

NO. 48270-3-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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DIVISION II  
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STATE OF WASHINGTON  
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TAYLOR R. GILBERT.

Appellant,

v.

BRIAN BLYTH, and JULIE BLYTH, husband and wife. and MATTHEW BLYTH,

Respondents.

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BRIEF OF RESPONDENTS

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Douglas F. Foley, WSBA #13119  
Vernon S. Finley, WSBA #12321  
Douglas Foley & Associates, PLLC  
13115 NE 4th Street, Suite 260  
Vancouver, WA 98684  
(360) 883-0636

Attorneys for Respondents

pm 5/6/16

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A. INTRODUCTION

This case presents the question of whether a \$55,249 Offer of Judgment that expressly provided that it was inclusive of PIP payments is a binding offer that really is inclusive of PIP payments. The trial court properly agreed and awarded an offset of \$35,000 for prior PIP payments.

B. RESTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Respondents acknowledge Appellant's assignment of error, but believe that the assignment of error could be more appropriately formulated as follows:

(1) Assignment of Error

1. Did the trial court correctly enter the Judgment and accompanying Order for Offset to include the previously paid PIP benefits in amount of \$35,000 in accord with the express terms of the CR 68 Offer of Judgment?

(2) Issues Pertaining to Assignments of Error

Respondents acknowledge Appellant's assignment of error and designates the following issues for consideration:

1. Should an Offer of Judgment that expressly states that it "is inclusive of \$35,000 in PIP benefits that have already been paid" be

enforced as written, particularly, where the offering party clarifies in writing to the accepting party that the offer is all inclusive and includes the PIP benefits?

C. RESTATEMENT OF THE CASE

Taylor Gilbert (“Gilbert”) sued Brian Blyth and Julie Blyth, and Matthew Blyth (“Blyth Defendants”) for damages arising out of a motor vehicle accident. CP 97. On or about September 10, 2015 the Blyth Defendants made a CR 68 Offer of Judgment which is set forth below:

Brian Blyth, Julie Blyth and Matthew Blyth, pursuant to CR 68, offers to allow judgment to be entered against them in this matter for \$55,249.00 (Fifty Five Thousand Two Hundred and Forty Nine Dollars and 00/100) Dollars. **This \$55,249.00 is inclusive of \$35,000 in PIP benefits that have already been paid. Thus defendant offers \$20,249.00 new money after the offset of the \$35,000.00 already paid.** This total amount includes taxable costs and Mahler fees and all other attorney fees incurred to date.

This Offer of Judgment includes the entire claim of the plaintiff and any and all liens and/or subrogation interest of all parties, persons or entities.

These Defendants expressly deny liability and state that this Offer of Judgment is for purposes of settlement only.

CP 36 (emphasis added).

Gilbert, in response to defendants Offer of Judgment which clearly indicated that the total amount was offset by the \$35,000 previously paid and was inclusive of all fees, costs, *Mahler* fees and other attorney's fees to date, responded via email indicating that "we do not believe the additional condition that the offer includes a \$35,000 offset without paying *Matsyuk* fees is allowed under CR 68." Gilbert then proposed a counter to the terms of the original judgment in an email sent to defense counsel on Saturday the 19th indicating that:

Ms. Gilbert would be willing to accept the Offer of Judgment for \$55,249, and stipulate to an offset of \$2,404.50, and agree not to have judgment entered against Mr. Blyth as that will negatively affect his credit. However, Ms. Gilbert's willingness to accept the Offer of Judgment with the stipulated offset and no entry of judgment will cease on Monday, September 21, at noon.

If we cannot reach an agreement as to the amount of the offset by noon on Monday, Ms. Gilbert will decide between two options:

- (1) Go to trial seeking only general damages, meaning Allstate will need to hire its own attorney to pursue reimbursement of the \$35,000 PIP medical specials at trial because it is unwilling to pay *Matsyuk* fees for its pro rata share of the costs and attorney fees for trial; or
- (2) File an acceptance of the offer to enter judgment for \$55,249, and move the Court for entry of judgment against Mr. Blyth for the full \$55,249 and for a post-judgment determination of the appropriate PIP offset and *Matsyuk* fees.

CP 78.

Counsel for the Blyth Defendants responded in an email which clarified the already well laid out terms of the Offer of Judgment indicating that the judgment included *Mahler/Matsyuk* fees of \$11,550 for the recovery of \$35,000 paid towards plaintiff's medical bills:

While the defendants will not be arguing for all \$35,000 in medical specials at trial, should they be awarded at trial or accepted in the Offer of Judgment defendant is entitled to offset in the total judgment amount for those bills previously paid. With regards to Mahler/Matsyuk payments in the event of those medicals be awarded at trial or in the event of your client's acceptance of the Offer of Judgment, the \$55,249 Offer of Judgment is inclusive of *Mahler/Matsyuk* fees as indicated in the pleading. Thus, the \$55,249 includes \$35,000 in medical bills already paid, general damages, costs and any and all attorney fees including the \$11,550 Mahler/Matsyuk fees in this case. The total judgment would be offset by the \$35,000 in medical bills previously paid. Thus, defendants would agree to draft a check of \$20,249.00 new money to satisfy the Offer of Judgment in its entirety. We are not accepting your counter of a reduced offset and our original Offer of Judgment remains.

CP 79.

On September 21, 2015 Gilbert accepted the Offer of Judgment, as stated below:

Plaintiff, Taylor R. Gilbert, pursuant to CR 68, accepts Defendants Brian Blyth, Julie Blyth, and Matthew Blyth's offer to allow judgment to be entered against them in the amount of \$55,249.00 (Fifty Five Thousand

Two Hundred F arty Nine 001100 Dollars), including taxable costs and attorney fees.

Defendants are not entitled to an offset of the judgment because they have paid no sums to Plaintiff. Allstate is not a party to this action, and Plaintiff does not agree to enter into an agreement with Allstate regarding disputed issues related to PIP benefits paid by Allstate.

CP 34.

Despite the fact the Offer of Judgment had expressly been inclusive of PIP payments, Gilbert moved for entry of Judgment pursuant to CR 68 arguing that no offset should be provided for the PIP payments. CP 39. The Court rejected Gilbert's arguments and entered Judgment in the amount of \$55,249. CP 4. An Order Re Offset in the amount of \$35,000 for the PIP payments was entered at the same time on October 19, 2015. CP 7. A Satisfaction of Judgment was then entered on October 29, 2015 for the remaining amount of \$20,249.

CP 50.

#### D. SUMMARY OF ARGUMENT

Gilbert accepted a CR 68 Offer of Judgment that expressly included the amount of the prior PIP payments in the offer. The trial court correctly entered the Judgment for the amount of \$55,249 and

ordered that the judgment be offset by the amount of \$35,000 for the PIP payments on October 19, 2015. CP. 4, 7.

The pertinent portion of the offer provided:

“This \$55,249.00 is inclusive of \$35,000 in PIP benefits that have already been paid. Thus defendant offers \$20,249.00 new money after the offset of the \$35,000.00 already paid.”

“[I]nclusive of \$35,000 in PIP benefits” could not be clearer. Gilbert largely ignores it and all case law under CR 68, instead raising numerous collateral arguments about PIP offset issues.

Gilbert made the voluntary choice to accept the Offer of Judgment shortly before the trial date. He could have rejected the Offer and gone to trial and sought a court determination of whether he was made whole and the amount of attorney fees to be deducted from the PIP payments.

The Court of Appeals decision in *Jenbere v. Lassek*, 169 Wn. App. 318, 319, 279 P.3d 969 (2012), *rev. denied*, 175 Wn.2d 1028 (2012) held that a party making a CR 68 Offer of Judgment that was “all inclusive” was entitled to define the offer as including attorney fees. It was argued in *Jenbere* that there was mandatory language that the court “shall award” attorney fees pursuant to MAR 7.3 and

RCW 7.06.060 and that the CR 68 offer could not include attorney fees. *Id.* at 321. The court in *Jenbere* rejected this approach, which provides strong precedent for this court to deny the argument that a Rule 68 Offer of Judgment cannot include the amount for PIP reimbursement to the insurer.

The purpose of a Rule 68 Offer of Judgment is to provide an incentive for parties to settle. *Magnussen v. Tawney*, 109 Wn. App. 272, 277, 34 P.3d 899 (2001). Gilbert was well aware that he would be receiving \$20,249.00 in “new money.” The Judgment and Order of Offset of the trial court should be affirmed.

E. ARGUMENT

(1) Standard of Review

The construction of a CR 68 offer is reviewed de novo. *Seaborn Pile Driving Co. v. Glew*, 132 Wn. App. 261, 266, 131 P.3d 910 (2006), *rev. denied*, 158 Wn.2d 1027 (2007).

(2) The CR 68 Offer of Judgment Was Inclusive of PIP Payments.

The issue in this case is whether Gilbert is bound by the CR 68 Offer of Settlement that was inclusive of PIP payments. CR 68 provides in pertinent part as follows:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment....The fact that an offer is made but not accepted does not preclude a subsequent offer....

The Offer of Judgment expressly included PIP fees as shown below in pertinent part:

Brian Blyth, Julie Blyth and Matthew Blyth, pursuant to CR 68, offers to allow judgment to be entered against them in this matter for \$55,249.00 (Fifty Five Thousand Two Hundred and Forty Nine Dollars and 00/100) Dollars. **This \$55,249.00 is inclusive of \$35,000 in PIP benefits that have already been paid. Thus defendant offers \$20,249.00 new money after the offset of the \$35,000.00 already paid.** This total amount includes taxable costs and Mahler fees and all other attorney fees incurred to date.

This Offer of Judgment includes the entire claim of the plaintiff and any and all liens and/or subrogation interest of all parties, persons or entities. (emphasis supplied)

CP 36. The clause was well drafted and made it expressly clear that the offer was a final settlement. The clause included *Mahler* fees, attorney fees, and was unambiguously for the entire claim of the Plaintiff.

Counsel for Gilbert and the Blyth defendants expressly discussed the terms of this offer in their email exchanges. Counsel for the Blyth defendants clearly explained that the offer included PIP payments, as shown below:

While the defendants will not be arguing for all \$35,000 in medical specials at trial, should they be awarded at trial or accepted in the Offer of Judgment defendant is entitled to offset in the total judgment amount for those bills previously paid. With regards to Mahler/Matsyuk payments in the event of those medicals be awarded at trial or in the event of your client's acceptance of the Offer of Judgment, the \$55,249 Offer of Judgment is inclusive of *Mahler/Matsyuk* fees as indicated in the pleading. Thus, the \$55,249 includes \$35,000 in medical bills already paid, general damages, costs and any and all attorney fees including the \$11,550 Mahler/Matsyuk fees in this case. The total judgment would be offset by the \$35,000 in medical bills previously paid. Thus, defendants would agree to draft a check of \$20,249.00 new money to satisfy the Offer of Judgment in its entirety. We are not accepting your counter of a reduced offset and our original Offer of Judgment remains.

CP 79.

The Court of Appeals decision in *Jenbere v. Lassek*, 169 Wn. at 319 held that a party making a CR 68 Offer of Judgment that was "all inclusive" was entitled to define the offer as including attorney fees despite the mandatory language that the court "shall award" attorney fees pursuant to MAR 7.3 and RCW 7.06.060. *Id.* at 322-323. The same reasoning in *Jenber* should apply here for PIP reimbursement.

In *Jenbere* the Offer of Judgment was “inclusive of any and all attorney fees and cost.” *Id.* at 321. Like the present case, the nature of the “all inclusive” CR 68 offer in *Jenbere* was clarified by an email exchange between the parties, as shown below:

Lassek claims the award of attorney fees was erroneous because the Offer of Judgment, which was accepted by Jenbere, specifically included “any and all” attorney fees. We agree. The CR 68 Offer of Judgment proposed “to allow judgment to be taken in the above matter in the amount of Five Thousand Five Hundred Dollars and 00 cents (5,500.00) inclusive of any and all attorney fees and costs . . . .” (Some emphasis added.) Additionally, counsel for Jenbere asked about this provision prior to accepting, and was told it was “all inclusive” rather than merely covering statutory attorney fees.

*Id.* at 321.

Gilbert argues that the previously paid PIP payments should never be included in a CR 68 Offer. A similar argument was dismissed in *Jenbere*. The plaintiff in *Jenbere* argued that the language in MAR 7.3 and RCW 7.06.060 is “mandatory” in that it provides that the superior court “shall” award reasonable attorney fees and costs against a party who appeals an award but fails to improve his or her position in a trial de novo. On this basis, the plaintiff claimed that an award of attorney fees can never be included in a CR 68-based settlement offer if the appealing party did not improve his position in a trial de novo.

*Id.* at 321. The Court of Appeals rejected this argument finding that nothing in MAR 7.3 or RCW 7.06.060 indicates that parties are prohibited from entering into a settlement, whether via CR 68 or some other mechanism, that includes all attorney fees. *Id.* at 321-322.

The same result should apply for including the prior PIP payments in the offer. There is no authority that prohibits the parties from entering into a settlement agreement here. Indeed, it is common practice to offer to settle personal injury cases for one settlement number, often representing “new money”. Plaintiff cites no authority that a PIP reimbursement claim cannot be settled by the parties.

The decision of the trial court is in accord with the purpose of a CR 68 Offer of Judgment which is to provide an incentive for parties to settle. *Magnussen v. Tawney*, 109 Wn. App. 272, 277, 34 P.3d 899 (2001). The law favors settlements. *Haller v. Wallis*, 89 Wn.2d 539, 544, 573 P.2d 1302 (1978). The express public policy of the state is to encourage settlement.” *State v. Noah*, 103 Wn. App. 29, 50, 9 P.3d 858 (2000), *rev. denied*, 143 Wn.2d 10 14 (2001). This strong public policy supports the right of a defendant to offer a single settlement amount in a personal injury case to resolve all claims, including prior PIP payments.

*McGuire v. Bates*, 169 Wn.2d 185, 234 P.3d 205 (2010)

involves the payment of attorney fees in a CR 68 offer. In that case, while mandatory arbitration was pending, the plaintiff accepted a \$2,180 offer of settlement for “all claims.” Thereafter, the plaintiff asked the arbitrator to award attorney fees pursuant to a statute. The arbitrator denied the request on the ground that the settlement had included plaintiff’s request for fees. The plaintiff then requested a trial de novo. The trial court awarded her fees. The Washington Supreme Court reversed. Noting that “[t]he settlement offer....was not silent regarding attorney fees,” the court ruled that “the settlement offer that was accepted....settled ‘all claims’ and one of the claims was for attorney fees.” *Id.* at 198.

In *McGuire* the court explained that CR 68 offers are construed in the same manner as other contracts, as shown below:

This court interprets settlement agreements in the same way it interprets other contracts. *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 164 Wn.2d 411, 424 n.9, 191 P.3d 866 (2008). In doing so, we attempt to determine the intent of the parties by focusing on their objective manifestations as expressed in the agreement. *See Hearst Commc’ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). The subjective intent of the parties is generally irrelevant if we can impute an intention corresponding to the reasonable meaning of the actual words used.

*Id.* at 188-189. The CR 68 Offer to Gilbert was unambiguous and enforceable. Gilbert may assert that he had a subjective intent that no credit should be given for the payment of the PIP benefits, but that subjective intent is irrelevant. The *McGuire* case provides strong support for construing the language of the CR 68 offer to treat the prior PIP payments as an offset according to basic contract law principles.

In summary, the CR 68 Offer unambiguously included the prior PIP payments. It was expressly stated by counsel for the Blyth Defendants that a check in the amount of \$20,249.00 “new money” would satisfy the Offer of Judgment in its entirety. CP 79. Gilbert accepted this offer of settlement and the upcoming trial date was stricken. CP 34. The trial court correctly construed the language of the CR 68 Offer and applied the offset for the PIP payments. The *Jenbere* decision provides compelling authority for this result.

(3) The CR 68 Offer Properly Included PIP Payments.

Gilbert in his acceptance of the CR 68 Offer included a paragraph that stated that Blyth Defendants are not entitled to an offset of the judgment because they have paid no sums to Plaintiff – that Allstate paid the PIP. Gilbert argues that the Blyth defendants should not be entitled to an offset as payment was made by defendants’

insurance company. Gilbert argues in his brief that the right of reimbursement between Gilbert and Allstate, who is not a party to the lawsuit, was not before the trial court. Appellant's Brief, Pg. 14.

Gilbert's position is not supported by the unambiguous language of the offer that includes the \$35,000 PIP benefits previously paid, and is contradicted by well-established case law that recognizes the ability of insurers to recover payments made on behalf of their insured. *See Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632, 966 P.2d 305 (1998); *Winters v. State Farm Mutual Automobile Insurance Co.*, 144 Wn.2d 869, 31 P.3d 1164 (2001); *Hamm v. State Farm Mutual Automobile Insurance Co.*, 151 Wn.2d 303, 88 P.3d 395 (2004) and *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643 (2012).

An insurer that pays funds to an insured through a PIP policy may seek reimbursement if the PIP insured collects directly from an at-fault party. *Winters*, 144 Wn.2d at 876. When liability insurance is involved, one mechanism for achieving such reimbursement is through an "offset," which is "a credit to which an insurer is entitled for payments made under one coverage against claims made under another coverage within the same policy." *Id.*

The Offer of Judgment clearly dictated that the judgment was to be offset by \$35,000 previously paid. *Mahler, Winters, Hamm,* and *Matsyuk* provide express authority that payments made on behalf of the insured by insurers can to be credited towards final judgment.

(4) Response to Specific Arguments.

Gilbert's first two issues pertaining to assignments of error are covered by the decision of the Washington Supreme Court in *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn. 2d 643, 272 P.3d 802 (2012). *Matsyuk* involves the same factual situation that is present in this appeal – a passenger suing the driver of the car and the passenger is covered under the driver's auto policy for the PIP coverage. In *Matsyuk* in a consolidated appeal, the plaintiffs recovered PIP funds as insureds, under policies held by the tortfeasors, and then incurred attorney fees in recovering from the tortfeasors' liability insurance provided by the same carrier. *Id.* at 647. *Matsyuk* involved an offset for recovery of the PIP payments, as shown by the facts set forth below:

Matsyuk apparently reached a settlement with Stemditsky and State Farm for \$ 5.874, to be paid by State Farm in its capacity as Stemditsky's liability insurer. **State Farm indicated it would seek reimbursement of its previous PIP payments through an offset to the liability payment it was making on**

**Stemditsky's behalf** and provided a check for \$ 4,000 (\$ 5,874 minus \$ 1,874). (emphasis supplied)

*Id.* at 648. The court in *Matsuyk* held that to an extent the insurers seek an offset they must share in the plaintiffs' attorney fees on a pro rata basis, as shown below:

We hold that under *Mahler*, *Winters*, and *Hamm*, the liability funds recovered here created a common fund triggering the equitable fee sharing rule. To the extent the insurers here have recovered or seek to recover an offset against their PIP payouts, they must share in the plaintiffs' attorney fees on a pro rata basis.

*Id.* at 659. The court in *Matsuyk* held that a common fund is created, thereby triggering *Mahler's* equitable fee sharing rule, when the injured party is insured under a PIP policy held by the tortfeasor and also recovers from the tortfeasor's liability policy. *Id.* at 663. *Matsuyk* recognizes the propriety of the offset procedure by the insurer in the tortfeasor's lawsuit.

Gilbert's first issue pertaining to Assignments of Error states: "Does Washington treat payments made by the tortfeasor entitling the tortfeasor to setoff for the full amount of PIP benefits made." *Matsuyk* answers this question stating that a common fund is made subject to equitable sharing. It should be noted that the dissenting opinion disagrees with the common fund characterization. *Id.* at 663.

Gilbert's second issue states: "Whether the well-established full compensation/made whole and pro rata legal expense sharing rules apply in cases where a PIP insurer also provides the tortfeasor's liability coverage?" Insureds are fully compensated when they have recovered all of their damages as a result of a motor vehicle accident. *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 621, 160 P.3d 31 (2007). Insureds are not entitled to double recovery. *Id.* at 618. After an insured is "'fully compensated for his loss,'" an insurer may seek an offset, subrogation, or reimbursement for PIP benefits already paid. *Sherry*, 160 Wn.2d at 618 (quoting *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 219, 588 P.2d 191 (1978)). An offset is "'a credit to which an insurer is entitled for payments made under one coverage against claims made under another coverage within the same policy.'" *Matsyuk* at 173 Wn.2d 650. *Matsyuk* answers this question in part as the pro rata legal expense sharing rules apply.

The Blyth defendants recognize the established law regarding full compensation/made whole and pro rata legal expense rules. That indeed would have been the case if Gilbert had rejected the CR 68 Settlement Offer. However, the CR 68 Offer was accepted shortly

before trial and due to Gilbert's acceptance there was no basis according for an offset hearing.

*Matsyuk* authorizes an offset hearing to determine the amount of PIP funds offset. Since an offset hearing can be part of the case, it logically follows that one settlement number in CR 68 offer can be utilized to resolve all issues in the case.

The critical point is that *Gilbert* accepted the CR 68 Offer. Under CR 68 it is entirely proper to provide one settlement number for resolution of the entire case – including the PIP offset. As previously discussed, Washington law strongly favors the settlement of disputes. Settlement of the entire case, including the offset, should be encouraged to resolve disputes.

The same reasoning set forth above answers Gilbert's third issue which states: "Whether the dispute regarding a right of reimbursement between Gilbert and the non-party PIP insurer Allstate was properly before the trial court in plaintiff's lawsuit against the tortfeasor defendants Blyth?" *Matsyuk* discusses the use of an offset hearing. Gilbert cannot claim error by the court when he accepted the Offer of Judgment, thereby choosing to forego litigating the case to verdict and seeking a determination of the PIP reimbursement in an offset hearing.

Gilbert in his fourth issue states: “Whether a non-party PIP insurer may use CR 68 to avoid well-established law and to violate the Consumer Protection Act and insurance regulations?” Gilbert cites no authority under any cases involving CR 68 for this argument.

Here, there is no cause of action for bad faith or breach of the insurance regulations plead in the Complaint. CP 97. As previously discussed in detail, in *Jenbere* a party making a CR 68 Offer of Judgment is entitled to define the offer as including attorney fees. *Jenbere* at 169 Wn. App. 319. The *Jenbere* decision provides compelling precedent for the use of CR 68 offer for all offset issues, which would include equitable apportionment of attorney fees and a determination of whether the plaintiff was made whole.

There are practical reasons for this approach. An offer can be easily be drafted that expressly states the amount of “new money” and the amount of prior PIP payments that are included. This will avoid piecemeal litigation and having a subsequent court hearing for the offset after a CR 68 offer.

(5) Olympic Steamship Fees Should Not Be Awarded.

Gilbert requests his reasonable attorney fees, including on appeal, under RAP 18.1 and *Olympic S.S. Co. v. Centennial Ins. Co.*.

117 Wn.2d 37 (1991). Under *Olympic Steamship*, “[a]n insured who is compelled to assume the burden of legal action to obtain the benefit of its insurance contract is entitled to attorney fees.” *Id.* at 54.

This case involves the legal interpretation of a CR 68 Offer along with PIP offset issues. A dispute about whether the insurer must pay a proportionate share of attorney fees in order to affect a right to reimbursement for PIP benefits paid is not a coverage dispute. *Mahler*, 135 Wn.2d at 431-32. The PIP benefits were never at issue and did not require the efforts of an attorney. An insured cannot claim attorney fees where the dispute is over the extent of the insured’s damages or factual questions of liability. *Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 899, 16 P.3d 617 (2001). The issues involved in this case do not involve coverage under the insurance policy. *Olympic Steamship* attorney fees are not applicable.

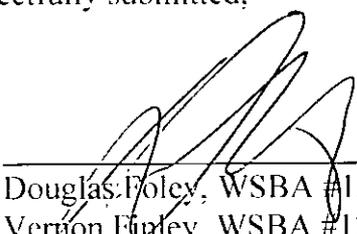
F. CONCLUSION

The \$55,249 Offer of Judgment that expressly said it was inclusive of PIP payments should be enforced as written. The offer was unambiguous and should be enforced as written. The trial court’s determination that there was an offset of \$35,000 for prior PIP

payments was correct. The decision of the trial court should be respectfully upheld in this appeal.

DATED this 6th day of May, 2016.

Respectfully submitted,

By: 

\_\_\_\_\_  
Douglas Foley, WSBA #13119  
Verion Furley, WSBA #12321  
Douglas Foley and Associates, PLLC  
13115 NE 4<sup>th</sup> Street, Suite 260  
Vancouver, WA 98684  
Attorneys for Respondents

**CERTIFICATE OF SERVICE**

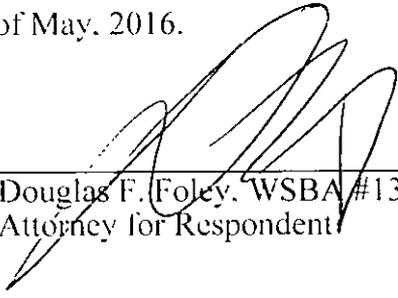
I, Douglas F. Foley, certify that I mailed, or caused to be mailed,  
a copy of the foregoing Respondent's Brief, postage prepaid, via U.S.  
Mail and by email, to the following counsel of record at the following  
address:

Barbara J. Rhoads-Weaver  
Sustainable Law, PLLC  
Attorney for Appellant  
P.O. Box 47  
Vashon, WA 98070

Email: [barb@sustainablelawpllc.com](mailto:barb@sustainablelawpllc.com)

FILED APPEALS  
COURT OF APPEALS  
DIVISION I  
2016 MAY 10 AM 10:57  
STATE OF WASHINGTON  
BY DEPUTY

DATED this 6th day of May, 2016.

  
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Douglas F. Foley, WSBA #13119  
Attorney for Respondent