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STATE OF WASHINGTON  
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No. 97652-0

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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TODD MCLAUGHLIN, a Washington resident,

Petitioner,

v.

TRAVELERS COMMERCIAL INSURANCE COMPANY,  
a foreign corporation,

Respondent.

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PETITIONER'S CONSOLIDATED ANSWER TO *AMICI* BRIEFS

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## A. INTRODUCTION

Three respected *amici* groups have filed briefs to assist the Court in deciding this case – United Policyholders (“UP”), Cascade Bicycle Club (“Cascade”), and the Washington State Association for Justice Foundation (“WSAJ”). Each of these groups urge the Court to overturn Division I’s opinion, which ignored the Insurance Code, important public policy, and the proper method of resolving insurance disputes as outlined numerous times by this Court. The issues implicated in this insurance dispute necessarily affect the public interest,<sup>1</sup> and therefore it is unsurprising that these groups, representing thousands of constituents in Washington and beyond, have come forward to have their members’ voices heard.

*Amici* show that Division I’s published opinion in this case is untenable. They show that Division I’s opinion would negatively affect insureds across the country. This Court should reverse.

## B. ARGUMENT

- (1) UP and WSAJ Correctly Observe that Washington Law Governs This Dispute, as Travelers Admitted in Both Lower Courts

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<sup>1</sup> See, e.g., *Oregon Auto. Ins. Co. v. Salzberg*, 85 Wn.2d 372, 376-77, 535 P.2d 816 (1975) (“[I]nsurance policies...are simply unlike traditional contracts, i.e., they are not purely private affairs but abound with public policy considerations”); *Nat’l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 878, 297 P.3d 688 (2013) (“[I]nsurance contracts are imbued with public policy concerns”); RCW 48.01.030 (“The business of insurance is one affected by the public interest”).

As UP and the WSAJ correctly note, Washington law governs this dispute. UP br. at 12-13; WSAJ br. at 7-9. For the first time, only after McLaughlin petitioned for review to this Court, Travelers argued that California law should apply to this dispute. *E.g.*, Travelers' suppl. br. at 12. This is nothing but an eleventh-hour tactic by Travelers to distance itself from Washington law, as *amici* note. Travelers only cited Washington law when it initially denied McLaughlin's claim. CP 64. Travelers never pleaded foreign law in its answer in federal court. Travelers relied *exclusively* on Washington law in Division I; its appellate brief failed to cite a single California authority. Travelers conceded below that Washington law applied to the contractual claims at issue in this appeal, and "no conflicts-of-law analysis" was necessary. CP 70-71. In light of both parties' agreement that Washington law controlled this dispute, Division I relied exclusively on Washington law in its published decision.<sup>2</sup> In fact, Travelers waived the issue by raising it only for the first time in this Court. RAP 2.5(a).

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<sup>2</sup> UP also saliently points out that Washington law must govern this dispute where McLaughlin has permanently relocated to Washington, and this state's "public institutions, and its healthcare providers...bear the consequences of diminished financial resources to cover McLaughlin's injuries." UP br. at 12 n.3. Regardless of California's law, our state's strong policy in favor of providing coverage to insureds, specifically when it comes to motor vehicle collisions, must govern this dispute.

While the Court of Appeals correctly determined that this case is governed by Washington law, it erred in its analysis, ignoring this Court's controlling authority regarding the proper method of interpreting insurance policies. Reversal is warranted based on principles of Washington law.

This Court cannot allow Division I's published opinion to stand for the correct method for resolving insurance disputes in Washington. UP is correct that "[i]t has never been the law that single adverse dictionary definition defeats coverage," as Division I held. UP br. at 14. Rather, courts must consider terms in the insurance context, including statutory definitions of operative terms under the long-recognized rule that applicable "insurance regulatory statutes become part of insurance policies." *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 254, 850 P.2d 1298 (1993); *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 419 P.3d 400 (2018); *Ringstad v. Metro. Life Ins. Co.*, 182 Wash. 550, 553, 47 P.2d 1045 (1935). Nor may Travelers subtract from the statutorily mandated coverage. *Durant*, 191 Wn.2d at 11.

*At the very least*, where multiple reasonable definitions of a term exist, like one in the section of Washington's Insurance Code specifically addressing PIP coverage, a court has an obligation to adopt the definition

most favorable to the insured. *E.g., Int'l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 288, 313 P.3d 395 (2013).<sup>3</sup>

Additionally, this Court must confirm that insurance disputes in Washington are not resolved in a vacuum, devoid of public policy considerations as Division I determined. Rather, courts must follow this Court's clear direction that insurance policies are "simply unlike traditional contracts" because "they are not purely private affairs." *Salzberg*, 85 Wn.2d at 376-77.<sup>4</sup> *Amici* are correct that this Court should overrule Division I's outlier published decision.

(2) The Fact That McLaughlin Is Also Covered as a Named Insured Shows that PIP Applies Expansively to Cover All Victims of Motor Vehicle Collisions, as the Legislature Intended

UP and WSAJ also argue that McLaughlin was the "named insured" in his policy, and, therefore, he fits the definition of insured for PIP purposes as a matter of law. UP br. at 4-5; WSAJ br. at 10-13.

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<sup>3</sup> UP sums up Division I's error in this regard perfectly in its brief at 16-17. Division I was faced with many reasonable definitions of the term "pedestrian" drawn from numerous sources, including the Insurance Code, the Motor Vehicle Code, multiple dictionaries, historic decisions from this state, decisions from other jurisdictions, and more. Rather than adopting the definition that most favored the insured, it sided with Travelers and rendered the policy inoperable. That was error.

<sup>4</sup> *See also, Mission Ins. Co. v. Guarantee Ins. Co.*, 37 Wn. App. 695, 699, 683 P.2d 215 (1984) ("[U]nlike other types of contracts, insurance policies must be interpreted in light of important public policy and statutory considerations."); *Jack v. Standard Marine Ins. Co., Ltd., of Liverpool, England*, 33 Wn.2d 265, 205 P.2d 351 (1949) (holding that dictionary definitions "are not controlling" in insurance disputes because courts must consider policy arguments and the "purpose" of insurance contracts as a whole).

McLaughlin agrees with this argument; although, it is not necessary to resolve this case where McLaughlin also fit the definition of “pedestrian” as a “person not occupying a motor vehicle” at the time of the collision. RCW 48.22.005(11). However, UP and WSAJ cogently show that the Legislature chose to define the term “insured” *as expansively as possible* in the PIP context, because it sought to cover *all persons* affected by motor vehicle collisions. *See, e.g., Peoples v. United Servs. Auto. Ass’n*, 194 Wn.2d 771, 775, 452 P.3d 1218 (2019).

As all *amici* point out, Division I’s decision runs contrary to the clear public policy in this state to “broaden...the public’s protection against automobile accidents.” *See* Cascade br. at 4-5 (citing *Kyrkos v. State Farm Mut. Auto. Ins. Co.*, 121 Wn.2d 669, 675, 852 P.2d 1078 (1993)). The Legislature purposefully drafted the PIP statutes to expand coverage to all persons involved in such collisions, whether driving, walking, rollerblading, bicycling, or sitting at a bus stop. Division I was wrong to ignore this reality, a reality that is widely, if not universally, applied in the insurance industry across the country. *E.g., Tucker v. Fireman’s Fund Ins. Co.*, 517 A.2d 730, 733-35 (Md. 1986) (surveying over 30 states including Washington). This Court should reverse.

- (3) Even If Amici Make New Arguments, Which McLaughlin Does Not Concede, That Is Not Grounds to Object to the Brief

McLaughlin expects that Travelers will object to UP and the WSAJ's argument regarding McLaughlin's status as a "named insured" on the grounds that *amici* allegedly raise new theories in their briefs. *E.g.*, obj. to WSAJ br. at 2-4. McLaughlin does not agree that *amici* raise wholly new theories, but, rather, they emphasize important points showing the many ways in which Division I and the trial court erred in resolving this insurance dispute. The Legislature intended PIP coverage to apply expansively, and thus there are several bases for finding coverage for victims of automobile collisions. UP and the WSAJ's arguments are consistent with Washington law

But even assuming *arguendo* that Travelers is correct that these arguments are entirely new, Travelers' objections still fail. As this Court recently explained, although this Court "generally decline[s] to reach issues not properly presented by the parties, 'this [C]ourt has inherent authority to consider issues not raised by the parties if necessary to reach a proper decision.'" *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 792, 357 P.3d 1040 (2015) (quoting *Alverado v. Wash. Pub. Power Supply Sys.*, 111 Wn.2d 424, 429, 759 P.2d 427 (1988)). The Court in *Filo* rejected a party's objection to an argument raised for the first time by *amicus*. This Court explained that its inherent authority to consider all

issues necessary to reach a proper decision is especially paramount when the Court is asked to interpret statutes. *Id.* Such cases naturally have broad consequences for the public, and this Court should not willfully blind itself to the impact of its decisions.

Here, too, this Court is asked to resolve questions with a broad public impact, including the proper method for resolving insurance disputes, the applicability of definitions found in the Insurance Code, and whether courts can ignore arguments regarding public policy and legislative intent in favor of a dictionary. Because these questions have implications far beyond this single case, it is no wonder so many respected *amici* groups seek to participate. The Court should consider these arguments, so it can make a fully informed decision that will positively impact the citizens of this State. The Court should ignore Travelers' objections.

(4) Cascade's Brief Confirms that Division I Ignored the Reality that Bicyclists Are Commonly Considered Pedestrians for Insurance Purposes

Cascade's *amicus* brief provides helpful insight into the *predominant* practice in the insurance industry to treat bicyclists as pedestrians for PIP purposes. Cascade br. at 6-10. This is key where Division I ignored its duty to consider the definition of "pedestrian" as it

appears in the insurance context and as it is understood by the average purchaser of insurance. *E.g., Durant*, 191 Wn.2d at 18.

In its answer to McLaughlin’s petition for review, Travelers argued that “McLaughlin has not provided any evidence of how the insurance industry customarily treats bicyclists or pedestrian.” Travelers’ ans. at 10. That is false at the outset; McLaughlin provided *numerous* examples of the customary treatment of bicyclists as pedestrians. McLaughlin provided several Washington policies from multiple, major insurers that include the broad statutory definition of “pedestrian” as any person “not occupying a motor vehicle. Pet’r’s suppl. br. at 8-9 (citing CP 179-95). He also cited numerous Washington cases where bicyclists received PIP coverage and courts, like this Court, referred to them as pedestrians throughout their opinions. *Id.* at 9 (citing *Barriga Figueroa v. Prieto Mariscal*, 193 Wn.2d 404, 441 P.3d 818 (2019); *Mattson on Behalf of Mattson v. Stone*, 32 Wn. App. 630, 632, 648 P.2d 929 (1982); *see also, Brown v. Snohomish County Physicians Corp.*, 120 Wn.2d 747, 845 P.2d 334 (1993)). McLaughlin also cited cases from around the country (representing caselaw from approximately 30 states) where courts use expansive definitions of “pedestrian” for insurance purposes, including bicyclists. *Id.* (citing, *e.g., Tucker, supra*).

In addition to the overwhelming evidence McLaughlin provided, Cascade’s *amicus* brief reinforces the notion that insurers customarily treat bicyclists as pedestrians for insurance purposes. For example, Cascade provides publications from major insurers like Progressive and Esurance, informing customers like McLaughlin that their PIP policies will provide coverage if they are struck by a car “while walking or cycling.” Cascade br. at 6-7 (citing, *e.g.*, Esurance, *Medical Payments Coverage*, <https://www.esurance.com/info/car/medical-payments-coverage> (last visited October 25, 2019)). Cascade notes that its 17,000 members rely such publications, in addition to the caselaw and statutory authority cited *supra*, when purchasing insurance. Cascade br. at 9-10. Bicyclists like Cascade’s members are “acutely aware” of the dangers posed by motor vehicles, and therefore they rely on PIP coverage, which must be offered by insurers as directed by statute, to compensate *all victims* of motor vehicle collisions. *Id.* at 9.

Cascade correctly observes that if the Court allows Division I’s published decision to stand, bicyclists are now the *least protected persons* using public rights of way in our state. Cascade br. at 6. Division I’s published decision strips coverage even from bicyclists whose policies use the broad definition found in the Insurance Code, due to Division I’s tortured conclusion that a bicyclist is a person occupying a motor vehicle

under its “harmonized” reading of unrelated statutes. Pet’r’s suppl. br. at 16-20. The Court of Appeals was wrong to legislate this exception for bicyclists from the bench, contrary to the plain language of the statute. As Cascade points out, this Court should reverse Division I’s serious error.

C. CONCLUSION

*Amici’s* arguments further support McLaughlin’s position that this Court should reverse Division I’s opinion. The fact that this case has garnered the attention of these respected groups shows the public’s interest in ensuring that insurance contracts are properly interpreted.

DATED this 11th day of May, 2020.

Respectfully submitted,

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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Petitioner's Consolidated Answer to Amici Briefs* in Supreme Court Cause No. 97652-0 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: May 11, 2020, at Seattle, Washington.

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