Supreme Court
No. 94750-3

Court of Appeals
No. 74448-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LEXINE OTEY,

Petitioner,

v.

GROUP HEALTH COOPERATIVE,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

KARR TUTTLE CAMPBELL

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I. Identity of Respondent

Respondent Group Health Cooperative ("GHC"),[1] the defendant in the trial court, is a nonprofit Health Maintenance Organization ("HMO") that provides coverage for healthcare and prescription drug services to its subscribers and their enrolled dependents ("Members"). *See* CP 88, 195. GHC submits this brief pursuant to RAP 13.4(d) and asks that the Court deny the Petition for Review.

II. Court of Appeals Decision

In its May 15, 2017 decision, the Court of Appeals, Division One, affirmed the December 4, 2015 order of the King County Superior Court (Hon. Bruce Heller) granting GHC's summary judgment motion, dismissing Petitioner's claims, and entering judgment for GHC. CP 82–83.

III. Statement of the Case

This matter involves the interpretation of GHC's Group Medical Coverage Agreement (the "Agreement"), under which the Petitioner, Lexine Otey (hereinafter "Otey"), the named plaintiff in a putative — but uncertified — class action filed in Superior Court, had limited insurance coverage for various prescription drugs, subject to the express and defined terms of the Agreement.

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[1] Effective February 1, 2017, GHC was acquired by Kaiser Foundation Health Plan of Washington and, as of February 14, 2017, has been renamed Kaiser Foundation Health Plan of Washington.

The facts are undisputed; only the meaning of the challenged Agreement terms is in dispute. As noted by the Court of Appeals:

> Under the Agreement, Members [such as Otey] pay at most a $15 copayment for preferred generic drugs (Tier 1), a $30 copayment for preferred brand name drugs (Tier 2), and 100 percent of all charges for nonpreferred generic and brand name drugs (Tier 3).

Otey v. Group Health Coop., No. 74448-8-I (May 15, 2017) ("*Otey*"), slip op. at 2. *See also* CP 107–08. Otey essentially alleges that GHC overcharged her for prescription drugs. *See Otey*, slip op. at 1, 2. This allegation, however, is based upon Otey's incorrect and unreasonable interpretation of the Agreement's terms. As the Court of Appeals noted, "Otey's offered interpretation is not reasonable *when read in the context of the entire contract*." *Id.* at 1 (emphasis added).

As Otey admits and as further noted by the Court of Appeals, "The Agreement defines the terms 'Copayment' and 'Cost Share' in its Definitions section." *Id.* "Copayment" is defined as "[t]he specific dollar amount a Member is required to pay at the time of service for certain Covered Services." *Id.* at 6; CP 138. This definition makes the plan Members, such as Otey, responsible to pay the cost of a prescription up to a certain dollar amount, depending upon the drug involved. "Cost Share" is defined as "[t]he portion of the cost of Covered Services for which the

Member is liable. Cost Share includes Copayments, coinsurances and Deductibles." *Otey*, slip op. at 5–6; CP 138.

Nevertheless, Otey contended that the definition of "Copayment," along with "Cost Share," could be interpreted "to require GHC to share in the cost of covered drugs," at an amount less than the Copayment, "and by failing to do so GHC overcharged its Members." *Otey*, slip op. at 4. The Court of Appeals found otherwise, holding: "Because 'Cost Share' and 'Copayment' are defined terms in the Agreement *with only one reasonable interpretation*, and did not allow GHC to overcharge its Members, we find no error" in the trial court's ruling. *Id.* (emphasis added).

Contrary to Otey's contrived interpretation, "Copayment" does not require GHC to make any payment for Tier 1 or Tier 2 drugs unless the cost of the drug to the Member, i.e., the "Cost Share," exceeds the amount of the Copayment. In short, as the Court of Appeals found, if the cost of a prescription exceeds the amount of the Member's Copayment, GHC pays the difference under the terms of the Agreement:

> *When the Agreement is read as a whole, the defined terms Cost Share and Copayment are not ambiguous*.... Copayments are specific dollar amounts that act as a ceiling on the amount a Member must pay for Covered Services. Copayments do not require either party to pay a percentage of the cost of Covered Services.
>
> * * * *

> For the purposes of Tier 1 prescription drugs, the Agreement shows that Members are liable for up to $15, which would not affect GHC's responsibility to pay. But any amount for a Covered Service exceeding the Cost Shares value would be paid by GHC under the Agreement.

Otey, slip op. at 6–7 (emphasis added).

Otey contended that "Cost Share," as defined, requires GHC to pay for a portion of the cost of prescription drugs — even those that cost less than the Member's Copayment — rather than requiring the Member to pay the entire Copayment. *Otey*, slip op. at 7. However, as the Court of Appeals found, "Cost Share" applies only to costs, e.g., the Copayment, that the Member is required to pay under the Agreement; it does not apply to any costs that are GHC's responsibility. *Id.* The Court held:

> First, Cost Share explicitly includes Copayments in its definition, which in turn are set amounts listed in the Agreement that act as a ceiling on the price Members will be required to pay for certain Covered Services. Second, GHC will pay a portion of the cost of Tier 1 drugs, but only if the actual charge *incurred by the Member* for the drugs is greater than that $15 Copayment value. Third, after a Member reaches her "Out-of-pocket Limit" for the year,[2] GHC is solely responsible for paying any further Cost Shares. The Agreement does not make GHC responsible for the costs Otey incurred simply because the Copayment threshold was not reached.

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[2] *See* CP 100: **"Out-of-pocket Limit.** Out-of-pocket Expenses which apply toward the Out-of-pocket Limit are set forth in Section IV. Total Out-of-pocket Expenses incurred during the same calendar year shall not exceed the Out-of-pocket Limit."

Id. (emphasis added).[3]

Otey also challenged the meaning of the phrase "actual charge" (*see Otey*, slip op. at 8), which is undefined and appears in a different part of the Agreement — the "Financial Responsibilities for Covered Services" section. This section states, in part:

> **B. Financial Responsibilities for Covered Services**
>
> The Subscriber is liable for payment of the following Cost Shares for Covered Services provided to the Subscriber and his/her Dependents. Payment of an amount billed must be received within 30 days of the billing date. Charges will be for the lesser of the Cost Shares for the Covered Service or the *actual charge* for that service. Cost Shares will not exceed the *actual charge* for that service.[4]

CP 100; *Otey*, slip op. at 9 (emphasis added).

Otey argued that "actual charge" could be "reasonably interpreted to require GHC to charge Otey only the amount (GHC) paid for a drug." *Otey*, slip op. at 8. Having already rejected Otey's arguments concerning the interpretation of the defined terms "Cost Share[s]" and "Copayment," the Court carefully considered the Financial Responsibilities section. This

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[3] As the Court of Appeals found, provisions in the Washington Administrative Code, WAC 284-43-0160(9) and WAC 284-43-5110(1), concerning "Cost-sharing" and particularly its application in the context of prescription drugs, "closely match those in the Agreement, thereby lending support to (GHC's) offered interpretation." *Otey*, slip op. at 6, note 4. If, as Otey contends, the Agreement's definition of "Cost Share" is an example of "predatory drafting and consumer abuse" (*see* Petition at 10), then Otey's complaint is not with GHC or the Court of Appeals, it is with the Legislature.

[4] The listed Cost Shares are: 1) Annual Deductible; 2) Plan Coinsurance; 3) Copayments; and 4) Out-of-pocket Limit. CP 100.

section, the Court noted, "states that Members are responsible for costs for a Covered Service up to the Cost Shares amount." *Otey*, slip op. at 5. Reiterating the Agreement definitions, the Court further noted that "Cost Share" is defined as "[t]he portion of the cost of Covered Services *for which the Member is liable*," which includes the "Copayment" for the particular tiers. *Id.* at 5–6 (emphasis added).

The Court then fired strike three right down the middle, holding that "actual charge" was unambiguous under Washington law, stating:

> Although "actual charge" is undefined, *it can only have one reasonable interpretation when read in the context of the Agreement as a whole*. Therefore, we find no error.
>
> * * * *
>
> "Covered Services" [as referenced in the Financial Responsibilities section] are "services for which a Member is entitled to coverage in the Benefits Booklet."[5] As explained above "Cost Share" is the portion of the cost of Covered Services for which the Member is liable," and includes Copayments.[6] "Copayment" is the specific dollar amount a Member must pay at the time of service.
>
> Cost Shares act as a ceiling on the cost a Member can incur for a Covered Service. If the actual charge billed to a Member for a given Covered Service is lower than the Cost Share assigned to that service, the Member is responsible for only the actual charge incurred when the Member receives the Covered Service. The Agreement further states that

[5] Citing CP 138, 190.

[6] Citing CP 138, 190.

> Cost Shares will not exceed the actual charge for that service. If the actual charge *incurred by the Member* is lower than the Copayment value, the Member is responsible for paying the actual charge incurred. If the actual charge incurred [by the Member] is greater than the Copayment, the Member is responsible for the Copayment only.[7]
>
> The Financial Responsibilities for Covered Services section of the Agreement lays out the costs the Member is responsible for paying. It does not contain formulas or qualifiers that use the costs incurred by GHC in procuring drugs or services as a reference point for determining the cost charged to the Member. As written, and when viewed in the context of the preceding language referring only to the payment of the amount billed to the Member, *"actual charge" may only be reasonably interpreted as comparing the actual amount billed to a Member upon receiving a service to the Copayment value assigned to that service.*

Otey, slip op. at 9–10 (emphasis added).

In short, the Court of Appeals, having considered Otey's arguments, parsed the terms of the Agreement, and applied the applicable law, found that GHC does not overcharge Members such as Otey for prescription drugs under the unambiguous terms of the Agreement, and correctly affirmed the Superior Court's order granting summary judgment to GHC.

IV. Argument

RAP 13.4(b) sets forth the exclusive factors under which the Supreme Court will accept review. The Court will accept review "only"

[7] GHC is responsible for the remaining charge.

if the petitioner establishes one of the following four grounds: (1) the Court of Appeals decision is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; (3) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The Petition asserts that there are three issues for review: whether the Court of Appeals' decision conflicts with a decision of the Supreme Court; whether the decision is in conflict with a published decision of the Court of Appeals; and whether the decision "involves an issue of substantial public interest that should be determined by the Supreme Court."

A. The Court of Appeals' Decision Is Not in Conflict with a Decision of the Supreme Court.

The Petition attacks a reasoned opinion of the Court of Appeals, without providing cogent argument or relying on evidence.

No Supreme Court decision conflicts with the Court of Appeals' ruling affirming the trial court's order granting GHC's summary judgment motion. In short, the Supreme Court has never held that the contested terms in the Agreement — or in a similar contract — mean something other than what the Court of Appeals held.

Otey's only assertion with respect to an alleged conflict is her contention that the Court of Appeals essentially ignored Supreme Court decisions concerning the interpretation of contracts, particularly insurance policies. However, as the Court of Appeals' decision makes clear, the Court paid close heed to such doctrine, applied the principles appropriately, and — most importantly — found *no ambiguity* in the Agreement.

In any event, Otey is simply incorrect. The Court of Appeals' decision is rife with citations to principal Supreme Court cases construing insurance policies, and the premises of those decisions. Contrary to Otey's contention, there was nothing "novel" about the Court of Appeals' analysis: rather, it was a textbook analysis of the general legal principles as they applied to Otey's claims.

The Court of Appeals quoted and followed the very tenets that Otey believes were ignored. The Court of Appeals' task, given Otey's claims, was to examine Otey's offered interpretations "in the context of the entire contract." *Otey*, slip op. at 1. Otey, who asserts that the Court of Appeals failed to follow Washington authority concerning the interpretation of insurance contracts, actually is the one who flaunts that authority in an effort to twist words to her benefit.

Primarily, unlike the Court of Appeals, which read the Agreement's key terms "in the context of the entire contract," Otey reads them in

isolation.[8] As noted by the Court, "Otey's offered interpretation [of the Agreement's key terms] is not reasonable when read in the context of the entire contract." *Otey*, slip op. at 1.

An axiomatic canon of contract law, particularly applicable in the context of insurance policies, is that the court must look to the entire contract to determine whether a particular phrase is ambiguous. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 271–72, 267 P.3d 998 (2011). An ambiguity in an insurance policy is only present "if the language used is fairly susceptible to two different reasonable interpretations." *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998). A contract should be given a "practical and reasonable rather than a literal interpretation, and not a strained or forced construction leading to absurd results." *Eurick v. Pemco Ins. Co.*, 108 Wn.2d 338, 341, 738 P.2d 251 (1987) (citations omitted).

These are the very principles that the Court of Appeals applied, noting:

> In Washington, ... the [insurance] policy is construed as a whole, and the policy should be given a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.

[8] "The insurance contract must be viewed in its entirety; a phrase cannot be interpreted in isolation." *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). *See Otey*, slip op. at 8.

Otey, slip op. at 5. The Court's quoted citation is to *Kitsap County*, 136 Wn.2d at 575. Otey blithely contends that the Court disregarded this case: "The Court of Appeals ignored the controlling law on interpreting ambiguous provisions." Petition at 7–8.[9]

In stating that "[t]he court examines the terms of an insurance contract under their plain language to determine whether there is coverage," the Court of Appeals cited *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wn.2d 869, 877, 784 P.2d 507 (1990), and also for the premise that "[c]ourts give undefined terms in a policy their 'plain, ordinary, and popular' meaning." *Otey*, slip op. at 5, 8. Otey contends that the Court ignored this case. Petition at 7–8.

In stating that, "When interpreting insurance contracts, courts use the same interpretive techniques employed on other commercial contracts," the Court of Appeals cited *Int'l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282, 313 P.2d 395 (2013). *Otey*, slip op. at 5. Otey contends that the Court ignored this case. Petition at 7–8.

In stating that, "The contract must be read as an average person would read it, and given a practical and reasonable interpretation," the Court cited *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d at 272,

[9] *Kitsap County* also notes, "A policy is considered as a whole so that the court can give effect to every clause in the policy.... If policy language is clear and unambiguous, a court may not modify the insurance contract or create an ambiguity." 136 Wn.2d at 575–76.

supra. *Otey*, slip op. at 9. Otey contends that the Court ignored this case. Petition at 7–8.[10]

Reading the Agreement in accordance with Washington law, the Court of Appeals found no ambiguity in the Agreement's reference to "actual charge" or in the defined terms "Cost Share" and "Copayment." Nevertheless, Otey contends that "actual charge" is ambiguous and, therefore, it should be interpreted as she would *prefer* it to be read. Yet, that is not how insurance policies are to be read under Washington law.

Rather, as the Court noted, "Language of an insurance contract is ambiguous if it is fairly susceptible to two different reasonable interpretations." *Otey*, slip op. at 9 (citing *Am. Star Ins. Co. v. Grice*, 121 Wn.2d 869, 874, 854 P.2d 622 (1993)). The Court further stated, "Undefined terms in an insurance policy are given their ordinary and common meaning." *Id.* (citing *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997)).

The Court of Appeals applied these principles in interpreting "actual charge." The Court determined that there was only one reasonable interpretation of the defined terms "Copayment" and "Cost Share," and the undefined phrase "actual charge." As previously noted, the Court held:

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[10] The Court also cited two cases for the premise that "[c]ourts interpret insurance policies liberally in order to provide coverage wherever possible," and two cases noting that exclusionary terms are to be "construed narrowly." *Otey*, slip op. at 13–14.

"Although 'actual charge' is undefined, it can only have one reasonable interpretation when read in the context of the Agreement *as a whole*." *Otey*, slip op. at 8 (emphasis added).

The Court further found:

> "[A]ctual charge" may only be reasonably interpreted as comparing the actual amount billed to a Member upon receiving a service to the Copayment value assigned to that service.

Id. at 10. The Court noted that while "'actual' could mean" — as Otey wishes — "wholesale cost or otherwise limit the costs GHC may charge Members in a different type of contract, here there is no language in the Agreement that can support this interpretation." *Id.* at 10–11. Furthermore, Otey points to no such language.

Otey's main argument appears to be that the Court of Appeals failed to adhere to the premises that "a contract susceptible to more than one reasonable interpretation is ambiguous" and that "ambiguities are always resolved in favor of coverage." Petition at 7, 8. However, as already noted, the Court found only one "reasonable interpretation" of the challenged terms and "no ambiguity." Therefore, the Court was not compelled to interpret the Agreement in a light most favorable to Otey. *See* Petition at 12. As Otey herself notes, "Unambiguous contracts require no interpretation." Petition at 7 (citing *Grice*, 121 Wn.2d at 874).

Otey's further effort to color her argument with pejorative terms and accusations such as "adhesion contract," "hidden profits," "secretly mark[ing] up ... drugs," "predatory drafting," "consumer abuse," and similar *ad hominem* phrases, detracts nothing from the Court of Appeals' cogent legal analysis and adds nothing to her case. Her complaint alleges only that she was overcharged for prescription drugs by being required to pay "Copayments" and "Cost Shares" under the terms of the Agreement. However, she never alleges — and provides no evidence — that she ever paid more than $15 for a Tier 1 prescription or more than $30 for a Tier 2 prescription.

In short, the Court of Appeals diligently considered the applicable principles of insurance contract interpretation, as set forth in many Washington Supreme Court cases addressing such maxims, applied these principles to a T, and rendered its decision accordingly, resulting in the Court refuting all of Otey's claims and affirming the trial court's summary judgment order in favor of GHC. It is the result Otey complains of, not the journey.

B. The Court of Appeals' Decision Is Not in Conflict with a Published Decision of the Court of Appeals.

Otey's argument with respect to an asserted conflict with other decisions of the Court of Appeals is the same argument she makes with

respect to Supreme Court decisions, i.e., that the Court here supposedly failed to follow the established principles of insurance contract interpretation. In support of this vague premise, she cites only two unremarkable cases that do not differ in any respect from the Supreme Court cases previously cited.[11] Petition at 12–13.

Because, as noted above, the Court of Appeals did indeed follow the principles of insurance contract interpretation, it cannot be said that its decision conflicts with any published case from the Court, particularly since, as noted above, no Washington appellate case has ever construed the challenged terms in the GHC Agreement.

In any event, Otey actually fails to cite any particular decision by the Court of Appeals that allegedly conflicts with the Court's decision here. She vaguely cites *Signal Ins. Co. v. Walden*, 10 Wn. App. 350, 517 P.2d 611 (1973), a Division One case, only for the premise that Otey could not bargain with respect to GHC's coverage. Petition at 11. However, this is how insurance policies are offered in the marketplace, and the issue is not germane to Otey's claims. Similarly, she cites *Seattle NW Sec. Corp. v. SDG Holding Co., Inc.*, 61 Wn. App. 725, 738, 812 P.2d 488 (Division One, 1991); *McCann v. Wash. Pub. Power Supply Sys.*, 60 Wn. App. 353,

[11] *See Averill v. Farmers Ins. Co. of Wash.*, 155 Wn. App. 106, 229 P.3d 830 (Division One, 2010); *Petersen-Gonzales v. Garcia*, 120 Wn. App. 624, 86 P.3d 210 (Division Three, 2004).

362, 803 P.2d 334 (Division Three, 1991); and *Brower Co. v. Garrison*, 2 Wn. App. 424, 430, 468 P.2d 469 (Division One, 1970), for the rote premise that insurance policies typically are not bargained-for contracts. Petition at 12.[12]

In contrast to her argument regarding a supposed conflict with state Supreme Court decisions, Otey does make some effort to contend that the portion of the Court of Appeals ruling affirming dismissal of her Consumer Protection Act ("CPA") claim conflicts with prior decisions of the Court of Appeals. However, none of those cases are applicable.

Here, the Court of Appeals affirmed the trial court's dismissal of Otey's CPA claim on grounds that the contract claims upon which her CPA claim was based were meritless. The only cases Otey cites (two Court of Appeals cases and, curiously, one Supreme Court case)[13] did not address the question of whether a CPA claim should be dismissed when the trial court dismisses the underlying contract claims upon which the CPA claim is premised.

Rather, in *Dwyer* the court found that the contract terms violated the CPA; the *Peterson* court found no CPA violation; and the *Van Noy*

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[12] It is because insurance policies typically are not bargained-for contracts that the courts have developed the applicable principles of policy interpretation.

[13] *See Peterson v. Kitsap County Fed. Credit Union*, 171 Wn. App. 404, 287 P 3d 27 (Division Two, 2012); *Dwyer v. J.I. Kislak Mtge. Corp.*, 103 Wn. App. 542 13 P.3d 240 (Division One, 2000); *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn.2d 784, 16 P.3d 574 (2001). Petition at 14.

court affirmed the Court of Appeals' ruling reversing the trial court's summary judgment order, given material issues of fact. None of these are in conflict with the Court of Appeals decision here.

Unlike the cases cited by Otey, the Court did consider the particular issue of dismissing a CPA claim in light of the dismissal of underlying contract claims upon which the CPA claim was based. It held: "Because we find that Otey's breach of contract claim was properly dismissed, we decline to reinstate her CPA violation claim on that basis." *Otey*, slip op. at 16. This is axiomatic.

Otey asserted, however, that GHC acted in bad faith — although she adduced no evidence of GHC having done so — and that such alleged bad faith was "independent of the breach of contract claim and depends on unresolved questions of fact." *Id.* at 17. In this respect, the Court noted, "To succeed on a bad faith claim against an insurer, a policyholder must show the insurer's breach of an insurance contract was unreasonable, frivolous, or unfounded." *Id.* (citing *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 484, 78 P.3d 1274 (2003)). Otey failed to do so.

Contrary to *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 961 P.2d 933 (1998), in which the Court found that the insurer had acted in bad faith in failing to conduct a reasonable investigation of the insured's claim, even though coverage was properly denied, the Court of

Appeals noted that "Otey does not allege any act of bad faith separate from GHC's interpretation of the Agreement." *Otey*, slip op. at 18.[14] The Court further held, "Because Otey does not allege an act of bad faith separate from GHC's alleged breach of the Agreement, *Coventry Associates* is inapplicable to the present case." *Id.*

Coventry Associates, of course, is a Supreme Court decision, not a Court of Appeals decision.[15] In any event, there is no conflict between the Court of Appeals' decision here and any other Court of Appeals case cited by Otey, such that review is merited on this ground.

C. The Court of Appeals' Decision Does Not Involve an Issue of "Substantial Public Interest."

Otey contends that the "substantial public interest" involved here is a vague and alleged general need to "[k]eep[ ] and protect[ ] healthcare insurance, and the scope of healthcare coverage for consumers." Petition at 15. This case, of course, is no different than any other Court of Appeals case construing the terms of an insurance policy, whether it be a policy for health insurance, auto insurance or property insurance.

If there were such a "substantial public interest" in "keeping and protecting healthcare insurance" that merits review of a Court of Appeals

[14] Otey relied "primarily" on *Coventry* in seeking to revive her CPA claim before the Court of Appeals. *Otey*, slip op. at 18. However, she does not cite it in the Petition.

[15] Otey does not contend that the Court of Appeals' ruling affirming dismissal of her Consumer Protection Act claim conflicts with any decision of the Washington Supreme Court.

decision, then the Supreme Court would be compelled to accept review of every case involving the interpretation of a health insurance policy. But that certainly has not been the Supreme Court's practice.

Beyond the basic fallacy of Otey's argument, there is no claim here that Otey was denied healthcare benefits under her policy, i.e., the GHC Agreement. She received her prescriptions. Had the cost of her prescriptions exceeded the amount of the Copayment, GHC would have paid the balance due. Otey merely complains that she has to pay more money for her prescriptions than she would prefer, although she does not pay more than the $15 or $30 "Copayment" per prescription, depending on the applicable tier. Otey's complaint is focused solely on prescription charges that are *less* than $15.00 for a Tier 1 prescription. She points to no compelling public interest requiring health insurers to share the cost of very inexpensive prescriptions.

Nor does this case present an issue of "healthcare reimbursements." *See* Petition at 15. Otey did not seek reimbursement for any out-of-pocket healthcare expenses and does not claim that she was denied any such reimbursement. Beyond these assertions, Otey identifies no other alleged "substantial public interest" that merits review of the Court of Appeals' decision. Rather, she quotes a U.S. District Court case out of Minnesota,

that clearly construed other terms and has no precedential value in Washington.

Otherwise, Otey merely regurgitates her unsuccessful arguments in contravention of the Agreement and, asserting that she is correct and the Court of Appeals is wrong, urges the Supreme Court to grant review and find in her favor. This is contrary to RAP 13.4(b). This case does not involve an issue of "substantial public interest."

V. Conclusion

The Petition does not present an issue meriting review. Otey seeks review upon a baseless assertion that she should pay less than the price of a prescription when it costs less than the required "Copayment." Review by this Court "to determine whether (Otey) owes less than the Cost Share," i.e., the Copayment (Petition at 17), is unnecessary.

As the Court of Appeals' ruling demonstrates, the extensive body of case law developed in the Court of Appeals and the Supreme Court provides a set of basic tenets for the lower courts to apply in insurance policy cases. The trial court applied these principles in dismissing Otey's action on summary judgment, as did the Court of Appeals in affirming the trial court. Otey's claims do not merit a third bite at the apple.

On the basis of the foregoing, GHC respectfully requests that the Petition for Review be denied.

Respectfully submitted this 16th day of August, 2017.

KARR TUTTLE CAMPBELL

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing **RESPONDENT'S ANSWER TO PETITION FOR REVIEW** to be emailed on August 16, 2017, to the following counsel of Record at the following addresses:

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I declare under penalty of perjury under the laws of the state of Washington this 16th day of August, 2017, at Seattle, Washington.

Marya Hernandez

KARR TUTTLE CAMPBELL

August 16, 2017 - 10:03 AM

Transmittal Information

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Appellate Court Case Title:	Lexine Otey v. Group Health Cooperative
Superior Court Case Number:	15-2-22264-3

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