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NO. 97398-9

SUPREME COURT OF THE STATE OF WASHINGTON

DELIVERY EXPRESS, INC.,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Respondent.

DEPARTMENT OF LABOR AND INDUSTRIES ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case involves the unremarkable principle that the Industrial Insurance Act covers workers performing routine tasks such as delivering packages. This coverage includes independent contractors if their personal labor is the essence of the contract between the contractor and the employer. Delivery Express, Inc. (DEI) contracts with drivers to deliver goods to customers. The essence of the DEI driver contract is delivering goods, which requires its workers' personal labor. That does not stop being true when workers use their own vehicles to deliver those goods.

The leased-truck exemption also does not apply here. Although DEI argues that passenger cars like a Toyota Prius are "trucks," the ordinary dictionary definition is to the contrary. So the exemption does not apply.

DEI shows no conflict or issue of substantial public interest. The Court of Appeals applied routine statutory principles to decide this case and its decision furthered the Industrial Insurance Act's goal to provide "sure and certain relief" to injured workers to reduce "suffering and economic loss." RCW 51.04.010; RCW 51.12.010.

The Board of Industrial Insurance Appeals properly determined that all but three of DEI's drivers are covered workers. The Court of Appeals

applied well-settled case law in affirming that decision. This Court should deny review.

II. ISSUES

1. The Industrial Insurance Act covers an independent contractor if the essence of the contract is personal labor. DEI drivers load, navigate their route, and deliver on schedule. Is the essence of the contract their automobile or their labor?

2. RCW 51.08.180 exempts from coverage independent contractors who lease trucks to their employers. Using the ordinary dictionary meaning of truck—an automotive vehicle built for the transportation of goods on its own chassis—does substantial evidence show that DEI did not lease a "truck" from its drivers when they drove ordinary cars like Toyota Priuses, SUVs, and vans, which DEI did not show were designed to haul freight on their chassis?

3. RCW 51.08.180 covers independent contractors if the essence of the work under the contract is personal labor. RCW 51.12.020 excludes sole proprietors when working for themselves. Does RCW 51.08.180 govern when the drivers were providing personal labor to DEI under a contract and not otherwise working for themselves?

III. COUNTERSTATEMENT OF THE CASE

A. DEI Hires Drivers to Use Their Own Cars to Deliver the Packages

DEl provides delivery service, including general commodities including freight in the State of Washington. [1] It operates anywhere in the

[1] Exs 2, 8 at 3, 103; AR 11/19/14 at 117. "AR" refers to the administrative record in the certified appeal board record. Witness testimony is referenced by "AR" followed by testimony date and page number.

State of Western Washington.[2] In 2000, DEI began contracting with drivers who provided their own vehicles and, in return, paid the driver a commission for each completed delivery.[3] DEl contracted with drivers of 24-foot box trucks, passenger cars, and "everything in between."[4] Most drivers used small passenger cars, such as Toyota Yaris, Corolla, Scion and Prius, Subaru Legacy, Honda Fit, Ford Focus, Kia Rio, and Nissan Maxima.[5]

The agreements categorized the drivers as independent contractors providing transportation services to DEl customers. Ex 5 at 1, 5. The independent contractor agreement stated that the "Carrier desires to contract with Contractor to perform certain transportation services with the above-described motor vehicle and Contractor desires to provide such services[.]"[6] In 2011, DEI became a freight broker and used a Broker-Carrier Agreement that provides that the driver "shall provide motor vehicle equipment with drivers to provide small package/parcel pick-up and delivery service to [DEI's] shippers and consignees."[7]

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[2] AR 11/14/14 at 17.

[3] AR 11/14/14 at 26-27.

[4] AR 11/14/14 at 39.

[5] Vehicles described as follows: Toyota Yaris AR 11/19/14 at 23, 40; Corolla *id.* at 22; Scion, 11/14/19 at 160 -61; Prius AR 11/19/14 at 59-60; Subaru Legacy AR 11/14/14 at 187; Honda Fit AR 11/19/14 at 115-16; Ford Focus AR 12/8/14 at 109; Kia Rio AR 12/4/14 at 95; Nissan Maxima AR 12/4/14 at 130-31.

[6] Ex 5 at 1.

[7] Ex 30 at 2.

Both the contractor agreements and the broker-carrier agreements required each driver to furnish and operate a vehicle, and pay the cost of operating and maintaining the vehicle.[8] The agreements identified the vehicle the driver intended to use but mandated no size, make, or model.[9]

The shippers typically do not have relationships with the drivers; instead, they contact DEI for the delivery services.[10] DEI handles all billings with the customers and then pays the drivers a commission percentage.[11] Both the contractor agreements and the broker-carrier agreements contain noncompete clauses that limit the drivers' ability to solicit business from DEI customers, both during the term of the agreement and for 6 to 12 months after.[12]

Drivers testified that their "job" was delivering packages for DEI, that DEI required them to log in regularly, that they logged in early in the morning and remained available the entire day, that they drove a "route" for DEI during the day, generally Monday through Friday, and that they never hired anyone or asked anyone to help with the deliveries, or asked anyone to drive on their behalf when they were unavailable.[13] The drivers'

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[8] Ex 5 at 6; Ex 30 at 4.

[9] Ex 5, 30.

[10] AR 1/9/15 at 104-1174.

[11] *See* Exs 5, 30 at 2; *see* AR 11/14/14 at 176.

[12] Ex 5 at 6, 30 at 3-4.

[13] AR 11/19/14 at 12, 118-19, 122-23; AR 11/21/14 at 63; AR 11/21/14 at 105-09; AR 12/1/14 at 37; AR 12/1/14 at 61; AR 12/4/14 at 48; AR 12/4/14 at 117-18.

job was to deliver packages. Drivers used dollies if necessary to move the goods from their cars to where the customer needed the delivery.[14]

DEI required the drivers to identify themselves as working for DEI.[15] The agreement required the drivers to "conduct themselves courteously (both on the road and while with customers) and in a professional manner."[16] DEI required the drivers to be "neatly attired" and to wear "clean and wrinkle free" uniforms.[17] Hair had to be "clean, neat and conservatively styled," and any mustaches or beards had to be "neatly trimmed."[18]

Drivers maintained a regular schedule, and delivered, and unloaded goods under schedule, and the drivers selected the routes and navigated the delivery.[19] By contract, DEI assessed penalties if the drivers did not deliver goods within a reasonable time.[20] Drivers were responsible for carefully transporting the goods and DEI could charge them for any losses.[21] The drivers thought their job was to make sure the right goods were in the right place.[22]

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[14] AR 12/1/14 at 55.
[15] AR 1/09/15 at 101-03, 113; AR 11/14/14 at 164, 174-75.
[16] Ex 5 at 4.
[17] Ex 5 at 4.
[18] Ex 5 at 4.
[19] AR 1/9/15 107-112; AR 11/21/14 103-09; Ex 5 at 3-4
[20] Ex 5 at 5.
[21] AR 1/9/15 at 115; Ex 5 at 5.
[22] AR 12/4/14 at 99.

In 2010, the Department conducted an educational audit of DEI, looking back to determine whether the Industrial Insurance Act covered the drivers in 2009.[23] The auditor met with the firm and the Department determined that the Act covered the drivers.[24] The Department elected to not demand premiums against DEI then, but provided instructions to DEI about properly reporting the drivers in the future.[25]

After the 2010 audit, DEI changed its business model to become a freight broker and not a carrier.[26] It required that drivers sign an updated contract.[27] DEI however did not pay premiums for the drivers.[28] In 2011, the Department audited DEI for the last two quarters of 2010 and all four quarters of 2011.[29] The Department found that DEI owed premiums for work performed by all DEI drivers operating under contract for the last half of 2010 and all of 2011.[30] The Department assessed DEI premiums and penalties.[31]

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[23] *See* AR 11/14/14 at 123; AR 4/15/15 at 15.
[24] Ex 8 at 1-2; AR 4/15/15 at 15-17.
[25] AR 3/31/15 26-29; AR 4/15/15 at 15-17, 54-56; Ex 8.
[26] AR 11/14/14 at 68, 70, 113, 125.
[27] AR 1/9/15 at 96-97; AR 3/31/15 at 32-34.
[28] *See* AR 11/14/14 at 68-69, 133-34.
[29] Ex 13 at 1.
[30] Ex 13 at 1-2; Ex 589 at 1-2; Ex 590 at 1-2.
[31] Ex 583 at 1-2.

B. The Superior Court and Court of Appeals Affirmed the Board's Determination that the Essence of the DEI Drivers' Contracts Were Personal Labor

DEI appealed to the Board of Industrial Insurance Appeals. The Board found that the essence of the contracts was personal labor.[32] It also found that the drivers did not lease their vehicles to DEI, making the leased truck exemption inapplicable.[33] The superior court and the Court of Appeals affirmed rulings below, ruling that the essence of the drivers' contracts was for their personal labor, not their vehicle and that the leased truck and sole proprietor provisions did not exclude the drivers. *Delivery Express, Inc. v. Dep't of Labor & Indus.*, 442 P.2d 637, 640-41 (Wash. Ct. App. 2019).

IV. ARGUMENT

Under RCW 51.08.180, the Court of Appeals properly decided that the Industrial Insurance Act covered the DEI drivers because the essence of their labor under the contract was personal. It also properly decided that because the drivers were not driving trucks subject to the leased-truck exemption they were not excluded under the truck proviso. RCW 51.08.180 defines "worker" to include independent contractors when the essence of the contract is personal labor:

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[32] AR 218-21.
[33] AR 209, 214

> "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer . . . PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

In deciding the case under RCW 51.08.180, the Court of Appeals properly cited *Lyons* to recognize that the Act is broad in scope and contains a mandate of liberal construction to reduce to a minimum the worker's suffering and economic loss arising from injuries or death in the course of employment. *Delivery Express*, 442 P.3d at 643 (citing *Dep't of Labor & Indus. v. Lyons Enter. Inc.*, 185 Wn.2d 721, 734, 374 P.3d 1097 (2016)). The liberal construction of the Act requires that the court resolve all doubts in favor of coverage. *Id.* Contrary to DEI's argument, the principle that ambiguities are construed against the agency in a taxing statute does not apply here. Pet. at 10 (citing *Sacred Heart Med. Ctr. v. Dep't of Revenue*, 88 Wn. App. 632, 636-37, 946 P.2d 409 (1997)). This is because the Court has made clear in premium cases like *Lyons*, the payment of premiums facilitates workers' coverage and is construed to accomplish that purpose.

A. The Court of Appeals' Decision That the Use of Ordinary Cars Does Not Per Se Exempt a Worker From Industrial Insurance Coverage Is Entirely Consistent with This Court's Decisions

RCW 51.08.180 provides that if the essence of a contractor's labor under a contract is personal, the contractor is a covered worker. *White v. Department of Labor & Industries*, 48 Wn.2d 470, 294 P.2d 650 (1956), is the seminal case interpreting this statute, and DEI has shown no conflict with it. RAP 13.4(d)(1). *White* determined whether the essence of a contract was personal labor. To determine whether the "essence of a contract is personal labor," the Court focuses on the "realities of the situation" and on "the contract, the work to be done, the situation of the parties, and other attendant circumstances." *Lyons Enters., Inc.*, 185 Wn.2d at 735-36 (citation omitted). Essence refers to "the gist or substance, the vital sine qua non, the very heart and soul of the contract between the independent contractor and the employer." *Id.* at 735 (citation omitted).

In *White*, William and Lucinda White owned a donkey engine, which is specialized steam powered equipment. 48 Wn.2d at 475. The Whites contracted with a mill owner to move their "donkey engine onto the tract in question and to yard out and cold deck the logs." *Id.* The point of the contract was the specialized equipment that would be moved onto the customer's land. The Whites were approached to do the work because

"'we had equipment.'" *Id.* The Whites hired one worker to assist them in their work, and they received increased compensation from the mill owner to reflect the wage paid to that worker. *Id.* Under these facts, the Court held that personal labor is not the essence of a contract with an independent contractor when: (1) the independent contractor owns or supplies machinery or equipment (as distinguished from the usual hand tools) to perform the contract; (2) the independent contractor cannot perform the contract without assistance; or (3) the independent contractor either chooses to or must employ others to do all or part of the work the contractor has contracted to perform. *Id.* at 474.

It is the first test that is at issue, and the Court of Appeals held that the drivers' cars "were not specialized equipment" subject to the *White* exclusions. *Delivery Express*, 442 P.2d at 642. This follows *White*, which on its facts was confronted with how to approach a contract where the whole point of the contract was to use a specialized piece of equipment—a donkey engine. *White*, 48 Wn.2d at 475.

DEI, however, argues that vehicles are expensive equipment not hand tools under the first test. Pet. 14, 17. And so it believes that the use of an automobile means that the drivers are per se not covered. DEI misreads *White* to hold that the ownership of expensive equipment is a per se bar to workers' compensation coverage. AB 29-31. *White* did not decide this.

White's holding about equipment arises in the context of the facts and issues before the *White* Court—those needed to determine whether using specialized logging equipment—a donkey engine—to perform a contract precludes coverage. When determining what is precedential in a case, one "must remember that general expressions in every opinion are to be confined to the facts then before the court and are to be limited in their relation to the case then decided and to the points actually involved." *Wilber v. Dep't of Labor & Indus.*, 61 Wn.2d 439, 445-46, 378 P.2d 684 (1963). The *White* Court decided only that the specialized industrial equipment—a donkey engine—was the gist or primary object of the contract.

In ruling that substantial evidence supports the Board's decision that the essence of the contract was personal labor, the Court of Appeals held that "[t]he primary object is not the machinery the drivers own; it is the service of driving packages from point A to point B." 442 P.3d at 642. This ruling tracks the post-*White* case law and *White* itself. When the courts have looked to the gist or primary object of the contract as *Lyons* requires, they have not barred industrial insurance coverage because the job requires use of a vehicle. *Lyons*, 185 Wn.2d at 735-36; *Henry Indus., Inc. v. Dep't of Labor & Indus.*, 195 Wn. App. 593, 608-09, 381 P.3d 172 (2016) (object of contract was personal labor, not automobiles driven by

couriers); *B & R Sales, Inc. v. Dep't of Labor & Indus.*, 186 Wn. App. 367, 381-82, 344 P.3d 741 (2015) (object of contract was personal labor, not customized vans for carpet installing); *Jamison v. Dep't of Labor & Indus.*, 65 Wn. App. 125, 131, 827 P.2d 1085 (1992) (object of contract was personal labor, not CAT tractor); *Lloyd's of Yakima Floor Center v. Dep't of Labor & Indus.*, 33 Wn. App. 745, 751, 662 P.2d 391 (1982) (object of contract was labor, not installer vehicles used by floor covering installers).

DEI disputes the Court of Appeals' reliance on *Henry Industries,* which held that the vehicles courier drivers used to deliver packages were not specialized equipment needed to perform the contracted work, saying that *White* did not allow its test to be distinguished on whether the equipment was specialized. *See* Pet. 14-15 (quoting *Delivery Express*, 442 P.2d at 642 (citing *Henry Indus.*, 195 Wn. App. at 609)). But *White* did involve specialized equipment—a donkey engine.

And the case law has emphasized that the fact-finder should look to what the gist or primary object of the contract is considering the nature of the work, the situation of the parties, and other circumstances. *Lyons*, 185 Wn.2d at 735-36. The circumstances here show it is the labor of the drivers in delivering packages that is the gist or primary object of the

contract. DEI after all is a package-delivery firm and could hardly exist if the drivers didn't deliver the packages for the customers.

DEI argues that the essence of the contract was to provide vehicles because DEI did not own any. Pet. 15. This argument shows no reason to seek review as it seeks to reweigh the facts. The Board correctly decided that the gist or primary object of DEI's contracts was securing the services of drivers who could timely load, deliver, and unload goods to DEI's customers, not only to obtain access to the automobiles the drivers owned.

DEI also argues that *White* excludes the drivers because they could hire other people. Pet. 15-6. The *Lyons* Court already addressed and rejected this argument. 185 Wn.2d at 740. "The fact that a franchisee could hire a subordinate is insufficient to exempt an employer from IIA coverage." *Id.* They actually must have employed others to be subject to the exclusion. *Id.* DEI did not assign error to the finding that the drivers did not employ others by choice or necessity. Br. of Appellant 2; AR 220 (FF 6).

The Court of Appeals properly recognized that driving an ordinary automobile did not deprive a worker of coverage. Many jobs require a worker to supply an automobile, and this unremarkable fact does not warrant review. The Court of Appeals' decision is consistent with case law from this Court and the Court of Appeals so does not merit review.

B. DEI Shows No Issue of Substantial Public Interest About the Routine Application of the Dictionary to a Statutory Term

The Court of Appeals decision is consistent with well-settled rules of statutory construction. The Court of Appeals decided the meaning of a statutory term using a dictionary—"truck" in RCW 51.08.180—and applied it to the facts to determine that substantial evidence supported the Board's decision. This routine inquiry shows no reason to take review under RAP 13.4(d)(4). RCW 51.08.180 provides that a person is not a worker "with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier." RCW 51.08.180. The Court of Appeals below correctly determined that this section does not apply unless the drivers use a truck. Contrary to DEI's interpretation, "trucks" are not passenger cars like a Toyota Yaris, Corolla, Scion and Prius, Subaru Legacy, Honda Fit, Ford Focus, Chevrolet Cavalier, Kia Rio, or Nissan Maxima.

The Court of Appeals appropriately followed ordinary rules of statutory construction and used Webster's Third International Dictionary for the plain meaning of the word truck. *Delivery Express Inc.,* 442 P.3d at 643-45. The dictionary meaning of the word "truck" is "an automotive vehicle built for the transportation of goods on its own chassis" or "a motorized vehicle equipped with a swivel for hauling a trailer." Webster's

Third New International Dictionary 2454 (2002).[34] Under this definition, if a vehicle has a chassis designed to transport property or has a swivel to pull a trailer to transport property, it is a truck under RCW 51.08.180. The drivers here drove automobiles like Priuses, SUVs, and vans and DEI—who has the burden of proof—did not prove the vehicles were built on chassis designed to transport property. RCW 51.48.131 (employer has burden of proof).

DEI says that the definition from a vehicle licensing statute, RCW 46.04.653, should be used, which defines a truck as "every motor vehicle designed, used, or maintained primarily for the transportation of property." Pet. 8. DEI believes that the proviso covers any vehicle used to deliver goods, including passenger cars or even motorcycles. Br. of Appellant 18 ("[A]ny motor vehicle designed, used, or maintained primarily for transporting property, is a 'truck' regardless of its size, weight or configuration."). Indeed, DEI changes RCW 51.08.180 to say that the Legislature "meant exactly what it said—*any motor vehicle* used primarily

[34] DEI uses a different dictionary to argue truck means "a wheeled vehicle for moving heavy articles: such as . . . a strong horse-drawn or automotive vehicle (such as a pickup) for hauling." Pet. 7. That same dictionary also defines truck as a vehicle "used esp. for the highway hauling of freight." *Merriam Webster's Collegiate Dictionary* 1343 (11th ed. 2014). These definitions follow the standard dictionary used by the courts in Webster's Third International Dictionary in that they contemplate something more than an ordinary car— a vehicle specifically used for hauling freight.

to transport property is a 'truck.'" Pet. 10. But in RCW 51.08.180, the Legislature did not say "any motor vehicle"—it said trucks.

DEI tries to read RCW 46.04.653 into RCW 51.08.180. Pet. 12. But this would give no meaning to the Legislature's use of the word "trucks" and not "vehicles," and would fail to recognize the differing purposes of the two statutes. The purpose of RCW 46.04.653 is to ensure broad coverage for licensing and registration of motor vehicles. The purpose of RCW 51.08.180 is to provide a narrow exception to workers' compensation coverage for individuals doing a specialized type of work using one type of vehicle—a truck—not all types of vehicles. If the Legislature wanted to say "vehicles" instead of trucks it would have done so. The Court of Appeals properly rejected DEI's attempt to change the wording of the statute.

DEI would also have the Court ignore that the proviso involves leases with "common or contract carriers." As the Court of Appeals correctly points out, common carriers transport property in vehicles defined as trucks, trailers, semitrailers, tractors, or other vehicles used on highways to transport goods. *Delivery Express Inc.*, 442 P.3d at 644. This context shows that the Legislature did not intend to include all vehicles in the exemption but narrowed application to a subset of motor vehicles that common carriers use to move freight. DEI shows no issue of substantial

public interest by altering the words of a statute to provide more restrictive industrial insurance coverage.[35]

The statute is not ambiguous because the Legislature shows no intent that vehicles like motorcycles and Priuses should be considered trucks. But if it were ambiguous, DEI is wrong that the Court would consider any ambiguity against the Department (Pet. 10)—this Court has emphasized that RCW 51.08.180 is construed liberally in favor of broad workers' compensation coverage. *Lyons*, 185 Wn.2d at 734.

C. DEI Shows No Issue of Substantial Public Interest in the Court of Appeals Applying Routine Statutory Construction Principles to Harmonize Statutes

DEI shows no issue of substantial public interest in the Court of Appeals' routine statutory interpretation on whether the sole proprietor provision in RCW 51.12.020 excludes the drivers from coverage.

RCW 51.08.180 broadly extends coverage to independent contractors who provide personal labor. Seeking to undermine that broad extension of coverage, DEI argues that RCW 51.12.020(5), a statutory provision that provides that sole proprietors need not insure themselves as workers or employers, also exempts sole proprietors from coverage

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[35] DEI cites AGO opinions, which, consistent with the dictionary definition here, show that if the vehicle is designed for freight hauling it can be considered a truck. Pet. 9. Despite its burden of proof, DEI presented no evidence that a passenger car like a Prius was designed for freight hauling.

when they provide personal labor to employers under independent contracts. Pet. 17-20.[36] This argument renders meaningless the Legislature's coverage of independent contractors as all independent contractors who work on a self-employed basis will either be sole proprietors or be otherwise exempt as the officers of the businesses that they create. *Henry Indus.*, 195 Wn. App. at 623.

Henry Industries properly rejected this reading of the statutes because to do otherwise would contradict the statutory mandate to reduce to a minimum workers' suffering and economic loss arising from injuries in the course of employment. 195 Wn. App. at 623. It is implausible that the Legislature intended for its coverage of independent contractors in RCW 51.08.180 to not result in any independent contractors being covered under the Act, but that would be the inevitable conclusion of applying the sole proprietor, LLC, and corporate exemptions to independent contractors even when they provide personal labor to an employer under a contract.[37]

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[36] RCW 51.12.020 provides "The following are the only employments which shall not be included within the mandatory coverage of this title: . . . (5) sole proprietors or partners . . . (8) . . . officer[s] of a corporation . . . (13) [m]embers of a limited liability company . . . ." It is not "mandatory" under this statute that these individuals insure themselves for industrial insurance purposes.

[37] Under DEI's approach, RCW 51.08.180 would first extend coverage to independent contractors when the essence of the work they perform under a contract is personal labor, only to have RCW 51.12.020 take that coverage away from every such worker. This is because any person engaged in activity for profit on a self-employed basis, including one who provides work as an independent contractor, will be a "sole

Neither case DEI cites supports its claim that RCW 51.12.020 automatically bars an independent contractor whose personal labor is the essence of the contract. Pet. 17-18. While *Department of Labor & Industries v. Fankhauser* has broad language suggesting that the Industrial Insurance Act does not cover sole proprietors and partners, that decision does not reasonably establish that the Act never covers contractors who operate as sole proprietors. 121 Wn.2d 304, 309, 849 P.2d 1209 (1993). Nowhere did *Fankhauser* discuss or analyze whether RCW 51.12.020 prevents coverage for independent contractors just because they happen to own a sole proprietorship, even when the essence of the work they perform under a contract is personal labor. *Id.* at 309-10. Likewise, *Jepson v. Department of Labor & Industries*, 89 Wn.2d 394, 408, 573 P.2d 10 (1977), does not consider the interaction of RCW 51.12.020 and the independent contractor statute, RCW 51.08.180.

Furthering the broad remedial principles of the Industrial Insurance Act, the Court of Appeals has applied routine statutory construction principles to reject DEI's attempt to read RCW 51.12.020 in isolation as a

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proprietor" under the law unless another type of business entity, such as a corporation or LLC, is created. *See Dolby v. Worthy*, 141 Wn. App. 813, 816, 173 P.3d 946 (2007). This means that all independent contractors will have a business model subject to the exclusions in RCW 51.12.020 as that statute contains exemptions for sole proprietors, officers of corporations, and members of LLCs. *See* RCW 51.12.020(5), (8), (13).

per se exemption for anyone registered as a sole proprietor. DEI shows no reason to warrant review.

V. CONCLUSION

The Court of Appeals properly applied well-established law, used ordinary rules of statutory construction, and determined based on substantial evidence that DEI's courier drivers are covered workers under the Industrial Insurance Act. This Court should deny review.

RESPECTFULLY SUBMITTED this 17 day of September, 2019.

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