

NO. 45003-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE FARM INSURANCE COMPANY, Respondent

v.

BRENT & VERA ROLLINS, Appellants.

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**BRIEF OF RESPONDENT**

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COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON

ORIGINAL

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION.....	1
II. RESPONSE TO ASSIGNMENTS OF ERROR.....	1
III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR...	1
IV. STATEMENT OF THE CASE .....	2
V. ARGUMENT .....	6
1. The Trial Court should be affirmed because Ms. Rollins' use of the van 5 days a week to commute was frequent enough to increase State Farm's risk and to be considered regular use as a matter of law.....	8
2. The Trial Court should be affirmed because there is no legal justification to refuse to enforce the exclusion on public policy grounds.....	11
VI. CONCLUSION.....	18

## TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Anderson v. State Farm Ins. Co.</i> , 2007 WL 1577870 (District Court Decision); 300 Fed.Appx. 470 (2008) (9 <sup>th</sup> Circuit Decision affirming District Court).....	7
<i>Brown v. United Pacific Ins. Co.</i> , 42 Wn.App. 503, 711 P.2d 1105 (1986).....	13-14
<i>Butzberger v. Foster</i> , 151 Wn.2d 396, 89 P.3d 689 (2004).....	15-17
<i>Certain Underwriters at Lloyd's London v. Valiant Ins. Co.</i> , 155 Wn.App. 469, 229 P.3d 930 (2010).....	12
<i>Detweiler v. J.C. Penney Cas. Ins. Co.</i> , 110 Wn.2d 99, 751 P.2d 282 (1988).....	15-16
<i>Drollinger v. Safeco Ins. Co. of America</i> , 59 Wn.App. 383, 797 P.2d 540 (1991).....	7
<i>Eddy v. Fid. &amp; Guar. Ins. Underwriters, Inc.</i> , 113 Wn.2d 168, 776 P.2d 966 (1989).....	6
<i>Farmers v. Koehler</i> , 52 Wn. App. 822, 764 P.2d 1005 (1988).....	6
<i>Fluke Corp. v. Hartford Accident &amp; Indemn. Co.</i> , 145 Wn.2d 137, 34 P.2d 809 (2001).....	11
<i>Grange Ins. Ass'n v. MacKenzie</i> , 103 Wn.2d 708, 694 P.2d 1087 (1985).....	7, 10-11
<i>Hall v. State Farm</i> , 133 Wn.App. 394, 135 P.3d 941 (2006).....	7
<i>Mendoza v. Rivera-Chavez</i> , 140 Wn.2d 659, 999 P.2d 29 (2000).....	14
<i>Nelson v. Mut. Of Enumclaw</i> , 128 Wn. App. 72, 115 P.3d 332 (2005)....	8-9
<i>Ross v. State Farm Mut. Auto. Ins. Co.</i> , 132 Wn.2d 507, 940 P.2d 252 (1997).....	7

**STATUES**

**PAGE(S)**

RCW 48.22.090 (5) ..... 13-14

## **I. INTRODUCTION**

The State Farm policy issued to the Rollins excludes coverage when an insured is occupying a vehicle that is not listed on the policy and that is furnished for the insured's regular use. Here, Ms. Rollins made a PIP claim for injuries from an accident involving the Metro Vanpool van in which she commuted to and from work five days a week. The Rollins did not dispute that Ms. Rollins used the Vanpool van approximately 480 times in the year before the accident and 1440 times in the three years before the accident.

Given those undisputed facts, the unambiguous policy language, and the absence of any legal justification to refuse to enforce the exclusion on public policy grounds, the Trial Court was correct in granting summary judgment holding that the regular use exclusion applied and that there was no PIP coverage. That decision should be affirmed.

## **II. RESPONSE TO ASSIGNMENTS OF ERROR**

The Trial Court was correct in granting summary judgment and that decision should be affirmed.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Washington decisions have found that use of a vehicle four to six times a month was regular enough to increase the insurer's risk as a matter of law and to exclude coverage. When Vera Rollins had used the van 40 times a month to commute to and from work, was the van

she was riding in furnished for her regular use such that coverage was excluded?

2. Washington courts rarely invoke public policy to override the express terms of an insurance policy, and exclusions which do not violate statute and which do relate to an insurer's increased risk do not violate public policy. Here, the regular use exclusion is authorized by statute and relates directly to an increased risk to the insurer. Was the Trial Court correct in rejecting the Rollins' argument that the exclusion should not be enforced on public policy grounds?

#### **IV. STATEMENT OF THE CASE**

Brent Rollins is an insured on State Farm policy number 1539-543-47, and that policy includes PIP (Personal Injury Protection) coverage.<sup>1</sup>

Vera Rollins is the spouse of Brent Rollins, the policyholder.<sup>2</sup>

Under the PIP provisions on the Rollins' policy, there is no coverage for an insured occupying a motor vehicle furnished for the insured's regular use if it is not the insured's car or a newly acquired car by the insured.<sup>3</sup>

The State Farm Automobile Policy at issue here states the following language at page 13 under "Personal Injury Protection Coverage:"

#### **Exclusions**

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<sup>1</sup> CP 2: Complaint at paragraph 3.1; CP 5: Answer at paragraph 3.1; CP 33, 74: Declarations Page of State Farm policy.

<sup>2</sup> CP 2: Complaint at paragraph 3.2; CP 5: Answer at paragraph 3.2.

<sup>3</sup> CP 2: Complaint at paragraph 3.3; CP 5: Answer at paragraph 3.3; CP 87: State Farm policy at page 13.

THERE IS NO COVERAGE FOR AN  
**INSURED:**

\* \* \*

3. WHO IS **OCCUPYING A MOTOR  
VEHICLE:**

- a. **OWNED BY YOU; OR**
- b. **FURNISHED FOR YOUR  
REGULAR USE IF IT IS NOT  
YOUR CAR OR A NEWLY  
ACQUIRED CAR[.]**<sup>4</sup>

On January 19, 2012, Vera Rollins was riding as a passenger in a Metro Vanpool van when the van was involved in an accident,<sup>5</sup> and she applied for PIP benefits as a result of that January 19, 2012 accident.<sup>6</sup> That van was not owned by Brent Rollins or Vera Rollins,<sup>7</sup> and the van was not listed as a vehicle covered under the Rollins' State Farm insurance policy.<sup>8</sup>

The Rollins' answer states, "Vera Rollins commuted to work as a member of the Metro Vanpool van in which she was riding on January 19,

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<sup>4</sup> CP 2: Complaint at paragraph 3.4; CP 5: Answer at paragraph 3.4; CP 87: State Farm policy at page 13.

<sup>5</sup> CP 2: Complaint at paragraph 3.5; CP 5: Answer at paragraph 3.5.

<sup>6</sup> CP 5: Answer at paragraph 3.9.

<sup>7</sup> CP 2: Complaint at paragraph 3.6; CP 5: Answer at paragraph 3.6.

<sup>8</sup> CP 33, 74: Declarations page for Rollins policy.

2012.<sup>9</sup> In the three years prior to the accident, Ms. Rollins commuted to and from work five days a week in a Metro Vanpool van.<sup>10</sup> In that time period, she commuted in four particular Metro Vanpool vans.<sup>11</sup>

Based on the policy's regular use exclusion, State Farm moved for summary judgment and requested an order declaring that there was no coverage for Ms. Rollins' PIP claim.<sup>12</sup> In that motion, State Farm asserted that (1) the regular use exclusion applies because Ms. Rollins' use of the van was frequent enough to be considered regular as a matter of law; (2) that the regular use exclusion applies because use of a vehicle as a passenger qualifies as regular use; (3) the regular use exclusion applies because it can apply to nonowned vehicles; and the regular use exclusion applies because it may apply to a fleet of vehicles.<sup>13</sup>

Appellants Rollins filed a response and cross motion that (1) admitted that regular use exclusions have been held to be clear and ambiguous;<sup>14</sup> that

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<sup>9</sup> CP 5: Answer at paragraph 3.7.

<sup>10</sup> CP 36-37: Plaintiff's Interrogatories to Defendant and Answers Thereto –Interrogatory 1.

<sup>11</sup> CP37: Plaintiff's Interrogatories to Defendant and Answers Thereto –Interrogatories 3-4.

<sup>12</sup> CP 7-18: State Farm's Motion for Summary Judgment

<sup>13</sup> CP 7-18: State Farm's Motion for Summary Judgment

<sup>14</sup> CP 43: Response to State Farm's Motion for Summary Judgment at page 3.

(2) did not contest the authority that the regular use exclusion could apply to passenger use, use of a nonowned vehicle, or use of a fleet vehicle; but (3) did argue that the exclusion should not be enforced on public policy grounds.<sup>15</sup>

On May 17, 2013, the Trial Court granted State Farm's Motion for Summary Judgment and denied the Rollins' Cross-Motion for Summary Judgment.<sup>16</sup> In doing so, the Trial Judge noted that the Courts have held the exclusion to be not ambiguous, that State Farm applied it in a manner consistent with Washington case law, and that there was no violation of public policy:

The Washington courts have held that it is not ambiguous, that it is plain. I'm looking at the *Anderson* case, and that's *Anderson v. State Farm*, citing to *MacKenzie*, citing to *Sears v. Grange Insurance*, and we even see, as we talked about the infant that was injured, we see this clause being applied strictly in the most unfortunate of incidents and that's the injury to the child.

Going to Couch on Insurance, it makes – Couch cites to *Nelson v. Mutual of Enumclaw*, *Progressive v. Hoverter*, again, *Grange v. MacKenzie*, *Dairyland v. Ward*, and it takes this notion of furnished for regular use and applies it in a way consistent with that which is argued by State Farm in this case. Accordingly, I am going to grant the motion of State Farm.

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<sup>15</sup> CP 38-46: Response to State Farm's Motion for Summary Judgment.

<sup>16</sup> CP 133-134, CP 139-141

Parenthetically, I don't think it violates public policy as well. I don't think that the nature of the vanpool is so distinctly different from having fleet vehicles and so on as to rise to the level of public policy.

## V. ARGUMENT

As shown in the State Farm policy language set out above, the State Farm policy excludes coverage when a vehicle not shown on the declarations page is furnished for an insured's regular use. In that regard, paragraph 3.3 of the Rollins' Answer states, "Defendants admit that the PIP provisions of the State Farm policy excludes coverage of a motor vehicle furnished for an insured's regular use."<sup>17</sup>

Such exclusions for regular use have been upheld and found to be unambiguous.<sup>18</sup> The purpose of the "regular use" exclusion is "to provide coverage for isolated use without the payment of an additional premium, but to disallow the interchangeable use of other cars which are not covered

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<sup>17</sup> CP 5: Answer.

<sup>18</sup> *Eddy v. Fid. & Guar. Ins. Underwriters, Inc.*, 113 Wn.2d 168, 175, 776 P.2d 966 (1989); *Farmers v. Koehler*, 52 Wn. App. 822, 764 P.2d 1005 (1988).

by the policy.<sup>19</sup> The regular use exclusion has been applied as to use as a passenger,<sup>20</sup> to nonowned vehicles,<sup>21</sup> and to fleet vehicles.<sup>22</sup>

Both in their briefing to the Trial Court and in their briefing to this Court, the Rollins have not contested that the regular use exclusion is unambiguous; that it may apply to passengers, nonowned vehicles, and fleet vehicles; and that Ms. Rollins used the van approximately 40 times a month, approximately 480 times in the year before the accident, and approximately 1440 times in the three years before the accident. In those circumstances, the Trial Court's decision should be affirmed because (1) the use of the van 40 times per month was more than frequent enough to increase State Farm's risk

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<sup>19</sup> *Ross v. State Farm Mut. Auto. Ins. Co.*, 132 Wn.2d 507, 519-20, 940 P.2d 252 (1997), quoting *Grange Ins. Ass'n v. MacKenzie*, 103 Wn.2d 708, 712, 694 P.2d 1087 (1985).

<sup>20</sup> See *Anderson v. State Farm Ins. Co.*, 2007 WL 1577870 (District Court Decision); 300 Fed.Appx. 470 (2008) (9<sup>th</sup> Circuit Decision affirming District Court) (regular use exclusion applied to child's use of a vehicle that she regularly rode in as a passenger); *Ross v. State Farm*, 132 Wn.2d 507, 940 P.2d 252 (1997) (regular use exclusion precluded coverage when the vehicle was available to insured's wife for regular use as a driver or passenger).

<sup>21</sup> See *Hall v. State Farm*, 133 Wn.App. 394, 135 P.3d 941 (2006) (applying exclusion where insured was driving a bus provided by his employer); *Drollinger v. Safeco Ins. Co. of America*, 59 Wn.App. 383, 797 P.2d 540 (1991) (applying exclusion when insured police officer was driving a police car owned by his employer).

<sup>22</sup> See *Drollinger*, 59 Wn.App. at 387 (applying regular use exclusion when insured police officer was assigned to one of a fleet of police cars).

and to be considered regular use as a matter of law, and because (2) there is no legal justification to refuse to enforce the exclusion on public policy grounds.

1. **The Trial Court should be affirmed because Ms. Rollins' use of the van 5 days a week to commute was frequent enough to increase State Farm's risk and to be considered regular use as a matter of law.**

Under Washington law, Ms. Rollins' use of the Metro Vanpool van to commute to and from work five days a week is more than frequent enough to increase State Farm's risk, and Plaintiffs' argument otherwise is untenable.

For example, the policy declarations page shows that the only vehicle insured is a 1994 pickup truck insured by the named insured James Rollins.<sup>23</sup> Adding the 40 times per month use of the van by Ms. Rollins to the use of the truck by Mr. Rollins certainly increases the risk to State Farm,

Further, Washington case law indicates that such frequency of use is sufficient to be deemed regular use as a matter of law.

For example, in the 2005 Washington Court of Appeals decision in *Nelson v. Mut. Of Enumclaw*,<sup>24</sup> the Court of Appeals held that the regular use exclusion applied such that there was no coverage when a temporary mail carrier was involved in an accident while using the regular mail carrier's car

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<sup>23</sup> CP 33, 74: Declarations page for Rollins policy.

<sup>24</sup> 128 Wn. App. 72, 115 P.3d 332 (2005).

as she substituted on the regular carrier's route. In that case, the insured had used the vehicle 16 times over a four month period. In finding that the insured's use of the regular carrier's vehicle amounted to regular use, the *Nelson* court rejected the insured's argument that the use was irregular, noted that the use was "frequent and predictable," and commented that the use increased the insurer's risk:

*Frequency of Use.* Ms. Nelson first contends the term "regular use" does not apply to the situation here because her use of Mr. Frederick's vehicle was irregular. But the facts do not support her position. Ms. Nelson used the Saturn on a frequent and predictable basis.

...

Here, Ms. Nelson used Mr. Frederick's Saturn 16 times in a 4-month period. While she was not the exclusive driver of the vehicle, her use of the vehicle was frequent, consisting of every other Saturday and those days Mr. Frederick took a vacation. **More importantly, Ms. Nelson's use of the Saturn increased Enumclaw's risk without payment of additional premiums.**<sup>25</sup> (emphasis added)

Given that use just once a week was found to increase the insurer's risk in *Nelson*, Ms. Rollins' use of the van five days per week twice daily increases the insurers' risk that much more.

Like the plaintiff in *Nelson*, Ms. Rollins used the Metro Vanpool van

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<sup>25</sup> *Nelson*, 128 Wn. App. at 76-77.

“on a frequent and predictable basis:” five round trips weekly (about 40 uses a month) for three years. When the frequency of that use of the Metro Vanpool van by Ms. Rollins is compared to the 16 uses over a four month period in *Nelson*, that comparison demonstrates that the use of the Metro Vanpool van made by Ms. Rollins was more than regular enough to increase the risk to State Farm and to be deemed regular use as a matter of law.

That use of the van about 40 times per month increases the risk to State Farm as a matter of law is also shown by a comparison to the frequency of use in *Grange Insurance v. MacKenzie*.<sup>26</sup> The *McKenzie* case involved a circumstance where the Washington Supreme Court found there was regular use and thus no coverage when the Grange insured drove his resident relative brother’s car insured by Farmer’s Insurance Company 4 to 6 times a month.<sup>27</sup>

In holding that coverage was barred by the regular use exclusion, the *Mackenzie* court held that use of the car 4 to 6 times a month “significantly increased the risk to the insurer:”

These purposes are not met in this case, where George admittedly drove James' car at least 4 to 6 times per month, knowing he was the only driver available in the household. Such use by George is not the type of sporadic, isolated incidence of driving of a noncovered car that was contemplated in the clause. **Rather, this use significantly**

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<sup>26</sup> 103 Wn.2d 708, 694 P.2d 1087 (1985).

<sup>27</sup> *MacKenzie*, 103 Wn.2d at 712.

**increased the risk to the insurer**, without a corresponding increase in premiums. This court recognized in *Ward*, in stating the purposes behind these clauses, that such use unfairly burdens the insurer.<sup>28</sup> (emphasis added)

Given that in *McKenzie*, the Washington Supreme Court held that 4 to 6 uses of a car per month “significantly” increased the insurer’s risk, Ms. Rollins’ use of the Metro Vanpool van about 40 times a month certainly increased State Farm’s risk, and the Rollins’ contention otherwise is untenable. Accordingly, this Court should reject the Rollins’ assertion that Ms. Rollins use of the van created no increased risk to State Farm, and should affirm the Trial Court’s granting of summary judgment for State Farm.

**2. The Trial Court should be affirmed because there is no legal justification to refuse to enforce the exclusion on public policy grounds.**

For at least the six reasons discussed below, there is no legal justification to accept the Rollins’ invitation to refuse to enforce the exclusion on public policy grounds.

First, there is no justification to refuse to enforce the exclusion on public policy grounds because the Courts rarely invoke public policy to override the express terms of an insurance policy.<sup>29</sup> This point was

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<sup>28</sup> *MacKenzie*, 103 Wn.2d at 712.

<sup>29</sup> *Fluke Corp. v. Hartford Accident & Indemn. Co.*, 145 Wn.2d 137, 144, 34 P.2d 809 (2001).

reiterated by Court of Appeals in *Certain Underwriters at Lloyd's London v. Valiant Ins. Co.*,<sup>30</sup> in a case where the Court refused to hold that an anti-stacking provision violated public policy:

We also reject Underwriters' argument that the anti-stacking provision violates public policy. Limitations in insurance contracts which are contrary to public policy and statute will not be enforced, but otherwise insurers are permitted to limit their contractual liability. *Brown v. Snohomish County Physicians Corp.*, 120 Wash.2d 747, 753, 845 P.2d 334 (1993). Washington courts rarely invoke public policy to override the express terms of an insurance policy. *Fluke Corp. v. Hartford Accident & Indem. Co.*, 145 Wash.2d 137, 144, 34 P.3d 809 (2001). Generally a contract does not violate public policy unless it is prohibited by statute, condemned by judicial decision, or contrary to the public morals. *Brown*, 120 Wash.2d at 753, 845 P.2d 334.<sup>31</sup>

Second, there is no justification to refuse to enforce the exclusion because enforcing the exclusion violates no statute. As noted by the *Valiant Ins. Court* in the language quoted above, a contract provision that violates a statute can be void as against public policy. In this case, the Rollins have identified no way in which enforcement of the regular use exclusion would violate any statute. Instead, the exclusion tracks the language of the statute which provides that an insurer does not have to offer Personal Injury Protection (PIP) coverage for vehicles, like the Vanpool van, not listed on the

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<sup>30</sup> 155 Wn.App. 469, 229 P.3d 930 (2010).

<sup>31</sup> *Valiant Ins.*, 155 Wn.App. at 477.

policy's declaration page, but furnished for the insured's regular use:

An insurer is not required to provide personal injury protection coverage to or on behalf of:

...

(5) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made<sup>32</sup>;

In *Brown v. United Pacific Ins. Co.*,<sup>33</sup> the Court of Appeals held that a regular use exclusion as to Underinsured Motorist (UIM) coverage did not violate public policy because it tracked the language of the UIM statute, RCW 48.22.030:

The sole issue here is whether the Browns are entitled to underinsured motorist coverage under David Brown's policy with United Pacific, despite an exclusion for injuries incurred "[w]hile operating, or occupying any motor vehicle owned by or available for the regular use of you or any family member which is not insured for Liability coverage under this policy."

Since the exclusion is not ambiguous, it must be enforced unless against public policy. *Progressive Casualty Ins. Co. v. Jester*, 102 Wash.2d 78, 80, 683 P.2d 180 (1984). As the

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<sup>32</sup> RCW 48.22.090 (5) Personal injury protection coverage – Exceptions.

<sup>33</sup> 42 Wn.App. 503, 711 P.2d 1105 (Wn.App. 1986).

clause tracks the language of RCW 48.22.030, it can only be against public policy if the statute is as well.<sup>34</sup>

Just as the UIM regular use exclusion in *Brown* could not violate public policy because it tracked the UIM statute, the PIP regular use exclusion here cannot violate public policy because it tracks the PIP statute.

Third, there is no justification to refuse to enforce the exclusion because exclusions which are related to an insurance company's increased risk are not found to be contrary to public policy. For example, in *Mendoza v. Rivera-Chavez*,<sup>35</sup> the Washington Supreme Court noted that courts have upheld exclusions when the activity increases the insurer's risk and have found exclusions to violate public policy when no increased risk was manifested:

Other cases have upheld exclusion clauses in insurance policies on the basis that the activity excluded increased the risk to the insurer. The principle underlying these cases was expressed in *Eurick v. Pemco Ins. Co.*, 108 Wash.2d 338, 343-44, 738 P.2d 251 (1987), where we explained that "exclusions that have been held violative of public policy generally have been those manifesting no relation to any increased risk faced by the insurer, or when innocent victims have been denied coverage for no good reason."<sup>36</sup>

As discussed above, Ms. Rollins' use of the Vanpool van for her daily

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<sup>34</sup> *Brown*, 42 Wn.App. at 506

<sup>35</sup> 140 Wn.2d 659, 999 P.2d 29 (2000)

<sup>36</sup> *Mendoza*, 140 Wn.2d at 667

commute did increase the risk faced by State Farm as a matter of law. So, there are no public policy grounds that should prevent the exclusion from being enforced.

Fourth, the Rollins' argument regarding consumer expectations and the cases cited by the Rollins in making that argument do not support their contention that public policy prevents State Farm from enforcing the regular use exclusion.

The Rollins cite *Butzberger v. Foster*,<sup>37</sup> and *Detweiler v. J.C. Penney Cas. Ins. Co.*<sup>38</sup> as supporting their position because those cases are allegedly examples of instances where the courts have found UIM coverage in unusual situations. But those cases offer no grounds to void the regular use exclusion on public policy grounds as it applies to Ms. Rollins' frequent and regular use of the Metro Vanpool van to commute to and from work. Those cases have nothing in common with the facts of the present matter and do not contain a similar analysis. If anything, the logic in those cases supports enforcement of the regular use exclusion in this matter because both the *Butzberger* and *Detweiler* cases are examples of how broadly the Washington courts have defined "use" when related to automobiles.

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<sup>37</sup> 151 Wn.2d 396, 89 P.3d 689 (2004).

<sup>38</sup> 110 Wn.2d 99, 751 P.2d 282 (1988).

In *Butzberger*, Jeffrey Butzberger was struck on the roadway and killed after he stopped his car, got out, and went to the aid of another motorist, Frank Foster, whose truck had overturned.<sup>39</sup> Butzberger's estate sought UIM coverage from both the policy insuring his own vehicle and the policy insuring the Foster vehicle, and the carriers denied coverage based on the assertion that Butzberger was not using either vehicle. Even though Butzberger was not occupying either vehicle at the time he was struck and killed, the Washington Supreme Court stated, "We hold Butzberger was using both Foster's vehicle and the vehicle Butzberger had been driving when he was struck and killed by an underinsured motorist."<sup>40</sup>

In *Detweiler*, the Washington Supreme Court held that an insured was using his pickup truck when he was standing outside of his pickup truck and shooting at the tires to prevent it from being taken by an unauthorized user.<sup>41</sup> The *Butzberger* court cited *Detweiler* as an example of how the Washington courts have an "expansive" definition of use:

Additionally prior to *Sears* we held that shooting at your own vehicle with a revolver can constitute use of that vehicle. *Detweiler v. J.C. Penney Cas. Ins. Co.*, 110

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<sup>39</sup> 151 Wn.2d at 398-399.

<sup>40</sup> *Butzberger*, 151 Wn.2d at 413.

<sup>41</sup> *Detweiler*, 110 Wn.2d at 106-110.

Wash.2d 99, 109, 751 P.2d 282 (1988). In *Detweiler* a man with whom Stephen Detweiler had been drinking beer and whiskey drove off in Detweiler's pickup truck. *Id.* at 101, 751 P.2d 282. As the truck drove past Detweiler, he pulled out a revolver and fired several shots at the truck to stop it. *Id.* at 101, 751 P.2d 282. One of the bullets ricocheted off his truck and struck Detweiler in the head causing him facial and eye injuries. *Id.* We held the driver of Detweiler's truck was an uninsured motorist, and Detweiler was using his vehicle for purposes of uninsured motorist coverage. *Id.* at 102, 109. *Detweiler* did not discuss the *Rau* factors in its analysis of use, nor did the *Sears* court discuss *Detweiler*. Nonetheless, *Detweiler* demonstrates Washington's expansive reading of use, and as such we do not find Allstate's argument persuasive that use should somehow exclude "strangers."<sup>42</sup>

Given the "expansive" definition of "use" provided in the *Detweiler* and *Butzberger* cases, the Rollins' argument as to consumer expectations lacks merit. When the *Detweiler* court found a person was using a vehicle when he was 10-12 feet away and shooting at it, and when in *Butzberger* a person was using two vehicles when he was struck and killed while occupying neither, then Ms. Rollins was clearly using the Metro Vanpool van when she commuted to and from work, and because she commuted everyday that use was regular and subject to the exclusion.

Fifth, the Rollins' provide no authority from Washington or anywhere else in the nation holding that an insurance policy exclusion has been found unenforceable due to a public policy in favor of ridesharing.

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<sup>42</sup>*Butzberger*, 151 Wn.2d at 409-410.

Finally, refusing to enforce the exclusion on public policy grounds would be an unwarranted departure from binding Washington authority in cases like *Nelson* and *MacKenzie* which focused on the amount and regularity of use and the commiserate increase in risk to the insurer. In *Nelson* and *MacKenzie*, the courts enforced regular use exclusions where use was far less then frequent than the twice a work day - 10 times a week - and 480 uses a year that is undisputed in this case. It would be contrary to those cases to find the exclusion void for public policy and unenforceable.

## VI. CONCLUSION

The Rollins' State Farm policy excludes coverage when an insured is occupying a vehicle that is not listed on the policy and that is furnished for the insured's regular use. Here, Ms. Rollins used a Metro Vanpool van by commuting to and from work as a passenger five days a week, 40 times a month, 480 times a year. Under both common sense and case law, this amounts to regular use such that the regular exclusion applies and there is no coverage. The Trial Court's order of summary judgment in favor of State Farm should be affirmed. To do otherwise would be a substantial and unwarranted departure from both the policy language and Washington case law.

DATED THIS 1 day of November, 2013.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on November 15<sup>th</sup>, 2013, I caused service of the foregoing Brief of Respondent by email and legal messenger to:

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