No. 100230-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

POPE RESOURCES, a Delaware Limited Partnership,

Respondent,

v.

GRANITE STATE INSURANCE COMPANY, et al.,

Petitioners.

RESPONDENT'S ANSWER TO PETITIONS FOR REVIEW

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I. INTRODUCTION

None of the bases for review under RAP 13.4(b) apply here.[1] The Court of Appeals ("COA") applied well-settled conflict of law principles to the specific facts and issue before the court. The COA also followed *Steen* and other appellate precedent when it construed the terms of RCW 48.18.320 broadly, in order to effectuate the Legislature's purpose "to protect the injured and damaged by preventing insureds and insurers from coming together and canceling or rescinding insurance contracts after a potentially covered injury, death, or damage has occurred." *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 524, 91 P.3d 864, (2004).

Allowing insurers to enforce their agreements against an injured party because those agreements settled a dispute with their insured, or annulled only the portion of the policies covering that known occurrence, would be contrary to the statute's terms and the Legislature's intent. Furthermore, the insurance industry has been aware for decades that an insurer and an insured cannot agree to extinguish the vested rights of an injured party after an occurrence. This is a well-settled, basic principle of liability insurance. The COA's application of

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[1]By not addressing Petitioners' ("Insurers'") arguments that are untethered to RAP 13.4(b), Respondent Pope Resources does not admit the facts or legal conclusions asserted by Insurers.

RCW 48.18.320 here will have no effect whatsoever on future settlements of insurance claims.

II. FACTS

Pope Resources generally refers this Court to the facts set forth in the COA's opinion ("Opinion").[2] In their petitions, Insurers attempt to paint Pope Resources as an alter ego of P&T that was surreptitiously controlling P&T's insurance claims. These allegations are inaccurate and unsupported by the record,[3] and as the COA recognized, irrelevant to the issues on appeal.[4] The only relevant facts are 1) Insurers issued liability policies to P&T; 2) property damage – in the form of contamination at the Port Gamble Bay & Mill Site ("Site") now owned by Pope Resources – occurred during those policy periods; and 3) after that occurrence, and with full knowledge of Pope Resources' claims against P&T to recover the remedial costs for which both companies are strictly, jointly and

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[2]Opinion at 3-7.

[3]Respondent's COA Brief at 1-9.

[4]The COA noted that RCW 48.18.320 does not require the injured party to be oblivious of the annulment agreement, and that any questions about Pope Resources' alleged "alter ego" status are more properly decided in the trial court at a later phase of the litigation. Opinion at 44, 48.

severally liable under MTCA,[5] Insurers entered into agreements with P&T in which they attempted to annul coverage for Pope Resources' claims, among others.

Insurers paid approximately $17 million[6] to escape liability estimated at almost $70 million,[7] under policies with limits totaling more than $700 million.[8] Seven of these agreements purport to completely annul and "buy back" each of the subject policies.[9] The remaining three agreements attempt to destroy the effect of the policies with respect to known occurrences and existing environmental liabilities.[10] The COA properly determined that all of these attempted annulments are void and unenforceable against Pope Resources under the clear and unambiguous language of RCW 48.18.320.

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[5]Model Toxics Control Act, Chapter 70A.305 RCW.

[6]There is no evidence that P&T actually used any of these funds for cleanup activities at the Site. The evidence shows only that P&T deposited these funds in its general account and later entered into bankruptcy. CP 11272-74, 14873.

[7]CP 14702-19.

[8]*See* CP 10645-46.

[9]CP 11114, 11124, 11141-42, 11163, 11171, 11184, 11201-02.

[10]CP 11076, 11095-96, 11153.

III. ARGUMENT

A. The Opinion does not conflict with a decision of the Supreme Court or a published decision of the Court of Appeals.

The COA's decisions to apply Washington law and RCW 48.18.320 are consistent with appellate precedent and do not warrant review. *See Matter of Mines*, 186 Wn.2d 1001, 395 P.3d 997 (2016) (denying petition because appellate court did not err).

1. The decision to apply Washington law here is consistent with precedent.

The COA performed a straightforward, thorough analysis of the relevant Restatement factors and followed well-settled law to determine that Washington law applies to the specific issue on appeal. Contrary to Insurers' assertion that the COA failed to analyze competing states' interests, the COA spent nearly 16 pages of its opinion painstakingly considering, for each of the 10 agreements, all of the identified contacts with each proffered state, including Oregon. *See* Opinion at 10-26. The COA noted that while negotiations over the agreements occurred in a number of states, only Washington and Oregon had consistent contacts relevant to the case. Opinion at 25. Insurers point only to the fact that the settlements were negotiated in part in Oregon and "performed" in Oregon, because settlement funds were deposited in P&T's bank

account there. The COA correctly concluded that these fleeting contacts were "much less significant" than Washington's unique interests in protecting its residents from environmental contamination in Washington and in cleaning up such contamination. Opinion at 25.

The COA specifically noted that the cleanup costs associated with the Washington contaminated sites that were the subject of the insurance litigation and the settlement agreements, were significantly greater than the single Oregon site, so Washington had a greater interest than Oregon in having its law applied. Opinion at 17.[11] The COA also explicitly recognized that "the section 188 factors must be evaluated in the context of section 6 policy considerations" and explained that the other states' interests were insignificant compared with Washington's interest in cleaning up significant environmental contamination in Washington and protecting the rights of injured Washington residents under RCW 48.18.320. Opinion at 25. The fact that the COA did not give a detailed account of the other states' interests was not a failure of analysis, but an indictment of Insurers' failure to demonstrate

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[11]Section 188 of the Restatement provides: "These contacts are to be analyzed in the context of the specific issue before the court." Here, the issue before the COA was the availability of insurance proceeds to remediate a Washington site.

any legitimate, significant interest on the part of any other state in having its law applied to this issue as a result of any of the fleeting contacts they identify.

Furthermore, the COA did not rely solely on Washington's public policy and ignore other Restatement factors when it declined to enforce Insurers' choice of law provisions. The COA explained, in detail, the rule articulated by this Court:

> Under section 187 subsection (2)(b), we will disregard the party's chosen state's law and "apply Washington law if, without the provision, Washington law would apply[,] if the chosen state's law violates a fundamental public policy of Washington[,] ***and*** if Washington's interest in the determination of the issue materially outweighs the chosen state's interest." ***All three questions*** must be answered in the affirmative to disregard the parties' chosen state's law.

Opinion at 19 (quoting *McKee v. AT&T Corp*., 164 Wn.2d 372, 384, 191 P.3d 845 (2008); citing *Erwin v. Cotter Health Centers*, 161 Wn.2d 676, 696, 167 P.3d 1112 (2007)) (emphasis added; other alterations in original).

The COA then devoted over five pages of the Opinion to methodically and carefully analyzing each agreement containing a choice of law provision, and each chosen state's relationship with the transaction and parties under the section 188 factors. Opinion at 19-25. The COA correctly concluded, consistent with appellate precedent in *Canron, Inc. v. Fed. Ins.*

Co., 82 Wn. App. 480, 492, 918 P.2d 937 (1996), that "Washington's interests in protecting its residents from environmental contamination, its interests in cleaning up the severe contamination that occurred in Washington, and its interests in adhering to the policy behind RCW 48.18.320 displaces the much less significant relationships that these settlement agreements have with Oregon, California, and New Jersey." Opinion at 25.

It was only after this exhaustive analysis that the court turned to section 187's "fundamental public policy" prong and held that applying another state's law would violate Washington's strong policy – codified in RCW 48.18.320 – of protecting injured parties' access insurance proceeds after an accident. The COA's consideration of Washington's fundamental public policy is consistent with the standards pronounced by this Court in *McKee* and *Erwin*. *See In re Dependency of P.H.V.S.*, 184 Wn.2d 1017, 389 P.3d 460, 461 (2015) (no conflict with appellate precedent because "the Court of Appeals decision applied the principles of" the relevant appellate precedent).[12]

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[12]Allstate's attempt to manufacture a split of authority on this issue is unavailing. *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 230 P.3d 625 (2010) did not analyze any state's fundamental public

Nor do *Erwin* and Section 6 factors favor enforcing Insurers' agreements in order to encourage settlements that pay for environmental cleanups. These agreements neither required nor actually funded the cleanup at the Site. Furthermore, and as discussed below, applying RCW 48.18.320 here will not discourage future insurance settlements, environmental or otherwise. Moreover, Insurers' expectations regarding whose law would be applied in a dispute with P&T, cannot trump the numerous other elements of the conflict of law analysis relied upon by the COA. Contracting parties' expectations are but one factor to consider that *may* affect the analysis. *Mulcahy v. Farmers Ins. Co. of Washington*, 152 Wn.2d 92, 101, 95 P.3d 313 (2004); *Erwin*, 161 Wn.2d at 698-99.[13]

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policy - it simply concluded as a matter of contract law that the non-signatory guarantors were not bound to provisions they did not agree to. And *Fujifilm Sonosite, Inc. v. Imaging Specialists Grp., LLC*, No. 2:13-CV-983 RSM, 2014 WL 2930976 (W.D. Wash. June 27, 2014) is an unpublished federal district court case where the application of Washington law was not in dispute.

[13]Here, P&T is not a party to the appeal, so its expectations are less important. Also, as discussed below, Insurers never expected to enforce their agreements against an injured third party like Pope Resources.

The COA's conflict of law analysis was a fact-intensive, comprehensive, and unremarkable application of the appropriate Restatement factors. Washington appellate precedent makes abundantly clear that the most significant relationship test is a flexible, context-specific analysis, and some factors may be more important than others. *See, e.g. Shanghai Com. Bank Ltd. v. Kung Da Chang*, 189 Wn.2d 474, 485, 404 P.3d 62 (2017) (§ 188 contacts are to be evaluated according to relative importance with respect to particular issue); *Canron*, 82 Wn. App. at 492 ("*Some* of the contacts to be taken into account to determine which jurisdiction's law applies *include* [list of Section 188(2) factors]." (Emphasis added)). The COA's conflict of law analysis and decision to apply Washington law to the specific issue before the court do not warrant review.

2. The unambiguous terms of RCW 48.18.320 prohibit Insurers from enforcing their agreements against Pope Resources.

Consistent with *Steen*, the COA concluded that the language of RCW 48.18.320 is unambiguous. Accordingly, the COA did not add language or otherwise "judicially construe" the statute as Insurers contend. It looked only to the language of the statute, informed by appellate precedent and related

provisions in the Insurance Code,[14] to determine the Legislature's intent. Opinion at 27-32. The COA then read the terms of the statute broadly and flexibly, as *Steen* commanded in order to effectuate the statute's purpose. 151 Wn.2d at 519. The COA's decision does not merit review.[15]

a) Applying RCW 48.18.320 to Insurers' "buy back" agreements is consistent with precedent.

Insurers improperly focus on the motivation behind the settlement agreements and their relationship with their insured, rather than the effect of the agreements on the injured third parties that are protected by the statute. Insurers' assertions that the agreements constituted "accord and satisfaction" of disputed claims or "substitute performance" are irrelevant. By its own terms, RCW 48.18.320 applies to ***any*** agreement to annul insurance. The only relevant question is whether the effect of the agreements is to annul an insurance contract after an occurrence, to the detriment of an injured party. Seven of Insurers' agreements explicitly and unequivocally purport to

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[14]Title 48 RCW.

[15]For the reasons set forth below, the Opinion also does not conflict with appellate precedent regarding Washington's public policy promoting settlements.

void the policies in their entirety, *ab initio*.[16] Applying the statute to these agreements is entirely consistent with *Steen*'s interpretation of "annul" as meaning "to destroy the effect of". 151 Wn.2d at 520. The COA correctly concluded, consistent with *Steen*, that a cancellation via settlement agreement is not substantively different from a cancellation by another name or in another form.

The fact that Insurers settled a dispute with P&T and paid P&T in exchange for annulling the policies is also irrelevant. First, there is no evidence that P&T actually used any these proceeds to remediate the Site as Insurers imply. Second, the statute does not exempt settlement agreements or require a malicious intent on the part of an insurer in order to void an agreement. It requires only that the agreement attempt to annul an insurance contract after an injury to a third party, which these agreements clearly did.

Nor does COA's rejection of Insurers' severability argument conflict with any appellate decision. As the COA explained, the agreements do not merely contain offending or unconscionable provisions that can be excised while keeping the remaining provisions intact; they violate RCW 48.18.320 in their entirety. Opinion at 45. The agreements do only one thing

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[16]CP 11114, 11124, 11141-42, 11163, 11171, 11184, 11201-02.

- they annul insurance policies in exchange for a lump sum payment to P&T. Thus, there is nothing to sever from the agreements because the agreements themselves are prohibited by statute.[17]

b) Applying RCW 48.18.320 to agreements releasing known claims is consistent with precedent.

The COA correctly determined that RCW 48.18.320 also prohibits the three agreements that only partially annulled P&T's policies, because the promise to insure P&T's environmental liabilities, including its Port Gamble operations, was its own "insurance contract" that could not be retroactively annulled after an occurrence.[18] The COA's construction of the term "insurance contract" followed directly from this Court's own pronouncement in *Steen* that the term "insurance" was "broad and inclusive" and would be read to effectuate the Legislature's purpose to protect injured parties. 151 Wn.2d at

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[17]The Opinion is also consistent with appellate precedent on the issue of standing. As an injured third party claimant against whom Insurers are seeking to enforce their agreements, Pope Resources' interests are squarely within the zone of interests protected by RCW 48.18.320. *Branson v. Port of Seattle,* 152 Wn.2d 862, 875–76, 101 P.3d 67 (2004); *Steen*, 151 Wn.2d at 524.

[18]For a description of the scope of these releases, see Opinion at 36-42.

519, 524. *Steen* held: "The statute is clear on its face and applicable to ***all insurance contracts***." *Id.* at 522 (emphasis added).

Just as *Steen* found the term "insurance contract" broad enough to include claims-made insurance agreements that were not commonly used when the statute was enacted, the COA construed the term broadly to include both the entire written policy *and* each underlying "contractual obligation that in substance is a risk-shifting and risk-distributing device." Opinion at 33. To hold otherwise would be contrary to the Legislature's purpose: to prohibit an insured and insurer from depriving an injured third party of access to insurance proceeds after an occurrence.

The Louisiana Court of Appeals' similarly interpreted the term "insurance contract" in a statute identical to RCW 48.18.320. *Courville v. Lamorak Ins. Co.*, 301 So. 3d 557, 559, 2020-0073 (La. App. 4 Cir. 5/27/20), *writ denied* 302 So.3d 1100.[19] When that court voided an agreement between an insured and an insurer that settled a coverage dispute, it reasoned that a specific release of claims "essentially rescinded or annulled policy contracts for injuries sustained years ago"

[19]The Louisiana Supreme Court notably declined to review this case.

and so was not enforceable against the injured third party. *Id.* at 560.

Insurers mischaracterize *Aluminum Co. of America v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, 998 P.2d 856 (2000) and *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 329 P.3d 59 (2014) when they assert that prior decisions of this Court treated the term "insurance contract" as synonymous with "insurance policy". In neither of these cases was this Court called upon to interpret the meaning of "insurance contract" under RCW 48.18.320 or any other provision of the Code.[20] The COA's interpretation of the statutory term "insurance contract" as used in RCW 48.18.320 is not in conflict with any appellate precedent.

Insurers' contention that an "insurance contract" can only be viewed as the single, integrated written policy is also belied by their own policies. The three settlement agreements with partial annulments involve policies that themselves refer to multiple "insuring agreements."[21] Such policies also routinely include endorsements that add or exclude coverage

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[20]Similarly the general contract cases Insurers rely upon do not create a conflict warranting review because none of these cases interpret the term "insurance contract" in the context of RCW 48.18.320 or the Insurance Code.

[21]*See, e.g.*, CP 10700-01, 10704, 10849.

for individual risks in exchange for an increase or reduction in premiums. Certainly, if the operations in and around Port Gamble Bay were excluded from coverage under these policies, the premiums the Insurers charged P&T for the "policies" would have been reduced accordingly.

An insurance contract is simply, and broadly, any agreement to insure a risk. The "essential elements" of an insurance contract as articulated by this Court are: (1) an insurer; (2) consideration; (3) an insured; and (4) a hazard or peril insured against. *State v. Universal Serv. Agency*, 87 Wash. 413, 424, 151 P. 768 (1915). This historical understanding of "insurance contract" as referring to the underlying agreement to provide insurance, rather than the formal written instrument memorializing that agreement, was the backdrop against which the Legislature enacted RCW 48.18.320 in 1947.

In *State v. Mau,* 178 Wn.2d 308, 308 P.3d 629 (2013), this Court recognized that the Code draws a clear distinction between the underlying agreement to provide insurance and the formal written instrument memorializing it. *Mau* surveyed the usage of the term "contract of insurance" in Chapter 18 and concluded: "In every instance, the phrase is used as a synonym for 'insurance,'" defined in RCW 48.01.040 as "a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." *Id.* at 316.

Mau in particular cited RCW 48.18.140(1), which provides: "The written instrument, in which a contract of insurance is set forth, is the policy."[22]

The COA's interpretation of an "insurance contract" here is also consistent with RCW 48.18.320's place in the statutory scheme. Each of the three statutes immediately preceding RCW 48.18.320 in Chapter 18 that also govern cancellation apply to the cancellation of "any *policy*,"[23] whereas the Legislature specifically crafted RCW 48.18.320 to apply to any "*insurance contract*."[24] This choice again signals the Legislature's intent

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[22]*See also* RCW 48.18.520 ("Every insurance contract shall be construed according to the entirety of its terms and conditions **as set forth in the policy**, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy."); RCW 48.18.190 ("No agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing **and made part of the policy**."); RCW 48.18.210(3) ("No insurance contract . . . shall be rendered invalid . . . **if the policy** is countersigned with the original signature of an individual then so authorized to countersign.") (Emphases added).

[23]RCW 48.18.290, RCW 48.18.300, and RCW 48.18.310

[24]*See State v. Roth*, 78 Wn.2d 711, 715, 479 P.2d 55 (1971) ("Where different language is used in the same connection in different parts of a statute, it is presumed that a different meaning was intended.").

for the term "insurance contract" to apply more broadly than just the entire written policy.[25]

As the Insurance Commissioner explained in briefing to the COA, interpreting RCW 48.18.320 to permit partial retroactive annulments like the site-specific releases at issue here would create a loophole that could effectively eliminate the statute's protections. Supplemental Amicus Curiae Brief of the Washington State Insurance Commissioner Mike Kreidler at 6. Insurers could completely sidestep the statute by eliminating coverage provisions while leaving only nominal provisions (such as notice and renewal requirements) intact.[26] It would be absurd for RCW 48.18.320 to prohibit policy cancellations intended only to garner a return of premiums – as in *Steen* – yet allow agreements that intentionally destroy coverage for the very occurrence of the "injury death or damage" that triggers the statute's application in the first place,

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[25]For the same reasons, the COA's interpretation of "insurance contract" in this case will not create uncertainty in the Insurance Code warranting review under RAP 13.4(b)(4).

[26]*See also Mineweaser v. One Beacon Ins. Co.*, No. 14-CV-0585A(SR), 2018 WL 7079526 at *16-18 (W.D.N.Y. May 30, 2018) (to permit insurers and their insureds to retroactively cancel coverage after discovering an injury would defeat the purposes of statutes authorizing injured third parties to pursue claims against the insurer).

simply because they leave some portion of the policy intact. *See State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001) ("The court must also avoid constructions that yield unlikely, strange or absurd consequences." (Internal quotations omitted)).

B. The Opinion does not present an issue of substantial public interest.

The Opinion does not present a matter of substantial public interest because the COA correctly followed and applied *Steen* and RCW 48.18.320, and merely reinforced well-settled public policy that has existed for decades. There is no need for this Court to intervene.

The Opinion will not lead to litigation over the meaning of "insurance contract"[27] or the proper conflict of law analysis. Insurers' reliance on *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005) is misplaced. There this Court granted review in part because there were already examples of other courts struggling to implement the appellate ruling in question, which

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[27]Insurers do not identify any specific provisions in the Code that they think will become problematic. Furthermore, the COA explicitly confined its interpretation of "insurance contract" to the context of RCW 48.18.320, as this Court did in *Steen*. *See* Opinion at 31 ("we read the term "insurance contract" *in RCW 48.18.320* broadly and flexibly"); 151 Wn.2d at 519 ("*This statute* is broad and inclusive.") (Emphases added).

is not the case here. *Id.* at 577 n. 2. As discussed above, the COA correctly followed *Steen* and applied well-settled conflict of law precedent. There is no risk of confusion among other courts.[28]

Similarly, the Opinion is not contrary to Washington's policy of encouraging settlements. Assuming, *arguendo*, that the Opinion might have some impact on future settlements of long-tail liability insurance claims, the authority relied upon by Insurers does not support review by this Court. None of Insurers' cited cases involved a settlement agreement between and insured and an insurer that impaired an injured party's access to insurance proceeds or one that was expressly prohibited by a Washington statute.

In reality, the Opinion will have no impact on future insurance settlements. First, insurers are not motivated solely by the potential to achieve finality (which they know is never guaranteed).[29] They are also motivated to avoid the risks of

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[28]Similarly, as discussed above, the Opinion's interpretation of the term "insurance contract" in RCW 48.18.320 does not create an issue of substantial public interest because it is fully consistent with *Steen* and the legislative intent behind the statute.

[29]*See, e.g.*, SCOTT M. SEAMAN & JASON R. SCHULZE, ALLOCATION OF LOSSES IN COMPLEX INSURANCE COVERAGE

litigation with their insured: having to pay their entire policy limits (which amounted to over $700 million here), attorney fees under *Olympic Steamship*[30] or similar rules, and potential damages for bad faith or Consumer Protection Act violations.

Second, as the COA recognized, the anti-annulment principle is a nearly universal element of liability insurance law throughout the United States, and has been for decades.[31] RCW 48.18.320 has been part of Washington's Insurance Code since 1947. Insurers have long been well aware that injured third parties have rights to seek compensation from liability insurance proceeds, and that the only way to definitively resolve third party claims is through settlement ***directly with the injured third party***, as insurers routinely do in personal injury and other liability insurance contexts.

CLAIMS § 15:1 (2020-21 ed.) ("[E]ven a policy buy-back or mutual rescission agreement with complete releases of all known and unknown claims does not guarantee finality. For example, an insurer may not be able to enforce a policy buy-back agreement against vested third-party rights such as those of underlying claimants whose claims have accrued and are not parties to the agreement.").

[30]*Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

[31]*See* Opinion at 28, n. 143; Respondent's COA Brief at 44-46.

The reason there is little caselaw addressing RCW 48.18.320 specifically is not because the COA's interpretation of this statute is novel, but because the need to invoke the statute is rare. This issue only arises where, as here, insurers 1) settle with their insured without obtaining a release from the injured parties, 2) extract an indemnity from their insured to cover the known risk of future claims by injured parties, and 3) the insured indemnitor becomes insolvent.

Here, Insurers knew that they were leaving injured third parties like Pope Resources uncompensated, and that those parties could later come forward and seek insurance proceeds from them. Insurers accounted for this risk by having P&T indemnify them for such claims.[32] By doing so Insurers gambled that the opportunity to pay a fraction of their policy limits and potentially walk away from P&T's significant and ever increasing environmental liabilities was worth the risk of P&T becoming insolvent and unable to meet its indemnity obligations. That gamble backfired.

What makes this case unique is not the COA's interpretation of RCW 48.18.320, but Insurers' brazen attempt to shift the risk of their insured's insolvency - which they

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[32]CP 11065, 11100, 11115, 11126, 11142-43, 11156-57, 11163, 11172, 11185-86, 11204-05.

knowingly took when entering into the settlement agreements - onto an injured third party with vested rights. Insurers' inability to escape liability for the entire loss they promised to insure does not elevate this case to one involving substantial public interest. *See Mut. of Enumclaw Ins. Co. v. USF Ins. Co*., 164 Wn.2d 411, 423, 191 P.3d 866 (2008) ("An insurer that expressly agreed to cover an entire loss is not harmed by being obliged to do so.").

The Opinion will have no impact on insurers' ability to settle claims with their insureds. It simply reaffirms the longstanding principle - explicitly codified by our Legislature - that insurers cannot do so by agreeing to deprive an injured party of access to insurance proceeds after an occurrence. *Steen*, 151 Wn.2d at 524. For the same reasons, the Opinion will not hurt third party claimants by making settlement proceeds unavailable, as Insurers contend. When insurers like those here pay only a fraction of their insured's estimated liabilities and an even smaller fraction of the available policy limits, without ensuring that even those proceeds are used to compensate the injured parties, such settlements will never protect injured parties as RCW 48.18.320 was intended to do. Insurers have not established any issue of substantial public interest warranting review by this Court.

C. There is no significant question of law under the Constitution of the State of Washington or of the United States.

Insurers' assertion that review is warranted under RAP 13.4(b)(3) is specious. As the COA described in detail, and as discussed above, Washington has sufficient contacts with, and a significant interest in Insurers' attempt to enforce their agreements against a Washington company in order to bar access to insurance proceeds that would otherwise be available to remediate a Washington contaminated site – including contaminated groundwater and sediments that are owned by the State of Washington.[33] It was neither arbitrary nor fundamentally unfair for the COA to apply Washington law to decide this issue. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13, 101 S. Ct. 633, 66 L. Ed. 2d 521 (1981); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985).

III. CONCLUSION

For the reasons set forth above, Pope Resources respectfully requests that this Court deny Insurers' petitions for review.

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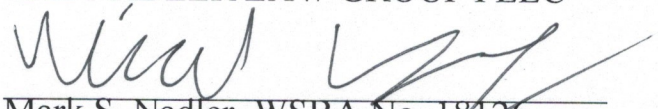
[33] *See* CP 16644; RCW 90.44.040.

Pursuant to RAP 18.17, this documents contains 4,777 words, excluding those exempted from the word count.

Respectfully Submitted this 8th day of November, 2021.

THE NADLER LAW GROUP PLLC



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DECLARATION OF SERVICE

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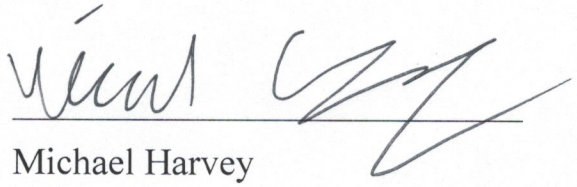
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 8th day of November, 2021, at Seattle, WA.



Michael Harvey

THE NADLER LAW GROUP PLLC

November 08, 2021 - 11:28 AM

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