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No. 65924-3

WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

SAFECO INSURANCE COMPANY OF ILLINOIS, *Appellant*

v.

COUNTRY MUTUAL INSURANCE COMPANY, *Respondent*

APPELLANT'S BRIEF

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I. INTRODUCTION

Safeco Insurance Company of Illinois brings this appeal because Country Mutual Insurance Company (Country) has shirked its obligation to provide prorata coverage along with Safeco.

Safeco insured the owners of a vehicle involved in an accident and Country insured the driver. Each policy provided the driver with liability insurance: the Country policy because it provided liability insurance to the driver for accidents resulting from the use of a non-owned vehicle, and the Safeco policy because the driver had the owners' permission to drive the vehicle.

The "other insurance" clauses of each policy contained language that made the policies excess to each other. Under Washington law, the conflict between those clauses negates them and requires that each insurer extend prorata coverage.

Safeco stepped up, extended coverage, and paid the property damage claim against the driver. But Country refused to extend prorata coverage, and the Trial Court erroneously ruled for Country. Safeco requests that this Court reverse and declare that (1) Safeco and Country are responsible for providing prorata coverage, that (2) Country must provide prorata reimbursement to Safeco, and (3) that Country must pay Safeco reasonable attorney fees.

II. ASSIGNMENTS OF ERROR

Safeco makes the following assignments of error:

1. The trial court erred by granting Country's cross motion for summary judgment.
2. The trial court erred in denying Safeco's Motion for Summary Judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When two liability insurance policies each have a clause making that insurance policy excess to the other insurance policy, then those clauses must be disregarded and each policy is liable for a prorata share of the loss. Here, both insurance policies contain clauses that would make each policy excess to the other. Should the Trial Court have entered summary judgment providing that each insurer is responsible for providing liability coverage on a prorata basis, and providing that Country is liable to make prorata reimbursement for amounts already paid by Safeco?

IV. STATEMENT OF THE CASE

This case involves a situation where Safeco has provided coverage to permissive driver Jonathan Kooista for claims arising from an accident that happened when Kooistra was driving a car owned by Safeco's insureds, and where Kooistra's own carrier, Country has refused to provide such coverage. Safeco contends that each insurer is responsible for providing coverage on a prorata basis, and Country contends that it is not responsible for providing such coverage.

On October 27, 2008, Country insured Jonathon Kooistra was involved in a motor vehicle accident while driving a car owned by Safeco insureds Paul and Alene Parish.¹

Kooistra had permission to drive the Parish vehicle, and, as a permissive driver, he had liability coverage under the Parish's Safeco policy as well as liability coverage under his own Country policy.²

Kooistra's Country policy contained the following language:

Other Insurance

If there is other applicable liability insurance for a loss covered by this policy, **we** will pay only **our** share of the loss. **Our** share is determined by totaling the limits of this insurance and all other collectible insurance and finding the percentage of the total which **our** limits represent. However, any insurance we provide with respect to a vehicle you do not own will be excess over any other collectible insurance.³

The Parish's Safeco policy contained the following language:

OTHER INSURANCE

If there is other applicable liability insurance available any insurance we provide shall be excess over any other applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance.⁴

¹ CP 2: Safeco's Complaint For Declaratory Judgment & Equitable Contribution (hereinafter Complaint) at paragraph 3.1; CP 23 Country Mutual Insurance Company's Answer to Complaint (hereinafter Answer) at paragraph 3.1

² CP 2: Complaint at paragraph 3.2; CP 23: Answer at paragraph 3.2

³ CP 2: Complaint at paragraph 3.3; CP 23: Answer at paragraph 3.3; CP 34: Kooistra Country policy at page 5

⁴ CP 2: Complaint at paragraph 3.4; CP 23: Answer at paragraph 34; CP 79 : Safeco Parish policy at page 5

The policy limits of the Kooistra Country policy are Liability – Bodily Injury \$300,000 each person / \$500,000 each occurrence, and are Property Damage \$100,000 each occurrence.⁵ The policy limits of the Parish Safeco policy are \$500,000 Combined Single Limit: Bodily Injury And Property Damage Liability.⁶

Thus far, in regard to the October 27, 2008 accident, Safeco has paid property damage claims to Dayisha Duim in the amount of \$6153.60 and to Gerit Hoogenbezm in the amount of \$1667.20.⁷ Safeco demanded that Country provide coverage for losses arising from the October 27, 2008, accident on a pro rata basis.⁸ But Country has refused Safeco’s demand that it provide coverage and has taken the position that its policy is excess and that Country will not make any payment unless the liability damages exceed the Safeco policy limit.⁹

Arguing that there were no material facts in dispute and that as resolution of the case turned on the legal interpretation of the “Other Insurance” clauses in the respective policies, Safeco brought a motion for summary judgment seeking an order that (1) each insurer is responsible for providing liability coverage on a prorata basis, that (2) Country is

⁵ CP 27: Country Policy Declarations Page

⁶ CP 67: Safeco Policy Declarations Page

⁷ CP 3: Complaint at paragraph 3.7; CP 23: Answer at paragraph 3.7

⁸ CP 2: Complaint at paragraph 3.5; CP 23: Answer at paragraph 3.5

⁹ CP 2: Complaint at paragraph 3.6; CP 23: Answer at paragraph 3.6

liable to make prorata reimbursement of the amounts already paid by Safeco, and that (3) Safeco is entitled to its reasonable attorney fees in bringing this action to establish that Country is responsible for providing liability insurance coverage on a prorata basis with Safeco.¹⁰

Country filed a cross motion for summary judgment and asked the Court to enter an order “that the Safeco policy is primary, the Country Insurance Policy is excess, and that this case should be dismissed with prejudice and without costs.”¹¹

On July 30, 2010, the Trial Court heard oral argument and issued an order granting Country’s motion for summary judgment and denying Safeco’s motion for summary judgment.¹² Safeco appeals.

V. ARGUMENT

When reviewing an order on summary judgment, the Court of Appeals makes the same inquiry as the trial court,¹³ and considers all legal questions de novo.¹⁴ Summary judgment is appropriate if “there is no genuine issue as to any material fact” and the moving party shows that he or she is “entitled to a judgment as a matter of law.”¹⁵

¹⁰ CP 7: Safeco’s Motion for Summary Judgment at page 1

¹¹ CP 143-144: Order Granting Defendant’s Cross-Motion For Summary Judgment

¹² CP 143-144: Order Granting Defendant’s Cross-Motion For Summary Judgment

¹³ *Cowlitz Stud Co. v. Clevenger*, 157 Wn.2d 569, 573, 141 P.3d 1 (2006) (internal citations omitted).

¹⁴ *Id.*

¹⁵ CR 56(c).

Under that standard, this Court should reverse the Trial Court's order, hold that Country's cross-motion for summary judgment should be denied and hold that Safeco is entitled to judgment (1) declaring that each insurer is responsible for providing liability coverage on a prorata basis, that (2) declaring that Country is liable to make prorata reimbursement of the amounts already paid by Safeco and entering judgment in favor of Safeco for \$3910.40 –which is half of what Safeco has paid on the loss, and that (3) Safeco is entitled to its reasonable attorney fees in bringing this action to establish that Country is responsible for providing liability insurance coverage on a prorata basis with Safeco.

A. This Court Should Reverse And Rule In Favor Of Safeco Because The Language Of The Respective Policies Make Each Policy Excess To The Other Such That Each Insurer Is Liable For A Prorata Share Of The Loss

Safeco provided an auto liability policy to the vehicle's owner,¹⁶ while Country provided an auto liability policy to the vehicle's driver.¹⁷

In *New Hampshire Indem. Co., Inc. v. Budget Rent-A-Car Systems, Inc.*¹⁸, the Washington Supreme Court rejected the contention that, as a rule, the insurer of the vehicle is always primary and instead held that coverage order depends on the language found in the insurance policies:

¹⁶ CP 63-109: Safeco Policy

¹⁷ CP 26-61: Country Policy

¹⁸ 148 Wn.2d 929, 64 P.3d 1239 (2003)

Specifically, the question is whether the insurer of a vehicle is always primary, or whether the terms of the insurance contracts themselves are determinative. We hold that the conditions of coverage depend on the terms of the insurance contracts and that no per se rule requires the insurer of a vehicle to provide primary coverage.¹⁹

As held by the Washington Supreme Court in *Pacific Indem. Co. v. Federated Am. Ins. Co.*²⁰, when both policies have clauses that would make the other policy excess, then each of those clauses is disregarded and each insurer is liable for a prorata share of the loss:

We find that the decision of the trial court-which we affirm-is in accordance with the general rule and weight of authority expressed in 7 Am.Jur.2d Automobile Insurance s 202, p. 545:

(W)here two or more policies provide coverage for the particular event and all the policies in question contain 'excess insurance' clauses-it is generally held that such clauses are mutually repugnant and must be disregarded, rendering each company liable for a pro rata share of the judgment or settlement, since, if literal effect were given to both 'excess insurance' clauses of the applicable policies, neither policy would cover the loss and such a result would produce an unintended absurdity.²¹

Here, the language of both the Country policy and of the Safeco policy would make each policy excess to the other, such that each insurer is liable for a prorata share of the loss. The Country liability insurance policy contains an "Other Insurance" clause that makes the Country policy

¹⁹ *New Hampshire Indemn.*, 148 Wn.2d at 932

²⁰ 76 Wn.2d 249, 456 P.2d 331 (1969)

²¹ *Pacific Indem.*, 76 Wn.2d at 251-252 (overruled on other grounds, *Mission Ins. Cp. V. Allendale Mut. Ins. Co.*, 95 Wn.2d 464, 626 P.2d 505 (1981))

excess when, as here, the Country insured is driving a vehicle he does not own:

Other Insurance

If there is other applicable liability insurance for a loss covered by this policy, we will pay only our share of the loss. Our share is determined by totaling the limits of this insurance and all other collectible insurance and finding the percentage of the total which our limits represent. However, any insurance we provide with respect to a vehicle you do not own will be excess over any other collectible insurance.²²

The Safeco liability insurance policy contains an “Other Insurance” clause that makes the Safeco policy excess to “any other applicable liability insurance:”

OTHER INSURANCE

If there is other applicable liability insurance available any insurance we provide shall be excess over any other applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance.²³

The Country language makes the Country policy excess to the Safeco policy because the Country insured was driving a vehicle he did not own. The Safeco language makes the Safeco policy excess because the Country policy is other applicable liability insurance.

The correct result under Washington law is straight forward. The excess language in the Safeco and Country policies is mutually repugnant,

²² CP 34: Country Policy at page 5

²³ CP 79: Safeco Policy at page 5

and those excess provisions negate each other such that both Safeco and Country are required to provide prorata coverage for the loss. The Trial Court, therefore, erred in denying Safeco's motion for summary judgment and erred in granting Country's cross motion. This Court should reverse.

B. This Court Should Reverse And Rule In Favor Of Safeco Because The Language Of Country's Policy Shows That It Is "Other Applicable Insurance"

Country's cross motion for summary judgment²⁴ and reply²⁵ did not dispute the well settled Washington law that conflicting excess provisions negate each other such that each insurer must provide rata coverage, and Country did not dispute that it would have to provide prorata coverage if its policy is "other applicable liability insurance." Instead, Country sought to avoid coverage by arguing that its "Auto Insurance Policy" is not other applicable liability insurance.²⁶ As will be discussed below, Country's argument is shown wrong by both policy language and case law.

Washington courts construe insurance policies as contracts.²⁷ The policy is considered as a whole, and given a "fair, reasonable, and sensible

²⁴ CP 117-124

²⁵ CP 138-142

²⁶ CP 119: Country's Cross Motion at page 3

²⁷ *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 665, 15 P.3d 115 (2000) (quoting, *Amer. Nat. Fire Ins. Co. v. B&L Trucking & Const. Co.*, 134 Wn.2d 413, 427-28, 951 P.2d 250 (1998) (quoting, *Key Tronic Corp. v. Aetna (CIGNA) Fire Underwriters Ins. Co.*, 124 Wn.2d 618, 627, 881 P.2d 201(1994))(citations omitted)).

construction as would be given to the contract by the average person purchasing insurance.”²⁸ Here, a review of the policy language shows the Country policy to be other applicable liability insurance.

The Country policy is titled “AUTO INSURANCE POLICY.” It is not titled an excess policy or an umbrella policy. Instead, it, like the Safeco policy, provides automobile liability insurance.

Further, a review of the Country policy language shows that the Country policy provides ‘liability’ insurance when, as was the case here, the insured is using a non-owned vehicle. In particular Section 1- “Liability Insurance” provides “liability insurance” when the insured is legally obligated to pay damages because of bodily injury or property damage “caused by an accident resulting from the ownership maintenance or use of an **insured vehicle**, ...or of any **nonowned vehicle**”: (emphasis original)

SECTION 1- LIABILITY INSURANCE

Bodily Injury, Coverage A

Property Damage, Coverage B

If **you** have paid for coverage under Section 1 (see the declarations page), **we** promise to pay all sums in behalf of an **insured** which the **insured** becomes legally obligated to pay as damages because of:

1. bodily injury (Coverage A), including death resulting from that bodily injury, sustained by any person;

²⁸ *Weyerhauser Co.*, 142 Wn.2d at 665

2. damage to or destruction of property (Coverage B), including loss of use.

The bodily injury or property damage must be caused by an accident resulting from the ownership, maintenance or use of an **insured vehicle**, including loading and unloading, or of any **nonowned vehicle** ...²⁹

That language shows the Country policy provides “liability insurance” for Country insured Jonathan Kooistra even when Mr. Kooistra was driving a nonowned car. Because it is liability insurance other than that provided Kooistra under the Safeco policy, it is “other applicable liability insurance” within the meaning of Safeco’s policy.

Both the Country and Safeco policies are automobile liability insurance policies, not umbrella policies or excess policies. Both the Country and Safeco policies have language providing liability insurance for this accident. And both the Country and Safeco policies have other insurance clauses that would make each policy of liability insurance policy excess to the other. Under Washington law, the conflict between the excess language found in those other insurance clauses negates them and requires that each insurer extend prorata coverage. Accordingly, under a correct application of the law, the Trial Court should have granted Safeco’s summary judgment motion and denied Country’s cross motion.

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²⁹ CP 31: Country Policy at page 2

C. This Court Should Reverse And Rule In Favor Of Safeco Because A Recent Texas Appellate Case Expressly Rejected The Argument Made By Country And Accepted The Argument Made By Safeco

Country rests its position on the argument that the Country “Auto Insurance Policy” is not “other applicable liability insurance.” But that exact argument was rejected by the Texas Court of Appeals in its 2009 case *Safeco Lloyds Insurance Company v. Allstate Insurance Company*.³⁰ While a reported decision from Texas is not binding on this Court, it is persuasive authority which the Court may consider and follow.³¹

Such consideration is particularly appropriate in this case because (1) the *Safeco Lloyds* decision concerns substantially the same facts as those here, because (2) the *Safeco Lloyds* decision concerns substantially the same policy language at issue here, because (3) the argument made by Country here was made by Allstate in the *Safeco Lloyds* case, because (4) the *Safeco Lloyds* decision expressly rejected the argument now made by Country, and because (5) the *Safeco Lloyds* Court accepted the argument now made by Safeco that the excess language in the policies conflicted such that both insurers were required to provide coverage on a prorata basis.

³⁰ 308 S.W.3d 49 (2009)

³¹ *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 330-331, 178 P.2d 995 (2008)

First, the relevant facts are substantially the same in *Safeco Lloyds* and in the present case. In *Safeco Lloyds*, (1) Safeco issued an auto insurance policy to the owner of the vehicle involved the accident, (2) the accident happened when a permissive user was driving the car, (3) another insurer, there Allstate, had issued an auto insurance policy to the permissive driver, (4) Safeco demanded that it and the other insurer provide coverage on a prorata basis, and the other insurer refused – contending that its policy provided only excess coverage.³² Likewise, here (1) Safeco issued an auto insurance policy to Paul and Alene Parish - the owners of the vehicle involved the accident, (2) the accident happened when a permissive user, Mr. Kooistra, was driving the car, (3) another insurer, here Country, issued an auto policy to the permissive driver, and (4) Safeco demanded that it and the other insurer provide coverage on a prorata basis, and the other insurer refused – contending that its policy provided only excess coverage.

Second, the policy language at issue in *Safeco Lloyds* was substantially the same as the policy language at issue here. The Safeco policy in *Safeco Lloyds* contained the same excess provision language that is found the Safeco policy here:

If there is other applicable liability insurance available
any insurance we provide shall be excess over any other

³² *Safeco Lloyds*, 308 S.W.3d at 51

applicable liability insurance. If more than one policy applies on an excess basis, we will bear our proportionate share with other collectible liability insurance.³³

Likewise, the Allstate policy in *Safeco Lloyds* contained the same type of excess language regarding non-owned vehicles that Country relies on

here:

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the portion that our limit of liability bears to the total of all applicable limits. However, any liability insurance we provide to a covered person for the maintenance or use of the vehicle you do not own shall be excess over any other applicable liability insurance.³⁴

Third, in *Safeco Lloyds*, Allstate made the same argument that Country makes now, that because the Safeco policy has an omnibus clause, the Allstate policy provides only excess insurance and is thus not other applicable liability insurance:

According to Allstate's reasoning, because the Safeco policy has an omnibus clause, i.e., "[w]e will pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident ... [,]" and the Allstate policy provides only excess coverage to covered persons driving vehicles they do not own, the policy limits in the Safeco policy must be exhausted before any excess liability on the part of Allstate is triggered. Thus, the Allstate policy is not "other applicable liability insurance," because the Mazda driven by Ramos is simply not covered under the Allstate policy, and there is no conflict between the "other insurance" clauses.³⁵

³³ *Safeco Lloyds*, 308 S.W.3d at 52

³⁴ *Safeco Lloyds*, 308 S.W.3d at 52

³⁵ *Safeco Lloyds*, 308 S.W.3d at 57

Fourth the *Safeco Lloyds* Court expressly rejected the argument (now made by Country) that the driver's policy provided only excess coverage, and instead found that the driver's policy provided primary coverage:

In making this argument, Allstate ignores language in its own policy, concentrating only on the excess language in the "other insurance" clause while ignoring the express language that the Allstate policy provides primary liability coverage when any "covered person" becomes legally responsible because of an auto accident. A "covered person" is defined in the Allstate policy to mean the insured "or *any family member* for the ownership, maintenance or use of any private passenger type auto, sport utility vehicle, pickup or *58 van or trailer." (emphasis added) Because Ramos was a "covered person" under the terms of the Allstate policy, it too provided primary liability coverage, thereby meeting the first requirement of the *Hardware Dealers* test and requiring the court to look at the "other insurance" clauses to determine if there was a conflict. **So, contrary to Allstate's contention, its policy does not simply provide excess coverage when a covered person is driving a non-owned vehicle; rather, it provides primary coverage for any covered person using any private passenger automobile.** If we accept Allstate's position, we would have to ignore the plain language of the Allstate policy in direct contravention of the admonition in *Don's Bldg. Supply, Inc.* that no section of an insurance policy should be considered apart from the other policy provisions. 267 S.W.3d at 23.³⁶ (emphasis added)

Likewise, the Country policy at **SECTION 1 – LIABILITY INSURANCE** is written to provide primary coverage when the insured is driving any nonowned vehicle. The "Definitions" section of policy defines "you" in relevant part as "the person named as insured on the declarations

³⁶ *Safeco Lloyds*, 308 S.W.3d at 57-58

page of the policy and that person's spouse.³⁷” As discussed in section B. above, **SECTION 1** then, as in *Safeco Lloyds*, provides primary coverage when “you” (in this case Kooistra) was driving “**any nonowned vehicle**.”³⁸”

Fifth, the *Safeco Lloyds* Court then went on to accept the argument made by Safeco in the present case - that because the other insurance clauses in the policies conflict, each insurer is obligated to provide coverage on a prorata basis, and the *Safeco Lloyds* Court correspondingly found that the trial court had erred in denying Safeco's motion for summary judgment and erred in granting the other insurer's motion for summary judgment:

In sum, we hold the test announced by the Texas Supreme Court in *Hardware Dealers* applies in this case. Applying that test, we conclude Ramos has coverage from both of the policies but for the existence of the other, and each policy contains a provision that is reasonably subject to a construction that it conflicts with a provision in the other concurrent policy. See *Hardware Dealers*, 444 S.W.2d at 589. Accordingly, as stated in *Hardware Dealers* the “offending” provisions must be ignored. *Id.* Ignoring the conflicting provisions, we hold Safeco and Allstate share liability on a pro rata basis in proportion to the amount of insurance provided by their respective policies, and therefore the trial court erred in granting Allstate's motion for summary judgment and denying Safeco's motion for summary judgment.³⁹

³⁷ CP 31: Country policy at page 2

³⁸ CP 31:Country Policy at page 2

³⁹ *Safeco Lloyds*, 308 S.W.3d at 60

The same result is appropriate here. Just as the Allstate policy in *Safeco Lloyds* was other applicable liability insurance when the Allstate policy expressly provided liability coverage when an insured was driving any private passenger car – including non-owned cars, the Country policy is other applicable liability insurance because the Country policy language expressly provides liability coverage when a Country insured is legally obligated to pay damages because of the use of a nonowned vehicle.

And just as the *Safeco Lloyds* Court reversed the Texas Trial Court's and found that each insurer was required to provide coverage on a prorata basis, this Court should likewise reverse and hold that Safeco and Country are obligated to provide coverage on a prorata basis.

D. This Court Should Grant Safeco Attorney Fees For Both The Trial Appellate Actions

Safeco's motion for summary judgment requested attorney fees per the *Olympic Steamship* doctrine,⁴⁰ and the Trial Court, in denying Safeco summary judgment, did not grant such fees.

But, for the reasons discussed above, the Trial Court should have granted Safeco summary judgment, and that summary judgment order should have provided that Country pay Safeco its reasonable attorney fees incurred in bringing this action to establish that Country is responsible to

⁴⁰ CP 14: Safeco's Motion for Summary Judgment at page 7

provide prorata coverage for the subject accident. Per the *Olympic Steamship* doctrine, an insurer, like Country, who refuses to provide coverage by incorrectly declining to pay a claim against its insured, is liable for the attorney fees incurred in a legal action to force it to provide that coverage.⁴¹ *Olympic Steamship* fees can be assessed against an insurer who declines coverage even if another insurer pays the claim against the insured and then funds the action against the insurer who incorrectly declined coverage.⁴² In this case, such attorney fees should have been awarded by the Trial Court. Further, as the *Olympic Steamship* doctrine allows for attorney fees on appeal, Safeco requests that its attorney fees be awarded for this appeal.⁴³

VI. CONCLUSION

Both the Safeco and Country policies are auto liability insurance policies, not umbrella policies. The Safeco other insurance clause makes the Safeco policy excess to the Country policy because the Country policy is other applicable liability insurance. Likewise, the Country other insurance clause makes the Country policy excess to the Safeco policy

⁴¹ *McRory v. Northern Ins. of New York*, 138 Wn.2d 550, 554-555, 980 P.2d 736 (citing *Olympic Steamship v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991))

⁴² See *McRory*, 138 Wn.2d at 556-560 (*Olympic Steamship* fees awarded when other insurer paid defense and settlement costs and when attorney fee award would ultimately go to other insurer who provided coverage)

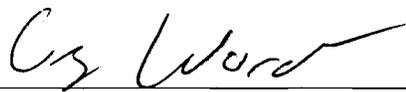
⁴³ See *Bordeaux, Inc. v. AM. Safety Ins. Co.*, 145 Wn.App. 687, 698, 187 P.3d 306 (2008) (allowing *Olympic Steamship* fees on appeal).

because the Country insured was driving a vehicle he did not own. Those excess provisions negate each other such that both Safeco and Country are required to provide prorata coverage for the loss.

Accordingly, the trial court erred in denying Safeco's motion for summary judgment and erred in granting Country's cross motion for summary judgment. This Court should reverse and issue a decision (1) declaring that Safeco and Country are responsible for providing liability coverage on a prorata basis for losses arising out of the October 27, 2008 accident, and (2) providing that Country must now reimburse Safeco the amount of \$3,910.40, which is one half of amount that Safeco has paid on this loss, and (3) providing that Country must pay Safeco, Safeco's reasonable attorney fees both at the Trial Court level and on this appeal.

Respectfully submitted this 3rd day of November, 2010.

BARRETT & WORDEN, P.S.

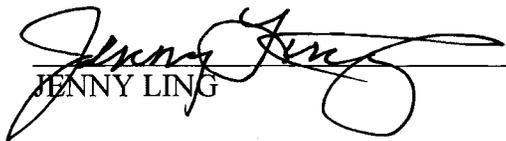


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DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the Appellant's Brief to be served via the methods below on the 3rd day of November, 2010 on the following counsel/party of record:

PARTY/COUNSEL	METHOD OF DELIVERY
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