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DIVISION III  
STATE OF WASHINGTON  
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NO. 345424

STATE OF WASHINGTON, COURT OF APPEALS  
DIVISION III

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KELLY RAMM and LISA RAMM, husband and wife,

Plaintiffs/Appellants

vs.

FARMERS INSURANCE COMPANY OF WASHINGTON,

Defendant/Respondent

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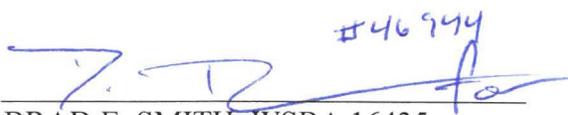
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BRIEF OF APPELLANTS KELLY AND LISA RAMM

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred when it failed to grant the Ramms' motion for summary judgment seeking coverage for Kelly Ramm's PIP claim for damages.

2. The Court erred when it granted Farmers' motion for summary judgment, finding that no coverage existed under the Ramms' PIP policy for his bodily injuries.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Did the Court correctly grant Farmers' motion for summary judgment, finding no coverage under the Ramm PIP policy for Kelly Ramm's injuries?

2. Did the trial court commit reversible error when it denied the Ramms' motion for partial summary judgment, failing to determine that coverage existed for the Ramms' injuries under their Farmers' PIP policy.

## **III. STATEMENT OF THE CASE**

### **A. Undisputed Facts Concerning Accident**

On July 25, 2015, Kelly Ramm was driving his 2006 Kia Sedona van westbound on Trent Avenue in Spokane County. CP 18, 21. He was

accompanied by his son, Connor, a 19-year old EMT student, in the front passenger seat. CP 18.

Mr. Ramm began suffering some kind of flu-like symptoms, and began to feel nauseous. Believing he was about to be sick, he turned his vehicle off Trent Avenue onto Airplane Way. CP 18, 21. He stopped his vehicle a short distance onto Airplane Way, off the side of the road, but still several feet away from the curb. CP 131-136. Mr. Ramm opened his driver's door (thus extending the door into the portion of the street designed for traffic), took off his seatbelt, and leaned outside the door as he was becoming sick. CP 18-19, 21, 135. He put the vehicle in "park," but did not turn off the ignition. CP 18, 21. He then passed out and fell forward onto the pavement, striking his forehead on the asphalt and causing severe injuries to his head. CP 19, CP 20.<sup>1</sup>

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<sup>1</sup> In preparation of Appellant's Brief, it was first noted that three photographs of Kelly Ramm's injuries, referenced in the Declaration of Kelly Ramm as Exs. A, B, and C (CP 19), were inadvertently not attached to the original Declaration filed with the Court on March 11, 2016. The photographs were referenced during oral argument on the motions (RP 3). However, as it has been determined from Farmer's counsel that the photos were not attached to the copy of the Declaration sent to Farmers, no attempt will be made to supplement the record at this time. It is not contested that Kelly Ramm was seriously injured and received a deep, bleeding gash to his forehead that necessitated medical treatment and left a scar.

Although Kelly Ramm's head and upper body were completely out of the vehicle, his legs were still inside the vehicle near the brake and accelerator pedals. CP 21. He was unconscious and bleeding profusely out of a massive cut in the middle of his forehead. His son Connor provided immediate medical assistance, and then drove him to the Valley Hospital Emergency Room. CP 21, 22.

In the course of his medical treatment, Kelly Ramm and his wife incurred medical bills exceeding \$10,000, the medical expense limits of their personal injury protection coverage under their Farmers automobile policy. CP 19.

At the time of his accident, Kelly and Lisa Ramm were insured under a Farmers Personal Automobile Policy, Policy No. 18644-33-85. CP 79. No-fault personal injury protection benefits were provided under Part III of that policy, as follows:

**Coverage D - Personal Injury Protection**

We will provide the benefits described below for **bodily injury** to each **insured person** caused by a **motor vehicle accident**.

Under paragraph III.d.1, the Farmers policy provides up to \$10,000 of medical benefits for each insured person. CP 34.

The Farmers policy does not provide a definition for the phrase “motor vehicle accident.” It does define the term “motor vehicle” to mean:

**Motor vehicle** means a land motor vehicle or a trailer, but does not mean a vehicle:

1. Operated on rails or crawler-treads.
2. Which is a farm type tractor, or any equipment designed or modified for use principally off public roads, while not on public roads.
3. Located for use as a residence or premises.

The policy defines “accident” to mean:

[A] sudden event, including continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage** neither expected nor intended by the **insured person**.

After the accident, Mr. Ramm submitted a claim for PIP benefits to Farmers. He subsequently received a letter dated August 11, 2015, from Jill Oster, a Med/PIP claims supervisor from Farmers Insurance. CP 19, 72-3. In that letter, Ms. Oster denied coverage for his accident on the basis that Mr. Ramm’s injury occurred while falling out of a vehicle “which was parked,” and therefore, in Farmers’ opinion, did not arise out of a “motor vehicle accident.” CP 19, 72.

## **B. Procedural Facts**

Kelly and Lisa Ramm filed their Complaint against Farmers on December 28, 2015. The Complaint alleged both breach of contract for

failure to properly pay PIP benefits owed under the policy, and also bad faith causes of action, including a claim under Washington's Insurance Fair Conduct Act. On March 11, 2016, the Ramms filed a Motion for Partial Summary Judgment, seeking a determination by the trial court that under the undisputed facts, coverage was owed by Farmers under the PIP provision of their policy issued to the Ramms, as a matter of law. CP 52-53. Farmers eventually filed their own Cross-Motion for Summary Judgment on coverage (CP 123-124).

The matter was heard before the Honorable Harold D. Clarke, III, on April 29, 2016. At that hearing, Judge Clarke denied the Ramms' motion for summary judgment, and entered an order granting Farmers' cross-motion for summary judgment, finding that Mr. Ramms' loss was not covered under the PIP portions of his Farmers policy. CP 153-54.

The parties eventually entered into a Stipulation dismissing the Ramms' bad faith claims, without prejudice, to resolve the remaining issues of this case and to allow for an immediate appeal of the coverage issue, as a matter of right. CP 155-158.

This appeal followed.

#### **IV. LEGAL ARGUMENT**

##### **A. Summary Of Argument**

It is the Ramms' contention on appeal that the trial court erred when it did not grant the Ramms' motion for partial summary judgment, finding as a matter of law that Kelly Ramms' injuries were covered under the Personal Injury Protection provisions of his Farmers policy. Under the facts, the policy language, and in particular pursuant to the *Tyrrell v. Farmers Ins.* case, Kelly Ramm's injuries occurred as a result of a "motor vehicle accident," an undefined term which has been defined to mean an accident that occurs while a motor vehicle is "being operated as a motor vehicle."

##### **B. Summary Judgment Standards And Standard Of Review**

As this matter arises from the trial court's granting/denying cross-motions for summary judgment, the consideration on review by this Court is de novo. The appellate court shall consider the matter on the same grounds as should have been determined by the trial court on summary judgment.

A summary judgment is proper when, viewing all the evidence and reasonable inferences therefrom most favorably towards the nonmoving

party, reasonable persons could draw only one conclusion: That the moving party is entitled to judgment as a matter of law. *Kesinger v. Logan*, 113 Wn.2d 320, 779 P.2d 263 (1989). The primary purpose of summary judgment is to avoid a useless trial. *Johnson v. Rothstein*, 52 Wn.App. 303, 759 P.2d 471 (1988). In the absence of any question of material fact, whether summary judgment is appropriate is a question of law. *Weir v. American Motorists, Inc.*, 63 Wn.App. 187, 816 P.2d 1278 (1991).

Neither party alleged below there were disputed facts that prevented the trial court from granting summary judgment as a matter of law.

### **C. Rules Of Policy Construction And Interpretation**

The construction or interpretation of an insurance policy is a question of law. *Queen City Farms, Inc. v. Central Nat'l Ins. Co. of Omaha*, 126 Wn.2d 50, 65, 882 P.2d 703 (1994). Where the facts are not in dispute, the question of whether coverage exists under an unambiguous insurance policy is determined as a matter of law. *Roller v. Stonewall Ins. Co.*, 115 Wn.2d 679, 682, 801 P.2d 207 (1990). *Tyrrell v. Farmers Ins. Co. of Washington*, 140 Wn.2d 129, 133, 994 P.2d 833 (2000).

Washington courts liberally construe insurance policies to provide coverage wherever possible. *Ainsworth v. Progressive Casualty Ins. Co.*,

180 Wn.App. 52, 61, 322 P.3d 6 (2014). In interpreting an insurance policy, the Court should examine the policy to determine whether, under the plain meaning of the contract, there is coverage. *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998). Terms undefined by the insurance contract should be given their ordinary and common meaning, not their technical, legal meaning. *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). Terms in an insurance policy must be given a fair, reasonable, and sensible construction as would be given by an average insurance purchaser. *Mid-Century Ins. Co. v. Henault*, 128 Wn.2d 207, 213, 905 P.2d 379 (1995). We interpret an insurance contract from the point of view of an average person purchasing insurance. *Holden v. Farmers Ins. Co. of Wash.*, 169 Wn.2d 750, 756, 239 P.3d 344 (2012).

**D. Kelly Ramm's Injuries Arose Out Of A Motor Vehicle Accident**

The Washington Court of Appeals described the intent and purpose of personal injury protection (PIP) coverage in the *Ainsworth* decision, cited above:

The no-fault insurance system and personal injury protection (PIP) benefits are intended to provide victims of motor vehicle accidents adequate and prompt reparation for certain economic losses at the lowest cost to both the individual and the no-fault

insurance system. The individual victim is benefited through quick compensation for economic losses incurred as a result of the accident, [irrespective] of fault and without having to bring a lawsuit.

*Id.* at 63, citing 12 Steven Plitt, Daniel Maldonado & Joshua D. Rogers, *Couch on Insurance* 3d § 171:45, at 171-46 (2006).

PIP coverage is specifically mandated by the Washington Legislature at RCW 48.22.085, to be offered in every automobile liability policy. The enactment of this mandatory offering of PIP coverage is evidence that there is a public interest in the providing of PIP coverage to Washington residents such as Kelly Ramm.

Although the phrase “motor vehicle accident” is not specifically defined by the Farmers policy, previous Washington decisions have held it is not ambiguous. *Tyrrell v. Farmers Ins. Co. of Wash.*, 140 Wn.2d 129, 134-35, 994 P.2d 833 (2000); *Farmers Ins. Co. v. Grellis*, 43 Wn.App. 475, 478, 718 P.2d 812 (1986). The qualifier that PIP coverage must arise out of a “motor vehicle accident” is not required by Washington law as codified in RCW 48.22.

Kelly Ramm’s injuries occurred during the course of his operation of his insured vehicle. During that operation, he became nauseous and pulled

off on the side of the road, because he felt he was about to get sick. Although he put the vehicle into “park,” he did not turn off the ignition. He did not even intentionally exit the vehicle, but while still seated opened his door so that he could vomit onto the ground. He then passed out, falling from his driver’s seat, partially out of the motor vehicle (his feet remained in the motor vehicle at all times), striking his forehead severely on the asphalt.

Notwithstanding the fact that Mr. Ramm’s injuries arose out of an accident, and that they were incurred while he was falling out of his motor vehicle, it is Farmers’ contention that he was not injured due to a “motor vehicle accident,” an undefined term under the Farmers policy.

Farmers denied Mr. Ramm’s claim on the basis of a very narrow reading of the Supreme Court decision of *Tyrrell v. Farmers*. In that case, after reviewing the respective proposed definitions by both Tyrrell and Farmers, the Supreme Court held:

We find Farmers’ position compelling: That the sensible and popular understanding of what a “motor vehicle accident” entails necessarily involves the motor vehicle *being operated as a motor vehicle*. . . . **A motor vehicle is being operated as a motor vehicle when it is being driven or when it is stopped while being driven.** For example, if a tree limb were to fall on the motor vehicle while a person was driving or had stopped while driving, that would constitute a “motor vehicle

accident.” On the other hand, **a motor vehicle is not being operated as a motor vehicle when parked.**

*Tyrrell, supra* at 838 (italics in original, bold/underline in quotation).

Farmers’ denial of Mr. Ramm’s claim rests entirely upon its argument that Mr. Ramm’s vehicle at the time he was injured was “parked.” This is based upon an extremely limited and narrow reading of the *Tyrrell* case. The average purchaser of insurance would not consider Mr. Ramm’s vehicle to have been “parked” at the time of the accident. While admittedly the gear was “in park,” the average purchaser of insurance would probably believe it was simply “pulled over.” The ignition was not turned off, and after intending to get sick, Mr. Ramm clearly intended to resume operation of his motor vehicle and return to his home.

Photographs taken after the accident, placing the vehicle in the same position it was in at the time of the accident, clearly show the Ramm vehicle was not parked next to the curb, was angled into the roadway, and when the driver’s door was open it was blocking the normal path vehicles would pass along when traveling down the road. Under no circumstances could the vehicle be considered “parked.”

The average purchaser of insurance would consider the term “parked” to mean the operation of the motor vehicle was terminated at the time, and the operator was either in the process of getting out of the vehicle or had removed himself from the vehicle. This interpretation would also comport with the average person’s understanding of some of the other terms of the policy. For example, the Farmers policy hinges coverage on several other provisions of the policy as to whether the insured person was “occupying” the vehicle. The term “occupying” is defined to mean “in, on, getting in to or out of.” Certainly, at the time of the accident Mr. Ramm was “occupying” the motor vehicle.

When one analyzes the facts of the *Tyrrell* case, it becomes even more apparent that Farmers’ tortured reading of that decision too narrowly construed the intended coverage of the PIP policy. In *Tyrrell*, the Farmers vehicle involved was a pickup upon which was affixed a camper in the truck bed. After it had been parked in a campground for some time, the Farmers’ insured got out of the back of the camper, stepped on the pickup tailgate, and then stepped down to a wooden bench/stool that was carried by the insureds to allow easier egress from the camper to the ground. This

step collapsed, causing the insured to hit both the tailgate and the ground, resulting in serious injury. *Tyrrell, supra* at 131-132.

Under these facts, the Washington State Supreme Court had no problem determining that the Tyrrell vehicle was not “being operated as a motor vehicle” at the time of the accident. Rather, it was more properly the “situs” of the accident. The Court held that a motor vehicle is being operated as a motor vehicle when it is being driven or when it is stopped while being driven. On the other hand, the motor vehicle is not being operated as a motor vehicle “when parked.”

The average purchaser of insurance would consider the Ramm vehicle, at the time this accident occurred, as being “stopped while being driven.” Mr. Ramm was not “parking” the vehicle for the purpose of terminating its use as a motor vehicle. This is evident by the fact that he kept the ignition running at the time of the accident.

This case is also distinguishable from the decision of *Farmers Ins. Co. of Wash. v. Grellis, supra*. In that case, the Washington State Court of Appeals found that a stabbing of the insured by a robber in the insured’s parked van was not an “automobile accident” as used by the policy, so as to give rise to PIP coverage. Although the stabbing incident in *Grellis*

happened while the vehicle was pulled off on the side of the road, that is the only similarity between the two cases. In *Grelis*, Mr. Grelis stopped his van at 11:00 p.m. on the side of Santa Monica Blvd. and sat inside reading flight schedules. After about 10 minutes, an unknown man tapped on the man's vehicle and asked for a ride. After the stranger entered the van, he and Grelis talked for a while. At some point in the conversation, Grelis entered the back seat of the van to put some papers away in his flight bag. Soon thereafter, the stranger, who was seated in the front passenger seat, pulled a knife on Grelis and demanded money. During the course of the robbery, the assailant stabbed Grelis, who was still seated in the back seat. Up to that point, the van's ignition was off and the van was not moving.

Under these facts, the Court of Appeals held that the average person would not consider the stabbing incident in Grelis's parked van as an "automobile accident." However, there are many distinguishing factors between the *Grelis* case and that involving Mr. Ramm. Although both vehicles were stopped, the Grelis ignition was turned off, while Mr. Ramm's was still on. Mr. Ramm had just stopped his vehicle momentarily and was clearly intending to proceed after he got sick. Mr. Grelis, however, had been stopped for some time reading in his van, had invited a

stranger into his vehicle after which they talked for a while, and then Mr. Grelis got out of his vehicle and entered the back seat, where he was sitting at the point he got stabbed. Mr. Grelis certainly could not have “operated the vehicle” from the back seat. The vehicle at the time of the stabbing was clearly not being “operated as a motor vehicle,” but was merely the situs of the incident.

To the contrary, the average purchaser of insurance would understand that while Mr. Ramm’s vehicle was stopped on the side of the road, it was still being “operated as a motor vehicle,” as the ignition was still on and Mr. Ramm was still “vehicle oriented” as he leaned out of his driver’s door to get sick.

At a minimum, in the absence of any Washington law directly on point, Farmers should have given equal consideration to Mr. Ramm’s position, as its own financial situation, which would be benefitted by its denial of coverage. As both Farmers and this Court are obligated under Washington law to liberally construe the Farmers policy in favor of providing coverage, the course is clear—the Court should reverse the trial court’s ruling against the Ramms on their motion for partial summary judgment, finding coverage under the Farmers PIP policy up to the full

\$10,000 provided thereunder. Where the facts are undisputed, whether this matter arose out of a “motor vehicle accident” is a question of law for the court to make on summary judgment. *Tyrrell*, supra.

**E. Courts From Other Jurisdictions Have Interpreted The Phrase “Motor Vehicle Accident” To Support The Ramms’ PIP Claim**

Nationwide, there is a surprising lack of cases directly on point, largely because other states have not approved policy language similar to Farmers (i.e., PIP coverage dependent on occurrence of a “motor vehicle accident”), or that other states simply have not interpreted that term the same as the Washington Supreme Court did in *Tyrrell*.<sup>2</sup> The Supreme Court of Texas, in *Texas Farm Bureau Mut. Ins. Co. v. Sturrock*, 146 S.W.3d 123 (2004), did extensively analyze whether an insured’s injuries resulted from a “motor vehicle accident” for purposes of PIP coverage under the insured’s Texas Standard Automobile Insurance Policy. After citing the *Tyrrell* and *Grelis* cases from Washington, as well as decisions from other jurisdictions, the court held that coverage existed for the insured’s injuries, when he drove his truck to work, parked, turned off the

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<sup>2</sup> Other states have, as discussed below, addressed somewhat similar terms as “auto accident” or “automobile accident” or “involved in the accident.”

engine, and while exiting the truck he entangled his foot in the raised portion of the truck's door facing.

In finding coverage, the Texas Supreme Court adopted the following test and held that a "motor vehicle accident" occurs when:

(1) One or more vehicles are involved with another vehicle, an object, or a person;

(2) the vehicle is being used, including exit or entry, as a motor vehicle; and

(3) a causal connection exists between the vehicle's use and the injury-producing event.

*Id.* at 134.

What appeared to be most determinative in the *Sturrock* decision was the fact that, at the time of the accident, the vehicle was still be used "as a motor vehicle." This would be contrary to the situation where the vehicle was merely the "situs" of the accident, or the accident occurred when the vehicle was no longer being operated as such. While obviously the *Sturrock* decision is not binding on this Court, it remains the only decision by a state supreme court that has extensively analyzed both the *Tyrrell*

decision and the requirement that the PIP coverage arise out of a “motor vehicle accident.”

As mentioned above, although few cases have addressed the identical issue of what constitutes a “motor vehicle accident” under PIP coverage, many courts have addressed similar issues, where they have struggled under similar facts to determine whether coverage exists for injuries under policies arising out of “auto” or “automobile accidents,” or the more common situation where the court struggles to determine whether injuries arose out of the “use” of a vehicle, or where the vehicle was “involved in an accident.” Those cases typically fall within several categories (depending upon the types of injuries or incidents involved), and while not controlling, they provide an interesting perspective on the instant case involving the Ramms.

Almost universally, those cases involving incidents where individuals are shot, or otherwise are victims of an assault, in or near the vehicle have found no coverage for the particular injuries under PIP policies. *Schulz v. State Farm Mut. Auto Ins.*, 930 S.W.2d 872 (1996) (victim shot outside the vehicle); *Farmers Ins. v. Grellis*, 43 Wn.App. 475, 718 P.2d 812 (1986) (victim stabbed while sitting inside vehicle); *State Farm Mut. Ins. Co. v.*

*Nichols*, 710 F.Supp. 1359 (N.D. Georgia 1989) (insured shot in car); *American Underwriters Ins. Co. v. Drummond*, 230 S.W.3d 320 (2006) (children shot in vehicle); *Allied Mut. Ins. Co. v. Patrick*, 16 Kan.App.2d 26 (1991) (insured sexually molested while in vehicle); *Jordan v. United Equitable Life Ins. Co.*, 486 S.W.2d 664 (1972) (cab driver shot and robbed while in vehicle). In all of these cases, courts found no coverage existed under PIP or similar policies, generally under the theory that the vehicles were merely the “situs” of the accident, and were not being used as a motor vehicle at the time or the motor vehicle was not causally connected to the assault.<sup>3</sup>

As noted by the Texas Supreme Court in *Sturrock*, courts have generally found coverage when the insured sustained injuries from a slip-and-fall accident while entering into or alighting from the covered

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<sup>3</sup> It should be pointed out, however, the courts have not always denied coverage in such situations. In *University Rehabilitation Alliance v. Farm Bureau*, 760 N.W.2d 574 (2008) (coverage found for a woman who was pushed from/assaulted in the vehicle while it was moving); *North Star Mut. Ins. Co. v. Peterson*, 749 N.W.2d 528 (2008) (coverage for hunters found when they were shot in a vehicle); *Stevenson v. State Farm Indem. Co.*, 709 A.2d 1359 (1998) (coverage found for children who were shot in a vehicle); and *Smaul v. Irvington Gen. Hospital*, 508 A.2d 1147 (1986) (coverage for an assault in or near a vehicle).

vehicle.<sup>4</sup> The *Sturrock* court then noted, however, the courts generally deny coverage for injuries sustained from slip-and-fall accidents occurring prior to or after the process of entering or exiting the vehicle.<sup>5</sup>

The *Sturrock* court's analysis and holding is similar to the rule of *Tyrrell*, where coverage was denied for a fall from the back of the pickup/camper when the insured had parked the camper earlier and was exiting the camper at the time of the fall.

What appears to be most consistent from these cases is that coverage is found when the vehicle is still in the process of being operated or used "as a motor vehicle," but denied when the vehicle has been parked and is no longer being used "as a motor vehicle" or is merely the situs of the assault or injury-producing incident.

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<sup>4</sup> *Haagenson v. Nat'l Farmers Union Prop. & Cas. Co.*, 277 N.W.2d 648, 651 (Minn. 1979); *Walker v. M&G Convoy, Inc.*, No. CIV.A. 88C-DE-191, 1989 WL 158511, at \*1 (Del.Super.Ct. Nov.2, 1989); *Padron v. Long Island Ins. Co.*, 356 So.2d 1337, 1339 (Fla.Dist.Ct.App. 1978); *Putkamer v. Transamerica Ins. Corp. of Am.*, 454 Mich. 626, 563 N.W.2d 683, 686 (1997); *Berry v. Dairyland County Mut. Ins. Co. of Texas*, 534 S.W.2d 428 (Tex.Civ.App.-Fort Worth 1976).

<sup>5</sup> *Chamblee v. State Farm Mut. Auto. Ins. Co.*, 601 So.2d 922, 924 (Ala. 1992); *Testone v. Allstate Ins. Co.*, 165 Conn. 126, 328 A.2d 686, 690 (1973); *Adamkiewicz v. Milford Diner, Inc.*, No. 90C-JA-23, 1991 WL 35709, at \*1 (Del.Super.Ct. Feb.13, 1991); *State Farm Mut. Auto. Ins. Co. v. Yanes*, 447 So.2d 945, 946 (Fla.Dist.Ct.App. 1984).

In the instant case, Kelly Ramm was operating the motor vehicle as a motor vehicle at the time of his accident. Although he had stopped the vehicle and “put it in park,” he had not parked the vehicle on the side of the road, had not turned off the ignition, and was still using it as a motor vehicle at the time he passed out and fell from the vehicle onto the asphalt. Unlike the exiting/entering cases (which would be covered by the *Sturrock* decision, although probably not under *Tyrrell*, which distinguished such cases and reasoning, *supra*, p. 136), Kelly Ramm did not intend to exit the vehicle, but instead only opened the door as he felt nauseous and felt he might need to vomit outside the vehicle itself.

At a minimum, the Ramms’ case most similarly matches the hypothetical example found by the Washington Supreme Court in *Tyrrell*, where they opined that:

A motor vehicle is being operated as a motor vehicle when it is being driven or when it is stopped while being driven. *For example, if a tree limb were to fall on the motor vehicle while a person was driving or had stopped while driving, that would constitute a “motor vehicle accident.”* On the other hand, a motor vehicle is not being operated as a motor vehicle when parked.

At the time of his accident, Kelly Ramm was operating the motor vehicle. It was “stopped while being driven.” Similar to the *Tyrrell*

hypothetical, where the Supreme Court determined that coverage would exist if a tree limb fell on a vehicle while it was stopped, Mr. Ramm's accident occurred when he fell from the vehicle while it was "stopped while being driven." The ignition was stilled turned on, he had not parked the vehicle on the side of the road, and he had evidenced no intent to terminate operation of the motor vehicle "as a motor vehicle" at the time of his accident.

Although reference to cases from other jurisdictions is informative, it is again asserted this court need go no farther than the above-quoted language from *Tyrrell*--coverage exists in this case because Kelly Ramm's accident occurred while the vehicle was "operated as a motor vehicle," and while it was "stopped while being driven." Farmers' attempt to deny coverage falls short, because the undisputed facts do not show the vehicle was "parked," as it was in *Tyrrell*, when the use of the vehicle "as a motor vehicle" had clearly terminated by the time of the accident.

**F. Kelly Ramm Is Entitled To Recover His Attorney Fees And Costs On Appeal**

Although the bad faith claims were voluntarily dismissed (without prejudice, and which may be raised later), should the trial court's decision

be reversed and coverage found, Kelly Ramm would be entitled to an award of his attorney fees and costs, both on appeal and before the trial court, under the principles of the Washington Supreme Court decision of *Olympic Steamship v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), as he was required to enter into litigation with Farmers in order to gain the benefits under his policy to which he was entitled. Washington law is clear, and it is not expected Farmers would contest that if Kelly Ramm prevails on appeal and the trial court's decision is reversed, then *Olympic Steamship* fees and costs are awardable at both the trial and appellate court levels.

#### **V. CONCLUSION**

Mr. Ramm's injuries were sustained when he was operating his motor vehicle as a motor vehicle. Although he had stopped the vehicle, he had not turned off the ignition or terminated his use of the motor vehicle while it was being driven.

This case is distinguishable from the facts in *Tyrrell*, and instead fall more closely within the hypothetical situation found by the State Supreme Court in *Tyrrell* where coverage would exist—this accident occurred while the vehicle was stopped “while being driven.” He was not “parked,” but

fell from the vehicle onto the asphalt from his seat, and never even completely exited the vehicle (his feet were still in the vehicle while his head had hit the asphalt).

In Washington, PIP coverage is mandated by law, and no-fault PIP policies are to be liberally construed in favor of coverage. It is respectfully requested that the trial court erred, and the appellate court should reverse its decision, finding as a matter of law that under the undisputed facts contained therein, Kelly Ramm is entitled to medical coverage under his PIP policy issued by Farmers.

DATED this 14th day of November 2016.

EWING ANDERSON, P.S.

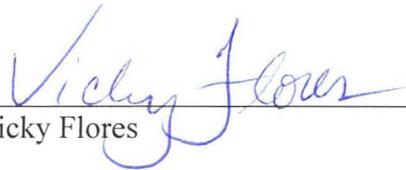
By: 

BRAD E. SMITH, WSBA 16435  
Attorney for Appellants/Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on November 14, 2016, the foregoing was delivered to the following persons in manner indicated:

Thomas Lether Eric J. Neal C.J. Carroll Lether & Associates, PLLC 1848 Westlake Ave. N, Suite 100 Seattle, WA 98109	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery-Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: 206-467-5544 <input checked="" type="checkbox"/> Email: <a href="mailto:tlether@letherlaw.com">tlether@letherlaw.com</a> <a href="mailto:eneal@letherlaw.com">eneal@letherlaw.com</a> <a href="mailto:ccarroll@letherlaw.com">ccarroll@letherlaw.com</a>
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Vicky Flores