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No. 62979-4-1

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

NORMAN BLACK, JANIS WARNER, CECELIA BLACK and LESTER
BLACK

Plaintiffs-Appellants,

v.

NATIONAL MERIT INSURANCE COMPANY, a Domestic Insurer and
Washington Corporation;

Defendant-Respondent,

and

TRACEY RADCLIFFE,

Defendant.

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REPLY BRIEF OF APPELLANT

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I. INTRODUCTION TO REPLY

In resolving this insurance coverage dispute, both sides agree that context is important. The “use of a non-owned auto” clause is a standard provision designed to extend, not exclude coverage. Interpretations of these clauses are insured-oriented, as *insurance follows the insured*. Liberal construction of these standard, inclusionary clauses furthers Washington public policy relating to auto accidents. As a result, National Merit concedes that Ms. Radcliffe’s liability from her one-time use of the non-owned auto in this case would have been covered by Farmers, and nearly every other insurer in Washington. Why should National Merit be treated any different?

National Merit argues that the way it drafted this otherwise standard provision lets it escape coverage where other Washington insurers would have to extend it. It argues the context for coverage should be confined to the four-corners of its form contract, irrespective of Washington precedent or policy. Yet the bolded but undefined terms “... use of **any covered auto**” must lawfully be construed as extending coverage for its insured’s liability. Public policy demands uniformity of application in the broad coverage provisions of adhesion contracts of automobile liability insurance.

National Merit’s concessions in this dispute answer the question of its own coverage obligations. In addition to its concession that Ms.

Radcliffe's liability from her one-time use of a non-owned auto would have been covered by Farmers and other Washington insurer, National Merit also concedes that "use" has a broad insurance interpretation. It also concedes that ordinary dictionaries are generally used to define terms an insurer fails to define, and that all dictionaries equate "covered" with "insured." It even concedes that Ms. Radcliffe's liability arose from her use of an insured auto.

In light of these concessions, National Merit's lengthy argument begins after any other insurer's analysis would have reasonably concluded. It devotes 40 pages of complex argument to explain why it should be treated different from any other Washington insurer due to the unique drafting of the standard policy terms. It myopically claims that the undefined word "use" which it drafted in conjunction with the bolded but also undefined term "**any covered auto**," can be eliminated and ignored through interpretation. So, too, should the word "any." In their place, National Merit argues coverage should be narrowed to include only an insured's physical driving or operation. Washington law has already rejected this argument, instead holding that "use" governs the interpretation of a standard automobile liability insurance. Heringlake v. State Farm Fire & Cas. Co., 74 Wn.App. 178, 872 P.2d 539 (1994).

Appellants believe the proper context requires interpretation through

the prism of Washington public policy, case law, and the purpose of these standard non-owned auto clauses, which is to broadly cover and compensate harm relating to auto accidents. These clauses are standard and designed to add to, not reduce coverage. Any interpretation must be through this lens.

When viewed in proper context, therefore, the standard protection for an insured's one-time use of a non-owned auto should be the same whether coverage is sought under a Farmers, Viking, PEMCO or National Merit policy issued in Washington. Insurance must follow the insured, whether the insured's one-time use is of an auto owned by a friend living in Washington, visiting from elsewhere or borrowed/rented from a stranger. The "positive" connection is already established by the fact that the use is by a particular insured whom the insurer knows, specifically underwrote, accepted as an insured, and charged premiums for according to their particular risk. As a result, the proper interpretation of a standard inclusionary clause requires extending coverage for an insured's broad "use" of any auto. Any exclusions are narrowly interpreted and focused on the insurer's ability to prove that its insured's use of another auto created an actual increased risk, such as through evidence on the frequency (rather than the nature) of the use.

National Merit does not provide any evidence that Ms. Radcliff's one-time use of the insured Goodell auto created an increased or uncompensated

risk. In fact, National Merit already factored in and decreased its risk in this case through its “other insurance” clause. While denigrating that clause as “mere boilerplate,” National Merit does not dispute that its effect is to reduce National Merit’s risk in the event its insured uses an automobile covered by another insurance policy, converting National Merit’s primary liability to secondary or excess coverage.

The trial court erred when it misinterpreted this standard inclusionary clause, designed to cover an insured’s one-time use of an insured but non-owned auto. Its interpretation is contrary to Washington precedent and public policy, and improperly prevented insurance from following an admitted insured. The trial court’s decision reduced standard coverage, rather than extended it. It also undercut the uniform construction of these standard clauses, creating uncertainty and unnecessary litigation.

Appellants ask this Court to reverse and remand this case for entry of an order stating that Ms. Radcliff’s liability arising from the one-time use of the Goodell auto is covered under National Merit’s policy.

II. SUMMARY OF UNDISPUTED MATERIAL FACTS

The following material facts are undisputed:

- The clause at issue is a standard, inclusionary clause designed to add to, not reduce coverage for an insured. National Merits is not relying upon one of its exclusions to deny coverage.

- National Merit's clause extends coverage for an insured's liability respecting the "use of **any covered auto or trailer.**"
- National Merit did not define "use," or "**any covered auto**"
- "Use" and "with respect to" are broadly interpreted in insurance inclusionary clauses.
- Washington has rejected other insurer's attempts to limit coverage for an insured's liability to physical driving or operation.
- Standard dictionaries equate "covered" with "insured."
- Tracey Radcliffe is an insured family member with National Merit.
- Ms. Radcliffe's liability is "with respect" to her one-time "use" of an auto owned by the Goodells and insured by PEMCO.
- Because the one-time use is of a non-owned auto insured under another company's insurance policy, National Merit's liability coverage becomes secondary or excess.
- Ms. Radcliffe would be covered under Farmers, PEMCO, Viking or any other standard Washington auto insurance policy.

III. REPLY ARGUMENT

A. Purpose of Standard Auto Liability Policy Is to Broadly Cover an Insured's Use of Any Auto: *Insurance Follows the Insured.*

"An automobile-liability insurance policy provides coverage to an insured for damages resulting from her use of an automobile." Thomas V. Harris, Washington Insurance Law §25.1 (2006) at 25-1. Any interpretation

must keep this intent at the forefront. “It must not be forgotten that the purpose of insurance is to insure, and that construction should be taken which will render the contract operative, rather than inoperative.” Phil Schroeder, Inc. v. Royal Globe Ins. Co., 99 Wn.2d 65, 68, 659 P.2d 509 (1983).

Further, because auto accidents greatly affect the public interest, insurance is heavily regulated and policies are interpreted through the lens of Washington’s strong public policy of protecting the insured-users of autos while ensuring full compensation for the victims of automobile accidents. Mutual of Enumclaw Ins. Co., v. Wiscomb, 97 Wn.2d 203, 207-09, 643 P.2d 441 (1982); Oregon Auto Ins. Co., v. Salzberg, 85 Wn.2d 372, 376-77, 535 P.2d 816 (1975) (“insurance policies, in fact, are simply unlike traditional contracts, i.e., they are not purely private affairs but abound with public policy considerations, one of which is that the risk-spreading theory of such policies should operate to afford to affected members of the public-frequently innocent third persons-the maximum protection possible consonant with fairness to the insurer.”).

Sources reflecting public policy and affecting interpretation of automobile policies in Washington include the Financial Responsibility Act (FRA), Chapter 46.29 RCW, and the Mandatory Liability Insurance Act (“MLIA”), Chapter 46.30 RCW. See Mendoza v. Rivera-Chavez, 140 Wn.2d

659, 999 P.2d 29 (2000).¹

In light of this public policy, insurance policies are interpreted to cover broadly the “use” of an automobile and are not limited to physical operation or driving. Harris, supra, § 25.1 at 25-1 to 25-8. Thus, “use” is not limited to physically touching the steering wheel, as argued by National Merit, but includes all potential uses of a vehicle, whether lawful or not. *Id.* See TransAmerican Ins. Group v. United Pacific Ins. Co., 92 Wn.2d 21, 26, 593 P.2d 156 (1979) (passenger’s illegal discharge of gun in car was “use” of auto covered under policy). Further, liability arising from “use” is not limited to tort-derived proximate cause, instead “it is only necessary that there be casual connection between the use and the automobile.” Insurance Company of North America v. Ins. Company of the State of Pennsylvania, 17 Wn.App. 331, 562 P.2d 1004 (1977) (broadly inclusive interpretation of “use” applies even in non-auto cases, aviation liability coverage held to cover insured’s liability for damage caused by forest fire arising from pilot extinguishing his cigarette on the helicopter’s fuselage); Butzberger v. Foster,

¹ The FRA and MLIA work together to reinforce Washington public policy of protecting insureds and compensating auto accident victims. Mendoza, supra. Thus, insurance terms that exclude standard coverages or conflict with the public policy of the FRA to limit protection are void, unless specifically bargained for or proven to actually increase the uncompensated risk to the insurer. *Id.*

151 Wn.2d 396, 89 P.3d 689 (2004) (“use” is broadly interpreted under auto policy so that a person could be using two autos without touching either); Heringlake, *supra* 74 Wn.App. 179 (rejecting language in auto policy tying coverage to “driving” or “physical operation”; instead adopting broader “use” interpretation to include storing dog in stationary and unoccupied truck bed).

As summarized in Ins. Co. of North America, *supra*:

The inquiry should be whether the negligent act which caused the injury, although not foreseen or expected was in the contemplation of the parties to the insurance contract and natural and reasonable incident or consequence of the use of the automobile and thus a risk against which they might be reasonably expect those insureds under the policy would be protected . . .

In our mobile society, the act of throwing or dropping objects from moving vehicle is not such an uncommon phenomena that such occurrence may not be anticipated or so inconsequential that members of the public need no financial protection from the consequence thereof. However anti-social such conduct may be, everyday experience tells us the various objects are thrown or permitted to fall from moving vehicles, examples are lighted cigarettes and cigars, food and drink and containers and other debris.

17 Wn.App. at 334-35.

B. Purpose of Standard Non-owned Auto Clause Is to Add To, Rather than Reduce Insurance.

Clauses extending coverage for an insured’s infrequent use of a non-owned auto have been standard in Washington for decades. Dairyland Ins.

Co. v. Ward, 83 Wn.2d 353, 517 P.2d 966 (1974); Farmers Ins. Co. of Washington v. USF & G, 13 Wn.App. 836, 837-38, 537 P.2d 839 (1975).

Standard language within most automobile policies provides that coverage for the use of non-owned vehicles extends to any insured. Policies define insured as the named insured and/or any 'family member.'

Harris, § 25.3 at fn. 114. These are inclusionary clauses designed "to add to, rather than reduce, the coverage provided by other provisions of the policy."

Harris, § 25.3, *citing* Farmers Ins., 13 Wn. App. at 839-40. In Dairyland Insurance, the court considered the use of a non-owned auto clause for the first time. After surveying interpretations of these standard clauses from other jurisdictions and authorities, the Court found the clause ambiguous. 83 Wn.2d at 359-60. The Court noted its "confusing structure" and the fact that it was "sandwiched into the general coverage provisions" where use is supposed to be extended, not excluded. *Id.* As a result, the Court refused to limit coverage for an insured's liability arising from their infrequent use of a non-owned vehicle:

The twofold purpose of the 'use of other automobile' clause is: (1) to prevent an insured from receiving coverage on all household cars or another uninsured car of the insured by merely purchasing a single policy, and (2) to provide coverage to the insured when engaged in the infrequent use of non-owned vehicles. (citations omitted) The danger of the assumption of additional risks without an added premium contemplated by the clause simply does not exist in the

instant case. Mark Donovan owned no other vehicles. His use of the pickup truck was found by the trial court to be infrequent. Thus, this case does not present an abuse at which the exclusionary provision was directed.

Id.

A year later, the use of a non-owned auto clause in a Farmers policy was evaluated. The court confirmed that these non-owned auto clauses are to be liberally interpreted to extend coverage.

We are concerned primarily with the non-ownership clause. Its purpose is to add to, rather than reduce, the coverage provided by other provisions of the policy. The clause provides the insured coverage for infrequent or occasional use of non-owned automobile.

Farmers, 13 Wn.App at 843. After finding the restriction for an insured's use of a non-owned auto ambiguous, the Court extended coverage explaining:

[T]he insurer is not providing coverage for any risk not anticipated; we are not dealing with a stolen automobile, nor one which was loaned to another contrary to the expressed desire of the owner. Mr. Haaby has paid premiums to Farmers to be protected against liability for injuries arising out of his use of a non-owned automobile.

Id.

It is now undisputed that these non-owned auto clauses are standard inclusionary provisions extending coverage for accidents in Washington. Harris, § 25.3; State Farm Fire & Cas. Co. v. Martin, 73 Wn.App 189, 192, 869 P.2d 79 (1993) (non-owned auto clauses are standard inclusionary

clauses and Washington's FRA requires insurers to provide omnibus coverage in all auto liability policies); RCW 46.29.490 "Motor Vehicle Liability Policy" defined; RCW 48.18.130 (insurance policies must contain standard provisions unless language is more favorable to the insured than the standard provision). As a result, they should be broadly and uniformly interpreted to further Washington's public policy.

C. Restricting Insurance to Physically Driving or Operating Has Been Rejected and is Contrary to Washington Public Policy.

Because non-owned auto clauses are inclusionary, designed to add to coverage, it would be unreasonable and contrary to Washington public policy to attempt to restrict coverage to the physical touching or operation of a vehicle. This argument was attempted and rejected in Heringlake. Such a narrow interpretation would also result in less coverage to this standard clause than allowed by Washington's FRA.

Heringlake involved a Viking Insurance auto liability clause that read "we insure any car, owned or non-owned, being driven by you." 74 Wn.App at 184. Similar to here, the insurer argued for narrow coverage based upon its unique policy language. "According to Viking, the endorsement was intended to broaden Clark's coverage to include non-owned vehicles used by him, but only when they were being physically operated by Clark." *Id.*, at

186-87. In rejecting the insurance company's attempt to restrict liability coverage to autos "being driven by" or "physically operated" by an insured, the court found those terms to be ambiguous and held "an average person would expect a Viking endorsement to cover vehicles being used by the insured, not merely physically operated by the insured." *Id.*

Here, National Merit uses this same rejected argument to attempt to exclude rather than extend coverage. The trial court erred in its adoption of this argument, as did the trial court in Heringlake. As in Heringlake, this court should reverse. National Merit fails to demonstrate any increased and uncompensated risk from its own insured's one-time use of a non-owned vehicle. In fact, National Merit's other insurance clause reduces the ordinary risk of its insured's use of any auto, converting its primary coverage to excess insurance when that use is of an auto insured by another insurer. *See New Hampshire Indem. Co. v. Budget Rent-A-Car Systems, Inc.*, 148 Wn.2d 929, 64 P.3d 1239 (2003) ("other insurance" clauses prioritize insurance coverage, even between an insurer and rental car company). Moreover, there apparently is no premium difference for this decreased risk as it is provided through a "boilerplate" clause National Merit uses throughout its policy.

Even the so-called "operator's policy" mandated under Washington's FRA does not restrict coverage to an insured's physical operation or touching

of the steering wheel, as proposed by National Merit here (and Viking in Heringlake). Instead, the FRA employs the broad term “use”:

(3) Operator’s policy. Such operator’s policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him

RCW 46.29.490(3)(emphasis added). As the Court clarified in Mendoza, the FRA, including this above section, establishes Washington’s public policy respecting the terms of auto insurance. Any term that conflicts with the minimal level of coverage under the FRA is void. The burden is upon the insurer to prove the restriction was specifically bargained for or necessary to prevent an uncompensated and increased risk to the insurer. 140 Wn.2d at 666. Neither is present here.

This is a standard auto insurance policy. Its terms were not bargained for by the insured. Instead, this adhesion contract was entered into upon the insured’s reliance that the insurer, as a fiduciary, would draft and apply its terms in compliance with all applicable laws and public policy requirements. Id., at 681; Seattle Northwest Securities Corp. v. SDG Holding Co., Inc., 61 Wn.App 725, 738, 812 P.2d 488 (1991); RCW 48.18.130.

Further, National Merit fails to support its argument that Tracey Radcliffe’s one-time use of a non-owned auto increased its risk. Washington

law makes clear that it is the frequency of use, not the purpose or nature of the use, that may increase the uncompensated risk. *See e.g. MacKenzie, infra.* Ms. Radcliffe’s risky use of the car in this case involved racing, illegal passing, yelling and encouraging the driver to speed up, go faster, and pass another car.² Accordingly, her conduct posed the same risk whether National Merit’s teenage insured was in her own car or her friend’s car.³ As a result, any limitation that decreases the broad coverage mandated by Washington case law, public policy and the FRA is void as not required by a particular risk for which the insurer has not already obtained an appropriate premium.

As established by both Mendoza, and Heringlake, National Merit cannot lawfully rewrite through interpretation its standard clause covering an

² Ms. Radcliffe’s position as a passenger did not preclude her liability for the injuries caused by her tortious concert of action. *See Yong Tao v. Heng Bin Li*, 140 Wn.App 825, 166 P.3d 1263 (2007)(participation to speed and improperly pass in a dangerous manner sufficient for concert of action and joint liability). This is one of many possible scenarios under which an insured who is “using” but not “operating” an auto may be jointly liable. *See, e.g. Thomas v. Casey*, 49 Wn.2d 14, 297 P.2d 614 (1956) (joint liability between volunteer driver and passenger of a car who stopped to assist another car that went into a ditch. The rescuers were jointly liable even though out of their parked car when it was hit by 3rd car).

³ National Merit admits that Ms. Radcliffe’s liability arose from her use of the Goodell auto, and that “use” was not a basis for its coverage denial. Admissions and unchallenged facts are verities on appeal. Torres v. Salty Sea Days, Inc., 36 Wn. App. 668, 670, 676 P.2d 512 (1984).

insured's one-time "use of **any covered auto**" to limit coverage to operation and physically touching the steering wheel. This interpretation conflicts with and "strikes at the heart of Washington public policy," rendering it void. As in Heringlake, this court should reverse the trial court and apply the interpretation that "covers vehicles being used by the insured, not merely physically operated by the insured." Heringlake, 74 Wn. App at 187.

D. Tying Coverage to an Insured's Infrequent Use is Sufficient Positive Connection to Prevent Unlimited Liability Concerns.

In addition to public policy, there are practical reasons for broadly interpreting these clauses to extend coverage for an insured's occasional use of a non-owned auto. An insurer already has a "positive" connection to its insureds. The insurer has reviewed the insured's application, evaluated individual risk factors, underwritten that risk, accepted the insured, and collected a premium to cover all liability that may in the future be posed by that particular insured's use of an automobile. *See e.g. Robinson v. Pemco Insurance Co.*, 71 Wn.App. 746, 749, 862 P.2d 614 (1993) (insured's infrequent use of non-owned autos is standard clause to be liberally construed as "the insurer is familiar with the insured and can factor a degree of risk into its policy premiums"). The insurer's familiarity with a particular insured and positive choice to cover their liability consistent with Washington public

policy underscores the maxim that “insurance follows the insured.”⁴

If an insurer is concerned about the risk posed by a particular individual, it can charge more or refuse to insurer them. See New Hampshire Ins., 148 Wn.2d at 937. National Merit did just that in this case. National Merit evaluated both Tracey Radcliffe (a.k.a Tracey Klusman) as well as her brother, Leif. It underwrote both, calculating their particular risks, and chose to add them as insureds under their parents’ policy. CP 168, 194. However, National Merit later changed its mind. Upon renewal, National Merit chose to drop Leif and exclude him as an insured. Id. Based upon its calculations of Tracey’s individual risk factors, National Merit chose to retain her as an insured. Id. Thus, at the time of this accident Tracey Radcliffe was a National Merit insured with standard auto coverage as broad as that demanded of any insurer under Washington public policy.

Because it is now uniformly recognized that “use of non-owned autos” are *inclusionary* clauses standard to all Washington auto policies,

⁴ There is another maxim, “insurance follows the auto” that is incorporated in what is referred to as an “ownership” or “omnibus” clauses. Harris, §25.4. This clause provides protection for a non-insured’s use of an auto owned by an insured. In Robinson, the court discussed the different risk factors and evaluation of insured-oriented clauses versus owner/auto-oriented clauses. Here we are only concerned with the maxim “insurance follows the insured,” *i.e.*, the insured-oriented focus reflected in part one of National Merit’s “covered person” definition.

there is little litigation concerning the interpretation of these standard terms extending coverage. Instead, most of the current disputes concern an insurer's use of separate *exclusions* irrelevant here but generally relating to the frequency, not the nature of the use.⁵ Here, National Merit is relying upon an interpretation of its *inclusionary* clause, not an *exclusionary* clause.

E. The Two-Part Definition of “Covered Person” Supports Plaintiff’s Coverage Interpretation.

National Merit’s interpretation of its policy is not only inconsistent with public policy, but it is undermined by its own two-part definition of “covered person.” Recognized principles and rules governing the interpretation of insurance contracts require defined and undefined terms to be separately construed, with undefined terms given their plain and ordinary meaning. Kitsap County v. Allstate Ins. Co., 136 Wn.2d 567, 576, 964 P.2d

⁵ See, e.g., Grange Ins. Ass’n v. MacKenzie, 103 Wn.2d 708, 712, 694 P.2d 1087 (1985) (“An insurance company's legitimate interest is in preventing an increase in the quantum of risk without a corresponding increase in the premium; the risk to the insurance company is related only to the amount of time the car is driven, not to the *reason* that car is driven.”); Nelson v. Mutual of Enumclaw, 128 Wn.App 72, 115 P.3d 332 (2005) (“exclusions are enforced if clearly stated, and the nature of the insurer’s risk is altered by factors not contemplated in the calculation of the premium” with the “critical factor is not the purpose of the use, but the frequency of the use”); Westhaver v. Hawaiian Ins. & Guar., 15 Wn.App. 406, 408, 549 P.2d 507 (1976) (it is the “quantum of use which enhances the risk without a corresponding increase in the premium”).

1173 (1998). See Boeing Co. v. Aetna Cas. and Sur. Co., 113 Wn.2d 869, 876-877, 784 P.2d 507 (1990) (contract should be construed to give each separate clause force and effect). Further, where “two contradictory interpretations might arguably be sustained when a coverage provision is applied to the fact pattern presented,” the court is obliged to accept that interpretation which favors the insured. Herrmann v. Grange Ins. Ass'n, 33 Wn.App. 734, 740, 657 P.2d 346 (1983).

Here, National Merit has drafted a two-part definition of “covered person.” The first part expressly applies only to an insured person using the undefined term “any covered auto,” which is commonly understood to mean any insured auto as insurance covers the insured. The second part applies to any person using the defined term “your covered auto,” which is expressly limited by reference to ownership, frequency and operation. This is the omnibus clause, where insurance follows the auto, not the insured. As a result, a different analysis is required.

Yet under National Merit’s argument that “any covered auto” and “your covered auto” are synonymous, the first part of the “covered person” definition is rendered superfluous, because “any person” within the second part would include insureds like Tracey and her parents. This is contrary to rules of insurance contract interpretation. Boeing Co., 113 Wn.2d at 876-

877 (1990) (each separate clause must be construed as having force and effect). Further, it conflates the two different orientations and thus obscures the preexisting “positive” connection between insurer and their insureds.⁶

National Merit’s position is also inconsistent as applied. Part one of the definition of “covered person” includes an insured’s “use of **any covered auto or trailer.**” A trailer is defined in the policy as including a farm implement or a boat trailer, which do not have steering wheels and cannot be “operated” as now defined by National Merit. Thus, part one of the definition of “covered person” must reasonably be construed as written and applied to an insured’s “use” of a trailer or auto, rather than physical “operation,” of it.

In short, only if these separate definitions of “covered person” are given independent meaning, so that insurance follows the insured, does the policy comport with public policy and the purpose of liability insurance, and satisfy the expectations of the insured.

IV. CONCLUSION

The trial court erred in interpreting the National Merit policy to

⁶ Relying on a treatise by a former editor of Black’s Law Dictionary National Merit presents a highly technical and exhaustive grammatical dissection of the definition “your covered auto” used in part two of the definition of “covered person.” Ironically, it ignores that Black’s itself defines “cover” as meaning “to protect by means of insurance” like every other dictionary. Black’s Law Dictionary (5th Ed.) at 330.

preclude coverage for Tracey Radcliffe's undisputed one-time use of the insured Goodell vehicle. This interpretation is contrary to the mandatory, broad construction of "use" required under Washington case law and public policy. It is also inconsistent with the two-part definition of "covered person" in the National Merit policy. Only when these parts are independently construed to have separate and independent meaning and purposes do they satisfy the public policy requirement that an insured's liability be covered for her one-time "use" of a non-owned automobile.

National Merit's standard adhesion contract may not lawfully be construed to provide less coverage than that required by other insurers, whose policies meet the minimum coverage requirements of Washington law.

Respectfully submitted this 26th day of October, 2009.

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CERTIFICATE OF SERVICE

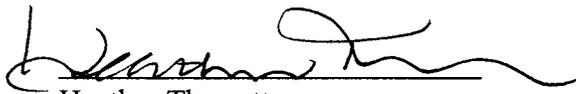
THE UNDERSIGNED hereby certifies that she caused delivery of a copy of the foregoing to be served on the below date to all counsel of record in the following manner:

Patrick S. Brady [] *Via Facsimile*
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of October, 2009 at Seattle, Washington.


Heather Thweatt