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STATE OF WASHINGTON
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No. 97652-0

SUPREME COURT
OF THE STATE OF WASHINGTON

TODD MCLAUGHLIN, a Washington resident,

Petitioner,

v.

TRAVELERS COMMERCIAL INSURANCE COMPANY,
a foreign corporation,

Respondent.

CORRECTED BRIEF OF AMICUS CURIAE
CASCADE BICYCLE CLUB

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A. INTRODUCTION

Cascade Bicycle Club (“Cascade”) asks that this Court grant review and reverse Division I’s published decision denying Personal Injury Protection (“PIP”) coverage to Todd McLaughlin who was injured in a collision with a motor vehicle while riding his bicycle. Cascade’s members routinely rely on PIP coverage to provide “no-fault” medical and wage loss benefits when they are injured, as bicyclists, in collisions with motor vehicles. The legislature wisely chose to make this coverage available to all vulnerable users of our public ways, including bicyclists, who fall victim to motor vehicle crashes. Division I’s opinion strips this key coverage from bicyclists in favor of a strict dictionary definition of the term “pedestrian,” which Travelers failed to define in its own insurance policy. Not only is this wrong under the law, but it is also wrong in the insurance context, where average purchasers of insurance like Cascade’s members, have relied on PIP and Medpay provisions in automobile policies to cover medical bills and wage loss in bicycle collisions with motor vehicles for decades. This Court should grant review and reverse.

B. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The identity and interest of Cascade in this action, as required by RAP 10.3(e), are articulated in detail in Cascade’s motion for leave to submit this *amicus* brief.

C. STATEMENT OF THE CASE

Cascade adopts the statement of the case in the petition for review.

D. ARGUMENT

Todd McLaughlin shows the many legal errors made by Division I in its published opinion, and Cascade concurs in those arguments as *amicus curiae*. However, several key points deserve highlighting, most notably Division I's disregard of policy arguments that courts must consider when interpreting insurance contracts. Division I's opinion overlooks the reality of the insurance industry and the routine application of PIP coverage to bicyclists. By adopting a strict dictionary definition over the definition in the insurance code and as used in the insurance industry, Division I's opinion conflicts with precedent and strips important protections from bicyclists. This Court should grant review and reverse.

(1) Division I's Published Opinion Ignores Public Policy and the Important Protections for Bicyclists in the Insurance Code

Division I ignores the policy behind PIP insurance and the reason the legislature chose to apply it broadly to all persons “not occupying a motor vehicle,” including bicyclists. PIP (which is substantially similar to Medical Payments or “Medpay” coverage) is a type of coverage designed to provide victims of automobile crashes relatively simple access to medical benefits for their injuries as well as wage loss benefits, irrespective of fault

and without having to bring a lawsuit. David K. DeWolf and Matthew C. Albrecht, *Purpose of personal injury protection statutes*, 35 Wa. Prac., WASHINGTON INSURANCE LAW AND LITIGATION § 5:1 (2018-2019 ed.).

These benefits can often be fairly low, sometimes just \$5,000, as in McLaughlin's case. But for the average purchaser of insurance, PIP provides an important source of funds, especially for those who may not be able to afford co-pays or deductibles on their health insurance plans or who need benefits for income lost due to their injuries. This coverage is important not only for people like many of Cascade's members who depend on their bicycles for transportation, including commuting to work, but it is also crucial to the many Washingtonians who live paycheck to paycheck. After a crash, PIP coverage can often mean the difference between financial stability and financial hardship.

Importantly, PIP is designed to cover not only occupants of motor vehicles, but also the most vulnerable victims of motor vehicle crashes, such as people walking or riding a bicycle on a sidewalk, crosswalk, or a public street. RCW 48.22.005(11) (defining "pedestrian" in the PIP context as any person "not occupying a motor vehicle"). Division I's published opinion seems to ignore the policy and purpose behind PIP coverage itself. PIP exists to compensate all victims of *motor vehicle* collisions because motor vehicles are inherently dangerous, especially for bicyclists and other types

of pedestrians. As Division II has said, the “danger is inherent in motor vehicles because of their weight and the speed at which they travel.” *City of Montesano v. Wells*, 79 Wn. App. 529, 536, 902 P.2d 1266 (1995) (cited in petition for review at 16-18 and discussing the legal distinction between motor vehicles and other vehicles such as bicycles). Motor vehicles pose the greatest threat to other users of public streets, and bicyclists are no less vulnerable than other pedestrians to injury in motor vehicle accidents. *State v. Morris*, 87 Wn. App. 654, 666-67, 943 P.2d 329 (1997), *review denied*, 134 Wn.2d 1020 (1998) (cited in petition for review at 13).

The legislature has long recognized the special danger posed by motor vehicles. For example, the legislature has assigned significant criminal penalties to crimes involving the criminal operation of a motor vehicle. *See, e.g.*, RCW 46.61.520 (vehicular homicide) (requiring the operation of a “motor vehicle”); RCW 46.61.524 (negligent driving in the first degree) (*accord*); RCW 46.61.525 (negligent driving in the second degree) (*accord*). And the legislature chose to become one of only a handful of states to mandate that insurers provide PIP coverage for motor vehicle collisions, unless a consumer affirmatively opts out. RCW 48.22.085. The PIP statute is just another in the long line of measures the legislature has taken to alleviate the “financial distress following in the wake of automobile accidents” and “broaden generally the public’s protection against

automobile accidents.” *Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 675, 852 P.2d 1078 (1993) (discussing the legislature’s reasons for expanding underinsured motorist coverage) (quotation omitted). This shows a clear policy of protecting all citizens from the dangers posed by motor vehicles.

At the same time the legislature enacted the PIP statute, it included a broad definition of “pedestrian” for PIP purposes as any person “not occupying a motor vehicle.” RCW 48.22.005(11). This clearly shows the legislature’s intent to apply PIP coverage broadly to all victims of motor vehicle collisions, whether inside a motor vehicle or not. Division I was incorrect to conclude otherwise and ignored the established public policy in this state to protect insureds and provide benefits to those injured in motor vehicle crashes. Pet. at 3-4 (citing, *e.g.*, *Oregon Auto. Ins. Co. v. Salzberg*, 85 Wn.2d 372, 376-77, 535 P.2d 816 (1975); *Mission Ins. Co. v. Guarantee Ins. Co.*, 37 Wn. App. 695, 699, 683 P.2d 215 (1984), etc.).

Simply put, Division I’s opinion makes no sense. PIP exists to compensate all victims of motor vehicle collisions, because motor vehicle collisions are likely to cause injury. There is no reason to carve out an exception to PIP for bicyclists, where passengers of motor vehicles are covered as well as all persons “not occupying motor vehicles.” Bicyclists are now the least protected class of citizens using public rights of way from

an insurance perspective, which was never the intention of the legislature in choosing to enact the PIP statutes. This Court should grant review and reverse to correct this conflict with the numerous authorities cited above, regarding PIP coverage in this state. RAP 13.4(b)(1), (2).

(2) **Division I's Published Opinion Ignores the Reality of Consumer's Insurance Expectations**

Division I's published opinion not only conflicts with the law and policy of this state, it ignores the reality of the insurance expectations of consumers. Bicyclists rely on PIP coverage to provide medical and other benefits for injuries in collisions with motor vehicles, irrespective of fault and without having to file a time-consuming lawsuit. This is routine in the insurance industry as evidenced by publications from major insurers. For example, Progressive Insurance operates a Frequently Asked Questions page on its public website, explaining how bicyclists are often covered under their auto and homeowners' policies. Progressive, *Bicycle Insurance*, <https://www.progressive.com/answers/bicycle-insurance/> (last visited October 25, 2019). Progressive specifically explains that for "injuries caused by biking accidents with a driver...your injuries will be covered...[i]f you have personal injury protection or medical payments coverage." *Id.* Likewise, Esurance, a subsidiary of Allstate Insurance, explains on its website that Medpay [aka PIP] insurance covers insureds

who are “struck by a car while walking or cycling.” Esurance, *Medical Payments Coverage*, <https://www.esurance.com/info/car/medical-payments-coverage> (last visited October 25, 2019).

A simple Google search reveals additional authority that demonstrates bicyclists are covered by PIP policies as pedestrians injured in motor vehicle accidents. *See, e.g.*, Myles Ma, *Is bicycle insurance a thing — & do you need it?*, Policygenius.com blog (Sept. 19, 2017) <https://www.policygenius.com/blog/does-bicycle-insurance-even-exist/> (“Every car insurance policy covers you as a cyclist for collisions involving an automobile.”); AutoInsurance.org, *Auto Insurance for Cyclists*, <https://www.autoinsurance.org/auto-insurance-for-cyclists/> (last visited October 25, 2019) (“Cyclists will be glad to know that Medpay is applicable for bike accidents that involve a car.”).

These layperson’s authorities (*i.e.*, those that an average purchaser of insurance like Cascade’s members might find with a simple Google search) are in addition to the legal authorities from Washington cited in McLaughlin’s petition for review, where bicyclists received PIP coverage for collisions with motor vehicles *and courts referred to them as pedestrians* in such situations. Pet. at 8.¹ Until Division I’s published

¹ Citing, *e.g.*, *Barriga Figueroa v. Prieto Mariscal*, 193 Wn.2d 404, 441 P.3d 818 (2019) (bicyclist received PIP benefits as a “pedestrian” injured in a crash with an automobile and this Court referred to the bicyclist as a pedestrian throughout its opinion).

opinion, this was not a controversial understanding of the term “pedestrian” for average purchasers of PIP insurance. *See* CP 179-95 (several PIP policies in Washington offered by McLaughlin that define pedestrian broadly as anyone “not occupying a motor vehicle.”).²

Division I wrongfully ignored this reality. Average purchasers of insurance—and especially regular cyclists like Cascade’s members who are acutely aware of the danger posed by motor vehicles—can and do rely on these publications and court cases as assurances that PIP coverage is available in bicycle vs. motor vehicle crashes. Division I’s decision to ignore the plain meaning of the term within the insurance industry and in Washington’s insurance code in favor of a strict dictionary definition conflicts with clear precedent for interpreting insurance policies. *See* Pet. at 3-14 (citing cases where dictionary definitions did not supplant the insurance code or terms as they otherwise appear in the insurance context).

Division I’s opinion turns the insurance industry on its head as it relates to bicyclists injured in crashes with automobiles. Supreme Court review is necessary to protect this Court’s precedent on the proper method

² McLaughlin correctly points out that an average insurance customer would consider a bicyclist to be a person “not occupying a motor vehicle.” That is the only sensible interpretation of that phrase; a bicycle has no motor. Division I’s opposite interpretation and unnecessary “harmonization” of multiple definitions of the term “pedestrian” is out of touch with reality and the plain language of the statute.

of resolving insurance disputes and this state's preference in favor of providing coverage for insureds. RAP 13.4(b)(1), (2).

(3) **Bicycle Safety Is an Issue of Substantial Public Importance**

The Court should grant review and reverse because the safety of people riding bicycles is an issue of ever-increasing public importance. RAP 13.4(b)(4). Bicycle use not only reduces traffic, but it is a means to combat climate change, an issue of particular importance to the citizens and leaders of our state. Carlton Reid, *Bicycling Could Help Save The Planet, Says IPCC Climate Report*, Forbes (Oct. 8, 2018, 12:31 PM), <https://www.forbes.com/sites/carltonreid/2018/10/08/bicycling-could-help-save-the-planet-says-ippc-climate-report/#11e2618f2795>. Cities from Seattle to Spokane are adding infrastructure to encourage citizens to commute and travel by bicycle. These efforts have worked; one street in Seattle saw a 400 percent increase in bicycle traffic after the city added a protected bicycle lane. Angie Schmitt, *Ridership Jumped 400% When Seattle Protected a Bike Lane*, Streetsblog USA (Apr. 18, 2019) <https://usa.streetsblog.org/2019/04/18/ridership-jumped-400-when-seattle-built-a-protected-bike-lane/>.

While public awareness and protected bike lanes can increase safety for bicyclists, crashes with motor vehicles are inevitable. PIP policies help

reduce financial hardship for people who are involved in collisions with motor vehicles while riding bicycles. As a type of no-fault coverage, PIP also protects insured drivers who collide with people riding bicycles by discouraging lawsuits, and litigation certainly will be more common if Division I's opinion is allowed to stand. The Court should grant review of this important public issue and reverse. RAP 13.4(b)(4).

E. CONCLUSION

This Court should grant review and reverse the published opinion below. Division I's opinion ignores important public policy and legal protections afforded to bicyclists in this state.

DATED this 7th day of November, 2019.

Respectfully submitted,



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November 07, 2019 - 11:05 AM

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Appellate Court Case Title: Todd McLaughlin v. Travelers Commercial Insurance Company

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