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Judicial Feat: Bicyclist is a "Pedestrian:" Coverage Owed

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Yesterday, on December 10, 2020, the Supreme Court of Washington spoke: a bicyclist is a "pedestrian." As a result, coverage was owed under an automobile policy.

Many reading this do not handle claims under auto policies. But the lessons from *McLaughlin v. Travelers Insurance Company,* No. 97652-0 (Wash. Dec. 10, 2020) apply to all lines of insurance.

Lesson one. Insurance coverage litigation is unpredictable. Two lower courts concluded that a bicyclist is not a "pedestrian." This seems incontrovertible. Yet six Justices of the Washington Supreme Court concluded otherwise.

Second, *McLaughlin* is a reminder that the rules can differ between insurers and policyholders in coverage litigation. In general, insurers are usually obligated to prove what a term means. Policyholders, however, can often win by simply proving that a term has more than one reasonable meaning. If so, the term is generally construed in their favor. As the Supreme Court noted in *McLaughlin*, the term "pedestrian" has several different meanings.

In *McLaughlin*, the Washington high court addressed coverage under the following circumstances. Todd McLaughlin was injured after his bicycle crashed into an open parked car door in Seattle. McLaughlin, a transplant from California, sought MedPay coverage (California's version of PIP coverage) under his automobile policy, issued by Travelers. The policy provided coverage for up to $5,000 worth of medical expenses incurred by the insured, who was defined, in relevant part, as **"a pedestrian when struck by[] a motor vehicle".** (emphasis added) The term "pedestrian" was not defined. Travelers denied coverage based upon Washington and California vehicle codes which defined "pedestrian" to exclude bicyclists.

McLaughlin filed suit, claiming breach of contract. The trial court ruled that Travelers was not in breach because "an ordinary and common meaning of pedestrian does not include bicyclist." The Court of Appeals affirmed the trial court's decision, relying on the dictionary definition of pedestrian and the definition of "pedestrian" contained within Washington's vehicle code.

The Supreme Court of Washington reversed, finding that McLaughlin qualified as a "pedestrian" under the terms of the Travelers' policy. The court determined that Washington's motor vehicle statutes were inapplicable, and instead relied upon Washington's casualty insurance statute, RCW 42.22.005.

Under RCW 42.22.005, a pedestrian is defined as "a natural person not occupying a motor vehicle," which is defined in RCW 46.04.320 as "every vehicle which is self-propelled." The court found that the application of this definition also comported with "Washington's strong public policy in favor of full compensation of medical benefits for victims of road

accidents."

The court noted that, even if RCW 48.22.005's definition of "pedestrian" was inapplicable, the term "pedestrian" was clearly ambiguous, as the term had several different meanings under various statutes, and therefore must be construed against Travelers.

A three justice dissent had this to say:

> The majority relies in part on the very litigation itself to find ambiguity, noting that the "vigorous debate in this case over the meaning of 'pedestrian' demonstrates that the term is susceptible to more than one reasonable interpretation." Majority at 11. This interpretive principle that litigation implies ambiguity would result in the end of unambiguous contract terms. The clear, unambiguous dictionary definition of "pedestrian" is sufficient to resolve this case.

There are no sure things in insurance coverage litigation. It is not death and taxes.

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