

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/8/2019 2:13 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 95827-1  
Court of Appeals, Division III No. 346714

---

SUPREME COURT OF THE STATE OF WASHINGTON

---

MONICA DIAZ BARRIGA FIGUEROA, AS PARENT AND  
NATURAL GUARDIAN OF BRAYAN MARTINEZ, A MINOR,

*Respondent,*

vs.

CONSUELO PRIETO MARISCAL,

*Petitioner.*

---

SUPPLEMENTAL BRIEF OF RESPONDENT PURSUANT  
TO THE COURT'S LETTER DATED JANUARY 7, 2019

---

Ned Stratton, WSBA #42299  
Brian Anderson, WSBA #39061  
Anderson Law PLLC  
5861 W. Clearwater Ave.  
Kennewick, WA 99336  
(509) 734-1345  
[ned@andersonlawwa.com](mailto:ned@andersonlawwa.com)  
[law@andersonlawwa.com](mailto:law@andersonlawwa.com)

George Ahrend, WSBA #25160  
Ahrend Law Firm PLLC  
100 E. Broadway Ave.  
Moses Lake, WA 98837  
(509) 764-9000  
[gahrend@ahrendlaw.com](mailto:gahrend@ahrendlaw.com)

Co-Attorneys for Respondent

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

ISSUE PRESENTED.....1

SUPPLEMENTAL ARGUMENT.....1

    A. An insurer may not commingle personal injury protection (PIP) and liability files or functions because such commingling is incompatible with the insurer’s common law and statutory duties to its PIP and liability insureds and violates the work product protection .....1

    B. Evidence obtained in violation of the insurer’s duties to its insured or in violation of the work product protection is inadmissible .....5

    C. Offering evidence obtained in violation of the insurer’s duties to its insured or in violation of the work product protection is misconduct warranting a new trial.....6

    D. Admission of evidence obtained in violation of the insurer’s duties to its insured is presumptively prejudicial.....6

    E. An insurer who shares information from its PIP file on an ex parte basis with defense counsel elevates its own interest in minimizing liability exposure over its PIP insured’s interest in obtaining full compensation and thereby commits the tort of insurance bad faith and violates of the Consumer Protection Act .....8

    F. In addition to the normal remedies for bad faith and violation of the CPA, an insurer who shares information from its PIP file on an ex parte basis with defense counsel should forfeit its right to reimbursement of PIP payments .....9

    G. Defense counsel obtaining information from the insurer’s PIP file on an ex parte basis is potentially subject to disqualification, although Figueroa has not sought disqualification in this case and the record is not sufficiently developed to resolve this issue .....9

CERTIFICATE OF SERVICE

## APPENDIX

## TABLE OF AUTHORITIES

### Cases

<i>Atlantic Cas. Ins. Co. v. Oregon Mut. Ins. Co.</i> , 137 Wn. App. 296, 153 P.3d 211 (2007).....	8
<i>Barriga Figueroa v. Prieto Mariscal</i> , 3 Wn. App. 2d 139, 414 P.3d 590 (2018).....	1
<i>Butler v. Safeco Ins. Co.</i> , 118 Wn. 2d 383, 823 P.2d 499 (1992).....	7
<i>Columbia Cmty. Bank v. Newman Park, LLC</i> , 177 Wn.2d 566, 304 P.3d 472 (2013).....	9
<i>Coventry Associates v. American States Ins. Co.</i> , 136 Wn. 2d 269, 961 P.2d 933 (1998).....	7
<i>DeTurk v. State Farm. Mut. Auto. Ins. Co.</i> , 94 Wn. App. 364, 967 P.2d 994 (1998).....	9
<i>Ellwein v. Hartford Co.</i> , 142 Wn. 2d 766, 15 P.3d 640 (2001).....	3-4
<i>Foss Maritime Co. v. Brandewiede</i> , 190 Wn. App. 186, 359 P.3d 905 (2015), <i>rev. denied</i> , 185 Wn. 2d 1012 (2016).....	9-10
<i>Gosney v. Fireman's Fund Ins. Co.</i> , 3 Wn. App. 2d 828, 419 P.3d 447 (2018), <i>rev. denied</i> , 191 Wn. 2d 1017, 426 P.3d 748 (2018).....	8
<i>Green v. Holm</i> , 28 Wn. App. 135, 622 P.2d 869 (1981).....	2
<i>Harris v. Drake</i> , 152 Wn. 2d 480, 99 P.3d 872 (2004).....	4-5
<i>Heidebrink v. Moriwaki</i> , 104 Wn. 2d 392, 706 P.2d 212 (1985).....	4-5

<i>In re Firestorm 1991</i> , 129 Wn. 2d 130, 916 P.2d 411 (1996).....	10
<i>Kane v. Klos</i> , 50 Wn.2d 778, 314 P.2d 672 (1957).....	9
<i>Kim v. Allstate Ins. Co.</i> , 153 Wn. App. 339, 223 P.3d 1180 (2009).....	4
<i>Lima v. Chambers</i> , 657 P.2d 279 (Utah 1982).....	3-4
<i>Mahler v. Szucs</i> , 135 Wn. 2d 398, 957 P.2d 632 (1998).....	9
<i>Matter of Pers. Restraint of Benn</i> , 134 Wn. 2d 868, 952 P.2d 116 (1998).....	5
<i>Mutual of Enumclaw Ins. Co. v. Dan Paulson Const., Inc.</i> , 161 Wn. 2d 903, 169 P.3d 1 (2007).....	7-8
<i>Smith v. Safeco Ins. Co.</i> , 150 Wn. 2d 478, 78 P.2d 1274 (2003).....	3
<i>State v. Betancourth</i> , 190 Wn. 2d 357, 413 P.3d 566 (2018).....	6
<i>Tank v. State Farm Fire &amp; Cas. Co.</i> , 105 Wn. 2d 381, 715 P.2d 1133 (1986).....	1-2
<i>Van Noy v. State Farm Mut. Auto. Ins. Co.</i> , 142 Wn. 2d 784, 16 P.3d 574 (2001).....	1
<i>Washington St. Phys. Ins. Exch. &amp; Ass'n v. Fisons Corp.</i> , 122 Wn. 2d 299, 858 P.2d 1054 (1993).....	10

### **Statutes, Rules and Regulations**

CR 59(a)(2).....	6
RCW 19.86.090 & .170 .....	8

RCW 48.01.030 .....8

RCW 48.30.010 .....8

**Other Authorities**

4 Wash. Prac., Rules Practice CR 59 (6th ed.) .....6

Steven Plitt & Steven J. Gross, *Splitting Claim Files: Managing the  
Concern for Conflicts of Interest Through Use of Insurance  
Company Conflict Screens*, 32(6) Ins. Litig. Rep. 151 (Apr. 26,  
2010) .....4

## I. ISSUE PRESENTED

Plaintiff-Respondent Monica Diaz Barriga Figueroa, as parent and guardian of Brayan Martinez (“Figueroa”), submits the following supplemental brief pursuant to the letter from the Court dated January 7, 2019, which requests briefing on the following topic:

The Court of Appeals opinion suggests that the insurer commingled its file relating to Ms. Diaz’s PIP claim with its file relating to coverage of its insured Prieto Mariscal. *Barriga Figueroa v. Prieto Mariscal*, 3 Wn. App. 2d 139, 143 n.1, 414 P.3d 590 (2018). The Court requests that the parties file supplemental briefs addressing the rules about such commingling and what remedies, if any, a court may impose if the commingling was improper.<sup>1</sup>

## II. SUPPLEMENTAL ARGUMENT

**A. An insurer may not commingle personal injury protection (PIP) and liability files or functions because such commingling is incompatible with the insurer’s common law and statutory duties to its PIP and liability insureds and violates the work product protection.**

A liability insurer has a quasi-fiduciary relationship with its liability insured. *See Tank v. State Farm Fire & Cas. Co.*, 105 Wn. 2d 381, 385-86, 715 P.2d 1133 (1986). A PIP insurer also has a quasi-fiduciary relationship with a PIP insured. *See Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn. 2d 784, 793, 16 P.3d 574 (2001). A quasi-fiduciary relationship means the insurer must give equal consideration to its insured’s interests and cannot place its own interests above its insured’s interests. *See Tank*, 105 Wn. 2d at 388. The insurer “must refrain from engaging in any action which would

---

<sup>1</sup> A copy of the letter is reproduced in the Appendix to this brief.

demonstrate a greater concern for the insurer's monetary interest than for the insured's financial risk." *Id.* Recognition of this type of relationship is grounded in common law principles and statutes and regulations governing the insurance industry. *See id.* at 385-86.

When a PIP insured pursues a claim against a liability insured and the insurer is the same for both insureds, as in this case, the insurer's obligations arising from the different quasi-fiduciary relationships are in conflict. *See Green v. Holm*, 28 Wn. App. 135, 137, 622 P.2d 869 (1981) (noting adversary relationship between insurer and third-party claimant). The insurer's obligation to defend its liability insured against the claim asserted by its PIP insured conflicts with the insurer's obligation to cooperate with its PIP insured in obtaining full compensation (along with reimbursement of PIP payments pursuant to the insurance contract and/or equitable subrogation principles). If the insurer were to share information from its liability file with its PIP insured in order to maximize the possibility or amount of reimbursement of PIP payments, the insurer would be placing its own interest in obtaining such reimbursement above its liability insured's interest in avoiding or minimizing a liability judgment and thereby violate the quasi-fiduciary equal consideration rule. Likewise, when the insurer shares information from its PIP file with its liability insured in order to avoid or minimize a liability judgment, as happened here, the insurer places its own interests in avoiding or minimizing such a judgment above its PIP

insured's interest in obtaining full compensation and violates the equal consideration rule.

To avoid violations of the equal consideration rule, the insurer may not commingle its liability and PIP files or functions. This Court has already expressed strong disapproval of commingling uninsured/underinsured motorist (UIM) and liability files. *See Ellwein v. Hartford Co.*, 142 Wn. 2d 766, 782, 15 P.3d 640 (2001) (stating “we find it particularly troubling that the insurer may ‘commingle’ the liability representation file with the UIM file”).<sup>2</sup> The grounds for disapproval are even stronger in the PIP context because the insurer does not stand in the shoes of the tortfeasor as it does with respect to UIM coverage. *See id.*, 142 Wn. 2d at 779-81 (indicating UIM insurer may assert defenses available to the tortfeasor, while requiring UIM insurer to honor insureds' reasonable expectation that they will be dealt with fairly).

The basis for the Court's disapproval of an insurer's commingling of files is the conflicting nature of the interests arising from the different relationships with its insureds. In support of its statement of disapproval, *Ellwein* cited and quoted *Lima v. Chambers*, 657 P.2d 279, 285 (Utah 1982), for the proposition that a UIM insurer intervening in a tort action “must not be allowed to use against its insured any information whatsoever

---

<sup>2</sup> Overruled on other grounds by *Smith v. Safeco Ins. Co.*, 150 Wn. 2d 478, 486, 78 P.2d 1274 (2003).

gained by reason of the insurer-insured relationship.” 142 Wn. 2d at 782 & n.11. *Lima* explained that this is because the respective interests of the insurer and insured would otherwise be “conflicting.” 657 P.2d at 285.<sup>3</sup>

This analysis of an insurer’s duties to its insured is consistent with the work product protection, which also has the effect of preventing an insurer from commingling files and functions under separate coverages. The Court has previously held that statements by a liability insured to the insurer, *see Heidebrink v. Moriwaki*, 104 Wn. 2d 392, 400, 706 P.2d 212 (1985), and medical information provided by a PIP insured to the insurer, *see Harris v. Drake*, 152 Wn. 2d 480, 488, 99 P.3d 872 (2004), are confidential work product. In *Harris*, the Court specifically noted that an insurer’s failure to assert the work product protection on behalf of its PIP

---

<sup>3</sup> *Ellwein* appears to be one of the few cases in the country to address commingling of liability and first-party files. *See* Steven Plitt & Steven J. Gross, *Splitting Claim Files: Managing the Concern for Conflicts of Interest Through Use of Insurance Company Conflict Screens*, 32(6) Ins. Litig. Rep. 151 n.5 (Apr. 26, 2010) (stating “[t]ypically, a file splitting scenario involves defending the insured under a reservation of rights while simultaneously pursuing a coverage determination,” and noting that, “[w]hile there is little case authority on this topic, commentators have opined that an insurer may also violate the duty of good faith and fair dealing towards its insured if the insurance company has failed to split the file between an insured’s UM/UIM first party claim and the insured tortfeasor when the insurance company happens to insure both parties”; brackets added). In *Kim v. Allstate Ins. Co.*, 153 Wn. App. 339, 361-65, 223 P.3d 1180 (2009), Division II held that an insurer did not commit bad faith when it used a medical examination for purposes of both UIM and PIP coverage, and appeared to permit commingling of first-party files to that limited extent. *Kim* distinguishes *Ellwein* on grounds that seem to be immaterial, i.e., the type of expert used (medical rather than accident reconstruction), and the fact that both UIM and PIP coverages give the insurer a contractual right to a medical exam. 153 Wn. App. at 365. *Kim* otherwise seems to be at odds with the conflict of interest basis for the Court’s disapproval of commingling first- and third-party coverages expressed in *Ellwein*. However, the Court does not need to address issues arising from commingling first-party coverages in this case.

insured “might be interpreted as a violation of [the PIP insurer’s] quasi-fiduciary duty to [its PIP insured].” 152 Wn. 2d at 492 (brackets added). In this way, the insurer’s quasi-fiduciary relationship with its insureds bolsters the work product analysis, especially given that work product protection is a matter of judicial policy to maintain “certain restrictions on bad faith, irrelevant and privileged inquiries” and “ensure the just and fair resolution of disputes.” *Heidebrink*, 104 Wn. 2d at 400-01.

**B. Evidence obtained in violation of the insurer’s duties to its insured or in violation of the work product protection is inadmissible.**

Work product information is unquestionably inadmissible. *See Harris*, 152 Wn. 2d at 492 (affirming exclusion of witness on work product grounds); *Matter of Pers. Restraint of Benn*, 134 Wn. 2d 868, 936, 952 P.2d 116 (1998) (affirming exclusion of document on work product grounds). Whether or not it is deemed to be work product, evidence obtained in violation of the insurer’s duties to its insured should likewise be held inadmissible, as Figueroa urged in the superior court. *See* RP 120:2-4. Excluding such evidence is necessary to protect the interests of the insured and to deter the insurer from violating its quasi-fiduciary duties. The insurer should not be able to profit from violating these duties to its insured. By allowing such evidence, courts would, in effect, be aiding and abetting the

insurer's violation of its duties.<sup>4</sup> Although the insurer's violation of its duties gives rise to other civil remedies, discussed below, the insured plaintiff should not be forced to pursue those claims as an alternative to their claim against the tortfeasor.

**C. Offering evidence obtained in violation of the insurer's duties to its insured or in violation of the work product protection is misconduct warranting a new trial.**

An aggrieved party is entitled to a new trial based on “[m]isconduct of [the] prevailing party[.]” CR 59(a)(2) (brackets added). This includes misconduct of the prevailing party's counsel in offering inadmissible evidence. *See* 4 Wash. Prac., Rules Practice CR 59 (6th ed.) (providing example of misconduct by counsel in injecting the subject of insurance into the trial). For the same reasons that evidence obtained in violation of an insurer's duties to its insured is inadmissible, offering such evidence should be deemed to be misconduct warranting a new trial, as Figueroa requested in the superior court. *See* CP 541, 543, 549-53 & 555-56.

**D. Admission of evidence obtained in violation of the insurer's duties to its insured is presumptively prejudicial.**

In the context of a tort claim for insurance bad faith, when an insurer violates the quasi-fiduciary equal consideration rule in other conflict-of-interest situations, such as a reservation-of-rights defense, there is a

---

<sup>4</sup> *Cf. State v. Betancourth*, 190 Wn. 2d 357, 364, 413 P.3d 566 (2018) (noting purposes of exclusionary rule in criminal cases are to protect private interests, deter misconduct, and preserve the integrity of judicial proceedings).

rebuttable presumption of harm to the insured. *See Mutual of Enumclaw Ins. Co. v. Dan Paulson Const., Inc.*, 161 Wn. 2d 903, 920, 169 P.3d 1 (2007) (relying on *Butler v. Safeco Ins. Co.*, 118 Wn. 2d 383, 394, 823 P.2d 499 (1992)). The presumption of harm is warranted because “[t]he insured should not have the *almost impossible burden* of proving that he or she is demonstrably worse off because of [the insurer’s actions].” *Id.*, 161 Wn. 2d at 920 (quoting *Butler*, at 390; emphasis & brackets in original). The insurer can only rebut the presumption by establishing that its acts did not harm or prejudice its insured. *Id.* at 920. This presumption should apply to erroneous admission of evidence as well as a bad faith claim.

The Court has declined to extend the presumption of harm to the first-party coverage context in the absence of a potential conflict of interest between insurer and insured. *See Dan Paulson*, 161 Wn. 2d at 920 n.16 (citing *Coventry Associates v. American States Ins. Co.*, 136 Wn. 2d 269, 281, 961 P.2d 933 (1998)). However, the touchstone of the presumption of harm is the existence of a potential conflict, and nothing in this Court’s precedent precludes recognition of a presumption of harm in the first-party context when such a conflict exists. Because this case involves a conflict between the insurer’s roles as liability insurer and PIP insurer, Figueroa is entitled to a presumption of prejudice.

**E. An insurer who shares information from its PIP file on an ex parte basis with defense counsel elevates its own interest in minimizing liability exposure over its PIP insured's interest in obtaining full compensation and thereby commits the tort of insurance bad faith and violates of the Consumer Protection Act.**

Violation of the quasi-fiduciary equal consideration rule subjects an insurer to liability for the tort of insurance bad faith. *See Dan Paulson*, 161 Wn. 2d at 915 & n.9. It also subjects the insurer to liability for violation of the Consumer Protection Act. *See* RCW 19.86.090 & .170; RCW 48.01.030; RCW 48.30.010. Because the record in this case is not fully developed regarding the extent of the insurer's bad faith and CPA violations and Figueroa's injury and damage, the remedies available to Figueroa for these claims should be reserved for a separate, direct action against the insurer. Nonetheless, the record in this case does reveal bad faith on the part of the insurer, which has prejudiced Figueroa and should entitle her to a new trial in this case. The Court should make a finding of bad faith, and give that finding preclusive effect in a separate, direct action against the insurer. *See Gosney v. Fireman's Fund Ins. Co.*, 3 Wn. App. 2d 828, 877, 419 P.3d 447 (2018), *rev. denied*, 191 Wn. 2d 1017, 426 P.3d 748 (2018) (applying collateral estoppel to insurer); *see also Atlantic Cas. Ins. Co. v. Oregon Mut. Ins. Co.*, 137 Wn. App. 296, 305, 153 P.3d 211, 216 (2007) (noting issue of bad faith can be resolved in garnishment of insurer).

**F. In addition to the normal remedies for bad faith and violation of the CPA, an insurer who shares information from its PIP file on an ex parte basis with defense counsel should forfeit its right to reimbursement of PIP payments.**

Just as a PIP insured cannot prejudice the insurer's right to reimbursement of PIP payments, the insurer "cannot unilaterally interfere with the [PIP] insured's right to recover against the tortfeasor." *DeTurk v. State Farm. Mut. Auto. Ins. Co.*, 94 Wn. App. 364, 370, 967 P.2d 994 (1998) (relying on *Mahler v. Szucs*, 135 Wn. 2d 398, 425-26, 957 P.2d 632 (1998); brackets added). When the insurer does interfere, as it did in this case by sharing information from the PIP file with defense counsel, forfeiture is consistent with the equitable nature of subrogation. *See Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 581, 304 P.3d 472 (2013) (noting "[f]rom ancient times, '[t]he first maxim in equity' has been that one 'who seeks equity must do equity'"; quotation marks & brackets in original). It is also supported by analogy to traditional fiduciary relationships. *See Kane v. Klos*, 50 Wn.2d 778, 789, 314 P.2d 672 (1957) (holding breach of fiduciary duty results in forfeiture of right to compensation).<sup>5</sup>

**G. Defense counsel obtaining information from the insurer's PIP file on an ex parte basis is potentially subject to disqualification, although Figueroa has not sought disqualification in this case and the record is not sufficiently developed to resolve this issue.**

---

<sup>5</sup> Defense counsel requested PIP reimbursement before and during trial. CP 9, 210 & 217; RP 14:3-7.

Counsel who improperly obtains confidential work product or other privileged information is potentially subject to disqualification. *See Foss Maritime Co. v. Brandewiede*, 190 Wn. App. 186, 195-98, 359 P.3d 905 (2015), *rev. denied*, 185 Wn. 2d 1012 (2016) (following *In re Firestorm 1991*, 129 Wn. 2d 130, 916 P.2d 411 (1996), and *Washington St. Phys. Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn. 2d 299, 858 P.2d 1054 (1993)). Disqualification hinges upon counsel's "fault" and "knowledge of privileged information," among other things. *See Foss*, 190 Wn. App. at 195. The same rule should apply when defense counsel accesses the plaintiff-insured's PIP file on an ex parte basis, independent of whether the file is deemed to be work product. Figueroa has not sought disqualification of defense counsel in this case, and the record is not sufficiently developed to resolve the issue because the circumstances regarding defense counsel's access to Figueroa's PIP application and perhaps other information from the PIP file are murky at best. Nonetheless, the Court should make it clear in future cases that counsel's participation in the commingling of liability and PIP files and functions entails the potential for disqualification.

Respectfully submitted this 8th day of February, 2019.

s/George M. Ahrend  
George M. Ahrend, WSBA #25160  
Ahrend Law Firm PLLC  
100 E. Broadway Ave.  
Moses Lake, WA 98837  
Telephone (509) 764-9000

Fax (509) 464-6290  
E-mail [gahrend@ahrendlaw.com](mailto:gahrend@ahrendlaw.com)

## CERTIFICATE OF SERVICE

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I served the document to which this is annexed by email and postal delivery, postage prepaid, as follows:

**Counsel for Petitioner:**

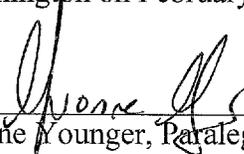
Joseph Hampton  
Michelle Kierce  
Betts Patterson & Mines  
One Convention Place, Suite 1400  
701 Pike Street  
Seattle WA 98101-3927  
[jhampton@bpmlaw.com](mailto:jhampton@bpmlaw.com)  
[mkierce@bpmlaw.com](mailto:mkierce@bpmlaw.com)

Steven M. Cronin  
Mullin, Cronin, Casey & Blair, P.S.  
115 N. Washington, 3rd Flr.  
Spokane, WA 99201  
[stevecronin@mccblaw.com](mailto:stevecronin@mccblaw.com)

and via email to co-counsel for Respondent pursuant to prior agreement to:

Ned Stratton at [ned@andersonlawwa.com](mailto:ned@andersonlawwa.com)  
Brian Anderson at [law@andersonlawwa.com](mailto:law@andersonlawwa.com)

Signed at Moses Lake, Washington on February 8, 2019.

  
\_\_\_\_\_  
Yvonne Younger, Paralegal

**APPENDIX**

Letter from Court dated January 7, 2019 ..... A-1

# THE SUPREME COURT

STATE OF WASHINGTON

SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

P.O. BOX 40929  
OLYMPIA, WA 98504-0929

(360) 357-2077  
e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

January 7, 2019

## LETTER SENT BY E-MAIL ONLY

Steven M. Cronin  
Attorney at Law  
115 N. Washington Street, Suite 3  
Spokane, WA 99201-0657

Joseph D. Hampton  
Michelle Elizabeth Kierce  
Betts, Patterson & Mines, P.S.  
701 Pike Street, Suite 1400  
Seattle, WA 98101-3927

Ned Stratton  
Brian J. Anderson  
Anderson Law  
5861 W. Clearwater Avenue  
Kennewick, WA 99336-1849

George M. Ahrend  
Ahrend Law Firm PLLC  
100 E. Broadway Avenue  
Moses Lake, WA 98837-1740

Re: Supreme Court No. 95827-1 - Monica Diaz Barriga Figueroa v. Consuelo Prieto Mariscal  
Court of Appeals No. 34671-4-III

Counsel:

The Court of Appeals opinion suggests that the insurer commingled its file relating to Ms. Diaz's PIP claim with its file relating to coverage of its insured Prieto Mariscal. *Barriga Figueroa v. Prieto Mariscal*, 3 Wn. App. 2d 139, 143 n.1, 414 P.3d 590 (2018). The Court requests that the parties file supplemental briefs addressing the rules about such commingling and what remedies, if any, a court may impose if the commingling was improper.

The supplemental briefing should be served and filed by February 8, 2019. The briefs should not exceed 10 pages.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin L. Lennon", written over a horizontal line.

Erin L. Lennon  
Supreme Court Deputy Clerk

ELL:sk



**AHREND LAW FIRM PLLC**

**February 08, 2019 - 2:13 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95827-1  
**Appellate Court Case Title:** Monica Diaz Barriga Figueroa v. Consuelo Prieto Mariscal  
**Superior Court Case Number:** 14-2-50417-1

**The following documents have been uploaded:**

- 958271\_Supplemental\_Pleadings\_20190208130136SC867019\_0959.pdf  
This File Contains:  
Supplemental Pleadings  
*The Original File Name was 2019-02-08 Supp Brf of Resp.pdf*

**A copy of the uploaded files will be sent to:**

- danhuntington@richter-wimberley.com
- dmarsh@bpmlaw.com
- jhampton@bpmlaw.com
- law@AndersonLawWA.com
- law@nedstratton.com
- mkierce@bpmlaw.com
- stevecronin@mccblaw.com
- valeriamcomie@gmail.com

**Comments:**

---

Sender Name: George Ahrend - Email: gahrend@ahrendlaw.com  
Address:  
100 E BROADWAY AVE  
MOSES LAKE, WA, 98837-1740  
Phone: 509-764-9000

**Note: The Filing Id is 20190208130136SC867019**