No. 97652-0

SUPREME COURT

OF THE STATE OF WASHINGTON

TODD MCLAUGHLIN, a Washington Resident,

Petitioner,

v.

TRAVELERS COMMERCIAL INSURANCE COMPANY,
a foreign corporation

Respondent.

TRAVELERS COMMERCIAL INSURANCE COMPANY'S ANSWER TO AMENDED BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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I. INTRODUCTION

United Policyholder's ("United") Brief of Amicus Curiae fails to provide this Court with assistance in conducting its review under RAP 13.4. It does not identify any actual conflict of law with this Court or the Court of Appeals. Rather, it plainly asks this Court to depart from its longstanding jurisprudence regarding insurance policy interpretation.

Moreover, the issues presented in United's brief do not involve a Constitutional issue and are not of substantial public interest to the citizens of Washington. The citizens of Washington do not have any interest in this Court addressing the construction of an automobile policy issued in California.

United's brief is premised on the notion that Washington Courts should interpret the term "pedestrian" in a California auto policy by incorporating a Washington statute into that policy. The Court of Appeals soundly—and correctly—rejected this premise.

United further argues that Division I's analysis is shortsighted. On the contrary, Division I methodically applied the correct principles of policy interpretation and statutory interpretation.

Similarly, United urges this Court to ignore firmly established and unambiguous rulings of this Court regarding the construction of insurance policies. This Court has long held that insurance policy contracts and

undefined terms in a policy are given their plain and ordinary meaning as set forth in common dictionary definitions. Division I correctly applied that well-settled law in this case. United provides no cognizable basis for overturning this longstanding principle of Washington insurance law.

III. STATEMENT OF THE CASE

The facts that give rise to the present action have been extensively briefed by the parties. For this reason and in the interest of economy, Travelers will not fully reiterate the same.

To the extent that the Court requires a detailed recitation of facts, Travelers directs this Court to Travelers' Answer to McLaughlin's Petition for Review.

IV. ARGUMENT

A. Division I's Holding Is Not Contrary to Washington Statutes or Public Policy

United primarily focuses on two arguments: (1) that Washington's statutory and case law mandate Personal Injury Protection ("PIP") coverage to all named insureds arising out of an automobile accident regardless of the insured's status as a pedestrian, bicyclists and/or occupant of a vehicle, and (2) that public policy mandates the same. In making these arguments, United is asking the court to overrule the policy language, depart from established jurisprudence, and expand coverage to

those who are not contractually obligated to receive such coverage. This argument and United's subsequent analysis are fundamentally flawed and should be disregarded.

First, the Washington statutes addressing PIP coverage do not set forth a comprehensive mandatory PIP coverage scheme. *See, e.g.*, ORS 742.520-544. Instead, under Washington law, PIP coverage and the scope of PIP coverage is primarily a contractual construct. *See Schab v. State Farm Mut. Auto. Ins. Co.*, 41 Wn. App. 418, 422, 704 P.2d 621, 624 (1985) ("PIP coverage is not mandated by statute, it is a matter of contract."); *see also Tyrrell v. Farmers Ins. Co.*, 140 Wn.2d 129, 994 P.2d 833 (2000) (this Court solely analyzed the insured's policy to determine the scope of PIP coverage for the insured). Washington statutes do provide some basic requirements regarding an insurer's responsibility to offer PIP coverage, the amount of PIP coverage and type of benefits to be offered. *See* RCW 48.22.085-095. However, there is no Washington statute or other expression of law or public policy that mandates PIP coverage for all insureds struck by vehicles while they are pedestrians or bicyclists under their own policies.

Second, PIP coverage is contractual with regard to scope. *See Schab*, 41 Wn. App. at 422; *see also Rodenbough v. Grange Ins. Asso.*, 33 Wn. App. 137, 139, 652 P.2d 22, 23 (1982). Thus, the scope of PIP

coverage to insureds is set forth under the terms of the policy between the insured and the insurer and not under a statutory scheme, like United argues.

Similarly, United argues that public policy mandates PIP coverage for the named insured under all circumstances. This is simply untrue. The PIP statutes clearly enumerate multiple exclusions and/or exceptions to PIP coverage. *See* RCW 48.22.090 (listing seven exclusions or exceptions to PIP coverage). Likewise, the courts have ruled that there are circumstances in which PIP coverage does not apply to insureds based on the terms of the policy contract. *Tyrrell*, 140 Wn.2d at 137 (this Court upheld the denial of PIP coverage for an insured who sustained injuries when he stepped out of a camper attached to a truck because the camper was not being used as a motor vehicle); *see also Ramm v. Farmers Ins. Co. of Wash.*, 200 Wn. App. 1, 2, 401 P.3d 325, 325, (2017) (Division III also upholding denial of PIP coverage to an insured who sustained injuries when feeling ill, pulled over and fell out of his parked, but still running, vehicle because the insured was not operating the vehicle at the time of the injury). These cases unequivocally confirm that PIP coverage is not owed to insureds in all circumstances. In both cases, the insured was in or near a vehicle when the injury occurred, yet the courts found that PIP coverage was not required based on the scope of the coverage afforded by the terms

of the policy. The insured in this matter, like the insureds in *Tyrrell* and *Ramm*, does not qualify for coverage under the plain terms of his policy because PIP coverage is governed by contract. The inquiry in this case ends there.

Lastly, United cites to several additional cases in an attempt to support its position. However, these cases do not support United's position, and do not address PIP coverage scope or the central issue in this matter: the interpretation of a California auto policy by determining the plain meaning of the term "pedestrian" in that policy. Instead, these cases analyze PIP reimbursement after PIP is paid. *See Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 614, 160 P.3d 31, 33 (2007); *see also Thiringer v. Am. Motors Ins. Co.*, (91 Wn.2d 215, 219, 588 P.2d 191, 193 (1978). These cases, along with the others cited by United, do not discuss policy interpretation or the interpretation of an undefined terms. Consequently, United's argument is unrelated and should be disregarded.

B. Division I Correctly Applied Established Washington Law

Division I's analysis of the Travelers' policy and its interpretation of the term "pedestrian" was proper here. United argues that the court used one dictionary definition, to the exclusion of other authority, in making its decision. This is incorrect. Division I systematically set forth its analysis starting with the correct policy interpretation standard ("courts construe

insurance policies are contracts"), moved through the interpretation of an undefined term ("Undefined terms in an insurance contract must be given their 'plain, ordinary, and popular' meaning"), and ended by properly harmonizing RCW 48.22.005 with RCW 46.04.400.

After going through its analysis, Division I applied the 'plain, ordinary, and popular' meaning of the term "pedestrian" to correctly hold that McLaughlin was not a pedestrian under the policy. This is the correct analysis because, under Washington law, the plain meaning of a term controls the interpretation of an insured's policy. *Allstate Ins. Co. v. Peasley,* 131 Wn.2d 420, 424, 932 P.2d 1244, 1246 (1997) ("if … the language of in an insurance policy is clear and unambiguous, the court must enforce it as written and cannot modify the contract or create ambiguity where none exists.") In fact, this Court has consistently reaffirmed that, when interpreting an undefined term in a policy, the Court must look at the term's plain meaning per the term's standard dictionary definition. *Durant v. State Farm Mut. Auto. Ins. Co.,* 191 Wn.2d 1, 12, 419 P.3d 400, 405 (2018) ("undefined terms in insurance contracts 'must' be given their plain, ordinary, and popular meaning, and courts may look to standard English language dictionaries to determine common meaning"); *Overton v. Consol. Ins. Co.,* 145 Wn.2d 417, 428, 38 P.3d 322, 327 (2002) ("Undefined terms in an insurance contract are given 'plain,

ordinary, and popular meaning' as set forth in standard English language dictionaries."). *See also Boeing Co. v. Aetna Cas. & Sur. Co.,* 113 Wn.2d 869, 877, 784 P.2d 507(1990).

Applying *Boeing*, the Court of Appeals stated, "Undefined terms in an insurance contract must be given their 'plain, ordinary, and popular' meaning." [*Id.*](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." *McLaughlin v. Travelers Commercial Ins. Co.*, 9 Wn. App. 2d 675, 679, 446 P.3d 654, 656 (2019). In interpreting the term "pedestrian," Division I correctly followed this Court's longstanding and established legal analysis and decisions. In doing so, Division I soundly rejected the argument that the term "pedestrian" was ambiguous, consequently affirming the denial of coverage.

Likewise, Division I followed the proper statutory analysis to come to the correct result. Under Washington law, statutory definitions of words do not control the interpretation of a policy. Rather, the plain meaning of a contract controls unless it is "prohibited by statute, condemned by judicial decision, or contrary to … public policy." *Schab,* 41 Wn. App. at 418. This Court has consistently upheld that where the language of a policy limitation is clear, the court will give effect to that language unless it is

contrary to public policy. *See State Farm Mut. Auto. Ins. Co.,* 41 Wn. App. 418, 421, 704 P.2d 621, 623 (1985); *see also Mut. of Enumclaw Ins. Co. v. Wiscomb*, 97 Wn.2d 203, 210, 643 P.2d 441, 445 (1982) ("the insurer is ordinarily permitted to limit its liability unless inconsistent with public policy or some statutory provision.").

Here, after a careful examination of the cited authority, Division I followed this Court's longstanding analysis, writing:

> [N]one 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 proposition that insurance policies cannot violate applicable statute.

McLaughlin, 9 Wn. App. 2d at 680. Importantly, as Division I also pointed out, United has not provided the court with authority which shows that a definition in the Washington Insurance Code supersedes the plain meaning of a definition and is incorporated into a policy. *Id.* Furthermore, United has not shown how the Traveler's policy violates Washington statutes. Ultimately, United has not provided the court with grounds for a departure from this Court's longstanding and well-established precedent regarding interpretation of an insurance policy.

In order to reverse Division I's decision, United would have this Court rewrite its established jurisprudence. United has not, however, set

forth grounds for such a drastic departure from Washington law and the doctrine of Stare Decisis. Division I correctly applied the law in its decision and this Court should decline to accept review of this case.

V. CONCLUSION

Based on the foregoing, Travelers respectfully requests that this Court discard United's amicus brief and decline to accept review of this case.

DATED this 10th day of December, 2019.

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CERTIFICATE OF SERVICE

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

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DATED this 10th day of December, 2019.

*s/ Elizabeth Kruh*_____
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December 10, 2019 - 9:47 AM

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Comments:

Travelers Commercial Insurance Company's Answer to Amended Brief of Amicus Curiae United Policyholders

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