
**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

DAVID MOELLER,

Plaintiff/Respondent,

v.

FARMERS INSURANCE COMPANY OF WASHINGTON and
FARMERS INSURANCE EXCHANGE,

Defendants/Petitioners.

**PETITIONERS' ANSWER TO MEMORANDUM OF
AMICI CURIAE AMERICAN INSURANCE ASSOCIATION
AND PROPERTY CASUALTY INSURERS ASSOCIATION
OF AMERICA IN SUPPORT OF GRANTING
PETITION FOR REVIEW**

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**PETITIONERS' ANSWER TO MEMORANDUM OF AMICI
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Amici curiae American Insurance Association and Property
Casualty Insurers Association of America were correct to challenge the
authorities on which the Court of Appeals and Moeller relied for the
conclusion that most courts have determined that diminished value is a
covered loss under a direct and accidental loss coverage clause.¹ Amici
did not mention, however, that although admitting in the cited case that
“the insurer did not dispute that diminished value was a covered loss,” *see*
App. 8 at n.8 (*citing Campbell v. Markel Am. Ins. Co.*, 822 So. 2d 617,
623 (La. Ct. App. 2001), the Court failed to acknowledge that in almost
every case where the clause is mentioned, the insurer did not argue the
“direct and accidental loss” coverage issue, but instead focused on the
policy’s “Limit of Liability” and “Payment of Loss” clauses. *See Allgood*
v. Meridian Sec. Ins. Co., 836 N.E.2d 243, 246-47 (Ind. 2005); *Gonzales*
v. Farmers Ins. Exch., 345 Ore. 382, 393, 196 P.3d 1 (2008); *Am. Mfrs.*
Mut. Ins. Co. v. Schaefer, 124 S.W.3d 154, 158 (Tex. 2003); *Carlton v.*

¹ Petitioners agree with amici that many of the cases Moeller cites in support of the Court of Appeals’ coverage analysis “are clearly not on point.” Amici Memorandum at 9. In the 14 cited cases, only one actually mentions a “direct and accidental loss” clause – and in that case, the court acknowledged the insurer did not dispute that diminished value was a covered loss. *See Gonzales v. Farmers Ins. Exch.*, 345 Ore. 382, 393, 196 P.3d 1 (2008).

Trinity Universal Ins. Co., 32 S.W.3d 454, 460-61 (Tex. Ct. App. 2003); *cf. Lupo v. Shelter Mut. Ins. Co.*, S.W.3d 16 (Mo. Ct. App. 2002) (not indicating whether insurer argued “direct and accidental loss” issue). In the one case where the insurer did argue that diminished value is not covered under a “direct and accidental loss” clause, the court agreed with the insurer. *See Davis v. Farmers Ins. Co. of Arizona*, 140 N.M. 249, 142 P.3d 17 (N.M. Ct. App. 2006).

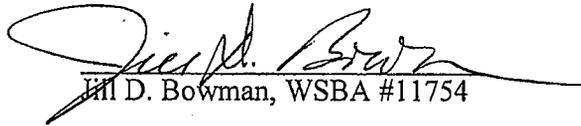
In *Davis*, the court examined the same coverage clause found in Moeller’s policy. The insurer promised to pay for the insured’s “loss,” which was defined as the “direct and accidental loss of or damage to **your Insured car**, including its equipment.” *Compare id.* at 252, 142 P.3d 17 and CP 19 (*quoted at App. 6*). The court found that the “plain meaning” of “loss of” a vehicle in a collision is that the vehicle was a total loss. *Davis*, 140 N.M. at 252, 142 P.3d 17. When the insured vehicle is not a total loss, but there is “damage to” it, the coverage clause requires only that the insurer pay for “direct damage,” which does *not* include diminished value. *See id.* at 252-53, 142 P.3d 17.

Because many car insurance policies contain the same or similar coverage clauses, proper interpretation of this clause is a matter of

substantial public interest. For this reason and the reasons discussed in
the Petition for Review, this Court should accept review.

DATED: June 25, 2010.

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CERTIFICATE OF SERVICE BY MAIL

I certify that on June 25, 2010, I caused copies of the foregoing

**PETITIONERS' ANSWER TO MEMORANDUM OF AMICI
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AMERICA IN SUPPORT OF GRANTING PETITION FOR**

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Attached for filing in the case of Moeller v. Farmers Insurance Company of Washington, et al., Case No. 84500-0, is Petitioners' Answer to Memorandum of Amici Curiae American Insurance Association and Property Casualty Insurers Association of America in Support of Granting Petition for Review. This filing is submitted by Jill D. Bowman, WSBA #11754, (206) 624-0900, jdbowman@stoel.com.

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