FILED
SUPREME COURT
STATE OF WASHINGTON
2/26/2018 4:10 PM
BY SUSAN L. CARLSON
CLERK

NO. 94771-6

IN WASHINGTON STATE SUPREME COURT

BRETT DURANT, On Behalf of
Himself and all other similarly situated,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, a foreign automobile insurance company,

Defendant.

FROM THE US DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PLAINTIFF'S ANSWER TO *AMICUS CURIAE* BRIEF OF THE OFFICE OF INSURANCE COMMISSIONER

Tyler K. Firkins
VAN SICLEN, STOCKS & FIRKINS
721 45th St NE
Auburn, WA 98002
253-859-8899
tfirkins@vansiclen.com

TABLE OF CONTENTS

Page

I. Introduction..... 1

II. Response to Amicus Statement of Facts 2

III. Argument in Response to Amicus 6

A. Statutorily Mandated Personal Injury Protection Coverage is Broad 6

B. "Essential to Achieving Maximum Medical Improvement" is neither a definition nor a component of the word "necessary" in State Farm's policy 10

IV. Conclusion..... 12

Appendix A: State Farm Letter to OIC dated December 21, 2005

Appendix B: OIC letter to State Farm dated July 23, 2015

Appendix C: Side by Side Comparison of Policy Submitted by State Farm in 2006 to OIC

TABLE OF AUTHORITIES

Page No

Washington Cases

Brady v. Autozone Stores, Inc., 188 Sn.2d 576, 580, 397 P.3d 120 (2017) 2

Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r, 178 Wn.2d 120, 137, 309 P.3d 372 (2013).....5

Revised Code of Washington:

RCW 48.22.005 9

RCW 48.22.005(7) 7, 9

RCW 48.22.005(12) 7, 8

RCW 48.22.085 .....7, 9

RCW 48.22.100 .....7, 9

RCW 48.22.510 3

Washington Administrative Code:

WAC 284-30-385 3

WAC 284-30-395 .....3, 4, 5, 6, 8, 9, 12

I. INTRODUCTION

State Farm has invited this Court to draw false inferences. State Farm has repeatedly argued that the Office of the Insurance Commissioner (OIC) has specifically approved its PIP policy language, including the unlawful maximum medical improvement (MMI) provision. State Farm argues that the OIC approved the MMI language on three (3) separate occasions. As the OIC's amicus brief demonstrates, these assertions are untrue.

Far from approving of State Farm's MMI policy language, the OIC specifically rejected the MMI language, and ordered State Farm to revise its policy in July of 2015. Rather than comply with the OIC directive, State Farm spent years trying to convince the agency to withdraw its directive. [1] The OIC did not. Instead, the OIC, in its Amicus Brief to this Court, unequivocally rejects State Farm's strained statutory interpretation, and reaffirms the OIC's rejection of the MMI language found in State Farm's policy.

As State Farm repeatedly argues in its Response Brief, where an agency regulation is involved, this Court "generally gives a high level of deference to an agency's interpretation of its regulation based on the

[1] In that interim time even more Washington consumers have been injured by the unlawful standard.

agency's expertise and insight gained from administering the regulations." State Farm's Response Brief at 19, citing *Brady v. Autozone Stores, Inc.*, 188 Wn.2d 576, 580, 397 P.3d 120 (2017). In its Amicus Brief and its July, 2015 letter to State Farm, the OIC unequivocally makes clear that State Farm's "essential to achieving maximum medical improvement" policy limitation does not comply with the broad, statutorily mandated PIP coverage in Washington. This Court should accept the interpretation of the OIC as to the regulation it created.

II. RESPONSE TO AMICUS STATEMENT OF FACTS

State Farm repeatedly argues that the OIC approved its Personal Injury Protection (PIP) form on three separate occasions. Def.'s Resp. Br. 21. This assertion is both untrue and irrelevant. This contention is irrelevant because every insurance policy that has ever been invalidated by Washington courts or the OIC was originally approved by the OIC. Insurance companies are always required in Washington to comply with all statutes and regulations irrespective of any approval the company might receive.

Further, the approval process is a continuing process where an insurer may alter small sections of its forms. The language at issue in this case was substantially altered in 2006, although State Farm did not advise the OIC of the substantive changes. Instead, State Farm indicated it only

made changes to the section of the policy pertaining to "fees." (See Appendix A attached hereto, and Exhibit 4 to Def.'s Resp. Br.) In fact, State Farm substantively altered the MMI language that had been approved before the enactment of the regulation at issue here. This change restricted PIP coverage even beyond the original limitations imposed before enactment of WAC 284-30-395. Rather than defining necessary medical expenses, the PIP provision now states that medical expenses must be both necessary *and* essential to achieving maximum medical improvement. However, the OIC was not alerted to this material alteration. The OIC asked for clarification of the parts of the policy that it had been alerted to, which were numerous. (Dkt. #7-7.) State Farm provided this clarification, but again did not alert the OIC to the change in its PIP coverage.

It is easy to understand how a regulator can miss substantial changes in forms that are countless pages in length and complexity. It is similarly easy to understand why RCW 48.22.510 is therefore necessary.

In its Response Brief, State Farm inaccurately recites the OIC's involvement in this case. State Farm states:

> Shortly after filing this lawsuit, Plaintiff's counsel contacted an employee of the OIC's Forms Department, notified him of this lawsuit, and asked the OIC to find that State Farm's MMI language violated WAC 284-30-385. (Dkt. 71, p. 2). The OIC Forms Department employee ***preliminarily*** agreed with Plaintiff's counsel and referred the matter to the OIC's Market Conduct Department to institute a Market Conduct Continuum Action ("Continuum

> Action") regarding the MMI issue. The OIC opened a Continuum action in August 2015. (Dkt. 61, p.2).

Defendant's Response at 17 (emphasis added).

In fact, the OIC issued a letter dated July 23, 2015, unequivocally informing State Farm that the very provision at issue in this case is in violation of WAC 284-30-395. The OIC further directed State Farm to file a "revised form whose language is compliant with the above cite and once that revised form is approved it must be sent to all policyholders who have the current version." OIC Amicus Brief, Exhibit 2.[2] The letter then went on to say that, "A copy of this letter is being provided to our chief Market Conduct Examiner for any *additional actions* deemed necessary." *Id.* (emphasis added).

The Defendant invites this Court to infer that the "employee" was acting on his own—that he was a rogue agent. State Farm also invites this Court to believe the "employee" only agreed with the plaintiff preliminarily. State Farm suggests that the only action taken by the employee was to refer the matter for a Market Conduct Continuum Action. All of the facts State Farm invites the Court to infer are false.

---

[2] This Court granted Plaintiff's motion to supplement the record. Order dated February 12, 2018. For convenience, Plaintiff also attaches the supplemented records as Appendix B to this Brief.

The OIC employee, Alan Hudina, is the employee charged with notifying insurance companies if their forms are deemed to be unlawful, as evidenced by his prior notification to American Family Insurance. (Dkt. 7, *Nauheim Dec.* Ex. 1.) Mr. Hudina, acting on behalf of the OIC, a state agency, unequivocally directed State Farm to discontinue acting unlawfully and to file an amended form.[3] He directed State Farm to send the revised form to all of its policyholders who had the deficient form. The Defendant has steadfastly refused to follow the OIC's directive. As the OIC properly points out, the only public action taken by the OIC is the letter by the OIC disapproving of the form, and the Amicus Brief, reiterating that the form violates WAC 284-30-395.

Finally, State Farm deceptively suggests that its form was approved a third time, citing an internal, unpublished memorandum that was never adopted by the OIC. (Def.'s Resp. Br. 18.) This assertion is untrue. State Farm only learned about the internal memorandum through a public records request made by the Plaintiff. The OIC never sent the memo to State Farm

---

[3] It is absurd for State to claim that Mr. Hudina's acts are not the acts of the agency for whom he is employed. *Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r*, 178 Wn.2d 120, 137, 309 P.3d 372 (2013) (a principal's grant of authority may come with implied authority to perform other acts that are necessary steps to achieving the principal's objective or that are customary for agents performing the work).

and certainly never adopted the memo as the position of the OIC. Yet, State Farm claims the internal memo constitutes a third approval of its policy form. Def.'s Resp. Br. 3, 17-18.

The most troubling statement to this Court by State Farm is its assertion that the OIC Forms Department has never withdrawn its approval. State Farm states:

> Nor has the OIC's Form's Department withdrawn approval of State Farm's policy form or taken any other regulatory action against State Farm regarding its MMI language.

Def.'s Resp. Br. 18. In fact, the OIC issued a letter specifically disapproving the form and directing State Farm to submit a new and revised form. Appendix B. This regulatory action was never withdrawn. Thus, the statement by State Farm is false. The OIC agrees and states:

> This interpretation of WAC 284-30-395 has been clearly communicated by the Commissioner, through his staff, to American Family Insurance in 2010, and again to State Farm in 2015, when taking exception to the language in their policies. In both instances, the Commissioner has directed carriers with non-compliant policy forms to submit new policy forms, with language that reflects the limited grounds available for the denial, limitation, or termination of medical and hospital benefits found in WAC 284-30-395(1). At no point has the Commissioner, or his staff, communicated a contrary interpretation of WAC 284-30-395(1).

Amicus Br. of OIC at 11-12.

III. ARGUMENT IN RESPONSE TO AMICUS

A. Statutorily mandated Personal Injury Protection Coverage is Broad.

The OIC states that the Washington legislature used broad language when mandating that insurance carriers in Washington offer Personal Injury Protection. OIC Amicus Br. at 10. The Plaintiff Class agrees. RCW 48.22.005(7) provides:

> (7) Medical and hospital benefits" *means payments for* ***all*** *reasonable and necessary expenses* incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eyeglasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

RCW 48.22.005(7) (emphasis added). By using the term "all" the legislature intended this grant of mandatory coverage to be broad rather than limited. As an example, the legislature does not limit medical and hospital benefits to those essential to achieving maximum medical improvement, which would be less than "all reasonable and necessary expenses."

RCW 48.22.005(12) provides:

> (12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through RCW 48.22.100. Payments made under personal injury protection

> coverage are limited to the actual amount of loss or expense incurred.

RCW 48.22.005(12). Here the legislature limited the amounts recoverable under a PIP policy to those bills actually incurred. The legislature did not further limit the coverage in any other way, such as restricting or eliminating pain management services, palliative care, or any other form of non-curative but necessary medical treatments and services.

In 1993 and 1994, the legislature was well aware of other legislative provisions such as various worker's compensation provisions, and at no time limited or used terms similar to those contained in Title 51, such as the terms "proper and necessary," thereby indicating an intention to align PIP with workers compensation. Instead, the grant of coverage was intended to be broad and fully protect Washington drivers in the event of a car crash.

State Farm and American Family Insurance both attempted to use policy language that restricted the broad grant of coverage that encompasses "all reasonable and necessary expenses." In response, the OIC rejected the limitation on coverage citing WAC 284-30-395, and directed both companies to revise their policies. State Farm has refused to do so.

In rejecting both American Family Insurance's and State Farm's policy forms, the OIC determined that the plain language of WAC 284-30-

395 restricts the reasons an insurance carrier may limit, deny or terminate coverage. Specifically, the regulation states:

> These are the only grounds for denial, limitation, or termination of medical and hospital services permitted pursuant to RCW 48.22.005(7), 48.22.095, or 48.22.100.

WAC 284-30-395. None of the listed reasons for limiting, denying or terminating benefits include the words "and essential to achieving maximum medical improvement." The statutory references in the regulation are important because it specifies each of the PIP statutes, including the broad definition of hospital and medical expenses defined in RCW 48.22.005.

State Farm does not challenge the regulation itself. Rather State Farm argues the regulation pertains only to the notice required to be provided to its insureds. Def.'s Resp. Br. 25-26. The Defendant's argument ignores entirely the above clear and unambiguous language. State Farm has no explanation for why the unambiguous words are included in the regulation. State Farm is not permitted to simply ignore either the broad coverage intended by the legislature or the plain meaning of the unchallenged regulation.

B. **"Essential to achieving maximum medical improvement" is neither a definition nor a component of the word "necessary" in State Farm's policy.**

The Plaintiff disagrees with the OIC as to which words in the policy form are in conflict with the regulation and statutes. The OIC limits its criticism to the words "maximum medical improvement." OIC Amicus Br. at 12-13. This however ignores the substantial change to the policy that occurred in 2006. The form now reads that medical and treatment expenses must be both necessary *and* essential to achieving maximum medical improvement. This distinction is critical because it demonstrates the fallacy of State Farm's argument that "essential to achieving maximum medical improvement" explains the word necessary in the policy. This might have been true in the 1994 version, but is not true with respect to the 2006 version which is even more restrictive. Now medical treatments must be both necessary *and* essential to achieving maximum medical improvement. (See Appendix C, which is a comparison of the differences between the 1994 policy form and the 2006 policy form. See Defendant's Response at 9 and 20.) The MMI provision is not a definition of necessary, but rather an additional requirement.

State Farm claims that the MMI standard is a "component" of the necessary standard. Def.'s Resp. Br. 20. This argument is flawed for two reasons. First, the issue is not whether the MMI standard is a "component"

of the definition of necessary. Rather, the issue is whether the MMI standard simply explains or defines the term necessary as State Farm claims earlier in its Brief. *Id.* at 9. It cannot if it is also a component of the definition of necessary.

Second, a clear reading of the policy forms shows that both the terms necessary and essential to achieving maximum medical improvement are found under the definition of reasonable. Under the plain language of the policy for medical expenses to be reasonable they must be the lowest in cost, necessary, prescribed by a licensed provider and essential to achieving maximum medical improvement.

Thus, the requirement according to the plain meaning of State Farm's policy is significantly more restrictive than the OIC argues. While it is true that clause "essential to achieving maximum medical improvement" is more restrictive than what is allowed under either the statute or regulation, the actual policy form is even more restrictive than what the OIC has argued.

///

///

///

///

///

IV. CONCLUSION

In summary, the Plaintiff Class agrees with the OIC in most respects. State Farm's policy form violates WAC 284-30-395. The policy form as written is not consistent with the regulation. [4]

DATED this 26th day of February, 2018.

VAN SICLEN, STOCKS & FIRKINS

/s/ Tyler K. Firkins

Tyler K. Firkins, WSBA #20964
Stephanie Messplay, WSBA#47017
David Nauheim, WSBA #41880
Attorneys for Plaintiff Brett Durant and all other similarly situated people.
721 45th Street N.E.
Auburn, WA 98002
Tfirkins@vansiclen.com
(253)859-8899

[4] It is irrelevant that the OIC can imagine that the term maximum medical improvement could be used consistent with the language of the regulation because implicit in the question is whether the actual language of the policy is consistent with the regulation. It is not, and the OIC has already directed State Farm to change its policy form.

CERTIFICATE OF SERVICE

I certify that I served a copy of the forgoing documents on the following individuals specified below on February 26, 2018. Service was made by the means specified below.

Gregory Worden Laura Hawes Young Gregory.Worden@lewisbrisbois.com Laura.Young@lewisbrisbois.com	[X] Via ECF
Frank Falzetta Jennifer Hoffman David Dworsky ffalzetta@sheppardmullin.com jhoffman@sheppardmullin.com ddworsky@sheppardmullin.com	[X] Via ECF
Thomas Adkins Tom@ThomasAdkins-law.com	[X] Via ECF
Dan Huntington Valerie Mcomie danhuntington@richter-wimberly.com Valeriemccomie@gmail.com	[X] Via ECF
Marta DeLeon martad@atg.wa.gov	[X] Via ECF

s/Diana M. Butler

Diana M. Butler, Paralegal

APPENDIX A

State Farm®
Providing Insurance and Financial Services
Home Office, Bloomington, Illinois 61710

December 21, 2005

Insurance Commissioner
Office of Insurance Commissioner
5000 Capitol Boulevard
P.O. Box 40255
Olympia, WA 98504-0255

Corporate Headquarters
One State Farm Plaza, D-4
Bloomington, IL 61710
Fax 309 766 0225

IN REPLY PLEASE REFER TO: AV-20476

RE: State Farm Mutual Automobile Insurance Company
State Farm Fire and Casualty Company
Automobile Insurance
9847A – State Farm Car Policy Booklet
155-3866.2 - Declarations Page
9247A – State Farm Recreational Vehicle Policy Booklet
Associated Endorsements

Enclosed for filing on behalf of the State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company of Bloomington, Illinois are copies of new State Farm Car Policy Booklet 9847A, associated endorsements, and Declarations Page 155-3866.2. We are revising these forms as described in the attached Filing Memorandum.

Also enclosed for filing on behalf of the State Farm Mutual Automobile Insurance Company of Bloomington, Illinois are copies of new State Farm Recreational Vehicle Policy Booklet 9247A.

We request your approval of this filing to be effective June 1, 2006 or as soon thereafter as the necessary procedural changes have been implemented.

Please direct all questions concerning this filing to:

Steve Woodard	(309) 766-2041	steve.woodard.a6bo@statefarm.com
Everett Truttmann	(309) 766-2066	everett.j.truttmann.awmz@statefarm.com

Written correspondence should be sent to the attention of the State Filings Unit at the address shown above.

Sincerely,

Everett J. Truttmann

Everett J. Truttmann, F.C.A.S., MAAA
AVP & Actuary and Assistant Secretary-Treasurer

DE/bl
Attachment

IC 6499 butler 348

State Farm Mutual Automobile Insurance Company
State Farm Fire and Casualty Company
Filing Memorandum

I. POLICIES

A. Car Policy Booklet 9847A replaces current car policy booklets 9847.7 and 9947.7. We have completely revised and reformatted this policy booklet as shown in the attached comparison. The changes that are more than just editorial are explained below.

1. DEFINITIONS

a. The terms: "State Farm Companies," "us," "our," and "we." have been added. State Farm Companies is defined as one or more of the following: State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and any of their affiliates. Us, our, and we are each defined as the company issuing the policy as shown on the Declarations Page.

b. "Non-Owned Car" has been changed as follows:

(1) A car owned by a resident relative no longer qualifies as a "non-owned car". Previously a resident relative's car qualified as a non-owned car if it had insurance within the past 30 days.

(2) We will now provide 30 days of coverage for the use of a "non-owned car," regardless of the number of policies a policyholder has with us. Previously we provided 21 days of coverage per policy.

c. "Owned By" has been added and is defined to mean:

(1) owned by;

(2) registered to; or

(3) leased, if the lease is written for a period of 31 or more consecutive days.

d. "Relative" has been changed to "resident relative." "Resident relative" means a relative of the first person shown as a named insured on the Declarations Page who resides primarily with that named insured. Wards and foster children who reside primarily with that same named insured are also now included.

e. "Trailer" has been added thus eliminating the need for a separate "trailer coverage" section.

2. LIABILITY COVERAGE

a. Additional Definition

"Insured" has been changed as follows:

(1) The first person shown as a named insured on the Declarations Page and his or her spouse are now covered while using a car owned by another person who resides in that first named insured's household, regardless of whether the car is insured. Previously, liability coverage did not apply in this situation unless the car was owned by a relative and the vehicle had liability coverage on it within the previous 30 days.

(2) All named insureds shown on the Declarations Page will now have coverage while using a "non-owned car." Previously, coverage was only provided to the first person shown as a named insured on the Declarations Page. Resident relatives of the first person shown as a named insured on the Declarations Page will also continue to be covered for their use of "non-owned cars."

(3) Because of the change to the definition of "non-owned car," resident relatives no longer have coverage from this policy for the use of a car owned by another resident relative.

b. Supplementary Payments

(1) Coverage for payment of attachment bonds has been eliminated.

(2) Reimbursement for wages lost while an insured attends an arbitration, mediation, or trial at our request has been increased from $100 to up to $200 per day.

c. Exclusions

(1) There is no coverage for an insured who intentionally causes bodily injury or damage to property. This is in addition to the policy requirement that there must be an accident for coverage to apply.

(2) The "fellow employee" exclusion has been revised ~~to~~ so that coverage is now provided for resident relatives who injure a fellow employee. The named insured already has this coverage.

(3) There is no coverage for an insured while that insured is valet parking a vehicle.

(4) There is no coverage for any order of restitution awarded in a criminal proceeding or equitable action.

DIC 6499 butler 349

(5) There is no coverage while a vehicle is:

(a) off public roads and being prepared for, used in practice for, or operated in any racing, speed, hill-climbing, jumping, or other similar contest; or

(b) on a track designed primarily for racing or high-speed driving.

d. Financial Responsibility Certification

An insured will no longer be asked to reimburse us for amounts paid because we certified a policy as proof of financial responsibility.

3. PERSONAL INJURY PROTECTION COVERAGE

a. "Reasonable Expenses" has been added and includes fees specified in a fee schedule applicable to coverage included in a motor vehicle liability policy issued in the state where medical services are provided. It also includes fees prescribed or authorized by law.

b. If There Is Other Coverage

When more than one State Farm vehicle policy applies, we will pay up to the single highest applicable limit. Limits may not be added together to determine the most that we will pay. When coverage is available from other sources, our single highest limit will be compared to the amounts available from the other sources to determine the amount we will pay.

4. MEDICAL PAYMENTS COVERAGE

a. Additional Definitions

(1) "Insured" has been added.

(a) All named insureds and the resident relatives of the first named insured are now covered while occupying a non-owned car or if struck as a pedestrian. Previously, only the first named insured and his or her resident relatives had this coverage.

(b) Passengers other than named insureds and resident relatives are no longer covered while occupying a non-owned car. Coverage previously applied if the non-owned car was occupied or driven by the first named insured or that person's resident relatives.

(2) "Medical Services" has been added and requires that healthcare providers be licensed if a license is required by law.

(3) "Reasonable Expenses" has been added and includes fees specified in a fee schedule applicable to coverage included in a motor vehicle liability policy issued in the state where medical services are provided. It also includes fees prescribed or authorized by law.

b. Exclusions

The following exclusions have been added:

(1) There is no coverage if any workers compensation law or similar law applies.

(2) There is no coverage for an insured while that insured is valet parking a vehicle.

(3) There is no coverage for bodily injury due to the discharge of a firearm.

(4) There is no coverage while a vehicle is:

(a) being prepared for, used in practice for, or operated in any racing, speed, hill-climbing, jumping, or other similar contest; or

(b) on a track designed primarily for racing or high-speed driving.

5. UNDERINSURED MOTOR VEHICLE COVERAGE

a. Additional Definitions

"Insured" has been changed to include all named insureds, rather than just first named insureds, when injured as a pedestrian or while occupying a non-owned car. Passengers other than named insureds and resident relatives are no longer covered while occupying a non-owned car driven by an insured.

b. Exclusions

(1) Coverage is no longer excluded for the first person shown as a named insured on the Declarations Page and his or her spouse while occupying a motor vehicle owned by a resident relative.

(2) There is no coverage for bodily injury due to the discharge of a firearm.

(3) There is no coverage for an order of restitution awarded in a criminal proceeding or equitable action.

c. If There Is Other Coverage

When more than one State Farm vehicle policy applies, we will pay up to the single highest applicable limit. Limits may not be added together to determine the most that we will pay. When coverage is available from other sources, our single highest limit will be compared to the amounts available from the other sources to determine the amount we will pay.

7. PHYSICAL DAMAGE COVERAGES

a. Additional Definitions

(1) "Covered Vehicle" has been added to describe which vehicles are covered. A "non-owned car" is covered:

(a) while it is being driven or occupied by a named insured or by a resident relative; or

(b) while it is not being driven but is in the custody of a named insured or a resident relative.

(2) A definition of "Loss Caused By Collision" has been added. Included with this definition, there has been a change such that a covered vehicle that hits or is hit by a bird or an animal is no longer covered under Collision Coverage. This type of loss is now covered only under Comprehensive Coverage.

(3) "Loss" now includes the word "sudden" to emphasize that damage to a covered vehicle that occurs as a result of repeated exposure is not considered a "loss" and, therefore, is not covered under Physical Damage Coverages.

b. Insuring Agreement

(1) Glass Breakage – Glass breakage is no longer specifically included as damage that is payable under Comprehensive Coverage. If the glass breakage is caused by collision, the loss is payable only under Collision Coverage. If the glass breakage is caused by a Comprehensive Coverage peril, then the loss is payable only under Comprehensive Coverage.

(2) Comprehensive Coverage – The following changes have been made regarding transportation expenses when a covered vehicle is stolen:

(a) Transportation expenses do not apply when a temporary substitute car is stolen.

(b) The total amount payable for transportation expenses incurred due to any one theft is $750. The daily limit for transportation expenses remains $25.

(c) The date payment ends has been changed to the date the stolen vehicle is recovered or the date we offer to pay the actual cash value if the vehicle is not been recovered.

(3) Collision Coverage – The deductible will no longer be waived when a State Farm insured vehicle has a collision with another vehicle insured by State Farm. Previously, this waiver applied for deductibles of $100 or less.

(4) Clothes and Luggage Coverage – There is no longer coverage for damage to clothes and luggage. Previously we provided coverage with a $200 limit.

(5) Car Rental and Travel Expenses Coverage - This coverage no longer applies when there is a loss to a non-owned car or a temporary substitute car.

(6) Car Rental and Travel Expenses Coverage - The policy no longer provides payment of $10-per-day benefit if an insured does not rent a car and the loss is payable under Comprehensive Coverage or Collision Coverage.

(7) Car Rental and Travel Expenses Coverage – The policy will now provide coverage for any meals and lodging up to a limit of $500, instead of extra meals and lodging, resulting from a delay en route to an insured's destination when the described car or a newly acquired car is damaged more than 50 miles from home and is not driveable.

c. Supplementary Payments – Comprehensive and Collision Coverages

A new provision has been added explaining supplementary payments that are provided for towing, storage, and debris removal costs incurred by the insured as the result of a covered loss.

d. Limits and Loss Settlement – Comprehensive and Collision Coverages

Language has been added allowing paintless dent repair to be included in an estimate that we use to determine the most we will pay for repair of a covered.

e. Limits – Car Rental and Travel Expenses Coverages

We have increased the limits for Travel Expenses and for Rental Car – Repayment of Deductible Amount Expense from $400 to $500.

f. Exclusions

(1) Intentional theft of or damage to any vehicle by or at the direction of an insured is not covered. This is in addition to the policy requirement that there must be an accident for the loss to be covered.

(2) Theft, conversion, embezzlement, or secretion of a car by an insured or a consignee is not covered.

(3) Voluntarily relinquishing possession of the described car or a newly acquired car under an actual or presumed sales agreement is not covered.

(4) There is no coverage for vehicle parts and equipment that are illegal. There is also no coverage for parts and equipment that are installed at a location on the covered vehicle that would make the use of such parts or equipment illegal. However, we will pay for the legal version of such parts or equipment if they are necessary for the safe operation of the covered vehicle.

(5) The exception to the exclusion regarding damage to tires has been changed to allow coverage for more perils.

(6) There is no coverage while a vehicle is:

(a) being prepared for, used in practice for, or operated in any racing, speed, hill-climbing, jumping, or other similar contest; or

(b) on a track designed primarily for racing or high-speed driving.

8. DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE

Benefits are now doubled only in situations when the insured is both:

a. injured or killed while occupying a private passenger car; and

b. using a seatbelt as recommended by the vehicle manufacturer.

Exclusions

There is no coverage for death, dismemberment, loss of sight, or loss of earnings that results from:

a. Nuclear reaction, radiation, or radioactive contamination from any source, or the accidental or intentional detonation of, or release of radiation from, any nuclear or radioactive device.

b. The discharge of a firearm.

c. Exposure to fungi.

APPENDIX B

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

P.O. BOX 40255
OLYMPIA, WA 98504-0255
Phone: (360) 725-7000

*** Courtesy Copy via E-Mail***

July 23, 2015

STATE FARM INSURANCE
KEVIN NICKLAS, FORMS MANAGER
1 State Farm Plaza
Bloomington, IL 61710

Re: Personal Auto Form Number 9847 A
VIA Email

Dear Mr. Nicklas,

It has been brought to our attention that language in the Reasonable Medical Expenses section, item 2, specifically that which reads, "...are essential in achieving maximum medical improvement ..." is in violation of WAC 284-30-395(1).

WAC 284-30-395(1) reads as follows:

"(1) Within a reasonable time after receipt of actual notice of an insured's intent to file a personal injury protection medical and hospital benefits claim, and in every case prior to denying, limiting, or terminating an insured's medical and hospital benefits, an insurer shall provide an insured with a written explanation of the coverage provided by the policy, including a notice that the insurer may deny, limit, or terminate benefits if the insurer determines that the medical and hospital services:

(a) Are not reasonable;

(b) Are not necessary;

(c) Are not related to the accident; or

(d) Are not incurred within three years of the automobile accident.

These are the only grounds for denial, limitation, or termination of medical and hospital services permitted pursuant to RCW 48.22.005(7), 48.22.095, or 48.22.100."

OIC 6499 butler 895

While the form in question was approved with an effective date of 12.15.06, pursuant to RCW 48.18.510, this form "...shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code."

So there can be no misinterpretation or confusion on the part of policyholders, please file a revised form whose language is compliant with the above cite and once that revised form is approved it must be sent to all policyholders who have the current version.

A copy of this letter is being provided to our Chief Market Conduct Examiner for any additional actions deemed necessary.

Should you have any questions or concerns, please contact me at your convenience.

Sincerely,

Alan A. Hudina, Manager
P & C and Life & Annuities
Office of Insurance Commissioner

CC: Jeanette Plitt, Chief Market Conduct Examiner

OIC 6499 butler 896

APPENDIX C

Proposed – 9847A 2006

a. The usual and customary fees charged by a majority of healthcare providers who provide similar medical services in the geographical area in which the charges were incurred;
b. The fee specified in any fee schedule:
   (1) applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where ***medical services*** are provided; and
   (2) as prescribed or authorized by the law of the state where ***medical services*** are provided;
c. The fees agreed to by both the ***insured's*** healthcare provider and ***us***; or
d. The fees agreed upon between the ***insured's*** healthcare provider and a third party when ***we*** have a contract with such third party; and

2. incurred for necessary:
   a. medical, surgical, X-ray, dental, ambulance, hospital, and professional nursing services, and
   b. pharmaceuticals, eyeglasses, hearing aids, and prosthetic devices

   that are rendered by or prescribed by a licensed medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the ***bodily injury*** sustained in the accident.

Subject to 1. and 2. above, semi-private room charges are the most ***we*** will pay unless intensive care is medically required.

Insuring Agreement

We will provide ***personal injury protection benefits*** to an ***insured*** for ***bodily injury*** sustained by that ***insured*** and caused by an ***automobile*** accident.

Determining Reasonable Medical Expenses

We have the right to:

1. obtain and use:
   a. peer reviews; and
   b. medical bill reviews

   of the medical expenses and services to determine if they are reasonable and necessary for the ***bodily injury*** sustained;
2. use a medical examination of the ***insured*** to determine if:
   a. the ***bodily injury*** was caused by a ***motor vehicle*** accident; and
   b. the medical expenses and services are reasonable and necessary for the ***bodily injury*** sustained; and
3. enter into a contract with a third party that has an agreement with the ***insured's*** healthcare provider to

Current – 9847.7 1994

of the date of the accident for:

a. medical, surgical, X-ray, dental, ambulance, hospital and professional nursing services, and
b. eyeglasses, hearing aids and prosthetic devices.

Expenses are reasonable only if they are the lowest of any one of the following charges:

1. the usual and customary fees charged by a majority of healthcare providers who provide similar medical services in the geographical area in which the charges were incurred;
2. the fees agreed to by both the injured ***person's*** healthcare provider and us; or
3. the fees agreed upon between the injured ***person's*** healthcare provider and a third party when we have a contract with such third party.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the ***bodily injury*** sustained in the accident.

Semi-private room charges are the most we will pay unless intensive care is medically required.

What We Pay

We will pay for ***bodily injury*** to an ***insured*** caused by an ***automobile*** accident:

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the ***bodily injury*** sustained.

We have the right to:

1. obtain and use:
   a. peer reviews; and
   b. medical bill reviews

   of the medical expenses and services to determine if they are reasonable and necessary for the ***bodily injury*** sustained;
2. use a medical examination of the injured ***person*** to determine if:
   a. the ***bodily injury*** was caused by a motor vehicle accident; and
   b. the medical expenses and services are reasonable and necessary for the ***bodily injury*** sustained; and
3. enter into a contract with a third party that has an agreement with the injured ***person's***

VAN SICLEN STOCKS & FIRKINS

February 26, 2018 - 4:10 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94771-6
Appellate Court Case Title:	Brett Durant v. State Farm Mutual Automobile Insurance Company

The following documents have been uploaded:

- 947716_Briefs_20180226160852SC551721_6993.pdf
  This File Contains:
  Briefs - Answer to Amicus Curiae
  The Original File Name was durant oic answer.pdf

A copy of the uploaded files will be sent to:

- jhoffman@sheppardmullin.com
- Gregory.Worden@lewisbrisbois.com
- Julie.Feser@atg.wa.gov
- Tom@ThomasAdkins-law.com
- bonitaf@richter-wimberley.com
- colette.saunders@lewisbrisbois.com
- danhuntington@richter-wimberley.com
- davidnauheim@gmail.com
- ddworsky@sheppardmullin.com
- ffalzetta@sheppardmullin.com
- laura.young@lewisbrisbois.com
- martad@atg.wa.gov
- valeriemcomie@gmail.com
- vicki.milbrad@lewisbrisbois.com

Comments:

Sender Name: Diana Butler - Email: diana@vansiclen.com
Filing on Behalf of: Tyler K. Firkins - Email: tfirkins@vansiclen.com (Alternate Email: diana@vansiclen.com)

Address:
721 45th St NE
Auburn, WA, 98002
Phone: (253) 220-8803

Note: The Filing Id is 20180226160852SC551721