

No. 64626-5 I

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION I

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DALJEET SOMAL, individually,  
and on behalf of all those similarly situated,

Respondent,

v.

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Appellant.

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**RESPONDENT DALJEET SOMAL'S  
SUPPLEMENTAL BRIEF**

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**ORIGINAL**

Respondent Daljeet Somal submits this in response to the Supplemental Brief filed by Petitioner/Appellant Allstate concerning recent revision to WAC § 284-30-393 (effective July 8, 2011). In short, the recently revision to the regulation has no bearing on the issues in this appeal.

WAC § 284-30-393 addresses whether an insured's deductible must be included when an insurer pursues a recovery from a responsible party, and the extent to which any such recovery must be first allocated to the insured's deductible. The recent revision makes two changes to the previous WAC § 284-30-393 (effective August 21, 2009 to July 8, 2011). One change is that it altered the application of the provision from "subrogation recoveries" by the insurer to "any recoveries" by the insurer. *See Allstate's Supp. Br., Appx. A.* The other change is that it added the phrase cited by Allstate. Specifically, while both the current and previous versions provided that any funds recovered "must be allocated first to the insured for any deductible(s) incurred in the loss," the current revision adds: "less applicable comparable fault." *See Allstate's Supp. Br., Appx. A.*

The "less applicable comparable fault" language changes nothing in regards to the instant case, because comparative fault is not "applicable" to no-fault coverage such as the collision coverage at issue here. The

Supreme Court directly addressed and resolved this issue in *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 625, 160 P.3d 31 (2007) (an insured’s loss for make whole purposes is the “actual” loss, “without reduction to account for the insureds’ fault”).<sup>1</sup> Thus, there is no “applicable” comparable fault here. Moreover, to the extent the recent revision to WAC § 284-30-393 might be read to apply in these circumstances and to reduce the insured’s full compensation recovery under no fault coverage for purported comparable fault, the regulation cannot be reconciled with *Sherry* and therefore cannot stand.

July 19, 2011.



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<sup>1</sup> More detailed argument on *Sherry* is found in Somal’s Brief of Respondent at 15-18.

DECLARATION OF SERVICE

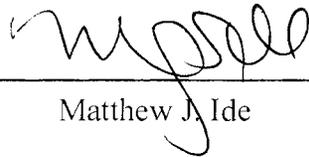
I certify that on July 19, 2011, I caused to be filed with the Court of Appeals, Division I, via messenger, Respondent Daljeet Somal's Supplemental Brief, and caused to be delivered, via first class mail, postage prepaid, a true and accurate copy to:

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Casualty Insurance Company

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Seattle, Washington, this 19th day of July, 2011.



Matthew J. Ide

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