverage.

The Insurance Commissioner has adopted rules setting the minimum amount of coverages to be provided by auto insurers upon the request of and payment by the consumer. The minimum coverages are as follows: (1) \$35,000 for medical and hospital benefits incurred within three years of the accident; (2) \$35,000 for one year's income continuation subject to limitations; and (3) \$40 per day for loss of services for at least one year.

SUMMARY:

Automobile liability insurance companies must provide PIP coverage under nonbusiness auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes, motorcycles, intentional injuries, and certain other specified situations.

Coverage must extend to reasonable and necessary medical and hospital expenses incurred within three years from the date of the insured's injury up to \$10,000. Funeral expenses must be covered up to \$2,000. Loss of income benefits must be provided up to \$10,000 subject to certain limits. Loss of

services benefits must be provided up to \$40 per day and not exceeding a total of \$5,000. Insurers must offer higher benefit limits equal to those contained in existing rules upon request.

Insurers and policyholders must adhere to the claim procedures outlined.

Insurance companies may not settle subrogation claims through intercompany arbitration until the policyholder's claim has been settled.

An insurer may not incorporate any exclusion, condition, or other provision in a policy that limits the PIP benefits required without the approval of the Insurance Commissioner.

SUMMARY OF PROPOSED SENATE AMENDMENT:

The provisions concerning claim procedures, including access to medical records, are deleted. Various clarifying amendments are made.

Appropriation: none

Revenue: none

Fiscal Note: requested January 28, 1993

Effective Date: The bill takes effect July 1, 1994.

TESTIMONY FOR:

Personal injury protection coverage provides first dollar coverage regardless of fault. This legislation will establish a similar offer and rejection system that exists for uninsured/underinsured motorist coverage.

TESTIMONY AGAINST:

The mandatory offer of PIP coverage is not necessary because over 90 percent of auto insurance purchasers have PIP coverage. Concerns exist over provisions concerning access to medical records, rejection, and dispute resolution. In addition, the bill fails to contain cost controls and will generate litigation.

TESTIFIED: Dennis Martin, Washington State Trial Lawyers Association (pro); Jean Leonard, Washington Insurers; Craig McGee, PEMCO; Mike Kapphahn, Farmers Insurance; Dan Wolfe, Safeco

Appendix E

2 ESHB 1233 - S AMD 000828
3 By Senator Moore

4 ADOPTED 4/16/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Automobile" means a passenger car as defined in RCW 46.04.382
11 registered or principally garaged in this state other than:

12 (a) A farm-type tractor or other self-propelled equipment designed
13 for use principally off public roads;

14 (b) A vehicle operated on rails or crawler-treads;

15 (c) A vehicle located for use as a residence;

16 (d) A motor home as defined in RCW 46.04.305; or

17 (e) A moped as defined in RCW 46.04.304.

18 (2) "Bodily injury" means bodily injury, sickness, or disease,
19 including death at any time resulting from the injury, sickness, or
20 disease.

21 (3) "Income continuation benefits" means payments of at least
22 eighty-five percent of the insured's loss of income from work, because
23 of bodily injury sustained by him or her in the accident, less income
24 earned during the benefit payment period. The benefit payment period
25 begins fourteen days after the date of the accident and ends at the
26 earliest of the following:

27 (a) The date on which the insured is reasonably able to perform the
28 duties of his or her usual occupation;

29 (b) The expiration of not more than fifty-two weeks from the
30 fourteenth day; or

31 (c) The date of the insured's death.

32 (4) "Insured automobile" means an automobile described on the
33 declarations page of the policy.

34 (5) "Insured" means:

35 (a) The named insured or a person who is a resident of the named
36 insured's household and is either related to the named insured by

1 blood, marriage, or adoption, or is the named insured's ward, foster
2 child, or stepchild; or

3 (b) A person who sustains bodily injury caused by accident while:

4 (i) Occupying or using the insured automobile with the permission of
5 the named insured; or (ii) a pedestrian accidentally struck by the
6 insured automobile.

7 (6) "Loss of services benefits" means reimbursement for payment to
8 others, not members of the insured's household, for expenses reasonably
9 incurred for services in lieu of those the insured would usually have
10 performed for his or her household without compensation, provided the
11 services are actually rendered, and ending the earliest of the
12 following:

13 (a) The date on which the insured person is reasonably able to
14 perform those services;

15 (b) The expiration of fifty-two weeks; or

16 (c) The date of the insured's death.

17 (7) "Medical and hospital benefits" means payments for all
18 reasonable and necessary expenses incurred by or on behalf of the
19 insured for injuries sustained as a result of an automobile accident
20 for health care services provided by persons licensed under Title 18
21 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and
22 necessary ambulance, hospital, and professional nursing service.

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

27 (9) "Named insured" means the individual named in the declarations
28 of the policy and includes his or her spouse if a resident of the same
29 household.

30 (10) "Occupying" means in or upon or entering into or alighting
31 from.

32 (11) "Pedestrian" means a natural person not occupying a motor
33 vehicle as defined in RCW 46.04.320.

34 (12) "Personal injury protection" means the benefits described in
35 sections 1 through 5 of this act.

36 NEW SECTION. **Sec. 2.** (1) No new automobile liability insurance
37 policy or renewal of such an existing policy may be issued unless
38 personal injury protection coverage benefits at limits established in

1 this chapter for medical and hospital expenses, funeral expenses,
2 income continuation, and loss of services sustained by an insured
3 because of bodily injury caused by an automobile accident are offered
4 as an optional coverage.

5 (2) A named insured may reject, in writing, personal injury
6 protection coverage and the requirements of subsection (1) of this
7 section shall not apply. If a named insured has rejected personal
8 injury protection coverage, that rejection shall be valid and binding
9 as to all levels of coverage and on all persons who might have
10 otherwise been insured under such coverage. If a named insured has
11 rejected personal injury protection coverage, such coverage shall not
12 be included in any supplemental, renewal, or replacement policy unless
13 a named insured subsequently requests such coverage in writing.

14 NEW SECTION. **Sec. 3.** (1) Personal injury protection coverage need
15 not be provided for vendor's single interest policies, general
16 liability policies, or other policies, commonly known as umbrella
17 policies, that apply only as excess to the automobile liability policy
18 directly applicable to the insured motor vehicle.

19 (2) Personal injury protection coverage need not be provided to or
20 on behalf of:

21 (a) A person who intentionally causes injury to himself or herself;

22 (b) A person who is injured while participating in a prearranged or
23 organized racing or speed contest or in practice or preparation for
24 such a contest;

25 (c) A person whose bodily injury is due to war, whether or not
26 declared, or to an act or condition incident to such circumstances;

27 (d) A person whose bodily injury results from the radioactive,
28 toxic, explosive, or other hazardous properties of nuclear material;

29 (e) The named insured or a relative while occupying a motor vehicle
30 owned by the named insured or furnished for the named insured's regular
31 use, if such motor vehicle is not described on the declaration page of
32 the policy under which a claim is made;

33 (f) A relative while occupying a motor vehicle owned by the
34 relative or furnished for the relative's regular use, if such motor
35 vehicle is not described on the declaration page of the policy under
36 which a claim is made; or

37 (g) An insured whose bodily injury results or arises from the
38 insured's use of an automobile in the commission of a felony.

1 NEW SECTION. **Sec. 4.** Insurers providing automobile insurance
2 policies must offer minimum personal injury protection coverage for
3 each insured with maximum benefit limits as follows:

4 (1) Medical and hospital benefits of ten thousand dollars for
5 expenses incurred within three years of the automobile accident;

6 (2) Benefits for funeral expenses in an amount of two thousand
7 dollars;

8 (3) Income continuation benefits covering income losses incurred
9 within one year after the date of the insured's injury in an amount of
10 ten thousand dollars, subject to a limit of the lesser of two hundred
11 dollars per week or eighty-five percent of the weekly income. The
12 combined weekly payment receivable by the insured under any workers'
13 compensation or other disability insurance benefits or other income
14 continuation benefit and this insurance may not exceed eighty-five
15 percent of the insured's weekly income;

16 (4) Loss of services benefits in an amount of five thousand
17 dollars, subject to a limit of forty dollars per day not to exceed two
18 hundred dollars per week; and

19 (5) Payments made under personal injury protection coverage are
20 limited to the amount of actual loss or expense incurred.

21 NEW SECTION. **Sec. 5.** In lieu of minimum coverage required under
22 section 4 of this act, an insurer providing automobile liability
23 insurance policies shall offer and provide, upon request, personal
24 injury protection coverage with benefit limits for each insured of:

25 (1) Up to thirty-five thousand dollars for medical and hospital
26 benefits incurred within three years of the automobile accident;

27 (2) Up to two thousand dollars for funeral expenses incurred;

28 (3) Up to thirty-five thousand dollars for one year's income
29 continuation benefits, subject to a limit of the lesser of seven
30 hundred dollars per week or eighty-five percent of the weekly income;
31 and

32 (4) Up to forty dollars per day for loss of services benefits, for
33 up to one year from the date of the automobile accident.

34 Payments made under personal injury protection coverage are limited
35 to the amount of actual loss or expense incurred.

36 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
37 added to chapter 48.22 RCW.

Appendix F

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1233

Chapter 242, Laws of 1993

53rd Legislature
1993 Regular Session

MOTOR VEHICLE INSURANCE--PERSONAL INJURY PROTECTION BENEFITS

EFFECTIVE DATE: 7/25/93 - Except Sections 1 through 5 which become effective on 7/1/94

Passed by the House April 20, 1993
Yeas 97 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 16, 1993
Yeas 35 Nays 10

JOEL PRITCHARD
President of the Senate

Approved May 7, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1233** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 7, 1993 - 11:26 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1233

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives R. Meyers, Zellinsky, Dellwo, R. Johnson, Scott, Riley, Kessler, Dunshee, Dorn, Foreman, Grant, Kremen and Johanson)

Read first time 02/10/93.

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17 including death at any time resulting from the injury, sickness, or
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2 eighty-five percent of the insured's loss of income from work, because
3 of bodily injury sustained by him or her in the accident, less income
4 earned during the benefit payment period. The benefit payment period
5 begins fourteen days after the date of the accident and ends at the
6 earliest of the following:

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8 duties of his or her usual occupation;

9 (b) The expiration of not more than fifty-two weeks from the
10 fourteenth day; or

11 (c) The date of the insured's death.

12 (4) "Insured automobile" means an automobile described on the
13 declarations page of the policy.

14 (5) "Insured" means:

15 (a) The named insured or a person who is a resident of the named
16 insured's household and is either related to the named insured by
17 blood, marriage, or adoption, or is the named insured's ward, foster
18 child, or stepchild; or

19 (b) A person who sustains bodily injury caused by accident while:

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21 the named insured; or (ii) a pedestrian accidentally struck by the
22 insured automobile.

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33 (7) "Medical and hospital benefits" means payments for all
34 reasonable and necessary expenses incurred by or on behalf of the
35 insured for injuries sustained as a result of an automobile accident
36 for health care services provided by persons licensed under Title 18
37 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and
38 necessary ambulance, hospital, and professional nursing service.

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

5 (9) "Named insured" means the individual named in the declarations
6 of the policy and includes his or her spouse if a resident of the same
7 household.

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11 the policy under which a claim is made;

12 (f) A relative while occupying a motor vehicle owned by the
13 relative or furnished for the relative's regular use, if such motor
14 vehicle is not described on the declaration page of the policy under
15 which a claim is made; or

16 (g) An insured whose bodily injury results or arises from the
17 insured's use of an automobile in the commission of a felony.

18 NEW SECTION. **Sec. 4.** Insurers providing automobile insurance
19 policies must offer minimum personal injury protection coverage for
20 each insured with maximum benefit limits as follows:

21 (1) Medical and hospital benefits of ten thousand dollars for
22 expenses incurred within three years of the automobile accident;

23 (2) Benefits for funeral expenses in an amount of two thousand
24 dollars;

25 (3) Income continuation benefits covering income losses incurred
26 within one year after the date of the insured's injury in an amount of
27 ten thousand dollars, subject to a limit of the lesser of two hundred
28 dollars per week or eighty-five percent of the weekly income. The
29 combined weekly payment receivable by the insured under any workers'
30 compensation or other disability insurance benefits or other income
31 continuation benefit and this insurance may not exceed eighty-five
32 percent of the insured's weekly income;

33 (4) Loss of services benefits in an amount of five thousand
34 dollars, subject to a limit of forty dollars per day not to exceed two
35 hundred dollars per week; and

36 (5) Payments made under personal injury protection coverage are
37 limited to the amount of actual loss or expense incurred.

1 NEW SECTION. **Sec. 5.** In lieu of minimum coverage required under
2 section 4 of this act, an insurer providing automobile liability
3 insurance policies shall offer and provide, upon request, personal
4 injury protection coverage with benefit limits for each insured of:

5 (1) Up to thirty-five thousand dollars for medical and hospital
6 benefits incurred within three years of the automobile accident;

7 (2) Up to two thousand dollars for funeral expenses incurred;

8 (3) Up to thirty-five thousand dollars for one year's income
9 continuation benefits, subject to a limit of the lesser of seven
10 hundred dollars per week or eighty-five percent of the weekly income;
11 and

12 (4) Up to forty dollars per day for loss of services benefits, for
13 up to one year from the date of the automobile accident.

14 Payments made under personal injury protection coverage are limited
15 to the amount of actual loss or expense incurred.

16 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
17 added to chapter 48.22 RCW.

18 NEW SECTION. **Sec. 7.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 8.** Sections 1 through 5 of this act shall take
23 effect July 1, 1994.

24 NEW SECTION. **Sec. 9.** The commissioner may adopt such rules as are
25 necessary to implement sections 1 through 5 of this act.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

Appendix G

FINAL BILL REPORT

ESHB 1233

C 242 L 93
Synopsis as Enacted

Brief Description: Regulating the mandatory offering of personal injury protection insurance.

By House Committee on Financial Institutions & Insurance
(originally sponsored by Representatives R. Meyers,
Zellinsky, Dellwo, R. Johnson, Scott, Riley, Kessler,
Dunshee, Dorn, Foreman, Grant, Kremen and Johanson).

House Committee on Financial Institutions & Insurance
Senate Committee on Labor & Commerce

Background: Most automobile insurance companies offer medical coverage, also referred to as personal injury protection (PIP) coverage, as part of a comprehensive auto insurance policy. PIP coverage includes disability, wage loss, and death benefit coverage. The Insurance Commissioner has adopted rules setting basic standards for the amount of coverage to be offered by insurers who market PIP coverage.

Summary: Automobile liability insurance companies must provide PIP coverage under nonbusiness auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes or motorcycles, for intentional injuries, for injuries arising from war, from toxic waste exposure or from accidents while the insured is occupying an owned but uninsured auto, or from accidents to the insured's relative while occupying an auto owned by the relative.

Coverage must extend to reasonable and necessary medical and hospital expenses up to \$10,000, incurred within three years from the date of the insured's injury. Funeral expenses must be covered up to \$2,000. Loss of income benefits must be provided up to \$10,000, subject to certain limits. Loss of services benefits must be provided up to \$40 per day, not exceeding a total of \$5,000. Insurers must offer higher limits for all such benefits as provided.

Votes on Final Passage:

House	95	0	
Senate	35	10	(Senate amended)
House	97	0	(House concurred)

Effective: July 25, 1993
July 1, 1994 (Sections 1 - 5)

Appendix H

FINAL BILL REPORT

HB 1084

C 115 L 03

Synopsis as Enacted

Brief Description: Regulating automobile insurance.

Sponsors: By Representatives Hunter, Benson and Schual-Berke; by request of Insurance Commissioner.

House Committee on Financial Institutions & Insurance
Senate Committee on Financial Services, Insurance & Housing

Background:

Personal Injury Protection Coverage. "Personal injury protection" (PIP) is a type of automobile insurance coverage obtained by most drivers as part of their comprehensive automobile insurance policy. The PIP insurance provides immediate benefits to an insured on a no-fault basis if he or she is injured in an automobile accident. The coverage generally provides limited financial compensation for injury, death, disability, wage loss, and other expenses incurred as the result of an accident. Automobile liability insurance companies must provide PIP coverage under non-business auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes or motorcycles.

Mandatory Minimum PIP Coverage. At minimum, an insurer must offer PIP benefits that cover medical and hospital expenses incurred within three years of the date of the insured's injury, up to a maximum of \$10,000. Funeral expenses must be covered up to \$2,000. A maximum of \$5,000 in coverage must be provided for loss of services, subject to a limitation of \$40 per day and \$200 per week. Loss of income benefits must also be provided, subject to the following conditions:

- Income losses must be incurred within one year of injury.
- A total of \$10,000 in coverage must be offered, subject to a limit of \$200 per week or 85 percent of average weekly income, whichever is less.
- Weekly payments are limited to 85 percent of the insured's weekly income, and the calculation of the amount of the weekly payment must include the combined total of the insurance benefits and all other income loss benefits received by the insured.

Optional Extended PIP Coverage. When explicitly requested by an insured, insurers are required to offer PIP benefits that are much more extensive than the mandatory

minimums discussed above. Under the optional coverage provisions, the coverage limit for medical and hospital expenses is raised to \$35,000. Coverage for loss of services is set at \$40 per day for up to one year and is not subject to a specified yearly limit. The limit on loss of income benefits is raised to \$35,000, subject to a limit of the lesser of \$700 per week or 85 percent of the insured's average weekly income prior to the injury.

Summary:

Technical changes are made to the PIP statutes involving the reorganization of statutory provisions, language clarification, and the deletion of redundant passages. Ambiguous statutory language is revised, thus clarifying that the specified PIP coverages represent the minimum coverages that must be offered by an insurer and allowing insurers to offer more extensive PIP benefits should they so choose.

Votes on Final Passage:

House 93 0

Senate 48 0

Effective: July 27, 2003

FILED
JANUARY 9, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SVETLANA KOREN as parent and)	No. 34723-1-III
Guardian of ERIC KOREN,)	
)	
Petitioner,)	
)	
v.)	
)	PUBLISHED OPINION
STATE FARM FIRE AND CASUALTY)	
COMPANY, a foreign entity authorized to)	
perform the business of insurance in)	
Washington,)	
)	
Respondent.)	

PENNELL, J. — Under the personal injury protection (PIP) provisions of State Farm’s insurance policy, and Washington’s motor vehicle and insurance statutes, a standard capacity school bus does not qualify as an “automobile.” This is because an “automobile” is defined as a motor vehicle designed to carry 10 passengers or less¹ and school buses can carry many more than 10 people.

Despite the limited definition of an “automobile,” we are asked whether a collision between school buses qualifies as an “automobile accident” because the term “automobile

¹ Some vehicles designed to carry 10 passengers or less are excluded from the definition of “automobile,” but those exclusions are not relevant to the issues on appeal.

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accident” has a special meaning, extending to all motor vehicle collisions, regardless of vehicle type. Our answer is no. The meaning of “automobile accident” is informed by the definitions applicable to the term’s component words. “Automobile accident” is a two-word phrase wherein the first word modifies the second. As such, a collision can qualify as an “automobile accident” only if it involves a vehicle meeting the definition of an “automobile.”

The superior court properly construed the term “automobile accident” in granting summary judgment to State Farm. The order on appeal is therefore affirmed.

FACTS

Svetlana Koren’s minor son Eric was injured as a result of a collision involving two school buses. Mrs. Koren filed a claim for PIP benefits on behalf of Eric with her insurer, State Farm.

The PIP portion of the insurance policy between Mrs. Koren and State Farm provides benefits “for **bodily injury** sustained by [the] **insured** and caused by an **automobile** accident.” Clerk’s Papers (CP) at 59.² Those PIP provisions further define an “automobile,” in pertinent part, as a “**motor vehicle** registered or designed for carrying

² Eric qualified as an insured under his mother’s policy by virtue of being a resident relative.

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ten passengers or less” *Id.* at 58. The terms “accident” and “automobile accident” are not defined in the policy.

State Farm denied Mrs. Koren’s coverage claim. According to State Farm, Eric’s injuries were not sustained during an “automobile accident” as contemplated by Mrs. Koren’s policy. Specifically, because each of the two buses involved were designed to carry more than 10 passengers, neither vehicle met the policy definition of an “automobile.”

Mrs. Koren filed suit against State Farm on behalf of Eric in Spokane County Superior Court, and the parties filed cross motions for summary judgment on issues related to insurance coverage. The superior court sided with State Farm. The court reasoned the focus in this case was not the definition of “automobile accident,” rather it was whether the school buses involved in the accident met the definition of “automobile.” It found the policy’s definition of “automobile” was not ambiguous and the buses did not qualify as automobiles. The superior court also found the definition of “automobile” under the insurance policy tracked with the language of RCW 48.22.005(1) and RCW 46.04.382; thus, it did not contravene public policy. Since the court found the school bus collision here did not qualify as an insurable event, it did not reach State Farm’s other coverage arguments for summary judgment.

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Mrs. Koren sought, and we granted, discretionary review of the superior court's summary judgment order.³

ANALYSIS

Summary judgment orders are reviewed de novo. *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014). Where the facts in a motor vehicle insurance case are not disputed, "coverage depends solely on the language of the insurance policy," and the interpretation of such language is a question of law reviewed de novo. *Roller v. Stonewall Ins. Co.*, 115 Wn.2d 679, 682, 801 P.2d 207 (1990), *overruled on other grounds by Butzberger v. Foster*, 151 Wn.2d 396, 89 P.3d 689 (2004). "In construing the language of an insurance policy, the policy should be given a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." *Roller*, 115 Wn.2d at 682. Courts may not create an ambiguity where the policy language is "clear and unambiguous," and not fairly susceptible to different reasonable interpretations. *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998).

Mrs. Koren challenges the superior court's summary judgment order favoring State Farm, arguing the plain terms of her policy do not resolve the question of whether a

³ Extra-contractual claims remain for decision in superior court.

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school bus collision constitutes an “automobile accident.” As noted by Mrs. Koren, the State Farm policy defines the term “automobile,” but not “automobile accident.”

According to Mrs. Koren, “automobile accident” is a term of art that has a special meaning and extends coverage to all motor vehicle collisions. Mrs. Koren relies on *Farmers Insurance Company of Washington v. Grelis*, 43 Wn. App. 475, 718 P.2d 812 (1986) and *Tyrrell v. Farmers Insurance Company of Washington*, 140 Wn.2d 129, 994 P.2d 833 (2000) for this assertion.

In *Grelis*, the insured was physically assaulted while sitting in his van. He filed a claim for PIP benefits. Farmers denied coverage, claiming Mr. Grelis had not been involved in an “automobile accident.” There was no dispute that, under the plain terms of the PIP policy, Mr. Grelis’s van constituted an “automobile” and his injuries were sustained as a result of an “accident.” Nevertheless, Farmers argued the term “automobile accident,” undefined by the insurance policy, did not cover Mr. Grelis’s circumstances.

The *Grelis* court sided with Farmers. *Grelis* recognized an “automobile accident” is a specific kind of accident. This is because the word “automobile” modifies the word “accident.” 43 Wn. App. at 478. Although undefined by the policy between Mr. Grelis and Farmers, *Grelis* held the term “automobile accident” did not encompass an accident

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whose only connection with an automobile was location. Instead, an accident must somehow be causally related to the operation of an automobile. *Grelis* cited with approval a decision out of New York that defined a “motor vehicle accident” as an accident involving “one or more vehicles in a forceful contact with another vehicle or a person, causing physical injury.” *Grelis*, 43 Wn. App. at 478 (quoting *Manhattan & Bronx Surface Transit Operating Auth. v. Gholson*, 98 Misc. 2d 657, 658-59, 414 N.Y.S.2d 489, *aff’d*, 79 A.D.2d 1004, 420 N.Y.S.2d 298 (1979)).

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.” Relying on *Grelis*, Farmers argued the term “motor vehicle” modified the word “accident” in a way that excluded Mr. Tyrrell’s accident from coverage. The Supreme Court agreed. The court cited *Grelis* with approval and held that the sensible and popular understanding of what is meant by a “motor vehicle accident” necessarily involves a motor vehicle being operated as a motor vehicle. *Tyrrell*, 140 Wn.2d at 137.

Contrary to Mrs. Koren’s claims, *Grelis* and *Tyrrell* do not support coverage in this case. Neither *Grelis* nor *Tyrrell* held the terms “automobile accident” or “motor vehicle

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accident” should be construed in a manner contrary to their policy definitions. Both *Grelis* and *Tyrrell* focused on the word accident and discussed what it meant for the terms “automobile” and “motor vehicle” to modify the word accident. Both decisions held the modifiers used by the insurance policy limited the scope of an accident that could form the basis for recovery.

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.”

Excluding Eric’s school bus accident from PIP coverage does not violate public policy. Consistent with State Farm’s insurance policy, Washington law only contemplates PIP coverage for “automobiles.” *See* RCW 48.22.085-100. Like State Farm, Washington defines an “automobile” as a passenger car designed for carrying

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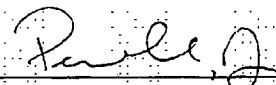
Koren v. State Farm Fire and Cas. Co.

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.

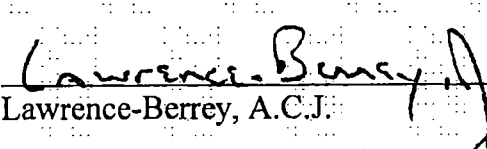
CONCLUSION

The superior court's summary judgment order is affirmed. Mrs. Koren's request for attorney fees is denied. This matter is remanded to the superior court for further proceedings.

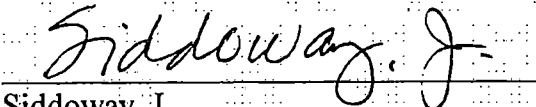


Pennell, J.

WE CONCUR:



Lawrence-Berrey, A.C.J.



Siddoway, J.