SUPREME COURT, STATE OF COLORADO

Case Nos. 96SC854, 97SC164, 97SC182, 97SC201, 97SC506

CERTIORARI TO THE COLORADO COURT OF APPEALS

AMICUS BRIEF

96SC854

FARMERS INSURANCE EXCHANGE d/b/a FARMERS INSURANCE GROUP OF COMPANIES,

Petitioner,

v.

SONJA FILIPPI,

Respondent.

97SC164

FARMERS INSURANCE EXCHANGE,

Petitioner,

v.

BILL BOOM INCORPORATED, a Colorado corporation,

Respondent.

97SC182

MID-CENTURY AUTO COMPANY,

Petitioner,

v.

SAFEWAY TRUCKING, INC. and LARRY DEAN LINCOLN,

Respondents.

97SC201

AMERICAN FAMILY INSURANCE GROUP,

Petitioner,

v.

FEDERAL EXPRESS CORPORATION,

Respondent.

97SC506

SCHNEIDER NATIONAL CARRIERS, INC., a Nevada corporation; and ROBERT WESTFALL,

Petitioners,

v.

ALLSTATE INSURANCE COMPANY, an Illinois corporation,

Respondent.

Petitions for Certiorari to the Colorado Court of Appeals

Dated: October 6, 1997

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I. ISSUE PRESENTED FOR REVIEW

What is the proper scope of the phrase "nonprivate passenger motor vehicle" in C.R.S. Section 10-4-713(2)(a)?

II. STATEMENT OF THE CASE

Five cases have been consolidated for this appeal. The Amici support the Petitioners in the first four cases in seeking a reversal of the Courts of Appeals' decisions. The Amici support the Respondent in the case of *Schneider v. Allstate, 97SC506*, and seek affirmation of that underlying decision.

The City of Aurora hereby incorporates by reference the Statement of the Case contained in Petitioners' Farmers', Mid-Century's, and American Family's Opening Brief.

III. SUMMARY OF ARGUMENT

The Court of Appeals, in the instant cases, misinterpreted the phrase "nonprivate passenger motor vehicle" in the No-Fault Act by ignoring both the definition of private passenger motor vehicle contained in the Act and the legislative history regarding those terms. The definition of private passenger motor vehicle contains exceptions for certain public or livery conveyances and trucks with a rated

load capacity in excess of 1,500 pounds. This definition, combined with the legislative history recited by Petitioners, clearly reveals that the legislators intended the phrase "non private passenger motor vehicle" to refer to large trucks rather than publicly owned passenger vehicles.[1]

The Colorado Court of Appeals' decisions in the first four cases which involved only private entities has managed to strip away virtually all of the protections of, and incentive for providing, No-Fault coverage on passenger vehicles owned by public entities.

In June of 1995, the Court of Appeals, in another case between an insured and his private insurance company for underinsured motorist benefits, determined that:

> . . . PIP payments made by a governmental entity are separate and distinct from its tort liability because, as previously noted, two separate obligations are involved. The PIP payments are a statutory obligation imposed without regard to fault, whereas any tort liability arises from fault. *See* §§10-4-705(1), and 10-4-706, C.R.S. (1994 Repl. Vol. 4A). *Cf. Cingoranelli v. St. Paul Fire & Marine Insurance Co., supra.*

Farmers Insurance Exchange v. Sittner, 902 P.2d 938, 941 (Colo. App. 1995).

The Court of Appeals reasoned that any other result could violate the stated purpose of the No-Fault Act which is "to avoid inadequate compensation to victims of automobile accidents" by requiring registrants of motor vehicles to provide No-Fault benefits. *Id. at 940.*

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[1] The legislative history actually refers specifically to commercial vehicles. However, the statutory definition contains language which could imply all large trucks, even those owned by governmental entities.

In the *Filippi* case, at issue here, the same Division of the Court of Appeals recognized that "claims by private parties against governmental entities arising from automobile accidents are also generally subject to the provisions of the No-Fault Act" pursuant to *Regional Transportation District v. Voss, 890 P.2d 663, 666 (Colo. 1995)*, but then proceeded to completely eviscerate the protections of that Act for publicly owned passenger vehicles by allowing subrogation only against public entities for claims involving their passenger vehicles. The effect of these two decisions, in combination, will have a devastating fiscal impact on governmental entities and will put governmental entities at a distinct economic disadvantage as compared to private individuals and entities. Such a result is obviously contrary to the express purpose of the Colorado Governmental Immunity Act which states, in pertinent part, that:

> The general assembly also recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens.

C.R.S. Section 24-10-102.

Principles of statutory construction state that "[a] court also may consider the consequences of a particular construction when determining the legislature's intent." *People v. Zapotocky, 869 P.2d 1234, 1238 (Colo. 1994).* In this instance, it is absurd to believe that the legislature intended to place greater financial burdens on the taxpayers than on private commercial entities.

Under the No-Fault Act, only "registrants" of motor vehicles are required to procure complying policies. Police and firefighting vehicles are not required to be registered in the State of Colorado. *C.R.S. Section 42-3-104(3).* Thus, governmental entities are not required to provide PIP benefits on their police and fire vehicles. However, some governmental entities, including the City of Aurora, have voluntarily chosen to register their police and fire vehicles and, therefore, to provide PIP benefits on those vehicles. *Bushnell v. Sapp, 571 P.2d 1100 (Colo. 1977).* This decision is made by those entities specifically in order to avail themselves of protection from subrogation provided for in the No-Fault Act. If the majority of the Court of Appeals' decisions are not reversed, there will be no incentive for governmental entities to voluntarily provide PIP benefits to parties injured in accidents with these vehicles. This cannot be reconciled with the stated purpose of the No-Fault Act to require registrants of motor vehicles to procure insurance to provide adequate compensation to victims of motor vehicle accidents.

Further, and perhaps more importantly, governmental entities are required to register and provide PIP benefits on their non-police and fire vehicles. The Court of Appeals' decision would negate the protection from subrogation of the No-Fault Act as to these vehicles. The result of this interpretation would be that governmental entities, and ultimately the taxpayers, would bear the premium burden shift that the legislature sought to avoid, as demonstrated by the legislative history. It is clear from the legislative history that the legislature sought to maintain the premium differentiation

between commercial and private vehicles. It is inconsistent with the purposes of the Governmental Immunity Act, that the legislature would have intended to shift the premium burden from private commercial entities to the taxpayers. This Court has previously held that:

> When construing a statute, we presume that the legislature intends a just and reasonable result that favors the public interest over any private interest. *Allen v. Charnes*, 674 P.2d 378, 381 (Colo. 1984). Consequently, we will not construe a statute either to defeat the legislative intent or to lead to an absurd or illogical result. See *Ingram v. Cooper*, 698 P.2d 1314, 1315 (Colo. 1985). (Emphasis added.)

Higgins v. People, 868 P.2d 371, 373 (Colo. 1994).

Finally, the Court of Appeals' decisions excluding publicly owned passenger vehicles from the subrogation protections of the No-Fault Act cannot be reconciled with this Court's previous decisions applying both the benefits and constraints of the No-Fault Act to public entities. See *Dawson v. Reider, 872 P.2d 212 (Colo. 1994)* (Where Plaintiff suing insured public entity must comply with threshold provisions of No-Fault Act, she also receives benefit of longer No-Fault statute of limitations); *Bushnell, supra* (No-Fault Act's limits apply to a tort lawsuit arising from accident with police vehicle when the public entity has provided equivalent No-Fault coverages); *Regional Transportation District v. Voss, supra* (Because the CGIA states that "liability of a public entity shall be determined in the same manner as if the public entity were a private person," No-Fault provisions apply to governmental entities).

IV. ARGUMENT

A. "NONPRIVATE PASSENGER MOTOR VEHICLE" MEANS ALL VEHICLES THAT ARE NOT "PRIVATE PASSENGER MOTOR VEHICLES" AS DESCRIBED IN C.R.S. SECTION 10-4-713(2)(C).

The Court of Appeals, in the majority of its decisions in this case, failed to consider the statutory meaning of the phrase "nonprivate passenger motor vehicle" when it determined the phrase to mean only "government owned passenger vehicles." C.R.S. Section 10-4-713(2)(c) defines the term "private passenger motor vehicle" and by negative inference also defines a "nonprivate passenger motor vehicle:"

> (c) For the purposes of this subsection (2), a 'private passenger motor vehicle' means an automobile of the private passenger, station wagon, or camper type not used as a public or livery conveyance, unless such public or livery conveyance is regulated by the public utilities commission pursuant to article 10 of title 40, C.R.S., and is insured under a certificate of self-insurance pursuant to section 10-4-716, or an automobile of the panel delivery or truck type with a rated load capacity of one thousand five hundred pounds or less.

C.R.S. Section 10-4-713(2)(c). The term "nonprivate passenger motor vehicle" is addressed in C.R.S. Section 10-4-713(2)(a):

> Notwithstanding the provisions of subsection (1) of this section, where a motor vehicle accident involves a private passenger motor vehicle, a public school vehicle designed to transport seven or more passengers, and a nonprivate passenger motor vehicle, the insurer of the private passenger motor vehicle or the insurer of the vehicle designed to transport seven or more passengers shall have a direct cause of action for all benefits actually paid by such insurer under section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) against the owner, user, or operator of the nonprivate passenger motor vehicle or against any person or organization legally responsible for the acts or omissions of such owner, user, or operator; except that, when the injured person could recover in tort pursuant to section 10-4-714, such direct cause of action shall be to only the extent of the alleged tort-feasor's insurance coverage in excess of reasonable compensation paid to the injured person for such person's injury or damage by the alleged tort-feasor's insurer.

Judge Casebolt, in his dissent in *Farmers Insurance Exchange v. Bill Boom, Inc.*, ____ P.2d ____ (*Cert. Granted*), recognized this fact and stated that "when the General Assembly defines a term in a statute, statutory construction requires that the term be given its statutory meaning." *Id.* Since the phrase "private passenger motor vehicle" is defined in the statute, the phrase "nonprivate passenger motor vehicle" must be considered in terms of this definition. In order to consider the legislative intent of the statute, "such definition is applicable to the term whenever it appears in this statute." *Id.* When read in terms of the statutory definition, the word "non" modifies the entire defined phrase "private passenger motor vehicle," not the single word "private," which has no individual definition in C.R.S. Section 10-4-713. When the phrase is considered in this light, "nonprivate passenger motor vehicle" shall be defined as all vehicles which are not statutorily described as "private passenger motor vehicles." *Id.* Logically, the trucks described in the cases on appeal cannot be "private passenger motor vehicles," as defined by the statute. Similarly, a government owned earth mover could be considered a vehicle which is not a "private passenger motor vehicle" and thus subject to subrogation. A police car, on the other hand, would fit the definition of private passenger motor vehicle and would not be subject to subrogation. The Court of Appeals, in the first four cases, failed to consider the "internal legislative construction" of the statute, which is "of the highest value and

prevails over other extrinsic aides." *Bill Boom, supra*. As a result, they reached a conclusion that makes governmental entities liable for subrogation against all passenger vehicles in their possession, but arguably not their larger vehicles. This decision illogically contradicts the legislative construction of C.R.S. Section 10-4-713.

B. BY FAILING TO CONSIDER ITS LEGISLATIVE HISTORY AND INTENT IN THE FACE OF AMBIGUOUS LANGUAGE, THE COURT OF APPEALS ERRED IN ITS INTERPRETATION AND APPLICATION OF THE PHRASE "NONPRIVATE PASSENGER MOTOR VEHICLE." C.R.S. SECTION 10-4-713(2)(A).

"Nonprivate passenger motor vehicle," when considered in terms of the statutory definition, means all vehicles that do not qualify as "private passenger motor vehicles." As the multitude of cases before this Court illustrates, however, the phrase "private passenger motor vehicle" is subject to multiple interpretations, at least, by the Judges of the Court of Appeals. "Statutes susceptible to more than one interpretation are ambiguous and must be construed in light of their legislative intent and purpose." *In re Estate of David v. Snelson, 776 P.2d 813 (Colo. 1989).*

The Court of Appeals, in four of the cases on appeal, incorrectly held the phrase "nonprivate passenger motor vehicle" to mean only "government-owned passenger motor vehicle." *Filippi v. Farmers Insurance Exchange*, ____ P.2d _____ (Cert. Granted). The Court of Appeals asserts that only a plain reading of the statute is necessary, stating that their literal interpretation of the statute is correct as it does not create an absurd result. *Id.* The statutory language, however, is susceptible to multiple interpretations and, therefore, deserves heightened judicial consideration in light of its ambiguity. *City of Westminster v. Dogan Const. Co., Inc., 930 P.2d 585 (Colo. 1997).*

From a basic reading of the statute, at least three variations on meaning are immediately apparent within the phrase "nonprivate passenger motor vehicle:"

1. As the dissent in the *Bill Boom* case suggests, "non" modifies the entire phrase as to describe any vehicle that is not a "private passenger vehicle" as defined by C.R.S. Section 10-4-713(2)(c);

2. "Non" applies only to the word "private," revising the phrase to mean any government-owned passenger vehicle or cargo vehicle with a load capacity over 1500 pounds;

3. "Non" applies only to the word "private," and only the common usage of the individual words of the phrase is considered absent the statutory definition of "private passenger motor vehicle." In this consideration, as found in *Filippi*, only government-owned passenger vehicles are subject to subrogation, but not cargo trucks with a load capacity over 1,500 pounds.

It is hardly correct to offer only a "plain reading" consideration of a phrase instantly capable of multiple conflicting interpretations. When statutory language is ambiguous, its legislative history and intent must be considered when construing its meaning. *City of Westminster, supra*. By not considering the legislative history of the statute in light of its ambiguity, the Court of Appeals was in error when it concluded that the phrase "nonprivate passenger motor vehicle" applies only to government-owned passenger vehicles. The consequence of this interpretation is irrational, as it permits subrogation against governmental entities only and undermines the legislative intent of both the No-Fault Act and the Governmental Immunity Act. A study of the legislative history reveals that law makers intended the phrase to apply to large commercial vehicles, not government owned passenger vehicles.

C. THE LEGISLATURE INTENDED THE PHRASE "NONPRIVATE PASSENGER MOTOR VEHICLE" TO MEAN COMMERCIAL MOTOR VEHICLES.[2]

In construing the language of C.R.S. Section 10-4-713(2)(a), the Court's primary task is to ascertain and give effect to the intent of the General Assembly. *Woodsmall v. Regional Transp. Dist., 800 P.2d 63, 67 (Colo. 1990).* The Courts of Appeals, in four of the cases, failed to consider the legislative intent when interpreting the meaning of the "nonprivate" phrase.

After H.B. 1073 (the No-Fault bill) passed the House of Representatives, Representative Carl Gustafson testified before a Senate committee. In describing the intent of the bill, Representative Gustafson stated:

> It would tend to equalize rates between private passenger cars and commercial vehicles.
>
> We think we put the mechanism in here to prevent that kind of a premium shift from taking place. We give, as a definition, including commercial vehicles, as being covered under this. But then we've provided to the extent that they are the at-fault driver, that if the commercial vehicle hits me, that my insurer can claim against the insurer of the commercial vehicle from dollar one for whatever medical costs they've had to pay on my behalf.

Hearings before Senate Business Affairs and Labor Committee, 49th General Assembly, First Session (Feb. 21, 1973).

In a similar hearing before Senate Business Affairs and Labor Committee on February 28, 1973, Representative Gustafson further illustrated the intent of what would later become C.R.S. Section 10-4-713(2):

> The mechanism we've developed to preclude the two or three potential premium-shifting items that are almost inherent in a No-Fault bill . . . A commercial vehicle typically being larger, doing more

[2] See F.N. 1.

> damage, you would tend to equalize rates between commercial and private passengers. We do have a mechanism, uh, subrogation, excuse me, in the next section as against commercial vehicles starts at dollar one.

The language of Representative Gustafson is clear: The purpose of C.R.S. Section 10-4-713 is to prevent a shift of premium costs from a larger commercial vehicle to a smaller passenger motor vehicle. C.R.S. Section 10-4-713(2)(a) was included in order to offset this potential. The legislature correctly assumed that a large, truck type commercial vehicle would do considerably more damage to the average passenger car, and its occupants, than two passenger cars would do to each other. The bill's purpose is to protect the private citizen from the burden of insurance premium cost shifts resulting from the potential equalization of rates in the event of a truck/passenger car collision.

The Court of Appeals' interpretation in *Filippi* that a "nonprivate passenger motor vehicle" means a government owned passenger vehicle is incongruent with legislative intent. In fact, government owned vehicles are not mentioned in Representative Gustafson's statements. If the decision is to stand, the citizens of all municipalities will be forced to incur the premium shifting burden from any accidents involving government owned passenger vehicles. The potential for costs to government agencies and their citizens is enormous. Commercial enterprises can recover the burden of increased premium cost through the price of services they offer to the public. Municipalities and governmental agencies would have to recover that cost from the very people that the No-Fault Act served to protect -- private citizens.

The voice of the legislature clearly stated that C.R.S. Section 10-4-713 intended subrogation from dollar one to include only large trucks. Government owned passenger vehicles were intended to be protected from subrogation, as the *Schneider* case on appeal here correctly determined.

D. CASE LAW HAS ESTABLISHED THAT, THE PHRASE "NONPRIVATE MOTOR VEHICLE" IS UNDERSTOOD TO MEAN LARGE COMMERCIAL VEHICLES.

The No Fault Act has always been understood to provide protection to Colorado's municipalities from subrogation, which applied only to vehicles described as "nonprivate passenger motor vehicle(s)." Case law has consistently agreed that subrogation from dollar one applies to large commercial trucks.

In *Evinger v. Greeley Gas Co., 902 P.2d 941 (Colo. App. 1995),* the court determined that a truck owned by private enterprise was considered a nonprivate passenger motor vehicle under the No-Fault Act. The insurer of the accident victim was entitled to subrogation from dollar one against the trucking company.

In the fifth case being considered in this appeal, the Court of Appeals determined that "a tractor trailer is the very type of commercial vehicle the General Assembly sought to bring within the ambit of an insurer's subrogation rights." *Schneider, supra.*

The decision of the Court of Appeals in the instant cases has the potential to invalidate established case law which has correctly interpreted the legislative intent of the No-Fault Act.

E. THE COURT OF APPEALS' INTERPRETATION OF "NONPRIVATE PASSENGER MOTOR VEHICLE" TO MEAN "GOVERNMENT OWNED PASSENGER VEHICLE" UNDERMINES THE INTENT OF THE COLORADO GOVERNMENTAL IMMUNITY ACT (CGIA).

The Courts of Appeals, in the four cases, have failed to consider the public policy and legislative intent of the Governmental Immunity Act. If their interpretation of C.R.S. Section 10-4-713(2)(a) is affirmed, the Court of Appeals will ultimately undermine the public policy behind the CGIA, which states:

> The general assembly also recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens.

C.R.S. Section 24-10-102, Declaration of policy.

The long standing interpretation of the No-Fault Act has been that when two "private passenger motor vehicles" are involved in an accident, the insurance companies of the drivers are barred from bringing claims for subrogation for personal injuries against each other. When a "private passenger" and a "nonprivate passenger" motor vehicle are involved in an accident, the insurance company of the "private passenger vehicle" can claim subrogation against the "nonprivate passenger vehicle." The No-Fault Act has always been understood to mean that government owned passenger vehicles are treated as private passenger vehicles and offered protection from subrogation, while large trucks and other commercial vehicles are considered nonprivate and are subject to subrogation from dollar one. By necessity,

governmental entities maintain large fleets of passenger type vehicles. The consequence of the majority of the Courts of Appeals' decisions is to allow subrogation against all municipalities for claims involving passenger vehicles. This is clearly contrary to the policy of the Governmental Immunity Act.

If the majority decisions of the Courts of Appeals are to stand, we are faced with this conclusion: The CGIA seeks to protect the "taxpayers against excessive fiscal burdens," while the No-Fault Act provides that taxpayers will pay subrogation costs for accidents involving any vehicles owned by their county, city, and state. This illogical juxtaposition of concepts threatens to negate them both.

As Judge Casebolt also stated in his dissent in the Boom case, a statute must be construed in pari materia in order to effectuate legislative intent, *Walgreen Co. v. Charnes, 911 P.2d 667 (Colo. App. 1995)*, and to give consistent, harmonious, and sensible effect to all its parts. *I.A. Tobin Construction Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).* In pari materia is a rule of statutory construction that requires the various portion of the statute to be read together with all the other statutes relating to the same subject or having the same general purpose so that the legislature's intent may be ascertained. See *Black's Law Dictionary 791 (6th ed. 1990)*; Boom, supra at 4. In this case, the CGIA and No Fault Acts should be read together to give consistent and harmonious effect to each.

F. GOVERNMENTAL ENTITIES ARE WITHOUT REPRESENTATION IN A DECISION WHICH WILL SIGNIFICANTLY AFFECT THEM.

The issue being considered before the Colorado Supreme Court is one which will dramatically affect Colorado governmental entities. As this Court strives to determine an issue which will have a significant effect on the people of Colorado, the perspective of the governing bodies of those people must be considered. The current roster of cases consolidated for this decision concerns only private parties. Governmental entities are without a voice in a decision which will have a long standing impact upon them. Further, in light of the *Sittner* case, holding that PIP payments made by governmental entities are not subject to Governmental Immunity Act limits, governmental entities could be left with neither the protections of the No-Fault nor Governmental Immunity Acts in cases involving auto accidents. The Court should consider the impact of this decision on governmental entities and recognize their inherent interest in the matter at hand.

V. CONCLUSION

For the above stated reasons, the decision of the Court of Appeals should be reversed.

Dated: October 6th, 1997.

Respectfully submitted,

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