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.

TRAVELERS COMMERCIAL INSURANCE COMPANY'S ANSWER TO BRIEF OF AMICUS CURIAE CASCADE BICYCLE CLUB

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I. INTRODUCTION

Cascade Bicycle Club's ("Cascade") Brief of Amicus Curiae fails to provide this Court with assistance in conducting its review under RAP 13.4. It does not identify any actual conflict of law with this Court or the Court of Appeals. Rather, it plainly asks this Court to depart from its longstanding jurisprudence regarding insurance policy interpretation.

Moreover, the issues presented in Cascades' brief do not involve a Constitutional issue and are not of substantial public interest to the citizens of Washington. The citizens of Washington do not have any interest in this Court addressing the construction of an automobile policy issued in California.

Cascade's brief is premised on the notion that Washington Courts should interpret the term "pedestrian" in a California auto policy by incorporating a Washington statute into that policy. The Court of Appeals soundly—and correctly—rejected this premise.

Cascade further argues that consumer expectation should control how a policy is interpreted by the Court. This argument is plainly contrary to Washington law. This Court has long held that the consumer expectation cannot override the plain language of a contract.

Similarly, Cascade urges this Court to ignore firmly established and unambiguous rulings of this Court regarding the construction of

insurance policies. This Court has long held that undefined terms in a policy are given their plain and ordinary meaning as set forth in common dictionary definitions. Division I correctly applied that well-settled law in this case. Cascade provides no cognizable basis for overturning this longstanding principle of Washington insurance law.

III. STATEMENT OF THE CASE

The facts that give rise to the present action have been extensively briefed by the parties. For this reason and in the interest of economy, Travelers will not fully reiterate the same, aside from setting forth the controlling terms of the Travelers insurance policy at issue below:

> **MEDICAL PAYMENTS COVERAGE**
> **SECTION**
> **Coverage C- Medical Payments**
>
> ...
>
> **Insuring Agreement**
>
> A. We will pay the usual and customary charge for reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":
>
> 1. Caused by an accident; and
> 2. Sustained by an "insured".
>
> ...
>
> B. "Insured" as used in this Coverage Section means:
> 1. You or any "resident relative":
> a. While "occupying"; or
> b. As a pedestrian when struck by; a motor vehicle designed for use mainly on public roads or a trailer of any type.

CP 39.

To the extent that the Court requires a detailed recitation of facts, Travelers directs this Court to Travelers' Answer to McLaughlin's Petition for Review.

IV. ARGUMENT

A. Legal Standard

Cascade's brief fails to demonstrate why the Court should ignore longstanding principles of insurance policy construction law. Cascade merely states, without analysis, that Division I's Opinion creates conflicts and raises issues of substantial public interest. Cascade cites RAP 13.4(b)(1), (2), and (4) as the basis for this Court granting review, which provides as follows:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> . . .
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

In addressing the criteria in RAP 13.4, Cascade primarily focuses its efforts on asserting, without support, that Division I's Opinion is contrary to a vague notion of public policy regarding bicycle safety.

However, Cascade fails to identify how incorporating a Washington statute into a term found in a California auto insurance policy connects to a substantial public interest that should be addressed by this Court.

Further, Cascade fails to show how Division I's decision is in conflict with any precedent of this Court or the Court of Appeals. To the contrary, Travelers has repeatedly established that Division I correctly followed Washington law regarding insurance policy interpretation in this case. As a result, Cascade's brief should be discarded and this Court should decline to grant review.

B. Division I's Holding Is Not Contrary to Public Policy or Public Safety

The principal focus of Cascade's argument is that public policy requires the Court to equate the term "pedestrian" with bicyclist in order to provide PIP coverage to bicyclists under Travelers' insurance policy. While the safety of bicyclists is important as a general concern, bicycle safety and/or the danger posed by motor vehicles[1] is not at issue in this matter. This case is about interpreting a California auto policy by determining the plain meaning of the term "pedestrian" in that policy. Cascade has not and cannot show how incorporating a Washington statute

[1] Cascade cites to criminal statutes to argue that bicycle safety is important. However, these statutes involve the criminal operation of a motor vehicle and do not address or relate to statutory or policy interpretations of the term "pedestrian" in a PIP policy. Thus, these statutes and the analysis should be disregarded.

into a California insurance policy is required to uphold Washington's public policy interests.

Cascade makes broad sweeping arguments that public policy dictates that this Court overturn Division I's decision. However, these arguments are not supported by any legal authority. There is no statute or other expression of law or public policy in Washington that mandates PIP coverage for all insureds struck by other vehicles while they are pedestrians or bicyclists under their own policies. *Compare* RCW 48.22.095 *with* RCW 48.22.005 (listing definitions of terms that apply through Title 48, Chapter 22); *see also* RCW 48.22.090 (listing seven exclusions or exceptions to PIP coverage). Division I and Division II have further stated that scope of PIP coverage is governed by contract, not statute. *Schab v. State Farm Mut. Auto. Ins. Co.*, 41 Wn. App. 418, 422, 704 P.2d 621, 624 (1985); *Rodenbough v. Grange Ins. Asso*., 33 Wn. App. 137, 139, 652 P.2d 22, 23 (1982).

Taken together, these statutes and decisions confirm that insurance companies may elect to include PIP coverage for insureds struck by other vehicles as pedestrians and/or bicyclists in their policies, but there is no statutory or other legal obligation in Washington to provide PIP coverage to all pedestrians or bicyclists in every conceivable context. Cascade has certainly not shown that the public policy concern of bicycle safety

warrants overriding the freedom to contract between Travelers and its insured and this Court's longstanding principles regarding insurance policy interpretation.

Cascade is essentially asking this Court to reverse Division I's Opinion by either creating new legislation setting forth a broadened scope of PIP coverage or ignoring longstanding principles of insurance policy interpretation. This Court should not indulge in such extreme and ill-advised measures to overturn Division I's sound interpretation of a California auto policy in order to satisfy Cascade's vague expression of bicycle safety concerns. Rather, these concerns should be addressed, if at all, by the legislature.

C. Interpretation of an Insurance Policy is based on Plain Meaning, Not Consumer Expectation.

Cascade argues that this Court should discard settled Washington law regarding insurance policy interpretation and apply a consumer expectation test in order to reverse Division I's interpretation of the subject policy. Cascade's Br. 6. While some states employ a consumer expectation test, also known as the Reasonable Expectation Doctrine, when interpreting an insurance policy, this test clearly does not apply in Washington or California. Accordingly, this argument has no merit.

Under the Reasonable Expectation Doctrine, a court is required to construe a policy from the standpoint of the insured's expectations. *Richards v. Hanover Ins. Co*., 250 Ga. 613, 615, 299 E.2d 561 (1983) ("… insurance contracts are to be read in accordance with the reasonable expectations of an insured where possible.") (internal citations omitted). *See also Voorhees v. Preferred Mut. Ins. Co.*, 128 N.J. 165, 175 607 A.2d 1255 (1992) ("When the meaning of a phrase is ambiguous, the ambiguity is resolved in favor the insured, and in line with the insured's objectively-reasonable expectations.")(internal citations omitted).

This Court has expressly rejected the Reasonable Expectation Doctrine. *Findlay v. United States Pac. Ins. Co*., 129 Wn.2d 368, 378, 917 P.2d 116 (1996). Instead, this Court has recognized that, "in Washington the expectations of the insured cannot override the plain language of the contract." *Quadrant Corp v. Am. States Ins. Co.*, 154 Wn. 2d 165, 172, 110 P.3d 733 (2005) (citing *Findlay, supra*).

Further, this Court has consistently reaffirmed that, when interpreting an undefined term in a policy, the Court must look at the term's plain meaning per the term's standard dictionary definition. *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 12, 419 P.3d 400, 405 (2018) ("undefined terms in insurance contracts 'must' be given their plain, ordinary, and popular meaning, and courts may look to standard

English language dictionaries to determine common meaning"); *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 428, 38 P.3d 322, 327 (2002) ("Undefined terms in an insurance contract are given 'plain, ordinary, and popular meaning' as set forth in standard English language dictionaries.").

Cascade's attempt to persuade the Court to interpret the subject policy based on consumer expectations is tantamount to asking the Court to overturn its undisputed precedent dating back to at least 1996, and perhaps 1984. *See Findlay, supra; see also State Farm Gen. Ins. Co. v. Emerson*, 102 Wn.2d 477, 485 687 P.2d 1139 (1984) (declining to adopt the reasonable expectation doctrine). Cascade provides no grounds for such a significant departure from such longstanding and well-established Washington law.

Cascade's reference to website pages for insurance advocacy groups and other national insurance companies to support its consumer expectation argument is equally absurd. These websites are plainly not designed to provide binding insurance terms and should not be used to interpret a particular type of coverage provided in a particular policy under one state's insurance law. No court has ever interpreted an insurance policy issued by an insurance company by referring to general statements found on the national websites of wholly unrelated insurance companies and/or other general information groups.

Again, this Court should not indulge in Cascade's invitation to drastically depart from the established principles of law that actually apply to interpreting the insurance policy at issue. Division I correctly applied the law in its decision and this Court should decline to accept review of this case.

V. CONCLUSION

Based on the foregoing, Travelers respectfully requests that this Court discard Cascade's amicus brief and decline to accept review of this case.

DATED this 3rd day of December, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the party mentioned below as indicated:

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s/ Elizabeth Kruh
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December 03, 2019 - 9:00 AM

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