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COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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TODD MCLAUGHLIN, a Washington resident,

Appellant,

v.

TRAVELERS COMMERCIAL INSURANCE COMPANY,  
a foreign corporation,

Respondent.

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BRIEF OF APPELLANT

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A. INTRODUCTION

Todd McLaughlin was seriously injured while riding his bicycle in Seattle when he was struck by a car door. He sought coverage with his auto insurer, Travelers Commercial Insurance Company (“Travelers”), under the Medical Payments provision of his policy. The policy provides a modest \$5,000 of reasonable medical expenses in the event McLaughlin was struck by a motor vehicle as a “pedestrian.” The plan did not define the term “pedestrian.” Travelers denied coverage.

In denying benefits to McLaughlin, Travelers unilaterally chose a definition of pedestrian that favored its own interests over those of its insured. Travelers ignored applicable insurance statutes which define a pedestrian as “a natural person not occupying a motor vehicle.” RCW 48.22.005(11). Instead, it cited irrelevant traffic law ordinances requiring bicycles to follow the rules of the road, and handpicked narrow dictionary definitions found nowhere in the policy or in law.

The trial court erroneously granted summary judgment to Travelers, ignoring applicable authorities and failing to construe the contract against the insurer-drafter, as required by law. Its decision frustrated the purpose and policy behind insurance statutes, and rewarded Travelers for its own poor drafting of its insurance contract. These errors

warrant reversal. The case should be remanded with instructions to enter summary judgment in favor of McLaughlin.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its May 25, 2018 order granting Travelers' motion for partial summary judgment and denying McLaughlin's motion for partial summary judgment. CP 238-39.

(2) Issues Related to Assignments of Error

1. Where an insurance policy did not define the term "pedestrian," did the trial court err in failing to apply the definition of "pedestrian" found in applicable insurance laws – not only in Washington but around the country – that for insurance purposes a "pedestrian" includes anyone not traveling in a motor vehicle, such as a bicyclist? (Assignments of Error Number 1)

2. To the extent there is any ambiguity in the definition of "pedestrian," did the trial court err in failing to construe that definition in favor of the insured and in favor of finding coverage as required by Washington law? (Assignments of Error Number 1)

C. STATEMENT OF THE CASE

The facts of this case are not in dispute. Todd McLaughlin was injured on July 31, 2017 when Daniel Moore opened his driver's side door, striking McLaughlin, who then fell to the ground. CP 11-12. At the time of the incident, McLaughlin was riding his bicycle. *Id.* McLaughlin was not occupying a motor vehicle; the bicycle was not motorized in any

way. *Id.* The parties stipulated that McLaughlin was powering his bicycle “with his legs and feet.” *Id.* As a result of his injuries, McLaughlin suffered “tens of thousands of dollars in medical expenses.” CP 198.

At the time of the accident, McLaughlin was insured by Travelers. His policy included coverage of up to \$5,000 in medical payments coverage for “reasonable expenses incurred for necessary medical...services because of ‘bodily injury’: 1) caused by an accident; and 2) [s]ustained by an ‘insured.’” CP 39. For purposes of this provision, McLaughlin was considered an “insured” if he was “a pedestrian struck by” a motor vehicle. *Id.* The policy did not define the term “pedestrian.” CP 17-59.

McLaughlin sought coverage for his medical payments, but Travelers denied coverage under the policy, claiming that McLaughlin was not a pedestrian at the time of the accident. CP 64-65. In doing so, Travelers ignored the applicable insurance statutes which define pedestrian as “a natural person not occupying a motor vehicle.” RCW 48.22.005(11). Rather, Travelers relied on dictionary definitions strictly defining a pedestrian as a person “travel[ing] on foot; walker” and the definition of pedestrian found in Title 46 RCW, the Motor Vehicles title dealing with traffic infractions such as rules of the road and vehicle registration. *Id.* That title defines pedestrian as, “[a]ny person afoot or

who is using a wheelchair, power wheelchair as defined in RCW 46.04.415, or a means of conveyance propelled by human power other than a bicycle.” RCW 46.04.400.

Both parties moved for partial summary judgment regarding the definition of pedestrian in the insurance policy. Despite the applicable definition in the insurance statutes, the trial court, the Honorable Barbara Linde, denied McLaughlin’s Motion for Partial Summary Judgment and granted Travelers’ Motion for Partial Summary Judgment. CP 238-39. McLaughlin voluntarily withdrew his remaining claims, including his claim for bad faith, in order to pursue this timely appeal. CP 245-48.

#### D. SUMMARY OF ARGUMENT

The trial court erred in determining that McLaughlin was not a pedestrian at the time of the accident as that term is used in the insurance policy issued by Travelers. The term “pedestrian” is not defined in Travelers’ policy, but applicable insurance statutes define pedestrian as any person not occupying a motor vehicle. Washington courts, and courts across the country, have applied this definition in the insurance context. McLaughlin plainly fit this definition, and the trial court erred in failing to consider this applicable statutory provision when interpreting the insurance policy.

Rather than rely on clear insurance laws, Travelers cites irrelevant traffic laws which courts have recognized do not apply in the insurance context. Courts have also rejected the strict dictionary definitions offered by Travelers, which are far too narrow and frustrate the purpose behind insurance, which is to provide coverage for the insured. Finally, to the extent there is any ambiguity, the trial court erred in failing to construe the policy in favor of the insured and in favor of finding coverage.

E. ARGUMENT<sup>1</sup>

(1) The Law on Interpretation of Insurance Policies

The criteria for interpreting insurance policies are “well settled” in Washington.<sup>2</sup> *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 665, 15 P.3d 115 (2000). “[I]nsurance policies are construed as contracts.” *Id.* (quotation omitted). The policy is construed as a whole, giving a “fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.” *Id.* “If the

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<sup>1</sup> “Where there are no relevant facts in dispute, the applicable standard of review is *de novo* review of lower court decisions regarding insurance coverage.” *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 730-31, 837 P.2d 1000 (1992).

<sup>2</sup> McLaughlin’s policy was issued in California, but McLaughlin was a Washington resident at the time of the accident. Travelers initially raised a question regarding choice of law but conceded that there was no conflict between California and Washington law, and therefore “Washington law presumptively applies” to this dispute. CP 70-71 (citing *Tilden-Coil Constructors, Inc. v. Landmark Am. Ins. Co.*, 721 F. Supp. 2d 1007, 1012-13 (W.D. Wash. 2010)). McLaughlin agrees with Travelers position that Washington law should control the outcome of this case.

language is clear and unambiguous, the court must enforce it as written and may not modify it or create ambiguity where none exists.” *Id.*

“If during interpretation a court has determined that an essential provision is ambiguous...the court must attempt to resolve that ambiguity.” *Int’l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 283, 313 P.3d 395 (2013). “A clause is ambiguous when, on its face, it is fairly susceptible to two different interpretations, both of which are reasonable.” *Am. Nat. Fire Ins. Co. v. B & L Trucking & Const. Co., Inc.*, 134 Wn.2d 413, 428, 951 P.2d 250 (1998).

It is well settled that “[i]f a court is unable to resolve an ambiguity through interpretation, *it must construe the ambiguity in favor of the Insured.*”<sup>3</sup> *Int’l Marine Underwriters*, 179 Wn.2d at 288 (emphasis added). Courts must interpret an ambiguous contract most favorably for the insured “even though the insurer may have intended another meaning.” *Transcon. Ins. Co. v. Wash. Pub. Utils. Dists.’ Util. Sys.*, 111 Wn.2d 452, 456-57, 760 P.2d 337 (1988). This makes sense because the insured, as the drafter of a policy, “cannot...argue its own drafting is unfair” and courts “will not add language to the policy that the insurer did not include.” *B & L Trucking*, 134 Wn.2d at 430.

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<sup>3</sup> California follows the same rule of interpretation that “ambiguities are to be resolved against the insurer.” *Minkler v. Safeco Ins. Co. of Am.*, 49 Cal. 4th 315, 321, 232 P.3d 612 (2010).

“It is also universally settled that statutory provisions are a part of [an insurance] policy.” *Ringstad v. Metro. Life Ins. Co.*, 182 Wash. 550, 553, 47 P.2d 1045 (1935). This Court has explained that “unlike other types of contracts, insurance policies must be interpreted in light of important public policy and statutory considerations.” *Mission Ins. Co. v. Guarantee Ins. Co.*, 37 Wn. App. 695, 699, 683 P.2d 215 (1984). Thus, a court must consider statutory provisions regarding insurance when interpreting questions of insurance coverage. *Id.* (insurer could not seek to alter omnibus clause to exclude coverage for a leased vehicle where Washington insurance statutes mandated upfront omnibus clauses); *Ringstad, supra* (consulting statutes regarding life insurance to resolve coverage question); *see also, Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 673, 852 P.2d 1078 (1993) (noting an “extensive body of jurisprudence” holding that underinsured motorist provisions are interpreted in light of insurance statutes).

(2) Applicable Insurance Law Defines “Pedestrian” and Settles This Dispute in McLaughlin’s Favor; Definitions in Traffic Laws Do Not Apply

Here, the only disputed term is “pedestrian” which is undefined in the policy. However, applicable insurance laws, which operate as “part of the policy,” resolve the dispute in favor of McLaughlin and show that there is no ambiguity in the policy at all.

Automobile insurance is a type of “general casualty insurance” under Washington law. RCW 48.11.070.<sup>4</sup> This includes any policy “covering accidental injury to individuals...caused by being struck by a vehicle.” RCW 48.11.060(2). Importantly, pursuant to the laws governing automotive causality insurance, the term “pedestrian” is defined as: “a natural person not occupying a motor vehicle as defined in RCW 46.04.320.” RCW 48.22.005(11). A bicycle is not a “motor vehicle” under RCW 46.04.320.<sup>5</sup>

Thus, under this statutory definition, which operates as “part of the policy,” pursuant to *Ringstad, Mission Ins. Co., supra*, McLaughlin was a pedestrian at the time he was struck by a motor vehicle because he was not also occupying a motor vehicle. Travelers ignored this reality and misled the trial court, arguing that “Washington Courts have yet to define the term ‘pedestrian’ in the context of an automobile policy.” CP 74. Regardless of whether Washington *courts* have explicitly defined pedestrian in the insurance context, *the Legislature* plainly has.

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<sup>4</sup> Casualty insurance is a broad term and encompasses any “agreement to indemnify against loss resulting from a broad group of causes such as legal liability, theft, accident, property damage, and workers’ compensation.” Insurance, *Black’s Law Dictionary* (10th ed. 2014).

<sup>5</sup> California law likewise recognizes that a bicycle is not a “motor vehicle” for insurance purposes. *Chong v. California State Auto. Ass’n*, 48 Cal. App. 4th 285, 288, 55 Cal. Rptr. 2d 648 (1996).

Moreover, regardless of whether courts have specifically *defined* the term in the insurance context, they have long *recognized* that bicyclists are treated as pedestrians for insurance purposes. For example, in *Mattson on Behalf of Mattson v. Stone*, 32 Wn. App. 630, 648 P.2d 929 (1982), this Court considered the case of a woman who was struck by a car while riding on a bicycle. The Court noted that she received personal injury protection benefits “as a pedestrian injured in [the] accident.” *Id.* at 632 (emphasis added). This view is not controversial; it falls in line with insurance laws from jurisdictions across the country. *See, e.g., Fireman’s Fund Ins. Co. v. Kerger*, 194 Ga. App. 20, 20, 389 S.E.2d 541 (1989) (bicyclists are considered pedestrians for the purposes of Georgia insurance law); *Harbold v. Olin*, 287 N.J. Super. 35, 39, 670 A.2d 117 (N.J. Super. Ct. App. Div. 1996) (“A person riding a bicycle is considered a pedestrian for purposes of our State automobile insurance laws.”); *Pilotte v. Aetna Cas. & Sur. Co.*, 384 Mass. 805, 806, 427 N.E.2d 746 (1981) (Massachusetts insurance law includes “persons operating bicycles” in its definition of pedestrian).<sup>6</sup> The trial court erred by ignoring

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<sup>6</sup> In its attempt to find contrary authority involving insurance law, Travelers relied on an unpublished Ohio Court of Appeals decision where a split among Ohio courts exists. Travelers cited *Dye v. Grose*, 2015 WL 1255755 at \*4 (Ohio Ct. App. Mar. 12, 2015), where the Fifth District of the Ohio Court of Appeals held that a bicyclist is not a pedestrian under Ohio insurance laws. *See, e.g.,* CP 75. The panel was split three judges to two. The dissenting judges would have followed a unanimous decision from the Sixth District of the Ohio Court of Appeals, which held that a bicyclist is a pedestrian under Ohio insurance laws. *Id.* (Hoffman, J. dissenting) (citing *Schroeder v. Auto-*

the common definition of pedestrian that applies for insurance purposes in Washington.

Travelers offered nothing to contradict these authorities. It merely offered the definition of pedestrian found in traffic laws like Title 46 RCW and the Seattle Municipal Code 11.14.445, provisions which treat bicycles as vehicles when it comes to the “rules of the road.” CP 74. These provisions have nothing to do with insurance laws. This Court has recognized that these provisions generally have limited application outside of the traffic law context. *See Hill v. Jawanda Transp. Ltd.*, 96 Wn. App. 537, 546, 983 P.2d 666 (1999) (“Respect for the rules of the road is a question involving the enforcement of criminal statutes, and is not an appropriate consideration in *forum non conveniens* analysis.”); *State v. Morris*, 87 Wn. App. 654, 666, 943 P.2d 329 (1997), *review denied*, 134 Wn.2d 1020 (1998) (rejecting argument that because bicyclists “are part of the general motor vehicle law...and...are vehicles subject to the same

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*Owners Ins. Co.*, 2004 WL 2384350 (Ohio Ct. App. Oct. 22, 2004)). One of the dissenters pointed out the lunacy of following a strict definition of pedestrian as one “on foot”: “Using [the insurer’s] definition, a person pushing a baby in a stroller would be covered if struck by a car while the baby would not.” *Id.* at \*5 (Hoffman, J. dissenting).

The split among Ohio courts appears to remain unresolved. The fact that this unpublished opinion – representing three of the 10 judges who have considered the question in Ohio – is the best foreign authority Travelers could find shows the weakness of its position.

rules of the road as other vehicles” that they are less vulnerable than other pedestrians for purposes of sentencing enhancement).<sup>7</sup>

The broad definition of pedestrian in the insurance context is sound policy, as bicyclists are particularly vulnerable and susceptible to injury on the roadway. In *Morris*, this Court noted that a “bicyclist does not have any additional protection from injury that riding in an automobile might provide.” *Id.* at 667. Just like any other pedestrian, a bicyclist lacks airbags, seatbelts, and impact absorbing bumpers, thus making them vulnerable to serious injury. *Id.* Thus, while it may make sense to treat bicyclists the same as other vehicles when it comes to the rules of the road, it does not make sense to treat them the same in the context of laws designed to protect their safety and compensate them for their injuries incurred while bicycling.

The authorities and policy considerations cited above make it clear that for insurance purposes, bicyclists must be treated as pedestrians pursuant to RCW 48.22.005(11). Absent any definition of “pedestrian” in

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<sup>7</sup> Likewise, Travelers did not cite California authorities dealing with insurance laws, rather it relied on irrelevant traffic law provisions as it did when discussing Washington law. *See, e.g.*, CP 76 (relying on the California Vehicle Code §§ 23103 & 23105). In fact, the California case Travelers relied on most heavily, is not only a case having nothing to do with insurance, but it is an unpublished decision with no precedential value under California rules and therefore may not be cited in Washington. CP 75-76 (citing *Kelly v. EZ Rider & Co.*, 2014 WL 7178080 (Cal. Ct. App. Dec. 17, 2014)); GR 14.1(b) (party may only cite a foreign unpublished authority “if citation to that opinion is permitted under the law of the jurisdiction of the issuing court”). Again, Travelers’ inability to cite relevant authority is telling.

Travelers' policy, this definition should apply. The trial court erred in finding otherwise.

(3) Dictionary Definitions Do Not Apply Where Insurance Concepts Are Well-Defined

Lacking any controlling authority defining pedestrian in the context of insurance law, Travelers offered handpicked dictionary definitions generally describing pedestrian as “going or performed on foot, of, relating to, or designed for walking” or “a person who goes or travels on foot; walker.” CP 74 (citing Merriam-Webster); CP 222 (citing dictionary.com). These definitions do not control the outcome of this case. Not only do they conflict with the definition found in the statute governing casualty insurance discussed above, but they are far too narrow and are generally recognized to be inapplicable in Washington.

Dictionary definitions which limit the term “pedestrian” to those traveling “on foot” are not controlling where pedestrian is a broad term in the insurance context. This is not a controversial statement. For example, in *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 76, 517 A.2d 730 (1986), the Court of Appeals of Maryland surveyed the law across the country – mentioning 28 jurisdictions, including Washington – and noted that the term “pedestrian” commonly refers to more than merely walking

“on foot.”<sup>8</sup> The court noted examples given by legislatures and courts including bicyclists, horseback riders, roller skaters, ice skaters, persons in wheelchairs, persons on crutches or stilts, and persons sitting or otherwise not moving at all. *Id.* at 76-81. Applying these widely-recognized principles, the court determined that a person struck by a car while sitting on a stool in parking lot attendant’s booth qualified as a “pedestrian” for insurance purposes. *Id.* at 80.

This is sound policy, as a strict definition of pedestrian is absurd in the insurance context. Under Travelers’ absurd definition of pedestrian meaning strictly “going on foot” or “a walker,” a person pushing a baby in a stroller would be covered if struck by a car while the baby would not. *See Schroeder, supra* at n.6. This draconian definition cannot stand as courts must give insurance policies “a practical and reasonable interpretation rather than a strained or forced construction that leads to an absurd conclusion, or that renders the policy nonsensical or ineffective.” *Transcon. Ins. Co.*, 111 Wn.2d at 457.

Similarly, our Supreme Court recognized the absurdity of treating bicyclists differently than other pedestrians in the context of crosswalks:

Equally absurd would be practical application of [the rule that bicycles must be treated the same as motor vehicles

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<sup>8</sup> Travelers’ willful ignorance to this widely-recognized principle supports McLaughlin’s bad faith claim, a claim he voluntarily withdrew for the time being while this appeal is pending.

when crossing at crosswalks]. A hypothetical suggests the problem: Several groups of children return home from school...some on foot, others on skateboards, roller blades and bicycles, and wait at the crosswalk for a clear opportunity to cross...If such group were hit in the crosswalk, under [defendant's] interpretation, the vehicle driver would be liable to all children except those on bicycles. Such interpretation and result make no sense.

*Pudmaroff v. Allen*, 138 Wn.2d 55, 65-66, 977 P.2d 574 (1999). Thus, the Court held that bicyclists – even under the rules of the road which normally treats them the same as motor vehicles – “are to be treated akin to pedestrians when they use crosswalks to traverse a roadway.” *Id.* at 70. In so holding, the Court looked to the “declared purpose of our State’s traffic laws and regulations” which serve “to encourage and enhance highway safety.” *Id.* at 65.

Here too, the Court should look to the purpose of the laws at issue. In the insurance context, this Court has determined that “the purpose of insurance is to insure, that construction rendering the contract operative is to be preferred.” *Safeco Ins. Co. of Am. v. Davis*, 44 Wn. App. 161, 164, 721 P.2d 550 (1986) (quotation omitted) (holding that “if [the insurer] intended simply to exclude coverage for unlicensed and underaged drivers, it could have done so in clear terms”). This purpose is reflected in RCW 48.22.005(11)’s broad definition of pedestrian, which includes all persons “not occupying a motor vehicle.” This Court should avoid the absurd

results championed by Travelers and give that purpose its due effect. After all, as the party who drafted the policy, had Travelers intended that the policy exclude bicyclists “it could have done so in clear terms.” *See Davis, supra; B & L Trucking*, 134 Wn.2d at 430 (drafter of policy “cannot...argue its own drafting is unfair” and courts “will not add language to the policy that the insurer did not include.”).

Travelers offered one last argument that undefined terms must be interpreted in a way that would be “understood by the average person buying insurance.” CP 207 (citing *McDonald*, 119 Wn.2d at 724).<sup>9</sup> It summarily concluded with just a mere reference to dictionaries that “[a]n average person purchasing insurance would understand the term ‘pedestrian’ to mean someone walking.” *Id.* Not true. As discussed above, authorities from around the country have defined “pedestrian” to mean more than merely someone walking. Even the Washington traffic laws cited by Travelers – although inapplicable to this insurance dispute – recognize that skateboarders, roller skaters, and bikers using crosswalks are “pedestrians.” RCW 46.04.400. These are not merely legal definitions, but rather reflect common thought throughout the country.

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<sup>9</sup> In *McDonald*, the Court did not discuss what the disputed terms would mean to the average person buying insurance because it determined that language in the policy defined the outcome of that dispute. 119 Wn.2d at 733-34. Here, there is no dispute that “pedestrian” is undefined in the policy and to the extent more than one definition is reasonable *McDonald* recognized that a court must “construe the effect of such language against the drafter.” *Id.* at 733.

*See Tucker, supra.* After all, a parent pushing his or her baby in a stroller would surely expect that both would be considered pedestrians if struck by a car. Finally, as discussed below, to the extent there is any ambiguity in the definition of pedestrian, the Court must reject Travelers' assertions and side with McLaughlin.

The trial court committed error where Washington law treats bicyclists as pedestrians for insurance purposes. In finding otherwise, the trial court ignored precedent and frustrated the purpose of insurance laws. Summary judgment should be reversed and granted in favor of McLaughlin.

(4) The Trial Court Erred in Not Resolving any Remaining Ambiguity in McLaughlin's Favor

As discussed above, the policy is not ambiguous because Washington insurance law regarding automobiles defines pedestrian as a person "not occupying a motor vehicle." RCW 48.22.005(11). However, to the extent there is any ambiguity, the trial court erred in failing to resolve that ambiguity in McLaughlin's favor.

Again, "the purpose of insurance is to insure" thus, the "construction rendering the contract operative is to be preferred." *Davis*, 44 Wn. App. at 164. Coverage exclusions "are contrary to the fundamental protective purpose of insurance and will not be extended

beyond their clear and unequivocal meaning...Exclusions should also be strictly construed against the insurer.” *Stuart v. Am. States Ins. Co.*, 134 Wn.2d 814, 818-19, 953 P.2d 462 (1998). A court must construe ambiguities “in favor of coverage” wherever possible. *Certain Underwriters at Lloyd’s London v. Travelers Prop. Cas. Co. of Am.*, 161 Wn. App. 265, 278, 256 P.3d 368 (2011).

Here the ambiguity created by the conflicting definitions offered by the parties should be resolved in McLaughlin’s favor. To the extent the Court determines that multiple definitions are reasonable, the Court must find against the drafter of the policy – who had every opportunity to define pedestrian in the policy but failed to do so – and in favor of the insured, McLaughlin. However, the Court should note that even under the traffic laws cited by Travelers, bicyclists are often treated inconsistently.

Our Supreme Court has recognized that “Bicyclists enjoy an anomalous place in the traffic safety laws of Washington....the Legislature has viewed bicycles...on a case by case basis, and without any continuity.” *Camicia v. Howard S. Wright Const. Co.*, 179 Wn.2d 684, 700, 317 P.3d 987 (2014) (quoting *Pudmaroff*, 138 Wn.2d at 63 n.3). Bicyclists are sometimes treated as pedestrians, even under the rules of the road. For example, under RCW 46.61.755(2), “[e]very person riding a bicycle upon a sidewalk or crosswalk must be granted all of the rights and

is subject to all of the duties applicable to a pedestrian by this chapter.”  
*See also, e.g., Ludwigs v. Dumas*, 72 Wash. 68, 72, 129 P. 903 (1913)  
(rejecting distinction between person crossing at a crosswalk “as a  
pedestrian” versus riding a bicycle); *Pudmaroff*, 138 Wn.2d at 70 (while  
bicyclists are not treated as pedestrians under the rules of the road, they  
“are to be treated akin to pedestrians when they use crosswalks to traverse  
a roadway in the same manner as a pedestrian.”).<sup>10</sup>

Travelers wrongfully relied on traffic laws to argue that they  
unambiguously exclude bicyclists from the definition of pedestrian. In  
doing so, it fundamentally misled the court below by creating a notion of  
certainty over bicyclists’ place in traffic laws, where, in reality, the laws  
lack “any continuity.” *Camicia*, 179 Wn.2d at 700.

Similarly, the strict dictionary definitions Travelers offers  
including “traveling by foot” or “a walker” are full of ambiguities and  
exceptions. These definitions appear nowhere in Washington statutes, and  
conflict directly with the definition Travelers offers under Washington’s  
traffic laws. That definition includes not just “walkers” but also  
skateboarders, roller skaters, other persons traveling by “means of

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<sup>10</sup> California also treats bicycles inconsistently. For example, under California  
law, sidewalks are defined as portions of roadways “intended for pedestrian travel,” yet  
bicycles are specifically permitted to travel on sidewalks unless precluded by local  
ordinance. *See Spriesterbach v. Holland*, 215 Cal. App. 4th 255, 271, 155 Cal. Rptr. 3d  
306 (2013).

conveyance propelled by human power other than a bicycle.” RCW 46.04.400.

The dictionary definitions are the most insurer friendly, as they exclude these wheeled pedestrians, and fail to even account for a person hit by a car while standing still or resting on a bench on a public sidewalk. Moreover, the definition “by foot” is not the picture of clarity where a bicyclist, like a skateboarder, powers a bike using his or her feet and legs. For these reasons, courts have recognized that the dictionary definitions offered by Travelers are far too narrow and inapplicable. *See, e.g., Pudmaroff*, 138 Wn.2d 65-66 (noting examples of pedestrians who are not simply “on foot”); *Mattson on Behalf of Mattson*, 32 Wn. App. 632 (recognizing that person traveling on bicycle recovered insurance benefits as a “pedestrian” in an accident).

The inconsistencies and ambiguities in these definitions should be discarded in favor of the casualty insurance law definition which creates a bright line rule that a pedestrian is anyone “not occupying a motor vehicle.” RCW 48.22.005(11).

In sum, this Court is faced with three choices to fill in the definition of “pedestrian” ambiguously left blank in the insurance policy drafted by Travelers. This Court could determine that a pedestrian is (1) any person walking on foot; (2) anyone traveling using human power,

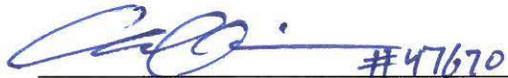
except those traveling by bicycle; or (3) anyone not in a motor vehicle. This Court must choose the latter, as it not only follows the definition applicable to insurance laws in this state, but it also favors coverage and the insured – instead of the insurer who drafted the policy. Summary judgment should be reversed.

F. CONCLUSION

The trial court erred in ruling that a person traveling by bicycle is not a pedestrian for insurance purposes. Controlling insurance laws dictate otherwise, and to the extent there are other reasonable definitions, the court was obligated to construe the policy against the drafter-insurer and in favor of finding coverage. Summary judgment should be reversed, and the case remanded with instructions to enter summary judgment in favor of McLaughlin.

DATED this 4<sup>th</sup> day of October, 2018.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Brief of Appellant*** in Court of Appeals, Division I Cause No. 78534-6-I to the following:

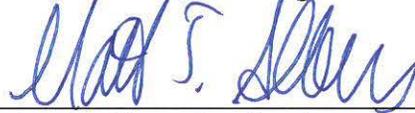
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 4, 2018, at Seattle, Washington.



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Matt J. Albers, Paralegal  
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