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No. 78534-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

TODD MCLAUGHLIN, a Washington Resident,

Petitioner,

v.

TRAVELERS COMMERCIAL INSURANCE COMPANY,
a foreign corporation

Respondent.

TRAVELERS COMMERCIAL INSURANCE COMPANY'S ANSWER TO MCLAUGHLIN'S PETITION FOR REVIEW

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I. INTRODUCTION

Todd McLaughlin's Petition for Review of Division I's decision in this matter should be denied. McLaughlin has failed to provide this Court with any basis for review under RAP 13.4. He does not identify any actual conflict with this Court nor does he even attempt to argue that the decision is in conflict with any other in the Court of Appeals. Moreover, the issues presented in McLaughlin's petition do not involve a Constitutional issue and is not of substantial public interest to the citizens of Washington.

The citizens of Washington do not have any interest in this Court addressing the construction of an automobile policy issued in California. McLaughlin's Petition is premised on the notion that Washington Courts should interpret the word "pedestrian" found in a California auto policy by applying Washington statutes. The Court of Appeals soundly – and correctly – rejected this premise.

McLaughlin's Petition urges this Court to accept review to argue that the unambiguous rulings of this Court on the construction of insurance policies should be ignored. This Court has long held that undefined terms in a policy are given their plain and ordinary meaning as set forth in common dictionary definitions. The lower Court correctly applied that long established law in this case. There is simply no conflict under Washington law in regard to this standard of policy interpretation.

McLaughlin argues that Washington statutes should be incorporated into his California policy to include bicyclists within the definition of "pedestrian." However, the California and Washington statutes addressing the "pedestrian" specifically exclude bicyclists from that definition. McLaughlin urges a limited reading of one Washington statutory provision – to the exclusion of other provisions of the same statute. His position is not supported by Washington or California law.

II. ASSIGNMENTS OF ERROR

Travelers asserts no assignments of error.

III. STATEMENT OF THE CASE

This Petition arises out of a claim for MedPay coverage by McLaughlin. On July 31, 2017, McLaughlin rode his bicycle in a marked bicycle lane when he collided with the door of a vehicle driven by Daniel Moore. CP 12. Moore opened his car door into McLaughlin's path, contacting McLaughlin and injuring him. CP 12.

Travelers issued McLaughlin an Automobile Policy at an address in Pleasanton, CA. CP 16-59. The policy provided a number of coverages, including Medpay and Uninsured Motorist ("UM"). McLaughlin tendered a claim to Travelers. Travelers issued payment for $100,000 under the UM portion of the policy. Rep. of Proceedings, p. 14:11-12.

Travelers further advised McLaughlin that it was disclaiming

MedPay coverage under his policy because he was not a pedestrian at the time of the accident. CP 64-65. The Medpay portion of the policy limited coverage to $5,000 and stated, in relevant part, as follows:

> **Coverage C- Medical Payments**
>
> **Insuring Agreement**
>
> B. "Insured" as used in this Coverage Section means:
>
> 1. You or any "resident relative":
>   a. While "occupying"; or
>   b. As a pedestrian when struck by;
>
>   a motor vehicle designed for use mainly on public roads or a trailer of any type.

CP 41.

McLaughlin filed a civil action in King County on December 18, 2018. CP 1. Both parties moved for Partial Summary Judgment regarding the definition of "pedestrian" in the policy. CP 66-78. The trial court granted Travelers' Motion for Partial Summary Judgment. CP 249-250. McLaughlin appealed. The Court of Appeals, Division I, affirmed the trial court. McLaughlin filed his Petition for Review on September 11, 2019.

IV. ARGUMENT

A. Legal Standard For Consideration of Petition for Review

McLaughlin's Petition fails to demonstrate why review is warranted. McLaughlin merely states, without analysis, that Division I's Opinion creates conflicts and raises issues of substantial public interest. McLaughlin cites RAP 13.4(b)(1), (2), and (4), which state as follows:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> . . .
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

There is no conflict between the Opinion in this case and any opinions issued by other courts in this State. Moreover, McLaughlin has failed to identify a substantial public interest that should be addressed by this Court. As a result, the Petition for Review should be denied.

B. <u>McLaughlin Fails To Present A Basis For Review Under RAP 13.4(b)(4)</u>

McLaughlin claims there is a substantial public interest at issue in this matter, which requires this Court to accept review under RAP 13.4(b)(4). He provides no case law to support his position. Moreover, it is unclear how Washington could have a substantial interest in incorporating a Washington statute into a California policy.

1. McLaughlin's Position Is Unsupported By Washington Law

McLaughlin fails to support his position that the issues presented in his Petition involve a "substantial public interest" as required under RAP 13.4(b)(4). He cites to no case law that indicates the interpretation of the word "pedestrian" in an insurance policy involves any articulable public interest. He merely claims that because insurance involves risk allocation, and can impact the public, this Court should accept review.

There is no support for this position in any of the case law cited by McLaughlin. The general nature of insurance is not sufficient grounds for this Court to accept review. If it were, review would be mandatory for any matter involving insurance. In the absence of an articulable and substantial public interest, there is no basis for review under RAP 13.4(b)(4).

2. *Washington Has No Substantial Public Interest in Incorporating a Washington Statute into a California Insurance Policy*

McLaughlin admits that the subject policy is a California policy. See Pet. at 2. This is notable when considering what McLaughlin is asking this Court to undertake. At issue is the interpretation of the term "pedestrian" in a California insurance policy. McLaughlin argues, without support, that the controlling law of both California and Washington should be ignored, and that a Washington statute should control how this term is interpreted. He further provides no applicable case law that holds that the plain and ordinary meaning of a term can be set aside on policy grounds. And most importantly, he provides no argument or support at all for his position that a Washington statute should control the meaning of terms in a California policy. It is difficult to imagine what possible public interest a Washington Court could have in this issue.

McLaughlin attempts to minimize this fact by stating Travelers conceded that Washington law applies. Pet. at 2. This is incorrect. Travelers took the position that both Washington and California law treat undefined terms in the same manner, and therefore the Court need not determine which law should apply at this time. In fact, Travelers advised the trial court that there was a potential conflict of laws. CP 70-71. However, because both Washington and California apply the plain and ordinary meaning to undefined terms in a policy, no actual conflict was present for purposes of determining the question of coverage in this case. *Boeing*, *supra; Chatton v. National Union Fire Ins. Co.*, 10 Cal. App. 4th 846, 853, (1992); *citing Producers Dairy Delivery Co., v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 912, 718 P.2d 920.

McLaughlin's position, if adopted, would create a conflict of law. He ignores both Washington's and California's practice of interpreting undefined terms using their plain and ordinary meaning and argues that an isolated Washington statute should govern. This is problematic, as the policy was issued in California, and McLaughlin has not established that Washington law should apply if an actual conflict of law did exist.

Further, if McLaughlin's method for interpreting the term "pedestrian" were adopted, California insurance codes show that "pedestrian" should not be construed in McLaughlin's favor. California

Insurance Code §11580.06 states that a "bicycle... is defined... as a device 'propelled exclusively by human power'" and refers to the definition contained in the Vehicle Code. California Ins. Code §11580.06, headnote 3. The California Vehicle Code explicitly defines both "bicycle" and "pedestrian" separately. California Vehicle Code §231, California Vehicle Code §467. California's definition of "bicycle" is "a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels." California Vehicle Code §231. In contrast, California's definition of "pedestrian" is "a person who is afoot or is using any of the following: (1) a means of conveyance propelled by human power *other than a bicycle.*" California Vehicle Code §467 (a) (emphasis added).

McLaughlin's argument does not consider what would be the applicable definition of "pedestrian" under California law, the state where this policy was issued. Instead, McLaughlin insists that the Court erred because it did not apply his preferred definition of "pedestrian." Applying Washington law, Division I made no error in its use of the dictionary definition of "pedestrian" and McLaughlin has not presented any authority that indicates otherwise. *DeHeer v. Seattle Post-Intelligencer,* 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out such authorities, but may assume that counsel, after diligent search, has found none."). Again, in the absence of an articulable and substantial public interest, McLaughlin's Petition for Review should therefore be denied.

C. There is No Conflict Between The Opinion of Division I And The Other Courts Of This State

McLaughlin's Petition fails to assert any actual conflict. McLaughlin attempts to manufacture a conflict by asserting that Division I failed to follow precedent when it applied a standard dictionary definition to an undefined term in the subject policy. However, Division I clearly followed this Court's articulation of Washington law in the Opinion.

1. Division I Properly Used a Standard Dictionary Definition to Give the Term "Pedestrian" It's Plain and Ordinary Meaning

When interpreting an insurance policy, courts should view it as a whole, giving it a "fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." *Quadrant Corp. v. Am. States,* 154 Wn.2d 165, 171, 110 P.3d 733 (2005) (*quoting Weyerhaeuser Co. v. Commercial Union,* 142 Wn.2d 654, 666, 15 P.3d 115 (2000)). Undefined terms "must be given their 'plain, ordinary, and popular' meaning." *Boeing Co. v. Aetna Cas. & Sur. Co.,* 113 Wn.2d 869, 877, 784 P.2d 507 (1990) (*quoting Farmers Ins. Co. of Wash. v. Miller,* 87 Wn.2d 70, 73, 549 P.2d 9 (1976)).

As repeatedly stated by this Court, "[t]o determine the ordinary meaning of an undefined term, our courts look to standard English dictionaries." *Boeing* at 877, *citing Safeco Ins. Co. of Am. v. Davis,* 44 Wn. App. 161, 165, 721 P.2d 550 (1986); *Transport Indem. Co. v. Sky-Kraft, Inc.,* 48 Wn.App 471, 487, 740 P.2d 319, 328 (1987); *Miebach v. Safeco Title Ins Co.,* 49 Wn. App. 451, 454 n. 1, 743 P.2d 845 (1987), *rev. denied,* 110 Wn.2d 1005 (1988). Undefined terms should not be given their technical or legal meaning. *Ainsworth v. Progressive Cas. Ins. Co.,* 180 Wn. App. 52, 62, 322 P.3d 6 (2014); *citing Allstate Ins. Co. v. Peasley,* 131 Wn.2d 420, 424, 932 P.2d 1244 (1997).

In this case, Division I correctly applied the definition from Webster's Third International Dictionary, which defines "pedestrian" as a "person who travels on foot: WALKER : as **a** : one who walks for pleasure, sport, or exercise: HIKER…**b** : one walking as distinguished from one travelling by car or cycle." Op. at 4. Using this definition, Division I determined McLaughlin was not a "pedestrian" at the time of the accident. Op. at 4.

Division I's analysis was consistent with prior decisions of this Court, as well as the Courts of Appeals. McLaughlin's claim that Division I ignored precedent in this is simply not supported by applicable case law or the Opinion issued by Division I.

2. McLaughlin's "Customary Usage" Argument is Unsupported in

Washington Law and Does Not Support Acceptance of Review

McLaughlin first argues that Division I ignored case law directing courts to consider evidence of custom and usage of the term “pedestrian” in the insurance industry. This argument has no merit.

As a preliminary issue, McLaughlin has not provided any evidence of how the insurance industry customarily treats bicyclists or pedestrian. In the absence of any such evidence, this argument fails.

Moreover, the lone case relied upon by McLaughlin, *Fiscus Motor Freight v. Universal Sec. Ins. Co.*, does not support his argument. In *Fiscus,* insurers initiated a declaratory judgment action contesting their duties to a common insured. 53 Wn.App. 777, 778, 770 P.2d 679 (1989). Fiscus had been retained to deliver fertilizer. *Id.* at 778. An individual, Griggs, accompanied Fiscus’ driver to learn how to drive the truck. *Id*. Fiscus’ driver positioned the truck to offload fertilizer into a pit. *Id.* at 779. While offloading the fertilizer, Griggs fell into a pit, injuring his leg. *Id*.

Griggs sued Fiscus and Fiscus tendered a claim to its insurers. *Id*. Both insurers were ordered to defend and indemnify Fiscus. *Id*. The declaratory judgment action was initiated to resolve the insurers’ respective duties to Fiscus. *Id*.

One of the issues in the coverage action involved whether the fertilizer was being “loaded or unloaded” at the time of the accident. *Id*. at

782. One insurer argued that the Court should look to customary practices regarding fertilizer delivery in order to interpret these terms. *Id.* at 783. The Court acknowledged that customary usage may be utilized, but found that the standard was unclear in that case. *Id.* at 783.

Most importantly, the Court held that industry custom should not determine the coverage issue. Specifically, the Court stated as follows:

> Evidence of customary usage also may be utilized in explaining contractual provisions. Universal refers to excerpts from several depositions purporting to demonstrate that delivery is complete when the fertilizer is dumped into the "input opening for a conveyance system", and that truck drivers were not expected to operate augers. It is unclear how this industry standard for delivery relates to the "loading and unloading" policy clause. **<u>Whether "delivery" is complete, as between trucker and receiver, should not determine whether the trucker's insurer covers the acts involved in "unloading".</u>**

Id. at 782-83 (emphasis added)(internal citations omitted)

McLaughlin mischaracterizes the holding in *Fiscus* and provides no other authority for the use of "customary usage" to interpret undefined terms in an insurance policy. As a result, the Court should disregard McLaughlin's argument that "custom and usage" somehow expands the term "pedestrian" to include a bicyclist. No conflict between the Courts of Appeals exists because of this case, and therefore, there is no basis for review under RAP 13.4(b)(1) or (2).

3. *The word "Pedestrian" is Unambiguous and McLaughlin's Contrary Argument Does Not Support Review*

McLaughlin also appears to argue that Division I's failure to recognize ambiguity in the term "pedestrian" raises a conflict. This argument has no merit. McLaughlin argues there is an ambiguity because it is a custom within the insurance industry to treat bicyclists as pedestrians. However, there is no case law in support of this contention.

A clause or phrase is only ambiguous when, on its face, it is fairly susceptible to two different but reasonable interpretations. *Weyerhaeuser* at 666; *Kitsap Cty. v. Allstate,* 136 Wn.2d 567, 575, 963 P.2d 1171 (1998). Courts may not strain to find an ambiguity in an insurance contract where none exists. *Lui v. Essex,* 185 Wn.2d 703, 712, 375 P.3d 596 (2016) *citing Quadrant Corp.* at 171; *Farmers v. Insurance Co. of N. Am.,* 20 Wn. App. 815, 820, 583 P.2d 664 (1978). Moreover, courts cannot create ambiguity or doubt where none exists. This Court has described this rule as follows:

> A court, however, may not interpret a policy in such a way that it creates nonexistent ambiguities that result in the policy being construed in favor of the insured. *See, e.g., W. Am. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 80 Wn.2d 38, 44, 491 P.2d 641 (1971); *McDonald v. State Farm Fire & Cas. Co.,* 119 Wn.2d 724, 734, 837 P.2d 1000 (1992)(recognizing that just because the policy language is complicated or confusing does not mean the provision in question is ambiguous).

Int'l Marine Underwriters v. ABCD Marine, LLC, 179 Wn.2d 274, 283, 313 P.3d 395 (2013).

If the language of a term is clear and unambiguous, the Court must enforce the policy as written. *Am. Nat'l Fire Ins. Co. v. B & L Trucking and Const. Co.,* 134 Wn.2d 413, 428, 951 P.2d 250 (1998).

McLaughlin appears to contend that the mere existence of multiple definitions of the term "pedestrian" automatically renders it ambiguous. This argument has no merit. While Division I reviewed multiple definitions of "pedestrian," none were in conflict. Each definition indicated that the term did not include a bicyclist. In fact, at least one dictionary definition expressly excluded bicyclists. As for the statutes, it is clear, when read together as required by law, that the legislature intended to exclude bicyclists from the definition of "pedestrian."

McLaughlin has failed to present the Court with competing and ***reasonable*** interpretations of the term at issue. As a result, there is no ambiguity in this case and Division I's Opinion was correct.

4. McLaughlin Cannot Manufacture a Conflict in Washington Law by Misstating Prior Decisions

McLaughlin further argues that Division I relied too heavily on the dictionary definition to interpret "pedestrian." McLaughlin claims Division I disregarded case law which states that dictionary definitions can be set aside based on public policy grounds. However, the case law cited by McLaughlin merely stands for the proposition that insurance policies cannot violate applicable statutes. *See Ringstad v. Metro Life. Ins. Co.,* 182 Wash. 550, 47 P.2d 1045 (1935) (a life insurance policy discriminate against insureds who borrow against the policy, in violation of an insurance statute); *Mission Ins. Co. v. Guarantee Ins. Co.,* 37 Wn. App. 695, 683 P.2d 215 (1984) (reformation of a policy post-injury improper because the statute fixed liability under the policy at the time of the accident); *Clements v. Travelers Indem. Co.,* 121 Wn.2d 243, 851 P.2d 1298 (1993) (Legislative intent "is not to be eroded . . . by a myriad of legal niceties arising from exclusionary clauses."). These cases state that an insurance company cannot draft a policy in violation of a statute. They do not provide support for McLaughlin's argument that Division I's Opinion conflicts with Washington law.

McLaughlin also relies on case law that only stands for the general proposition that insurance contracts are imbued with public policy considerations. *See Oregon Auto. Ins. Co. v. Salzberg,* 85 Wn.2d 372, 376, 535 P.2d 816 (1975)(Insurance contracts "abound with public policy considerations."). This case do not supersede this Court's repeated instruction regarding policy interpretation.

McLaughlin does discuss two cases that involve the interpretation of undefined terms. Both cases were cited by McLaughlin for the first time in his Petition. In *Jack v. Standard Marine Ins. Co. Ltd., of Liverpool,* *England,* a diesel steam shovel was damaged. 33 Wn.2d 265, 266, 205 P.2d 351 (1949). The issue of coverage turned on the meaning of the word "upset" as it was used in an enumerated peril policy. The Court determined that the policy was intended to cover the loss of the shovel, and a contrary dictionary definition should not pre-empt such coverage. *Id.* at 271.

McLaughlin has not established that the Medpay policy was intended to provide coverage for bicyclists.

Notably, this decision was issued in 1949, decades before this Court's decisions in *Boeing* (1990), *Weyerhaeuser* (2000), and *Quadrant Homes* (2005), among other cases. Clearly, the policy interpretation process undertaken by courts in this State has been clarified by this Court.

The second case discussed by McLaughlin is *Durant.* In that case, the parties disagreed over the meaning of "reasonable" and "necessary." *Durant v. State Farm Mut. Auto. Ins. Co.,* 191 Wn.2d 1, 5, 419 P.3d 400 (2018). The parties disputed State Farm's application of the "maximum medical improvement" ("MMI") standard in the context of Personal Injury Protection ("PIP") coverage. *Id.* at 5. Specifically, it was disputed whether the MMI standard was consistent with meaning of "reasonable" or "necessary" as those terms appeared in WAC 284-30-395(1). *Id.* at 7.

In *Durant,* the Court was asked to interpret undefined terms in an administrative regulation. It used dictionary definitions to do so. *Durant,* at 11-12. It then considered whether State Farm's standard was consistent with those terms. The Court ruled against State Farm because its standard was more restrictive than what the regulation required.

Durant does not provide any relevant guidance in this matter. Because its analysis involved interpreting an administrative regulation, the *Durant* Court considered the public policy behind the regulation. The Court did not consider public policy to interpret an undefined policy term.

McLaughlin does not support his Petition for Review with actual case law establishing a conflict between Division I and any other Court in this State. In light of this, there is no basis for review by this Court under RAP 13.4(b)(1) or (2).

5. Division I's Harmonization of RCW Titles 46 and 48 Did Not Create a Conflict

McLaughlin also argues that Division I's harmonization of RCW Titles 46 and 48 somehow create a conflict. Again, McLaughlin's position is not supported by law.

McLaughlin argues that RCW 48.22.005(11) should control. This provision states that a "Pedestrian means a natural person not occupying a motor vehicle as defined in RCW 46.04.320." RCW 48.22.005(11). It expressly incorporates Title 46. RCW 46.04.400 *explicitly* excludes bicycles from its definition of pedestrian as follows:

> “Pedestrian" means any person who is afoot or who is using a wheelchair, a power wheelchair, or a means of conveyance propelled by human power other than a bicycle.

The Court must determine legislative intent by looking at a statute within the context of provisions related to the statute and the statutory scheme as a whole. *Segura v. Cabrera,* 184 Wn.2d 587, 591, 362 P.3d 1278 (2005). Two statutes “must be read together ‘to give each effect and to harmonize each with the other.’” *Bour v. Johnson,* 122 Wn.2d 829, 835, 864 P.2d 380 (1993) (*quoting Draper Mach. Works, Inc. v. Dept. of Natural Resources,* 117 Wn.2d 306, 313, 815 P.2d 770 (1991)). The Court must avoid a strained and unrealistic interpretation. *State v. Danner,* 79 Wn.App. 144, 149, 900 P.2d 1126 (1995) *citing Wichert v. Cardwell,* 117 Wn.2d 148, 151, 812 P.2d 858 (1991). “Every provision must be viewed in relation to other provisions and harmonized if at all possible.” *Omega Nat’l. Ins. Co. v. Marquadt,* 115 Wn.2d 416, 425, 799 P.2d 235 (1990).

Division I determined that, when read together, RCW 46 and RCW 48 exclude bicyclists from the definition of “pedestrian.” As pointed out by the Court, RCW 48.22.005(11) does not refer to bicyclists. Op. at 6. RCW 46.04.400 does, however, expressly exclude bicyclists from the definition of “pedestrian.” As a result, the two statutory provisions can be harmonized and they must be interpreted as such. Under these provisions, a “pedestrian” is “a natural person not occupying a motor vehicle” and who is "afoot or who is using a wheelchair, a power wheelchair, or a means of conveyance propelled by human power other than a bicycle." RCW 48.22.005(11) and RCW 46.04.400. McLaughlin offers no credible argument as to why these provisions cannot be read together.

McLaughlin argues that the Court must only narrowly read RCW 48.22.005(11) to include only the definition of "motor vehicle" from RCW 46.04.320. McLaughlin offers no legal support. In fact, this narrow construction violates the maxims of statutory construction. *Segua, supra.* Since the provisions of RCW 46 and 48 do not conflict and can be harmonized, Division I's analysis and decision was correct and review by this Court is not warranted under RAP 13.4.

6. *McLaughlin's Other Case Law Does Not Conflict with Division I's Opinion*

McLaughlin also cites to cases where the Court determined a bicyclist was a pedestrian. In each instance, the cases are distinguishable because they involve materially different facts.

For example, McLaughlin relies upon *Pudmaroff*. In *Pudmaroff*, the plaintiff was riding his bicycle in a marked crosswalk. *Pudmaroff v. Allen,* 138 Wn.2d 55, 59, 977 P.2d 574 (1999). The plaintiff stopped at a stop sign before entering the crosswalk, waited for traffic, and then proceeded into the intersection. *Id*. As the plaintiff was riding in the crosswalk, he was struck by defendant's vehicle, causing injuries. *Id.*

The defendant claimed that the plaintiff was a motorist at the time of the collision and should be subject to the rules of the road and not afforded the protections extended to pedestrians crossing sidewalks. *Id.* The Court disagreed, explaining as follows:

> Although our State's laws on bicycles and traffic safety do not present a picture of clarity, we do not believe the Legislature's 1990 and 1991 amendment to the laws pertaining to pedestrians, crosswalks, and bicycles evidenced to overrule *Crawford.* We continue to adhere to the rule that bicyclists, ***although not pedestrians***, are to be treated akin to pedestrians when they use crosswalks to traverse a roadway in the same manner as a pedestrian.

Id. at 60 (emphasis added).

The narrow and limited exception discussed in the *Pudmaroff* case applies specifically to crosswalks where one would *expect* to find pedestrians. Moreover, the Court expressly noted that it continued to follow the rule that bicyclists are not pedestrians. *Id.* at 70. This case does not support McLaughlin's position.

McLaughlin also relies on *Schroeder v. Auto-Owners Ins. Co.,* where the Ohio Court of Appeals found that for purposes of UM coverage, the term "pedestrian" is ambiguous with respect to a bicyclist. 2004-Ohio-5667 (2004). In that case, the term "pedestrian" was bolded, but not defined in the policy. *Id.* at *P10. As a result, the Court held that a different meaning may be ascribed to the term. *Id.* at *P28-29.

McLaughlin fails to advise the Court that *Schroeder* was later distinguished by the same Ohio Court. Specifically, the Court stated:

> In this case, the term "pedestrian" is not defined in the policy. However, just because the policy does not define a term does not mean the policy is ambiguous. Unlike in the *Schroeder* case, the term "pedestrian" is not in bold face in the policy, so there is no indication that the policy ascribed a specific, unusual meaning to the term due to bold face type.

Dye v. Grose, 2015-Ohio-1001, *P12 (Ohio Ct. App. Mar. 12, 2015).

Not only is *Schroeder* not binding on this Court, *Dye* clearly distinguishes it for all relevant purposes.

Again, McLaughlin is unable to provide any pertinent case law to support his position. Simply put, no Washington Court has held that a statutory definition controls over a dictionary definition when assigning a term its plain and ordinary meaning. Moreover, no Washington Court has held that the statutory scheme must be construed so narrowly as to ignore other relevant definitions. As a result, McLaughlin's Petition should be denied, and the decision of Division I left undisturbed.

V. CONCLUSION

Based on the foregoing, Travelers asks that McLaughlin's Petition for Review be denied and that a Mandate be issued ending this litigation.

DATED this 11th day of October, 2019.

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_/s/ Thomas Lether_____________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the party mentioned below as indicated:

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DATED this 11th day of October, 2019.

*s/ Elizabeth Kruh*___________
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LETHER AND ASSOCIATES, PLLC

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Travelers Commercial Insurance Company's Answer to McLaughin's Petition for Review

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