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No. 78534-6-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

TODD MCLAUGHLIN, a Washington resident,

Petitioner,

vs.

TRAVELERS COMMERCIAL INSURANCE COMPANY, a foreign
corporation,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS

Todd McLaughlin seeks review of the opinion set forth in part B.

B. COURT OF APPEALS DECISION

Division I of the Court of Appeals issued a published opinion in Cause No. 78534-6-1 on August 12, 2019.

C. ISSUES PRESENTED FOR REVIEW

1. Where an insurance policy did not define the term “pedestrian,” did the lower court err in failing to consider the definition of pedestrian found in applicable insurance laws that for insurance purposes a pedestrian includes anyone “not occupying a motor vehicle?”

2. Where multiple, reasonable definitions of the term “pedestrian” exist, did the lower court err in failing to construe that definition in favor of the insured and in favor of finding coverage in conflict with Washington law?

D. STATEMENT OF THE CASE

The facts of this case are not in dispute. Todd McLaughlin was injured on July 31, 2017 when Daniel Moore opened his driver’s side door, striking McLaughlin, who then fell to the ground. CP 11-12. At the time of the incident, McLaughlin was riding his bicycle. *Id.* McLaughlin was not occupying a motor vehicle; the bicycle was not motorized in any way. *Id.* As a result of his injuries, McLaughlin suffered “tens of thousands of dollars in medical expenses.” CP 198.

At the time of the accident, McLaughlin was insured by Travelers. His policy included coverage of up to \$5,000 in medical payments coverage (*i.e.* personal injury protection or “PIP” coverage) for “reasonable expenses incurred for necessary medical...services because of ‘bodily injury’: 1) caused by an accident; and 2) [s]ustained by an ‘insured.’” CP 39; Appendix (“App.”) 13-14. McLaughlin was considered an “insured” if he was “occupying” or “[a]s a pedestrian struck by” a motor vehicle. *Id.* The policy did not define the term “pedestrian.” *Id.*; CP 17-59.¹

Travelers denied coverage under the policy, claiming that McLaughlin was not a pedestrian at the time of the accident. CP 64-65. In doing so, Travelers ignored relevant insurance statutes defining pedestrian as “a natural person not occupying a motor vehicle.” RCW 48.22.005(11). Rather, Travelers relied on dictionary definitions strictly defining a pedestrian as a person “travel[ing] on foot; walker” and the definition of pedestrian found in Title 46 RCW, *i.e.*, the motor vehicles title dealing with traffic infractions, the rules of the road, and vehicle registration. *Id.*

Both parties moved for summary judgment regarding the definition of pedestrian in the insurance policy, and the trial court sided with Travelers. CP 238-39. In a published decision, Division I affirmed.

¹ The policy was issued in California, but Travelers conceded Washington law governs this dispute. Resp’t br. at 10-11. Likewise, although the policy discusses “Med Pay” coverage, Travelers conceded that this coverage is identical to PIP. *Id.* at 4

McLaughlin v. Travelers Commercial Ins. Co., __ Wn. App. 2d __, 446 P.3d 654, 2019 WL 3774656 (2019). Division I refused to adopt the plain definition of pedestrian found in the Insurance Code, Title 48 RCW. Rather, it relied on a dictionary definition of the term pedestrian² and “harmonized” the multiple definitions of pedestrian found in traffic laws and the Insurance Code by concluding that a bicycle could be considered a “motor vehicle” even under the Insurance Code’s definition, and thus a bicyclist is not a pedestrian, even for PIP purposes. This petition follows.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

(1) Division I’s Overreliance on Dictionary Definitions Conflicts with This Court’s Precedent Regarding the Procedure for Interpreting Insurance Policies in Washington

This Court should grant review because the Court of Appeals’ overreliance on dictionary definitions conflicts with this Court’s precedent regarding the procedure for interpreting insurance policies in Washington, implicating issues of substantial public interest. RAP 13(b)(1), (2), (4).

In this case, the parties dispute the term “pedestrian” which Travelers chose not to define in a policy it drafted. Division I engaged in a

² The Court of Appeals found its own definition of “pedestrian,” one not offered by either party. Op. at 4 (citing Webster’s Third New International Dictionary 1664 (2002) which specifically excludes those who travel by “cycle”); *cf.* resp’t br. at 14-15 (citing Miriam Webster which does not mention bicyclists). This additional definition shows that there are multiple reasonable definitions, including the definition found in the Insurance Code, which necessarily means that the term is ambiguous. *Holden v. Farmers Ins. Co. of Washington*, 169 Wn.2d 750, 755-56, 239 P.3d 344 (2010). The Court of Appeals was wrong to summarily conclude otherwise at the end of its opinion.

strict contract interpretation analysis, searched for the meaning of the term “pedestrian” in a dictionary, and deemed that definition controlling. Op. at 4. While it is true that courts *may* consult dictionaries to interpret undefined contractual terms, dictionaries are not gospel when it comes to insurance policies. “[U]nlike other types of contracts, insurance policies must be interpreted in light of important public policy and statutory considerations.” *Mission Ins. Co. v. Guarantee Ins. Co.*, 37 Wn. App. 695, 699, 683 P.2d 215 (1984); *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 63 n.7, 322 P.3d 6 (2014) (*accord*). As this Court has explained:

[I]nsurance policies...are simply unlike traditional contracts, i.e., they are not purely private affairs but abound with public policy considerations, one of which is that the risk-spreading theory of such policies should operate to afford to affected members of the public-frequently innocent third persons-the maximum protection possible consonant with fairness to the insurer.

Oregon Auto. Ins. Co. v. Salzberg, 85 Wn.2d 372, 376-77, 535 P.2d 816 (1975); *see also, e.g., Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 254, 850 P.2d 1298 (1993) (reversing the holding that the “intent of the contracting parties [was] the sole determinative issue” in an coverage dispute because the Court of Appeals ignored the rule that “insurance regulatory statutes become part of insurance policies”); *Ringstad v. Metro.*

Life Ins. Co., 182 Wash. 550, 553, 47 P.2d 1045 (1935) (It is “universally settled that statutory provisions are a part of [an insurance] policy.”).³

Thus, a court cannot simply stop after consulting a dictionary when interpreting the definition of an undefined term in an insurance policy. Rather, a court must consider statutory provisions regarding insurance when interpreting questions of insurance coverage. Importantly, where multiple reasonable definitions of an undefined term in an insurance policy exist (such as a definition in an applicable insurance statute) a court *must* adopt the definition that most favors the insured. *Holden*, 169 Wn.2d at 755-56.

Here, as part of is “risk-spreading” authority and to maximize protection for insureds in Washington, the Legislature defined pedestrian – *specifically in the PIP context* – broadly as any “natural person not occupying a motor vehicle.” RCW 48.22.005(11). Where Travelers failed to define the term in its own policy, this reasonable definition provided by statute should have applied by law or, *at the very least*, created ambiguity which the court had an obligation to resolve in favor of the insured and in

³ Courts have looked to insurance statutes to interpret many types of insurance policies. See *Mission Ins. Co.*, *supra*, (insurer could not alter omnibus clause for a leased vehicle where RCWs mandate upfront omnibus clauses); *Ringstad*, *supra* (life insurance statutes are relevant coverage question); *Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 673, 852 P.2d 1078 (1993) (noting an “extensive body of jurisprudence” holding that underinsured motorist provisions are interpreted in light of insurance statutes). There is no reason why this rule of interpretation should not also apply to PIP policies.

favor of providing coverage. *Holden, supra*. The Court of Appeals ignored these rules in favor of a dictionary, in conflict with existing precedent.

This Court has long cautioned against an overreliance on dictionary definitions when interpreting insurance contracts, especially where doing so favors an insurer who fails to define a term in its own policy. For example, in *Jack v. Standard Marine Ins. Co., Ltd., of Liverpool, England*, 33 Wn.2d 265, 205 P.2d 351 (1949), an insurer denied coverage under a policy insuring heavy machinery, claiming that a toppled steam shovel was not “upset” within the common meaning of the undefined contractual term as found in a standard English dictionary. *Id.* at 270-71. This Court held that while dictionary definitions may be “generally accepted as the common meaning of the word” such definitions “are not controlling.” *Id.* Rather, a court must interpret a term in an insurance policy in light of the “purpose of the contract” (which is to insure)⁴ and the public policy that “insurance will be judicially construed in favor of the insured.” *Id.*

Recently, in *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 419 P.3d 400 (2018) this court reiterated the proper method of interpreting undefined terms in a policy. There, the parties disputed the meaning of the terms “reasonable” and “necessary” medical treatment in

⁴ As this Court has recognized, “the purpose of insurance is to insure.” *Phil Schroeder, Inc. v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 68, 659 P.2d 509 (1983).

the PIP context. While the Court exercised its discretion to consult a dictionary – *id.* at 12 (“courts *may* look to...dictionaries”) (emphasis added) – it did not end its analysis there. Rather, the Court considered dictionary definitions only to the extent they aligned with “Washington’s strong public policy in favor of the full compensation of medical benefits for victims of road accidents.” *Id.* at 14. The Court ensured that the dictionary definitions of the terms were consistent public policy considerations as well as the definitions and uses of the terms found in the Insurance Code and related WACs. *Id.* at 14-19. Importantly, this Court rejected the insurer’s attempt to “harmonize” the meaning of the terms found in the Insurance Code with those found in other sources of law, such as workers’ compensation statutes and maritime law. *Id.* Rather, the Court held that it must interpret the disputed terms “as those terms appear” in the insurance context. *Id.* at 18.

Here, *in the insurance context*, the Legislature chose to define pedestrian as any person “not occupying a motor vehicle.” RCW 48.22.005(11). This definition is commonplace within the insurance industry. McLaughlin produced numerous Washington PIP policies showing that insurers routinely include this broad definition of pedestrian in their policies. CP 179-95; App. 15-31 (evidence from four other Washington insurers defining pedestrian as any person “not occupying a motor vehicle”). And McLaughlin cited numerous examples from

published Washington cases where insurers and courts referred to bicyclists as pedestrians for PIP purposes. *See, e.g., Barriga Figueroa v. Prieto Mariscal*, 193 Wn.2d 404, 441 P.3d 818 (2019) (child on a bicycle qualified as a pedestrian for PIP purposes); *Mattson on Behalf of Mattson v. Stone*, 32 Wn. App. 630, 632, 648 P.2d 929 (1982) (woman who was struck by car while on a bicycle received PIP benefits “as a pedestrian injured in [the] the accident”); *see also, Brown v. Snohomish County Physicians Corp.*, 120 Wn.2d 747, 845 P.2d 334 (1993) (insurer paid PIP limits to insured who was struck by a motor vehicle while riding a bicycle).

McLaughlin also showed that most states have rejected the strict dictionary definition of “traveling by foot” for PIP purposes and cited numerous examples from around the country where bicyclists are considered pedestrians for purposes of insurance law. *See, e.g., Tucker v. Fireman’s Fund Ins. Co.*, 517 A.2d 730, 733-35 (Md. 1986) (surveying 28 jurisdictions, including Washington, rejecting a dictionary definition, and concluding that, for PIP purposes, “pedestrian” means more than those simply traveling “by foot;” it can include bicyclists, horseback riders, roller skaters, persons in wheelchairs, persons on crutches or stilts, and persons sitting or not moving at all).⁵ Thus, insurers and courts across the country

⁵ *See, also, e.g., Fireman’s Fund Ins. Co. v. Kerger*, 389 S.E.2d 541 (Ga. App. 1989) (bicyclists are pedestrians under Georgia insurance law); *Harbold v. Olin*, 670 A.2d 117 (N.J. Super. Ct. App. Div. 1996) (same in New Jersey); *Pilotte v. Aetna Cas. & Sur.*

have long disregarded the dictionary definition of pedestrian as merely traveling “afoot.” When it comes to PIP coverage, this history shows that the average purchaser of insurance would expect to be covered “as a pedestrian struck by a motor vehicle” in an automobile accident whether walking, bicycling, rollerblading, or sitting at a bus stop. The Court of Appeals was wrong to dismiss this evidence, especially where it most favors the insured. *See, e.g., Fiscus Motor Freight, Inc. v. Universal Sec. Ins. Co.*, 53 Wn. App. 777, 782, 770 P.2d 679, *review denied*, 113 Wn.2d 1003 (1989) (evidence of custom as use within the insurance industry is relevant when interpreting an insurance policy).

Courts have noted the absurdity of a strict dictionary definition of “traveling afoot” when it comes to automobile accidents, which would apply to a parent pushing a stroller but not the baby riding inside it. *Schroeder v. Auto-Owners Ins. Co.*, 2004 WL 2384350 (Ohio App. Oct. 22, 2004). Similarly, this Court recognized the absurdity of treating bicyclists differently than other pedestrians in the context of accidents at crosswalks:

Equally absurd would be practical application of [the rule that bicycles must be treated the same as motor vehicles when crossing at crosswalks]. A hypothetical suggests the problem: Several groups of children return home from school...some on foot, others on skateboards, roller blades and bicycles, and wait at the crosswalk for a clear

Co., 427 N.E.2d 746 (Mass. 1981) (same in Massachusetts); *Schroeder v. Auto-Owners Ins. Co.*, 2004 WL 2384350 (Ohio App. Oct. 22, 2004) (same in Ohio).

opportunity to cross...If such group were hit in the crosswalk, under [defendant's] interpretation, the vehicle driver would be liable to all children except those on bicycles. Such interpretation and result make no sense.

Pudmaroff v. Allen, 138 Wn.2d 55, 65-66, 977 P.2d 574 (1999).⁶

Division I did not mention the evidence of other Washington PIP policies and ignored the overwhelming caselaw cited *supra*, finding that they were not controlling, the facts were distinguishable, or that the cases were “not relevant” because the definition of pedestrian was not a central issue in the case. Op. at 7-9. Division I’s analysis misses the point. Its opinion fundamentally conflicts with published authorities setting out the proper method for interpreting insurance disputes in several ways.

First, as mentioned above, Division I’s opinion conflicts with published authority directing courts to consider evidence of custom and usage within the insurance industry when interpreting insurance contracts. *Fiscus*, 53 Wn. App. at 782. Whether or not the term “pedestrian” was the central issue in the numerous cases cited above is immaterial. Rather, these cases show a practice of custom and usage within the insurance industry that bicyclists are pedestrians *for PIP insurance purposes*. At the very least, these published cases show that the term pedestrian can reasonably be

⁶ Division I refused to reckon with the absurdity of excluding a child in a stroller from the definition of pedestrian, op. at 10, in conflict with the rule that appellate courts must “avoid interpreting statutes and contracts in ways that lead to absurd results.” *Forest Mktg. Enterprises, Inc. v. Dep’t of Nat. Res.*, 125 Wn. App. 126, 132, 104 P.3d 40 (2005).

construed to include bicyclists, given that is the overwhelming majority view which has applied to average purchasers of insurance across the country for decades. Moreover, the fact that many courts refer to bicyclists as pedestrians, even if the term is used casually throughout published opinions like *Barriga Figueroa*,⁷ shows that it is abundantly reasonable for the average person purchasing insurance to think the same thing. That reasonable definition *must* be adopted when interpreting an ambiguous policy because it is the one which favors the insured. *E.g., Holden, supra.*

Second, Division I's opinion fundamentally conflicts with the procedure for resolving questions of insurance disputes as laid out by this Court. A court must not strain to distinguish authorities which support extending coverage to an insured, rather a court is obligated to defer to such authorities and construe them broadly to find coverage. For example, in *American Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 229 P.3d 693 (2010), this Court considered a question of first impression regarding an insurer's duty to defend under an insurance policy. The policyholder

⁷ Division I's attempt to distinguish *Barriga Figueroa* was particularly tortured, leaning on evidence showing that the child may have been temporarily stopped on his bicycle when he was hit by a car. Op. at 7-8. This implies an exception to Division I's own holding that a bicyclist *is* a pedestrian for insurance purposes when temporarily stopped in the roadway. This implied exception makes no practical sense and will cause confusion in future cases. The Legislature was wise to remove confusion and define pedestrian for insurance purposes simply as any person "not occupying a motor vehicle." *Barriga Figueroa* is a reasonable application of this broad definition, and if this Court is reasonable in using that definition throughout its opinion, so too is an average purchaser of insurance to expect PIP coverage when struck by an automobile while riding a bicycle.

cited one federal case from Texas in notifying its insurer that coverage may apply. *Id.* at 403. The Court held that this was enough to put the insurer on notice that it had a duty to defend under the policy because a court must look for “any reasonable interpretation of the facts or the law that could result in coverage.” *Id.* at 413. The Court reasoned:

Washington courts have yet to consider the factual scenario before us today. Evaluation of out-of-state cases was appropriate in deciding which rule to apply. The lack of any Washington case directly on point and a recognized [possibility of coverage] in other states presented a legal uncertainty with regard to [the insurer’s] duty. Because any uncertainty works in favor of providing a defense to an insured, [the insurer’s] duty to defend arose when [a lawsuit was filed].

Id. at 408. This Court reiterated the fundamental principle any doubts in coverage must “be resolved in favor of the insured.” *Id.* at 411.

Here, Division I ignored this clear procedure for interpreting an insurance policy and strained to distinguish or disregard reasonable authority from Washington and elsewhere for an undefined term. In doing so, it failed to honor this Court’s longstanding principle that where there are multiple reasonable interpretations to a policy term, the term is ambiguous and such ambiguity must be resolved *in the insured’s favor*.

Third, Division I’s overreliance on a dictionary ignored the important public policy considerations courts must consider when interpreting insurance contracts, which are “unlike” traditional contracts.

Salzberg, 85 Wn.2d 372, 376-77. McLaughlin argued a host of policy arguments, explaining why the Legislature chose to define pedestrian so broadly, specifically for PIP purposes. For example, courts recognize that bicyclists are susceptible to serious injury on the roadway – just like any other pedestrian, a bicyclist lacks airbags, seatbelts, impact absorbing bumpers, a surrounding steel car frame, etc. *See State v. Morris*, 87 Wn. App. 654, 666-67, 943 P.2d 329 (1997), *review denied*, 134 Wn.2d 1020 (1998) (finding that bicyclists are no less vulnerable than other pedestrians for purposes of a sentencing enhancement). The Legislature indented PIP coverage to apply broadly “in favor of the full compensation of medical benefits for victims of road accidents” “irrespective of fault and without having to bring a lawsuit.” *Durant*, 191 Wn.2d at 14; *Ainsworth*, 180 Wn. App. at 62 (citing 12 Steven Plitt, Daniel Maldonado & Joshua D. Rogers, *Couch on Insurance 3d* § 171:45 at 171–46 (2006) (alteration omitted)). Division I’s opinion forecloses this important coverage to bicyclists.⁸

But Division I refused to even consider these policy arguments, claiming that McLaughlin failed to cite any “authority for the proposition that the plain meaning of an undefined term can be set aside on policy

⁸ While PIP limits are often low, they are not trivial for average purchasers of insurance. They cover important out of pocket expenses, like medical insurance deductibles and lost wages. The Legislature intended these benefits to apply to all victims of automobile accidents whether injured in a car, on foot, or on a bicycle. *Ainsworth, supra*.

grounds.” Op at 10. This is not true – McLaughlin quoted the published case law above, explicitly holding that “unlike other types of contracts, insurance policies must be interpreted in light of important public policy and statutory considerations.” Appellant’s br. at 7 (quoting, *e.g.*, *Mission Ins. Co.*).⁹ Division I’s opinion fundamentally conflicts with the many authorities cited in the court below and discussed above holding that insurance contracts must be interpreted in light of public policy because they are “simply unlike traditional contracts.” *Salzberg*, 85 Wn.2d at 376; *Nat’l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 878, 297 P.3d 688 (2013) (“[I]nsurance contracts are imbued with public policy concerns”); RCW 48.01.030 (“The business of insurance is one affected by the public interest”). Division I was wrong to divorce any public policy concerns from its analysis of an insurance dispute in order to rely solely on a dictionary definition. Its flawed methodology creates a conflict amongst published authorities, warranting review. RAP 13.4(b)(1), (2).

(2) Division I’s “Harmonization” of the Definition of Pedestrian in Separate Statutes to Avoid McLaughlin’s Argument that Multiple Reasonable Definitions of the Term Exist Conflicts with Published Precedent

⁹ Not only has this Court cited *Mission Ins. Co.* approvingly in *Pub. Employees Mut. Ins. Co. v. Muckleston*, 111 Wn.2d 442, 444, 758 P.2d 987 (1988), but every division of the Court of Appeals has cited its headnote that insurance contracts must be interpreted in light of public policy considerations, unlike other contracts. *Stanton v. Pub. Employees Mut. Ins. Co.*, 39 Wn. App. 904, 907, 697 P.2d 259, *review denied*, 103 Wn.2d 1039 (1985) (Division III); *Dairyland Ins. Co. v. Uhls*, 41 Wn. App. 49, 52, 702 P.2d 1214 (1985) (Division II). These conflicts cannot stand.

Despite the clear and reasonable definition in the PIP statute that a pedestrian is any “person not occupying a motor vehicle as defined in RCW 46.04.320,” Division I refused to consider that definition or even find that the meaning of the term pedestrian is, *at the very least*, ambiguous due to multiple reasonable definitions. Op. at 6, 11. Rather the court found that a bicyclist did not even fit the definition of pedestrian in the PIP statute, RCW 48.22.005(11). The court reasoned that because Title 46 RCW – the title dealing with the rules of the road and motor vehicle registration – excludes bicyclists from its definition of “pedestrian,” it had a duty to “harmonize” that definition with the one in the Insurance Code and conclude that a bicyclist is not a pedestrian under either statute. Op. at 6 (citing RCW 46.04.400). Put another way, Division I held that a bicyclist is not a pedestrian even under the PIP statute because a bicyclist is a “person occupying a *motor vehicle*.” This baffling interpretation in a published decision creates a host of conflicts warranting review by this Court. RAP 13.4(b)(1), (2).

Even if Division I’s “harmonization” of two different definitions appearing in wholly separate statutes were appropriate – which it is not as discussed below – Division I failed at its task to give a sensible construction of the contract and created conflicts with published authority.

A bicycle is not a motor vehicle. This is true as a matter of common sense; a bicycle has no motor. Even Travelers stipulated in the trial court that McLaughlin “was not occupying a motor vehicle at the time of the accident.” CP 12. Importantly, it is also true as a matter of law, *see* RCW 46.04.320,¹⁰ and Division II addressed this issue years ago in a published decision which now conflicts with Division I’s published opinion here. In *City of Montesano v. Wells*, 79 Wn. App. 529, 902 P.2d 1266 (1995), Division II determined that DUI laws requiring the operation of a motor vehicle do not apply to bicyclists. The court reasoned that “RCW 46.04.320 defines a motor vehicle as ‘every vehicle which is self-propelled.’” *Id.* at 532. A bicycle is not self-propelled and “thus, a bicycle is not a motor vehicle.” *Id.* (citing RCW 46.04.071 (“‘Bicycle’ means every device propelled solely by human power”)). This conflict should be resolved.

Division I also reasoned that because a bicycle is a “vehicle” for purposes of traffic laws, should be considered a “motor vehicle” under the Insurance Code and excluded from the PIP statute’s definition of pedestrian under its “harmonized” reading of the statutes. *Op.* at 6. Again, this makes

¹⁰ “‘Motor vehicle’ means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.” RCW 46.04.320. Likewise, the Insurance Commissioner’s regulations define “motor vehicle” as “any vehicle subject to registration under chapter 46.16 RCW.” WAC 284-30-320(11). Bicycles are not subject to registration, and Division I’s opinion conflicts with this WAC.

no commonsense – a bicycle has no motor; it is not a motor vehicle. Division II also rejected this interpretation in its now conflicting opinion in *Montesano*, holding that laws referring to “motor vehicles” do not include bicyclists, even though bicyclists are included in the definition of “vehicles” in Title 46 RCW and must follow the rules of the road for safety purposes. *Montesano*, 79 Wn. App. at 532-36. This split in authority is untenable.

Division I’s opinion is not only an absurd construction of the statute; it is an absurd construction of the policy itself. McLaughlin was entitled to PIP coverage under his policy if he was injured in an accident while “occupying or [a]s a pedestrian struck by” a motor vehicle. App. 13; Op. at 4 (punctuation omitted). Thus, if McLaughlin was not a pedestrian under RCW 48.22.005(11) because he was “occupying a motor vehicle” pursuant to Division I’s “harmonized” reading of the statutes, then Travelers *still* had an obligation to pay him under the policy.

These absurd results could have been avoided had Division I followed the fundamental rule that courts have no authority to harmonize statutes that affect separate subject matters and serve “separate purposes.” *Washington Utilities & Transp. Comm’n v. United Cartage, Inc.*, 28 Wn. App. 90, 97, 621 P.2d 217, *review denied*, 95 Wn.2d 1017 (1981). Two distinct definitions in separate statutes should not be harmonized because “[w]here the legislature uses certain statutory language in one statute and

different language in another, a difference in legislative intent is evidenced.” *In re Forfeiture of One 1970 Chevrolet Chevelle*, 166 Wn.2d 834, 842, 215 P.3d 166 (2009).

Here, the Legislature chose to define pedestrian two ways, using different statutory language, in two wholly separate titles. Traffic laws in Title 46 RCW and the Insurance Code Title 48 RCW serve separate and distinct purposes. When it comes to the rules of the road, the Legislature chose to exclude bicyclists from the term pedestrian to increase safety by ensuring that bicyclists obey traffic laws. *See Montesano*, 79 Wn. App. at 535 (explaining the purpose behind adding bicyclists to traffic laws). The Legislature chose a broader definition when it comes to PIP coverage, because it intended to provide quick compensation to *all victims* of motor vehicle accidents “irrespective of fault and without having to bring a lawsuit.” *Ainsworth*, 180 Wn. App. at 62 (quotation omitted).

By “harmonizing” the definitions which serve these vastly different purposes, Division I ignored the plain intent of the Legislature, created conflicts among published authorities, and rendered the definition in the PIP statute superfluous. This Court should grant review to resolve the conflicts created by Division I’s published opinion. RAP 13.4(b)(1), (2).

(3) PIP Coverage is an Issue of Substantial Public Importance

This case raises issues of substantial public interest regarding insurance coverage which warrants review by this Court. RAP 13.4(b)(4). The “risk-spreading” nature of insurance inherently impacts the public as discussed above. And Division I’s inversion of the procedures and guidelines for interpreting undefined terms in an insurance policy is a boon for insurers who fail to define terms in their policies and a significant loss for individual citizens of this state.

Moreover, through its attempt to “harmonize” statutes with different subject matters, Division I’s opinion could affect more than just policies that leave the term pedestrian undefined. Arguably, even where insurers routinely define pedestrian with reference to the Insurance Code’s definition, App. 15-31, those insurers could cite Division I’s opinion to exclude bicyclists because the court held that a bicycle is a “motor vehicle” for PIP purposes. This absurd result cannot stand.

Division I’s published decision even has ramifications nationwide. While the overwhelming authority across the country supports a broad definition of pedestrian, there are relatively few authorities directly dealing with this question, likely because insurers and courts around the country have widely accepted the commonplace definition of “pedestrian” within the insurance industry that a pedestrian is any person not occupying a motor vehicle. *See, e.g., Mattson, Barriga Figueroa, Tucker, supra.* This decision

will negatively impact bicyclists who rely on PIP coverage to compensate them for their injuries, compensation the Legislature has deemed should apply to *all* victims of automobile accidents. *E.g., Ainsworth, supra.*¹¹

F. CONCLUSION

Division I's published opinion conflicts with multiple authorities in this state and raises issues of substantial public importance. Supreme Court review is warranted. RAP 13.4(b)(1), (2), and (4).

DATED this 11th day of September, 2019.

Respectfully submitted,



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¹¹ This issue is also significant in an area when all levels of government in our state encourage bicycling as a mode of transportation. These accidents, implicating PIP coverage for bicyclists injured in altercations with motor vehicles, will, unfortunately, become all the more common. RAP 13.4(b)(4).

APPENDIX

APPENDIX

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RCW 48.22.005(11) (Insurance Code)

“Pedestrian” means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

RCW 46.04.320

(1) “Motor vehicle” means a vehicle that is self-propelled or a vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(2) “Motor vehicle” includes:

- (a) A neighborhood electric vehicle as defined in RCW 46.04.357;
- (b) A medium-speed electric vehicle as defined in RCW 46.04.295;
- and
- (c) A golf cart for the purposes of chapter 46.61 RCW.

(3) “Motor vehicle” excludes:

- (a) An electric personal assistive mobility device;
- (b) A power wheelchair;
- (c) A golf cart, except as provided in subsection (2) of this section;
- (d) A moped, for the purposes of chapter 46.70 RCW; and
- (e) A personal delivery device as defined in RCW 46.75.010.

RCW 46.04.071

“Bicycle” means every device propelled solely by human power, or an electric-assisted bicycle as defined in RCW 46.04.169, upon which a person or persons may ride, having two tandem wheels either of which is sixteen inches or more in diameter, or three wheels, any one of which is more than twenty inches in diameter.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TODD MCLAUGHLIN, a Washington resident,)	No. 78534-6-I
)	
Appellant,)	DIVISION ONE
)	
v.)	
)	
TRAVELERS COMMERCIAL INSURANCE COMPANY, a foreign corporation,)	PUBLISHED OPINION
)	
Respondent.)	FILED: August 12, 2019

SMITH, J. — Todd McLaughlin appeals the trial court's dismissal of his lawsuit against his insurer, Travelers Commercial Insurance Company. McLaughlin was injured after he struck an open car door while riding his bicycle. McLaughlin's personal injury protection (PIP) policy covers injuries to a "pedestrian" but does not define that term. Because we must give an undefined term in an insurance policy its plain, ordinary, and common meaning and because the dictionary definition of "pedestrian" excludes bicyclists, we hold that McLaughlin was not a pedestrian at the time of his injury and therefore not entitled to PIP benefits. Additionally, we reject McLaughlin's contention that a definition of "pedestrian" in Washington's Insurance Code, Title 48 RCW, requires that a bicyclist is a pedestrian under his policy. Accordingly, we affirm.

FACTS

On July 31, 2017, McLaughlin was injured while riding his bicycle on Westlake Avenue in Seattle. Daniel Moore, who was parked on the street, did not see McLaughlin approach and opened his driver's side door, striking McLaughlin.

At the time of the accident, McLaughlin was covered by a California Personal Auto policy from Travelers. The policy provided PIP benefits of up to \$5,000 in medical expenses sustained by an "insured." The term "insured" was defined in relevant part as "a pedestrian when struck by" a motor vehicle. The term "pedestrian" was not defined.

McLaughlin sought coverage for his medical expenses under the policy. Travelers denied coverage, finding that McLaughlin was not a pedestrian because he was riding his bicycle at the time of the accident. McLaughlin sued Travelers for breach of contract and other related theories based on its denial of coverage. Both McLaughlin and Travelers moved for summary judgment on the breach of contract claim. The trial court concluded that the ordinary and common meaning of the term "pedestrian" does not include a bicyclist. It therefore granted Travelers's motion for summary judgment and denied McLaughlin's motion for summary judgment. McLaughlin appeals.

ANALYSIS

McLaughlin argues that because the ordinary meaning of "pedestrian" includes a bicyclist, the trial court erred in granting summary judgment to Travelers. We disagree.

“This court reviews summary judgment determinations de novo, engaging in the same inquiry as the trial court.” Kut Suen Lui v. Essex Ins. Co., 185 Wn.2d 703, 709-10, 375 P.3d 596 (2016) (quoting Durland v. San Juan County, 182 Wn.2d 55, 69, 340 P.3d 191 (2014)). “Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” Kut Suen Lui, 185 Wn.2d at 710 (quoting Durland, 182 Wn.2d at 69)). “Courts interpret language in an insurance policy as a matter of law,” and this court reviews those interpretations de novo. Kut Suen Lui, 185 Wn.2d at 710. As the insured, McLaughlin bears the burden to prove that he was entitled to coverage under the policy. E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co., 106 Wn.2d 901, 906, 726 P.2d 439 (1986).

Courts construe insurance policies as contracts. Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 665, 15 P.3d 115 (2000). When the court interprets an insurance policy, it considers the insurance policy as a whole, giving the policy “a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.” Quadrant Corp. v. Am. States Ins. Co., 154 Wn.2d 165, 171, 110 P.3d 733 (2005) (quoting Weyerhaeuser, 142 Wn.2d at 666). “Undefined terms in an insurance contract 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)). “To determine the ordinary meaning of an undefined term, our courts look to standard English language dictionaries.” Boeing, 113 Wn.2d at 877.

Here, McLaughlin's policy covers "reasonable expenses incurred for necessary medical and funeral services because of 'bodily injury': 1. Caused by an accident; and 2. Sustained by an 'insured.'" The policy defines an "insured" as:

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.

The term "pedestrian" is not defined in the policy. Therefore, we look to the dictionary definition of "pedestrian" to determine its plain, ordinary, and popular meaning. Webster's Third New International Dictionary 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." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1664 (2002).

The plain, ordinary meaning of "pedestrian," as defined by the dictionary, defeats McLaughlin's argument. Based on this definition, a pedestrian is distinct from a bicyclist, who travels by cycle. Therefore, the trial court did not err in concluding that McLaughlin was not an insured under the policy and that Travelers was entitled to summary judgment.

Both McLaughlin and Travelers agree that there is no conflict of law when the dictionary definition of "pedestrian" is used. But McLaughlin argues that the definition of "pedestrian" in RCW 48.22.005(11), which is part of Washington's Insurance Code, is automatically incorporated into the policy and includes a

bicyclist. In its amicus curiae brief, United Policyholders also asserts that RCW 48.22.005(11) applies here. But none of the authority cited by McLaughlin mandates that the plain meaning of an undefined term in an insurance policy be displaced if there is a definition of the same term in an insurance statute. Rather, they stand for the general proposition that insurance policies cannot violate applicable statutes. See Ringstad v. Metro. Life Ins. Co., 182 Wash. 550, 553-55, 47 P.2d 1045 (1935) (merely holding that a life insurance policy could not discriminate against insureds who borrow against their policies because an insurance statute prohibited such discrimination); Mission Ins. Co. v. Guarantee Ins. Co., 37 Wn. App. 695, 699, 683 P.2d 215 (1984) (similarly holding that reformation of a policy after an injury was improper in part because a statute fixed the insurer's liability under the policy at the time the injury occurred). Nevertheless, even if RCW 48.22.005(11) is incorporated into the policy, we disagree with McLaughlin's narrow reading of that statute and hold that McLaughlin has not met his burden to show that a bicyclist is a pedestrian, even under RCW 48.22.005(11).

"The purpose of statutory interpretation is to determine the legislature's intent and to apply it." Segura v. Cabrera, 184 Wn.2d 587, 591, 362 P.3d 1278 (2015). "When possible, we derive the legislature's intent solely from the statute's plain language, considering the text of the provision at issue, the context of the statute, related provisions, and the statutory scheme as a whole." Segura, 184 Wn.2d at 591.

RCW 48.22.005(11) states that “[p]edestrian’ means a natural person not occupying a motor vehicle *as defined in RCW 46.04.320.*” (Emphasis added.) Title 46 RCW not only includes a definition of “motor vehicle,” it also includes definitions for the terms “pedestrian” and “vehicle.” See RCW 46.04.400 (“Pedestrian” is defined as “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.”), .670 (“Vehicle” is defined as “every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles.”). Under those related definitions, the legislature expressly determined that a bicyclist was not a pedestrian, but a vehicle. The definition of “pedestrian” in RCW 48.22.005(11) specifically refers the reader to Title 46 RCW. Therefore, we attempt to harmonize the definition of “pedestrian” in that statute with the definition of “pedestrian” found in RCW 46.04.400. Because RCW 48.22.005(11) does not explicitly refer to bicyclists, the statutes can be harmonized by excluding bicyclists from that definition of “pedestrian,” in accordance with RCW 46.04.400.

McLaughlin argues that we must narrowly read RCW 48.22.005(11) to incorporate only the definition of “motor vehicle” from chapter 46.04 RCW. But doing so would violate the maxims of statutory construction that require us to determine the legislature’s intent in part by reading a statute within the context of its related provisions and the statutory scheme as a whole. See Segura, 184 Wn.2d at 591. Therefore, we do not read RCW 48.22.005(11) narrowly.

Citing a non-binding Maryland case, Tucker v. Fireman's Fund Ins. Co., 308 Md. 69, 517 A.2d 730 (1986), McLaughlin argues that the dictionary definition of “pedestrian” is not controlling because RCW 48.22.005(11) provides a broader definition of that term. As discussed, we disagree with his conclusion that the definition of “pedestrian” in RCW 48.22.005(11) includes a bicyclist. Furthermore, Tucker is not persuasive because that case involved statutory construction, not contract interpretation. See Tucker, 517 A.2d at 734 (giving the undefined term pedestrian in a PIP statute a broad interpretation consistent with the overall purpose of the statute). Tucker does not require reversal here.

McLaughlin argues that multiple cases have recognized that bicyclists are pedestrians for insurance purposes. He cites Mattson v. Stone, 32 Wn. App. 630, 648 P.2d 929 (1982), as an example. There, a passenger on a bicycle was struck by a car and obtained an insurance settlement from the driver’s insurer. Mattson, 32 Wn. App. at 631-32. The issue on appeal was whether the driver’s insurer had a valid subrogation claim against a later settlement between the bicycle passenger and driver. Mattson, 32 Wn. App. at 632. Although the court stated that the bicycle passenger was “a pedestrian injured in an accident” in its recitation of the facts of the case, it did not analyze whether the insurance policy defined a bicyclist as a “pedestrian.” Mattson, 32 Wn. App. at 632-33. Therefore, Mattson is not applicable to our analysis.

In a statement of additional authorities, McLaughlin cites to Barriga Figueroa v. Prieto Mariscal, 193 Wn.2d 404, 441 P.3d 818 (2019), a recent Supreme Court case that considered whether an insurer owes a person injured

under a tortfeasor's PIP policy the same quasi-fiduciary duties it would owe to the named insured. There, an eight-year-old boy was hit by a minivan. Barriga Figueroa, 193 Wn.2d at 407. The police report stated that the boy rode his bicycle into the roadway in front of the minivan. Barriga Figueroa, 193 Wn.2d at 407. The boy gave a number of statements about the accident, but his most detailed version was that his right shoelace got stuck in his bicycle spokes and the minivan ran over his leg when he leaned over to untangle the shoelace. Barriga Figueroa, 193 Wn.2d at 407. At the subsequent tort trial against the driver of the minivan, the trial court admitted a PIP application form signed by the boy's mother that mirrored the events reported in the police report. Barriga Figueroa, 193 Wn.2d at 410. The Supreme Court held that the PIP application was protected work product and should have been excluded. Barriga Figueroa, 193 Wn.2d at 415. In doing so, the court concluded, without extensive discussion, that the boy was an insured because under RCW 48.22.005(5)(b)(ii), "a pedestrian injured in an automobile accident is statutorily defined as an 'insured.'" Barriga Figueroa, 193 Wn.2d at 411. The court's statement does not help McLaughlin. The court did not specifically consider whether the definition of "pedestrian" includes a bicyclist. Furthermore, there was a factual dispute as to whether the boy was riding his bicycle in the road or was stopped to tie his shoelaces. For these reasons, Barriga Figueroa does not require reversal.

McLaughlin also cites authority from other jurisdictions that is similarly inapplicable in interpreting the undefined term "pedestrian" in his insurance policy. See Fireman's Fund Ins. Co. v. Kerger, 194 Ga. App. 20, 389 S.E.2d

541, 542 (1989) (issue on appeal was the meaning of “struck by” in the insurance policy even though “[t]he parties agree[d] that for the purposes of this case plaintiff must be considered a ‘pedestrian’ under Georgia law”); Harbold v. Olin, 287 N.J. Super. 35, 670 A.2d 117, 119 (App. Div. 1996) (acknowledging that the statutory definition of “pedestrian” under New Jersey PIP statutes includes a bicyclist); Pilotte v. Aetna Cas. & Sur. Co., 384 Mass. 805, 427 N.E.2d 746-47 (1981) (“The defendant’s insurance policy defines a pedestrian as ‘a person who is walking or who is operating a bicycle, tricycle or similar vehicle, or a person on horseback or in a vehicle drawn by an animal.’”). Furthermore, each of those other jurisdictions employ the reasonable expectation doctrine, which requires courts to interpret insurance policies from the standpoint of the insured’s expectations. U.S. Life Title Ins. Co. of Dallas v. Hutsell, 164 Ga. App. 443, 296 S.E.2d 760, 763 (1982); Home Indem. Ins. Co. v. Merchants Distribs., Inc., 396 Mass. 103, 483 N.E.2d 1099, 1101 (1985); Zacarias v. Allstate Ins. Co., 168 N.J. 590, 775 A.2d 1271-72 (2001). But our Supreme Court “has on several occasions specifically declined to adopt the doctrine of reasonable expectations, under which the insured’s subjective expectation of coverage determines the insurer’s liability.” Boeing, 113 Wn.2d at 894; see Quadrant, 154 Wn.2d at 172 (“[E]xpectations of the insured cannot override the plain language of the contract.”). These cases are not relevant.

McLaughlin next argues that public policy concerns weigh in favor of defining a bicyclist as a “pedestrian” because bicyclists, like pedestrians, are “particularly vulnerable and susceptible to injury on the roadway.” But as

explained, an undefined term in an insurance policy must be given its plain, ordinary, and popular meaning. McLaughlin cites no authority for the proposition that the plain meaning of an undefined term can be set aside on policy grounds. Therefore, we assume that he found none. 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 authorities, but may assume that counsel, after diligent search, has found none.”).

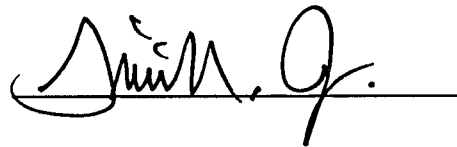
McLaughlin argues that refusing to recognize a bicyclist as a pedestrian under the plain meaning of that word will lead to an absurd result. To illustrate this argument, he claims that a baby in a stroller would not be covered by the dictionary definition of “pedestrian.” But to resolve this case, we need not determine whether such a baby would be an insured under McLaughlin’s policy.

McLaughlin also argues that we should look to “the purpose of the laws at issue” when defining “pedestrian.” As an example, he cites to Pudmaroff v. Allen, 138 Wn.2d 55, 977 P.2d 574 (1999), a Supreme Court case that examined whether a bicyclist was a “pedestrian” under former RCW 46.61.235(1) (1993), which required drivers to stop to allow pedestrians to cross the street in crosswalks. Pudmaroff, 138 Wn.2d at 60. The Supreme Court held that the definition of “pedestrian” in RCW 46.04.400 as a person “afoot” did not overrule prior case law establishing bicyclists would be treated the same as pedestrians when they were in a crosswalk. Pudmaroff, 138 Wn.2d at 64-65. The court explained that to hold otherwise would yield an absurd result because under such an interpretation, a driver would not be liable under RCW 46.61.235(1) for

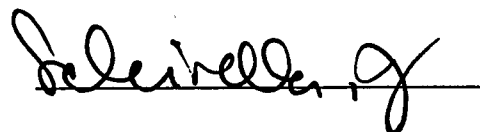
hitting a child riding his or her bicycle across a crosswalk. Pudmaroff, 138 Wn.2d at 64-65. But Pudmaroff is not controlling here. McLaughlin was not in a crosswalk when he was hit by Moore's car door—he was riding down a busy street in downtown Seattle. Furthermore, the term “pedestrian” in his insurance policy is not subject to principles of statutory interpretation, but to the principles of contract interpretation. The analysis of an undefined term in an insurance policy is straightforward and requires only that we determine the plain, ordinary, and popular meaning of “pedestrian.” We need not look to the purpose of any laws regulating pedestrians or bicyclists for this conclusion. Therefore, McLaughlin’s reliance on Pudmaroff is misplaced.

Finally, McLaughlin argues that to the extent the term “pedestrian” is ambiguous in the policy, the ambiguity should be construed against Travelers, who drafted the contract. He is correct that “[a]mbiguous policy language must be liberally construed in the insured’s favor.” Gull Indus., Inc. v. State Farm Fire & Cas. Co., 181 Wn. App. 463, 470-71, 326 P.3d 782 (2014). But here, “pedestrian” is not ambiguous under either the dictionary definition or RCW 48.22.005(11). Therefore, we are not required to construe “pedestrian” in McLaughlin’s favor.

We affirm.

A handwritten signature in cursive script, appearing to read "Smith", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Beach", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Schellinger", written over a horizontal line.

MEDICAL PAYMENTS COVERAGE SECTION
Coverage C – Medical Payments

Insuring Agreement

A. We will pay the usual and customary charge for reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by an accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

We have the right to review expenses incurred to determine if they are reasonable and necessary, and not in excess of the usual and customary charge for services. We may use any or all of the following sources to decide if any medical expense is usual and customary, reasonable, necessary and caused by an accident. These sources may include:

1. Our review of medical records and test results, or review by persons or services chosen by us;
2. Published or public sources of medical expense information;
3. Computer programs for analysis of medical treatment and expenses; and
4. Exams by physicians we select.

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.
2. Any other person while "occupying":
 - a. "Your covered auto"; or
 - b. A motor vehicle that you do not own while being operated by you or a "resident relative".

Exclusions

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motor vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (2.) does not apply to a vehicle used for a:
 - a. Share-the-expense car pool;
 - b. Charitable purpose; or
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "resident relative"; or
 - b. Furnished or available for the regular use of any "resident relative".
 However, this Exclusion (6.) does not apply to you.
7. Sustained while "occupying" a vehicle without a reasonable belief that such "insured" is entitled to do so. This Exclusion (7.) does not apply to a "resident relative" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto or sport utility vehicle;
 - b. Pickup or van, other than "your covered auto", with a Gross Vehicle Weight Rating of 10,000 lbs. or less; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
11. Sustained while "occupying" any vehicle while participating or competing in, or practicing or preparing for, any prearranged or organized:
 - a. Racing contest, meet or rally, whether against another vehicle or against time;
 - b. Demolition contest;

- c. Stunting activity; or
- d. High performance driving or racing instruction course or school.

This Exclusion (11.) applies only while the vehicle is at a location, whether temporary or permanent, established for any of the activities listed above.

- 12. Sustained while "occupying" "your covered auto" during a period it is rented or leased by you to others. However, this Exclusion (12.) does not apply to you or a "resident relative".

Limit Of Liability

- A. The limit of liability shown in the Declarations for Coverage C is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 - 1. "Insureds";
 - 2. Claims made;
 - 3. Vehicles or premiums shown in the Declarations; or
 - 4. Vehicles involved in the auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this Coverage Section and:
 - 1. Any other Coverage Section or part of this policy; or
 - 2. Any other personal auto policy issued to you by us or any of our affiliates.

Other Insurance

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", will be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

POLICY NUMBER:



PERSONAL AUTO
AS 2268 11 06

PERSONAL INJURY PROTECTION COVERAGE - WASHINGTON

With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

SCHEDULE

<input type="checkbox"/> BASIC LIMITS PERSONAL INJURY PROTECTION COVERAGE	
Benefits	Limit of Liability
Medical Expenses	\$10,000
Funeral Expenses	\$ 2,000
Income Continuation	\$10,000 subject to a maximum of \$200 per week
Loss of Services	\$5,000 subject to \$40 per day not to exceed \$200 per week
If indicated as applicable below or in the Declarations, the following increased limits personal injury protection benefits apply, instead of the corresponding basic limits personal injury protection benefits.	
<input type="checkbox"/> INCREASED LIMITS PERSONAL INJURY PROTECTION COVERAGE	
Benefits	Limit of Liability
Medical Expenses	\$35,000
Funeral Expenses	\$ 2,000
Income Continuation	\$35,000 subject to a maximum of \$700 per week
Loss of Services	\$40 per day

I. DEFINITIONS

The Definitions section is amended as follows:

A. The following definitions are replaced:

1. "Family member" means a person related to the "named insured" by:
 - a. Blood;
 - b. Marriage; or
 - c. Adoption;
 including a ward or foster child, who is a resident of the "named insured's" household. However, "family member" does not include the "named insured's" spouse.
2. "Your covered auto" means a "motor vehicle" owned by the "named insured":
 - a. To which the bodily injury liability coverage of this policy applies; and

b. For which a specific premium is charged.

B. The following definitions are added:

1. "Motor vehicle" means a self-propelled land motor vehicle or trailer. However, "motor vehicle" does not include a:
 - a. Farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads.
 - b. Vehicle operated on rails or crawler-treads.
 - c. Vehicle located for use as a residence or premises.
 - d. Motor home.
 - e. Moped.
 - f. Motorcycle.

2. "Named insured" means:
 - a. The person named in the Declarations; and
 - b. That person's resident spouse.
 3. "Pedestrian" means any person not "occupying" a motor vehicle.
- C. "Insured" as used in this endorsement means:
1. The "named insured" or any "family member" while:
 - a. "Occupying" or using; or
 - b. A "pedestrian" struck by; a "motor vehicle".
 2. Any other person while:
 - a. "Occupying" or using; or
 - b. A "pedestrian" struck by; "your covered auto".
- D. "Necessary medical" - when applied to services incurred by an insured under PART B - MEDICAL PAYMENTS COVERAGE - means services or supplies provided by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by us or someone on our behalf, are:
1. Required to identify or treat an injury caused by an accident covered by this policy;
 2. Consistent with symptoms, diagnosis, and treatment of the covered person's injury and appropriately documented in the covered person's medical records;
 3. provided in accordance with recognized standards of care for the covered person's injury at the time the charge is incurred;
 4. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
 5. Not primarily for the convenience of the covered person, or his or her physician, hospital, or other health care provider;
 6. The most appropriate supply or level of service that can be safely provided to the covered person; and
 7. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment;
- However, necessary medical services or supplies do not include expenses for any of the following:
1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or a supply, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed.
 3. In patient services or supplies provided to the covered person when these could safely have been provided to the covered person as an outpatient.
- E. "Reasonable expenses" - when applied to medical services incurred by an insured under PART B - MEDICAL PAYMENTS COVERAGE - means the least of:
1. The actual charge;
 2. The charge negotiated with a provider; or
 3. The charge determined by us based on methodology using a database designed to reflect amounts charged by providers of medical services or supplies within the same or similar geographic region in which you receive your medical services or supplies. The database will reflect (a) service charge data regardless of the provider's specialty and (b) in the case of new procedures, services or supplies, or existing procedures, services or supplies for which there is little or no charge data, a comparison to commonly used procedures, services or supplies.
- F. "Reasonable and necessary expenses" - when applied to any coverage involving medical expenses under this endorsement incurred by an insured, means services or supplies provided by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by us or someone on our behalf, are:
1. Required to identify or treat an injury caused by an accident covered by this policy;
 2. Consistent with symptoms, diagnosis, and treatment of the covered person's injury and appropriately documented in the covered person's medical records;
 3. Provided in accordance with recognized standards of care for the covered person's injury at the time the charge is incurred;
 4. Consistent with published practice



guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;

5. Not primarily for the convenience of the covered person, or his or her physician, hospital, or other health care provider;
6. The most appropriate supply or level of service that can be safely provided to the covered person; and
7. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.
8. Reasonable in terms of the charge for the service or supply provided.

However, reasonable and necessary expenses do not include expenses for any of the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed.
3. Inpatient services or supplies provided to the covered person when these could safely have been provided to the covered person as an outpatient.

"reasonable" - When applied to the charge for the service or supply provided means the least of:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by us based on a methodology using a database designed to reflect amounts charged by providers of medical services or supplies within the same or similar geographic region in which you receive your medical services or supplies. The database will reflect (a) service charge data regardless of the provider's specialty and (b) in the case of new procedures, services or supplies, or existing procedures, services or supplies for which there is little or no charge data, a comparison to commonly used procedures, services or supplies.

II. PERSONAL INJURY PROTECTION COVERAGE INSURING AGREEMENT

A. We will pay personal injury protection benefits to or for an "insured" who sustains "bodily injury". The "bodily injury" must be caused by an accident arising out of the ownership, maintenance or use of a "motor vehicle" as a "motor vehicle".

B. Subject to the limits shown in the Schedule or Declarations, for the personal injury protection coverage benefits that apply, personal injury protection benefits consist of the following:

1. Medical Expenses. All reasonable and necessary expenses incurred within 3 years from the date of the accident for:

- a. Medical, surgical, x-ray and dental services;
- b. Pharmaceuticals, prosthetic devices and eye glasses; and
- c. Necessary ambulance, hospital, professional nursing.

2. Funeral Expenses.

3. Income Continuation. 85% of an "insured's" loss of income from work, less other income earned, during a period of disability due to "bodily injury". Income continuation:

- a. Is payable only for the period beginning 14 days after the accident; and
- b. Ends when:

(1) The "insured" is able to resume the duties of that "insured's" usual occupation;

(2) 52 weeks have elapsed since the 14th day after the accident; or

(3) The "insured" dies.

The combined weekly payment for Basic Limits Personal Injury Protection Coverage to the "insured" for loss of income under:

- a. Any workers' compensation benefits;
- b. Personal Injury Protection Coverage provided under this policy; and
- c. Any other disability or loss of income benefits;

shall not exceed 85% of the "insured's" weekly income.

The weekly payment for Increased Limits Personal Injury Protection Coverage to the "insured" for loss of income shall not exceed 85% of the "insured's" weekly income.

4. Loss of Services. Reasonable expenses incurred during a period of disability for essential services instead of those an "insured" would have performed without income. Loss of services does not include expenses:
- a. For services obtained from members of the "insured's" household; and
 - b. Incurred after the earliest of the following:
 - (1) The date that the "insured" is able to resume essential services;
 - (2) 52 weeks since the date of the accident; or
 - (3) The "insured" dies.

EXCLUSIONS

- A. We do not provide Personal Injury Protection Coverage for "bodily injury" sustained by any "insured":
 1. Who intentionally causes injury to himself.
 2. While:
 - a. Participating in any prearranged or organized racing or speed contest; or
 - b. In practice or preparation for any such contest.
 3. If that person's "bodily injury" results or arises from the "insured's" use of a "motor vehicle" in the commission of a felony.
- B. We do not provide Personal Injury Protection Coverage for "bodily injury" sustained by:
 1. The "named insured" or any "family member" while "occupying" any "motor vehicle", other than "your covered auto", which is:
 - a. Owned by; or
 - b. Furnished for the regular use of: the "named insured".
 2. Any "family member" while "occupying" any "motor vehicle" which is:
 - a. Owned by; or
 - b. Furnished for the regular use of: that "family member".
- C. We do not provide Personal Injury Protection Coverage for "bodily injury":
 1. Due to War (declared or undeclared), or to an act or condition incident to such circumstances.
 2. Resulting from the:
 - a. Radioactive;
 - b. Toxic;
 - c. Explosive; or
 other hazardous properties of nuclear material.

LIMIT OF LIABILITY

- A. The limits of liability shown in the Schedule or Declarations for the Personal Injury Protection Coverage benefits that apply are the most we will pay to or for any one "insured" injured in any one "motor vehicle" accident, regardless of the number of:
 1. "Insureds";
 2. Policies or bonds applicable;
 3. "Your covered autos" or premiums shown in the Declarations; or
 4. Claims made.
- B. Any amounts payable under this coverage shall be reduced by any amount paid or payable under any:
 1. Workers' compensation law; or
 2. Any other similar medical or disability benefits law, excluding Medicare.

OTHER INSURANCE

- A. If there is other applicable automobile medical payments coverage or personal injury protection coverage, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.
- B. Any insurance we provide with respect to an "insured" while:
 1. "Occupying"; or
 2. A "pedestrian" struck by;

a temporary substitute or a non-owned automobile shall be excess over any other valid and collectible automobile medical payments coverage or personal injury protection coverage.

III. PART E - DUTIES AFTER AN ACCIDENT OR LOSS

Part E is amended as follows:

DUTIES AFTER AN ACCIDENT OR LOSS

- A. Duties A., B.3. and B.5. are replaced by the following:

A person seeking Personal Injury Protection Coverage must:

 1. In the event of an accident, give us or our authorized agent prompt written notice of the accident. The notice should identify the "insured" and contain reasonably obtainable information regarding how, when and where the accident happened.
 2. Submit to, when and as often as we reasonably require, physical exams by physicians we select. We will pay for these exams.



3. Give us:
- Prompt written proof of claim, under oath if required; and
 - Any other information which may assist us in determining the amount due and payable.
- B. The following duties are added:
- A person seeking Personal Injury Protection Coverage must at our request:
 - Give us authorization to enable us to obtain:
 - Medical reports;
 - Copies of records; and
 - Information regarding loss of income as a condition for receiving income continuation.
 - Furnish us with reasonable medical proof of that person's inability to work.
 - If a person takes legal action to recover damages for "bodily injury", against a person or organization who may be legally liable, a copy of the summons and complaint or other process served in connection with such action shall be promptly forwarded to us.

IV. PART F - GENERAL PROVISIONS

Part F is amended as follows:

- A. The following is added to the Our Right To Recover Payment provision:
- OUR RIGHT TO RECOVER PAYMENT**
- C. Any legal expenses incurred by us or that person, in recovering payments which benefit both parties, shall be shared equally by the parties. This provision (C.) applies to legal expenses incurred in a legal action for damages or otherwise.

- B. Paragraph B. of the Policy Period And Territory provision is replaced by the following:

POLICY PERIOD AND TERRITORY

- B. The policy territory is:

- The United States of America, its territories or possessions; or
- Canada.

- C. The following provisions are added:

ARBITRATION

If we and a person seeking Personal Injury Protection Coverage do not agree on the amount payable under this coverage, the matter shall, upon mutual written agreement, be decided by arbitration. In this event:

- The two parties must agree in writing on the selection of a single arbitrator.
- If the parties fail to agree on a single arbitrator, each party shall, upon written demand of either, select a competent disinterested arbitrator. The two arbitrators will select a third. A decision agreed to by any two arbitrators will be binding.
- Each party agrees to consider itself bound by any award by the arbitrator or arbitrators.

COORDINATION OF COVERAGE

Any Part B coverage or Underinsured Motorists Coverage we provide shall be excess over any payment made under Personal Injury Protection Coverage provided by this policy.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.



Automobile Policy Amendment

Policy Number: 4169-90-07-52

Automobile Personal Injury Protection - Washington

We agree with *you* subject to all terms of this Amendment and to all policy provisions except as modified by this Amendment.

We will provide the following benefits for loss and expense incurred due to *bodily injury* caused by accident and arising out of the ownership, maintenance or use of an *automobile*:

1. **Medical and hospital benefits** to or for each *insured*.
2. Benefits for funeral expenses for each *insured*.
3. **Income continuation benefits** to or for each *insured* who at the time of the accident was usually engaged in an occupation for pay.
4. **Loss of services benefits** to *you* if *you* suffer *bodily injury* caused by an accident while *occupying* or while a *pedestrian* through being struck by an *automobile*.

DEFINITIONS

The definitions of *bodily injury*, *non-owned auto*, *personal vehicle sharing program*, *personal vehicle sharing*, *relative*, *temporary substitute auto*, *transportation network company*, *war*, and *you* in Section I of the policy apply to this coverage. The following special definitions apply:

1. **Automobile** means a *passenger car* that is registered or principally garaged in this state other than:
 - a) a farm type tractor or other self-propelled equipment designed for use principally off public roads;
 - b) a vehicle operated on rails or crawler treads;
 - c) a vehicle located for use as a residence;
 - d) a moped;
 - e) a motor home.
2. **Income Continuation Benefits** means payments for the *insured's* loss of income from work because of *bodily injury* sustained by the *insured* in an automobile accident, less income earned during the benefit payment period. The combined weekly payment an *insured* may receive under personal injury protection, workers compensation, disability insurance, or other *income continuation benefits* may not exceed 85% of the *insured's* weekly income from work. The benefit payment period begins 14 days after the date of the automobile accident and ends at the earliest of the following:
 - a) the date on which the *insured* is reasonably able to perform the duties of his or her usual occupation, or
 - b) 54 weeks from the accident date, or
 - c) the date of the *insured's* death.
3. **Insured** means:
 - a) the named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or
 - b) a person who sustains *bodily injury* caused by accident while:
 - (i) *occupying* or using the *insured automobile* with the permission of the named insured; or
 - (ii) a *pedestrian* accidentally struck by the *insured automobile*.
4. **Insured Automobile** means an *automobile* described on the declarations page of the policy.
5. **Loss of Services Benefits** means reimbursement for payment to others, not members of the *insured's* household, for expenses reasonably incurred for services in lieu of those the *insured* would usually have performed for his or her household without compensation, provided the services are actually rendered.

Reimbursement for loss of services ends on the earliest of the following:

- a) the date on which the *insured* person is reasonably able to perform those services;
- b) 52 weeks from the date of the automobile accident; or
- c) the date of the *insured's* death.

6. **Medical and Hospital Benefits** means payments for all **reasonable and necessary expenses** incurred by or on behalf of the *insured* for injuries sustained as a result of an automobile accident for necessary:

- a) pharmaceuticals, eyeglasses, hearing aids, and prosthetic devices; and
- b) medical, surgical, X-ray, dental, ambulance, hospital, and professional nursing services

that are rendered by a licensed medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the **bodily injury** sustained in the accident. The medical treatment or diagnostic test must be consistent with the *insured's* clinically supported symptoms, diagnosis or indications, the treatment must be in accordance with the standards of good practice and standard professional treatment protocol, and must not include unnecessary testing or treatment.

Semi-private room charges are the most we will pay unless intensive care is medically required.

Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

7. **Occupying** means in or upon, entering into or alighting from.

8. **Passenger Car** means every motor vehicle, designed for carrying ten passengers or less and used for the transportation of persons, except motorcycles and motor-driven cycles.

9. **Pedestrian** means a natural person not **occupying** a motor vehicle.

10. **Reasonable and necessary expenses** means expenses that are the lowest of the following charges:

- a) The usual and customary fees charged by a majority of healthcare providers who provide similar medical services in the geographical area in which the charges were incurred;
- b) The fee specified in any fee schedule:
 - i) applicable to medical payments, no-fault coverage, personal injury protection coverage included in motor vehicle liability policies issued in the state where medical services are provided; and
 - ii) as prescribed or authorized by the law of the state where medical services are provided;
- c) The fees agreed to by both the *insured's* health care provider and us; or
- d) The fees agreed upon between the *insured's* health care provider and a third party when we have a contract with such third party.

11. **Ride-sharing** means the use of any vehicle by any person in connection with a **transportation network company** from the time a person logs on to or signs in to any computer or digital application or platform that connects or matches driver(s) with passenger(s) until the time a person logs out of or signs off of any such application or platform, including while en route to pick up passenger(s) and while transporting passenger(s).

COVERAGE LIMITS

Payments made under Personal Injury Protection Coverage are limited to the **reasonable and necessary expenses** incurred. Regardless of the number of claims made or *insured automobiles* to which this coverage applies, our limits of liability under this coverage are as follows for each *insured* in any one accident:

Option A

1. **Medical and hospital benefits** of \$35,000.
2. Funeral benefit of \$2,000.
3. **Income continuation benefits** of \$35,000, subject to a limit of \$700 per week.
4. **Loss of services benefits** of \$14,600. The maximum benefit is \$40 per day.

Option B

1. **Medical and hospital benefits** of \$10,000.
2. Funeral expense benefits of \$2,000.
3. **Income continuation benefits** of \$10,000 subject to a limit of \$200 per week
4. **Loss of services benefits** of \$5,000 subject to a limit of \$200 per week. The maximum benefit is \$40 per day.

We will reduce any amount payable under this coverage by the amount paid or payable under any workers compensation, or similar medical or disability benefits law.

In determining payment made under Personal Injury Protection coverage, we have a right to:

1. Obtain and use peer reviews and medical bill reviews of medical services and expenses to determine if they are **reasonable and necessary expenses** for the **bodily injury** sustained;

2. Use medical examinations of the *insured* to determine if the *bodily injury* was caused by an automobile accident and whether the medical expenses and services are *reasonable and necessary expenses* for the *bodily injury* sustained;
3. Enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

OTHER INSURANCE

If there is other Automobile Medical Payments or Automobile Personal Injury Protection for *medical and hospital benefits* insurance, we will not be liable for a greater part of any loss under this coverage than our limit of liability bears to the total limit of liability under applicable insurance. However, if the accident causing injury occurs while *occupying* or as a *pedestrian* through being struck by a *temporary substitute auto* or *non-owned auto*, this insurance shall be excess over any other valid and collectible Automobile Medical Payments or Automobile Personal Injury Protection insurance.

EXCLUSIONS

1. There is no coverage to or for any person who intentionally injures himself or herself.
2. There is no coverage to or for any person injured while participating in any prearranged or organized racing or speed contest or in practice or preparation for such a contest.
3. There is no coverage for *bodily injury* due to war, whether or not declared, or to an act or condition incident to such circumstances.
4. There is no coverage for *bodily injury* resulting from radioactive, toxic, explosive, or other hazardous properties of nuclear material.
5. There is no coverage for *you* or a *relative* for injury suffered while *occupying any automobile* owned by *you* or furnished for *your* regular use if such motor vehicle is not described on the declaration page of the policy under which a claim is made.
6. There is no coverage for a *relative* while *occupying an automobile* owned by him or furnished for his regular use if such vehicle is not described on the declaration page of the policy under which a claim is made.
7. There is no coverage for an *insured* whose *bodily injury* results or arises from the *insured's* use of an automobile in the commission of a felony.
8. There is no coverage for any person or organization while any motor vehicle is operated, maintained or used as part of any *personal vehicle sharing* facilitated by any *personal vehicle sharing program*.
9. There is no coverage for any person while any motor vehicle is used for *ride-sharing*. This exclusion does not apply to *you* or any *relative* while a passenger and not operating the motor vehicle.

CONDITIONS

The following special conditions apply to this coverage:

1. **Policy Period; Territory.**
This coverage applies only to accidents occurring during the policy period, within the United States of America, its territories, possessions or Canada.
2. **Notice.**
As soon as practicable after an accident, written notice must be given to us stating:
a) the time, place and details of the accident; and
b) the names and addresses of the *insureds*.
If an *insured* or his legal representative files suit against a third party to recover damages for *bodily injury*, he must provide us with a copy of the pleadings.
3. **Action Against Us.**
No action will lie against us unless there has been full compliance with all the terms of this coverage.
4. **Proof of Claim.**
As soon as practicable, the *insured* or his representative must give us written proof of claim, under oath if required, and any other information that may assist us in determining the amount due and payable.
5. **Reports and Examinations.**
Upon each request, the *insured* or, in the event of his incapacity or death, his legal representative, must authorize us to obtain medical reports, copies of records and loss of income information. For *income continuation benefits* and *loss of services benefits*, we may require the *insured* to cooperate in furnishing us with reasonable medical proof of his inability to work. The *insured* shall submit to examination at our expense, by doctors chosen by us, as we reasonably require.
6. **Trust Agreement.**
If we make a payment under this coverage we will be entitled to recover the amount of our payment out of the proceeds of any settlement or judgment that the person to whom we made payment may recover from anyone who was legally liable for the *bodily injury*.

If the *insured*, or we, or both incur legal expenses in recovering payments which benefit both, the expenses will be divided in proportion to each party's share of the recovery. The person to whom we made payment will hold in trust for our benefit all rights of recovery which he may have against anyone because of the *bodily injury* and he will do whatever is necessary to secure his and our rights. The person shall deliver to us all instruments and papers necessary to secure his and our rights and obligations.

7. Subrogation.

When we make a payment under this coverage, we will be subrogated to all the *insured's* rights of recovery against others. After the *insured* has been fully compensated for his or her loss, we will have the right to recover up to the amount of our payment from the remaining proceeds of the settlement or judgment.

This means we will have the right to sue for or otherwise recover the loss from anyone else who may be held responsible. The *insured* will do nothing after a loss to prejudice these rights. The *insured* will help us to enforce these rights.

8. Arbitration.

If any person making claim under this coverage and we do not agree as to the amount payable, the dispute will be resolved:

- a) By binding, voluntary arbitration, if the person making the claim and we mutually agree to such arbitration; or
- b) By a civil lawsuit brought by an *insured* in a court of competent jurisdiction.

The arbitration shall commence within a reasonable period of time. Unless we mutually agree otherwise, a voluntary arbitration shall be composed of a single arbitrator selected by mutual agreement.

The arbitrator will then hear and determine the question(s) in dispute. Any arbitration will be limited to issues in actual dispute but will not include disputes involving the existence or policy limits of Personal Injury Protection Coverage. The written decision of the arbitrator shall be binding on the *insured* and us as to the amount of benefits payable under Personal Injury Protection. The arbitrator has no authority to award:

- a) Costs, expenses, interest or fees; or
- b) An amount in excess of the available Limit of Liability for Personal Injury Protection.

Attorney's fees and fees for expert witnesses are to be paid by the party incurring them. Both parties will share equally the cost of the arbitrator.

Unless both parties agree otherwise, the arbitration will be conducted in the county in which the *insured* resides or the county where the *insured* resided at the time of the accident. Relaxed rules of evidence shall apply, unless other rules of evidence are agreed to by the parties. The arbitration shall be conducted pursuant to arbitration rules similar to those of the American Arbitration Association, the Center for Public Resources, the Judicial Arbitration and Mediation Service, Washington Arbitration and Mediation Service Chapter 7.04 RCW, or any other rules of arbitration agreed to by the parties.

9. Payment of Loss.

We may, at our option, pay:

- a) the *insured*; or
- b) the parent or guardian of the *insured* if he is a minor; or
- c) the spouse, if the *insured* is incapacitated or deceased; or
- d) any person or organization who renders the services for the *insured*.

Any payment shall reduce the amount payable under this coverage. Payment of loss will not be an admission of liability to any person.

We will pay any personal injury protection benefits owed within 30 days after satisfactory proof of claim has been received by us.

We affirm this amendment.



W. C. E. Robinson
Secretary



William E. Roberts
President

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL INJURY PROTECTION COVERAGE - WASHINGTON

PP 05 69 01 10

SCHEDULE

BASIC LIMITS PERSONAL INJURY PROTECTION COVERAGE

Benefits	Limit Of Liability
Medical and Hospital Expenses	\$10,000
Funeral Expenses	\$ 2,000
Income Continuation	\$10,000 subject to a maximum of \$200 per week
Loss of Services	\$ 5,000 subject to \$40 per day not to exceed \$200 per week

If indicated as applicable below or in the Declarations, the following increased limits personal injury protection benefits apply, instead of the corresponding basic limits personal injury protection benefits.

INCREASED LIMITS PERSONAL INJURY PROTECTION COVERAGE

Benefits	Limit Of Liability
Medical and Hospital Expenses	\$35,000
Funeral Expenses	\$ 2,000
Income Continuation	\$35,000 subject to a maximum of \$700 per week
Loss of Services	\$14,600 subject to a maximum of \$40 per day

With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

I. Definitions

The **Definitions** section is amended as follows:

A. The following definitions are replaced:

1. "Family member" means a person related to the **named insured** by:

- a. Blood;
- b. Marriage;
- c. Adoption; or
- d. Domestic partnership registered under Washington law;

including a ward or foster child, who is a resident of the **named insured's** household. However, the **named insured's** spouse or domestic partner shall be considered a **named insured**.

2. "Your covered auto" means a motor vehicle owned by the **named insured**:

a. To which the bodily injury liability coverage of this policy applies; and

b. For which a specific premium is charged.

B. The following definitions are added:

1. "Motor vehicle" means a self-propelled land motor vehicle or trailer. However, "motor vehicle" does not include a:

a. Farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads.

b. Vehicle operated on rails or crawler treads.

c. Vehicle located for use as a residence or premises.

d. Motor home.

e. Moped.

PERSONAL INJURY PROTECTION COVERAGE - WASHINGTON

PP 05 69 01 10

f. Motorcycle.

2. "Named insured" means:

- a. The person named in the Declarations; and
- b. That person's resident spouse or domestic partner registered under Washington law.

3. "Pedestrian" means any person not occupying a motor vehicle.

C. "Insured" as used in this endorsement means:

1. The named insured or any family member while:

- a. Occupying or using; or
- b. A pedestrian struck by; a motor vehicle.

2. Any other person while:

- a. Occupying or using; or
- b. A pedestrian struck by; your covered auto.

II. Personal Injury Protection Coverage

Insuring Agreement

A. We will pay personal injury protection benefits to or for an insured who sustains **bodily injury**. The **bodily injury** must be caused by an accident arising out of the ownership, maintenance or use of a **motor vehicle** as a **motor vehicle**.

B. Subject to the limits shown in the Schedule or Declarations, for the personal injury protection coverage benefits that apply, personal injury protection benefits consist of the following:

1. Medical and Hospital Expenses

All reasonable and necessary expenses incurred within three years from the date of the accident for:

- a. Medical, surgical, x-ray and dental services;
- b. Pharmaceuticals, prosthetic devices and eye-glasses; and
- c. Necessary ambulance, hospital, professional nursing.

2. Funeral Expenses

3. Income Continuation

An insured's loss of income from work, less other income earned, during a period of disability due to **bodily injury**. Income continuation:

a. Is payable only for the period beginning 14 days after the accident; and

b. Ends when:

- (1) The insured is able to resume the duties of that insured's usual occupation;
- (2) 54 weeks have elapsed since the date of the accident; or
- (3) The insured dies.

The combined weekly payment for Personal Injury Protection coverage to the insured for loss of income under:

- a. Any workers' compensation benefits;
- b. Personal Injury Protection Coverage provided under this policy; and
- c. Any other disability or loss of income benefits;

shall not exceed 85% of the insured's weekly income.

4. Loss Of Services

Reasonable expenses incurred during a period of disability for essential services instead of those an insured would have performed without income. Loss of services does not include expenses:

- a. For services obtained from members of the insured's household; and
- b. Incurred after the earliest of the following:

- (1) The date that the insured is able to resume essential services;
- (2) 52 weeks since the date of the accident; or
- (3) The insured dies.

Exclusions

A. We do not provide Personal Injury Protection Coverage for **bodily injury** sustained by any insured:

- 1. Who intentionally causes injury to himself.

PERSONAL INJURY PROTECTION COVERAGE - WASHINGTON

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2. While:
 - a. Participating in any prearranged or organized racing or speed contest; or
 - b. In practice or preparation for any such contest.
 3. If that person's **bodily injury** results or arises from the **insured's** use of a **motor vehicle** in the commission of a felony.
- B. We do not provide Personal Injury Protection Coverage for **bodily injury** sustained by:**
1. The **named insured** or any **family member** while **occupying** any **motor vehicle**, other than that **your covered auto**, which is:
 - a. Owned by; or
 - b. Furnished for the regular use of:
the **named insured**.
 2. Any **family member** while **occupying** any **motor vehicle** which is:
 - a. Owned by; or
 - b. Furnished for the regular use of:
that **family member**.
- C. We do not provide Personal Injury Protection Coverage for **bodily injury**:**
1. Due to War (declared or undeclared), or to an act or condition incident to such circumstances.
 2. Resulting from the:
 - a. Radioactive;
 - b. Toxic;
 - c. Explosive; orother hazardous properties of nuclear material.

Limit Of Liability

- A. The Limits Of Liability** shown in the Schedule or Declarations for the Personal Injury Protection Coverage benefits that apply are the most we will pay to or for any one **insured** injured in any one **motor vehicle** accident, regardless of the number of:
1. **Insureds**;
 2. Policies or bonds applicable;

3. **Your covered autos** or premiums shown in the Declarations; or

4. Claims made.

B. Any amounts payable under this coverage shall be reduced by any amount paid or payable under any:

1. Workers' compensation law; or

2. Any other similar medical or disability benefits law, excluding Medicare.

Other Insurance

A. If there is other applicable automobile medical payments coverage or personal injury protection coverage, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

B. Any insurance we provide with respect to an insured while:

1. **Occupying**; or

2. A **pedestrian** struck by;

a temporary substitute or a non-owned automobile shall be excess over any other valid and collectible automobile medical payments coverage or personal injury protection coverage.

III. Part E - Duties After An Accident Or Loss

Part E is amended as follows:

Duties After An Accident Or Loss

A. Duties A., B.3. and B.5. are replaced by the following:

A person seeking Personal Injury Protection Coverage must:

1. In the event of an accident, give us or our authorized agent prompt written notice of the accident. The notice should identify the **insured** and contain reasonably obtainable information regarding how, when and where the accident happened.

2. Submit to, when and as often as we reasonably require, physical exams by physicians we select. We will pay for these exams.

3. Give us:

a. Prompt written proof of claim, under oath if required; and

PERSONAL INJURY PROTECTION COVERAGE - WASHINGTON

PP 05 69 01 10

- b. Any other information which may assist us in determining the amount due and payable.

B. The following duties are added:

1. A person seeking Personal Injury Protection Coverage must at our request:
 - a. Give us authorization to enable us to obtain:
 - (1) Medical reports;
 - (2) Copies of records; and
 - (3) Information regarding loss of income as a condition for receiving income continuation.
 - b. Furnish us with reasonable medical proof of that person's inability to work.
2. If a person takes legal action to recover damages for **bodily injury**, against a person or organization that may be legally liable, a copy of the summons and complaint or other process served in connection with such action shall be promptly forwarded to us.

IV. Part F - General Provisions

Part F is amended as follows:

- A. The following is added to the **Our Right To Recover Payment Provision**:

Our Right To Recover Payment

- C. Any legal expenses incurred by us or that person, in recovering payments which benefit both parties, shall be shared equally by the parties. This Provision (C.) applies to legal expenses incurred in a legal action for damages or otherwise.
- D. We shall be entitled to a recovery under Paragraph A. or B. only after the person has been fully compensated for damages.

- B. Paragraph B. of the **Policy Period And Territory Provision** is replaced by the following:

Policy Period And Territory

- B. The policy territory is:

1. The United States of America, its territories or possessions; or
2. Canada.

- C. The following provisions are added:

Arbitration

1. If we and an **insured** do not agree on the amount of benefits payable under this coverage, the matter shall, upon mutual written agreement, be decided by arbitration. The two parties must agree in writing on the selection of a single arbitrator. If the parties fail to agree on a single arbitrator, each party shall upon written demand of either, select a competent disinterested arbitrator. The two arbitrators will select a third.
2. Unless the parties agree otherwise, arbitration will take place in the county in which the **insured** lives or the county where the **insured** lived at the time of the accident.
3. A decision agreed to by any two arbitrators will be binding.

Coordination Of Coverage

Any Part B coverage or Underinsured Motorists Coverage we provide shall be excess over any payment made under Personal Injury Protection Coverage provided by this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL INJURY PROTECTION COVERAGE – WASHINGTON

SCHEDULE

BASIC LIMITS PERSONAL INJURY PROTECTION COVERAGE	
Benefits	Limit Of Liability
Medical and Hospital Expenses	\$ 10,000
Funeral Expenses	\$ 2,000
Income Continuation	\$ 10,000 subject to a maximum of \$200 per week
Loss Of Services	\$ 5,000 subject to \$40 per day not to exceed \$200 per week

If indicated as applicable below or in the Declarations, the following increased limits personal injury protection benefits apply, instead of the corresponding basic limits personal injury protection benefits.

INCREASED LIMITS PERSONAL INJURY PROTECTION COVERAGE

Benefits	Limit Of Liability
Medical and Hospital Expenses	\$ 35,000
Funeral Expenses	\$ 2,000
Income Continuation	\$ 35,000 subject to a maximum of \$700 per week
Loss Of Services	\$ 14,600 subject to a maximum of \$40 per day

With respect to coverage provided by this endorsement, the provisions of the Policy apply unless modified by the endorsement.

I. Definitions

The Definitions section is amended as follows:

A. The following definitions are replaced:

1. "Family member" means a person related to the "named insured" by:
 - a. Blood;
 - b. Marriage;
 - c. Adoption; or
 - d. Domestic partnership registered under Washington law;including a ward or foster child, who is a resident of the "named insured's" household. However, the "named insured's" spouse or domestic partner shall be considered a "named insured".
2. "Your covered auto" means a "motor vehicle" owned by the "named insured":
 - a. To which the bodily injury liability coverage of this Policy applies; and

b. For which a specific premium is charged.

B. The following definitions are added:

1. "Motor vehicle" means a self-propelled land motor vehicle or trailer. However, "motor vehicle" does not include a:
 - a. Farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads.
 - b. Vehicle operated on rails or crawler-treads.
 - c. Vehicle located for use as a residence or premises.
 - d. Motor home.
 - e. Moped.
 - f. Motorcycle.

2. "Named insured" means:
 - a. The person named in the Declarations; and
 - b. That person's resident spouse or domestic partner registered under Washington law.
 3. "Pedestrian" means any person not "occupying" a motor vehicle.
- C. "Insured" as used in this endorsement means:
1. The "named insured" or any "family member" while:
 - a. "Occupying" or using; or
 - b. A "pedestrian" struck by; a "motor vehicle".
 2. Any other person while:
 - a. "Occupying" or using; or
 - b. A "pedestrian" struck by; "your covered auto".

II. Personal Injury Protection Coverage Insuring Agreement

- A. We will pay personal injury protection benefits to or for an "insured" who sustains "bodily injury". The "bodily injury" must be caused by an accident arising out of the ownership, maintenance or use of a "motor vehicle" as a "motor vehicle".
- B. Subject to the limits shown in the Schedule or Declarations, for the personal injury protection coverage benefits that apply, personal injury protection benefits consist of the following:
1. **Medical And Hospital Expenses**
All reasonable and necessary expenses incurred within three years from the date of the accident for:
 - a. Medical, surgical, x-ray and dental services;
 - b. Pharmaceuticals, prosthetic devices and eyeglasses; and
 - c. Necessary ambulance, hospital, professional nursing.
 2. **Funeral Expenses**
 3. **Income Continuation**
An "insured's" loss of income from work, less other income earned, during a period of disability due to "bodily injury". Income continuation:
 - a. Is payable only for the period beginning 14 days after the accident; and

- b. Ends when:
 - (1) The "insured" is able to resume the duties of that "insured's" usual occupation;
 - (2) 54 weeks have elapsed since the date of the accident; or
 - (3) The "insured" dies.

The combined weekly payment for Personal Injury Protection Coverage to the "insured" for loss of income under:

- a. Any workers' compensation benefits;
- b. Personal Injury Protection Coverage provided under this Policy; and
- c. Any other disability or loss of income benefits;

shall not exceed 85% of the "insured's" weekly income.

4. Loss Of Services

Reasonable expenses incurred during a period of disability for essential services instead of those an "insured" would have performed without income. Loss of services does not include expenses:

- a. For services obtained from members of the "insured's" household; and
- b. Incurred after the earliest of the following:
 - (1) The date that the "insured" is able to resume essential services;
 - (2) 52 weeks since the date of the accident; or
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Exclusions

- A. We do not provide Personal Injury Protection Coverage for "bodily injury" sustained by any "insured":
1. Who intentionally causes injury to himself.
 2. While:
 - a. Participating in any prearranged or organized racing or speed contest; or
 - b. In practice or preparation for any such contest.

3. If that person's "bodily injury" results or arises from the "insured's" use of a "motor vehicle" in the commission of a felony.
 4. While a "motor vehicle" is being used as a public or livery conveyance. This includes but is not limited to any period of time a "motor vehicle" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.
- B. We do not provide Personal Injury Protection Coverage for "bodily injury" sustained by:
1. The "named insured" or any "family member" while "occupying" any "motor vehicle", other than "your covered auto", which is:
 - a. Owned by; or
 - b. Furnished for the regular use of: the "named insured".
 2. Any "family member" while "occupying" any "motor vehicle" which is:
 - a. Owned by; or
 - b. Furnished for the regular use of: that "family member".
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 other hazardous properties of nuclear material.

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 2. Submit to, when and as often as we reasonably require, physical exams by physicians we select. We will pay for these exams.
 3. Give us:
 - a. Prompt written proof of claim, under oath if required; and
 - b. Any other information which may assist us in determining the amount due and payable.

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Coordination Of Coverage

Any Part B coverage or Underinsured Motorists Coverage we provide shall be excess over any payment made under Personal Injury Protection Coverage provided by this Policy.

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Petition for Review* in Court of Appeals, Division I Cause No. 78534-6-I to the following:

Thomas Lether, WSBA #18089
Julia Norwood, WSBA #52876
Jenna Mark, WSBA #54366
Lether & Associates, PLLC
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Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052

Original E-filed with:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 11, 2019, at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

September 11, 2019 - 12:01 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 78534-6
Appellate Court Case Title: Todd McLaughlin, Appellant v. Travelers Commercial Insurance Company, Respondent

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Comments:

Petition for Review (Filing fee will be sent directly to Supreme Court).

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