

IN THE SUPREME COURT OF THE STATE OF OREGON

STEPHANIE M. DOWELL,	)	
Individually and on behalf of others	)	
similarly situated,	)	
	)	Multnomah County Circuit Court
Plaintiff-Appellant and	)	Case No. 120506486
Petitioner on Review,	)	
	)	Court of Appeals No. A153170
vs.	)	
	)	Supreme Court No. S063079
OREGON MUTUAL INSURANCE	)	
COMPANY, an Oregon corporation,	)	
	)	
Defendant-Respondent and	)	
Respondent on Review.	)	
	)	

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**MERITS BRIEF OF AMICUS CURIAE OREGON TRIAL LAWYERS  
ASSOCIATION**

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On appeal from the Decision of the  
Court of Appeals from the Judgment of the Multnomah County Circuit Court  
Henry C. Breithaupt, Judge Pro Tempore

Opinion Filed: January 28, 2015  
Author of Opinion: Tookey, J.  
Concurring Judges: Sercombe, P.J.; Hadlock, J.

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## **TABLE OF CONTENTS**

I.	INTRODUCTION.....	1
II.	QUESTION PRESENTED AND PROPOSED RULE OF LAW.....	2
III.	ARGUMENT.....	2
	A. Including transportation expenses within the meaning of “expenses of * * * medical services” ensures that citizens and visitors injured in Oregon get prompt medical treatment.....	3
	B. The exclusion of transportation expenses from the PIP statute conflicts with the interpretation of similar provisions in other jurisdictions.....	5
IV.	CONCLUSION.....	9
V.	APPENDIX.....	11

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Allstate Ins. Co. v. Smith</i> , 902 P2d 1386, 1388 (Colo 1995).....	6, 9
<i>Davis v. Citizens Ins. Co. of Am.</i> , 195 Mich App 323 (1992).....	8
<i>Dowell v. Oregon Mutual Insurance Company</i> , 268 Or App 672 (2015).....	1
<i>Malu v. Sec. Nat. Ins. Co.</i> , 898 So 2d 69, 74 (Fla 2005).....	5, 8, 9
<i>O'Connor v. Zeldin</i> , 124 Or App 444, 447, 862 P2d 1321, 1323 (1995).....	5
<i>Plemmons v. New Jersey Auto. Full Ins. Underwriting Ass'n By &amp; Through Selective Ins. Co. of Am.</i> , 263 NJ Super 151 (App Div 1993).....	7

### **Statutes**

ORS 742.524(1)(a).....	1, 2, 4, 9
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## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The Court of Appeals' decision in *Dowell v. Oregon Mutual Insurance Company*, 268 Or App 672, 206 P3d 1042, 1050-51 (2015) is erroneous and should be reversed. In *Dowell*, the Court of Appeals considered whether ORS 742.524(1)(a), which provides that an insurer must provide personal injury protection (“PIP”) coverage for "all reasonable and necessary expenses of medical, surgical, ambulance, and prosthetic services....," includes transportation expenses to attend medical appointments and to obtain medication. *Dowell*, 268 Or App at 673. The court concluded that it did not.

However, as discussed in Plaintiff-Appellant’s brief, the plain language of the PIP statute, as well as statutory context, demonstrate that "expenses of medical... services" includes transportation expenses. Moreover, excluding transportation expenses would undermine the purpose of the PIP statute by preventing many injured persons without means from getting prompt medical treatment. Finally, this Court should interpret the PIP statute to include transportation expenses consistently with all other jurisdictions construing similar PIP statutes.

Therefore, OTLA respectfully urges this Court to reverse the Court of Appeals decision and clarify the scope of "expenses of medical \* \* \* services" under ORS 742.524(1)(a).

### **QUESTION PRESENTED AND PROPOSED RULE OF LAW**

The question presented in this case is whether costs of transportation to medical providers are “expenses of \* \* \* medical services” under ORS 742.524(1)(a), the Oregon personal injury protection law.

OTLA proposes that the term “expenses of \* \* \* medical services” includes transportation costs to medical providers.

### **ARGUMENT**

The Court of Appeals erroneously concluded that “expenses of \* \* \* medical services” under ORS 742.524(1)(a) does not include transportation expenses. That interpretation is inconsistent with the plain language and the context of the statute and would prevent many injured persons from getting prompt medical treatment. In addition, such an interpretation is inconsistent with all other jurisdictions that have considered this issue. Interpreting ORS 742.524(1)(a) to include transportation expenses will fulfill the purpose of the PIP statute and will bring Oregon in line with other jurisdictions.

**A. Including transportation expenses within the meaning of “expenses of \* \* \* medical services” ensures that citizens and visitors injured in Oregon get prompt medical treatment.**

The purpose of the PIP statute is to “reduce litigation, ensure prompt payment of claims, and ‘to ensure that all insured drivers, their families and guests, and pedestrians injured by them, would recover medical and economic losses subject to limits purchased without regard to fault.’”

Appellant’s Opening Brief pp. 6-7 (citing *Monaco v. U.S. Fidelity & Guar.*, 275 Or. 183, 187-88, (1976); Senate Judiciary Committee Minutes 2 (May 19, 1971); House Judiciary Committee Minutes 8 (Apr 17, 1973)). This purpose is best achieved by including transportation expenses in the definition of “expenses of medical \* \* \* Services.”

The PIP statute applies not only to drivers of motor vehicles, but also to passengers, pedestrians, bicyclists, or others who are injured in a motor vehicle accident. In 2012, the most recent year for which data is available, automobile accidents injured 36,085 people in Oregon.<sup>1</sup> The majority of these accidents – 78% -- occurred outside the City of Portland. Given that many of the state’s medical resources are concentrated in Portland or cities like Eugene, this means that many of those injured in accidents will have no choice but to travel substantial distances for medical appointments or

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<sup>1</sup> <http://www.oregon.gov/odot/td/tdata/car/docs/2012crashsummarybook.pdf>

treatments. Although people injured accidents occurring just outside Portland or another urban area may not incur substantial transportation costs, over 1.2 million Oregonians live outside a urban area with more than 50,000 people,<sup>2</sup> and nearly a million Oregonians live in nonmetropolitan counties.<sup>3</sup>

For an injured person living in a rural part of the state, the expense to travel to Portland (perhaps repeatedly) for specialized medical care is neither nominal nor avoidable. If PIP coverage cannot be used for transportation expenses, some injured persons without means will not be able to afford the cost of travel to and from medical treatments and appointments. Thus, interpreting ORS 742.524(1)(a) to preclude reimbursement for transportation expenses will undermine the PIP statute's goals of ensuring prompt payment of claims and recovery of medical and economic losses.

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<sup>2</sup> According to the USDA, 1.2 million Oregonians lived outside of an urban area of 50,000 people in 2000.

[http://www.ers.usda.gov/datafiles/Rural\\_Definitions/StateLevel\\_Maps/OR.pdf](http://www.ers.usda.gov/datafiles/Rural_Definitions/StateLevel_Maps/OR.pdf)

<sup>3</sup> As of 2006, the population of nonmetropolitan counties on Oregon was 839,222.

[http://www.ers.usda.gov/datafiles/Rural\\_Definitions/StateLevel\\_Maps/OR.pdf](http://www.ers.usda.gov/datafiles/Rural_Definitions/StateLevel_Maps/OR.pdf)



**B. The exclusion of transportation expenses from the PIP statute conflicts with the interpretation of similar provisions in other jurisdictions.**

Oregon's PIP statute provides for payments of "all reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the persons injury." Several other jurisdictions have considered whether similar personal injury protection statutes include transportation expenses associated with medical care. All four states that have considered this question – Florida, New Jersey, Colorado, and Michigan – have concluded that transportation expenses are included as medical expenses. Due to the similarity between the PIP statutes in those jurisdictions and the Oregon PIP statute,<sup>4</sup> the cases from those jurisdictions provide persuasive authority that this Court may weigh in interpreting ORS 742.524(1)(a). *See O'Connor v. Zeldin*, 124 Or App 444, 447 (1995) ("when a statute contains substantially the same terms as a statute from another jurisdiction, decisions construing that other statute may be persuasive.")

In *Malu v. Sec. Nat. Ins. Co.*, 898 So 2d 69, 74 (Fla 2005) (emphasis added), the Florida Supreme Court held that a PIP statute provision

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<sup>4</sup> The relevant text of each statute is referenced in the text and included in the attached appendix.

providing for coverage of “*all reasonable expenses* for medically *necessary* medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and medically necessary ambulance, hospital, and nursing services” required reimbursement of transportation expenses in connection with medical treatment. In so holding, the court rejected the contention that the inclusion of one form of transportation – via ambulance – implied the exclusion of other forms of transportation. *Id.* The court emphasized the statute’s wording regarding “*all reasonable expenses*” and case law holding that language of the PIP statute should be interpreted liberally to effectuate the legislative purpose of providing broad PIP coverage to Florida motorists. *Id.*

Similarly, in *Allstate Ins. Co. v. Smith*, 902 P2d 1386, 1388 (Colo. 1995), the Supreme Court of Colorado held that expenses for transportation to and from health care providers for the treatment of injuries arising from an automobile accident are reasonable and necessary expenses for medical treatment and are compensable under Colorado’s PIP statute.<sup>5</sup> The language of the statute provides coverage for “*all reasonable and necessary expenses* for medical, chiropractic, optometric, podiatric, hospital, nursing, X-ray,

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<sup>5</sup> In 2003, Colorado changed its insurance code and became a “fault” state, resulting in the repeal of the PIP statute. However, the statute as quoted herein and included in the appendix was in force and valid at the time of the decision.

dental, surgical, ambulance, and prosthetic services.” *Id.* (emphasis added).

In determining that transportation expenses were included, the court relied upon the statute’s legislative declaration, which states that its purposes include avoiding inadequate compensation to victims of automobile accidents and providing benefits to persons occupying such vehicles and to persons injured in accidents involving such vehicles.” *Id.* at 1387. The court also emphasized the essential nature of transportation expenses for those injured in automobile accidents:

In the modern health care system, travel to and from health care providers is an essential element of medical treatment \* \* \*. Without such transportation, the injured party could not obtain necessary medical treatment. Moreover, the cost of transportation expenses is especially burdensome in the case of rural residents who may have to travel significant distances to obtain medical services. For citizens living miles from our cities the inability to obtain compensation for transportation expenses may result in life sustaining medical treatment being unavailable.

*Id.* at 1388.

In *Plemmons v. New Jersey Auto. Full Ins. Underwriting Ass'n By & Through Selective Ins. Co. of Am.*, 263 NJ Super 151, 156 (App Div 1993), the New Jersey Superior Court emphasized causation in concluding that an insurer had to reimburse an injured person for transportation expenses under New Jersey's PIP statute. The statute defines "medical expenses" to include "expenses for medical treatment, surgical treatment, dental treatment,

professional nursing services, hospital expenses, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication *and other reasonable and necessary expenses.*" The court found that the transportation expenses, which were incurred traveling to and from the various doctors and hospitals for treatment of the injuries arising from the accident, were compensable because of the "direct nexus between plaintiff's transportation costs and his ongoing rehabilitation," given that "both are necessary as a proximate result of the accident."

Finally, in *Davis v. Citizens Ins. Co. of Am.*, 195 Mich App 323, 327-28, 489 NW 2d 214, 216 (1992), the Michigan Court of Appeals found that a modified van did constitute an allowable expense under Michigan's PIP scheme. The Michigan statute allows expenses consisting of "*all reasonable charges incurred for reasonably necessary* products, services and accommodations for an injured person's care, recovery, or rehabilitation." In so deciding, the court emphasized the necessity of transportation to an injured person with limited alternative means of transportation. *Id.*

In each of these cases, the PIP statute in question provides for coverage of expenses that are both "reasonable" and "necessary," just as Oregon's PIP statute qualifies "expenses" with "reasonable" and "necessary." In addition, three of the four state statutes – like Oregon's –

explicitly provide for coverage of “all” reasonable and necessary expenses. As noted in *Malu*, a statute’s wording regarding “*all* reasonable expenses” supports the inclusion of transportation expenses, especially combined with statutes and case law holding that language of the PIP statute should be interpreted liberally. *See Malu*, 898 So 2d at 74. Moreover, treating transportation costs as reasonable and necessary medical expenses fulfills the PIP statute’s purpose of ensuring prompt payment of claims and covering the expenses of those injured in automobile accidents. *See Allstate Ins. Co.*, 902 P2d at 1387. It also recognizes that travel to and from health care providers is an essential element of medical treatment and that the burden of this cost is especially high for rural residents who must travel to obtain medical treatment. *See id.* at 1388.

Given the similarity between the PIP statutes considered in each of these cases and ORS 742.524(1)(a), these cases provide persuasive authority that ORS 742.524(1)(a) should cover transportation expenses as well.

### **CONCLUSION**

Interpreting ORS 742.524(1)(a) to include transportation expenses will fulfill the purpose of the PIP statute and will bring Oregon law in line with other jurisdictions. This interpretation of the PIP statute is also consistent with the purpose and statutory context of the PIP scheme. Therefore, OTLA

respectfully urges this Court to interpret ORS 742.524(1)(a) to include transportation expenses.

DATED: November 19, 2015

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