No. 96185-9

**SUPREME COURT OF THE STATE OF WASHINGTON**

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No. 75727-0-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

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LAZURI DANIELS, individually and on behalf of all those similarly situated,

*Petitioner*,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

*Respondent.*

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# STATE FARM'S ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION

This is the third time Petitioner's counsel has sued an auto insurer for refunding a pro rata share of an insured's auto collision deductible. This is also the third time the Court of Appeals found their suit lacked merit, and the third time they sought review. Twice before—in *Averill v. Farmers Ins. Co. of Wash.*[1] and *Somal v. Allstate Prop. & Cas. Ins. Co.*[2]—this Court declined review. There is no reason to grant it now.

Petitioner Lazuri Daniels ("Daniels"), like the plaintiffs in *Averill* and *Somal*, made a property damage claim with her auto insurer following an auto accident. Their insurers paid all repair costs, less the collision deductible—the portion of the risk the insureds had contracted to retain. The insurers then made subrogation demands against the other drivers' insurers and included their insureds' collision deductible in their demands—first as a courtesy, and later pursuant to WAC 284-30-393 (effective 2009). The other insurers paid some, but not all, of the subrogation demands, because they disputed that their drivers bore 100% fault. The subrogating insurers then refunded their insureds' collision deductible pro rata based on comparative fault.

Daniels' counsel filed suit every time. In *Averill*, plaintiff claimed that refunding collision deductibles pro rata violated the common law

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[1] 155 Wn. App. 106, 229 P.3d 830 (2010), *review denied*, 169 Wn.2d 1017, 238 P.3d 502 (Sept. 7, 2010).

[2] No. 64626–5–I, 2012 WL 119895 (Wash. Ct. App. Jan. 17, 2012), *review denied*, 174 Wn.2d 1007, 278 P.3d 1112 (June 6, 2012).

"made whole" rule, WAC 284-30-393, and the terms of their contract. Division One of the Court of Appeal rejected those theories. It found that Washington courts had only applied the common law "made whole" rule in the reimbursement context—where an insurer seeks to recover its payments directly from an insured. No case had applied that rule in the traditional subrogation/collision deductible context. Drawing a distinction between those contexts made sense, given different equitable considerations involved in the reimbursement context and the purpose of a collision deductible.

*Averill* also rejected counsel's arguments based on the terms of the contract and WAC 284-30-393. While the regulation appeared to require a full deductible refund out of any subrogation recovery, regardless of fault, it became effective after the accident and could not apply retroactively because it represented a significant change in Washington law. After *Averill*, the Washington Insurance Commissioner amended WAC 284-30-393 (effective 2011) to *expressly permit* pro rata collision deductible refunds consistent with applicable fault.[3]

The following year, Division One of the Court of Appeals decided *Somal*. The Court of Appeals again rejected counsel's common law "made whole" rule argument. It also rejected the contract theory of

[3] WAC 284-30-393 now provides in part: "The insurer must include the insured's deductible, if any, in its subrogation demands. Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault."

liability, finding that the express terms of the Allstate contract at issue did not promise a deductible refund. Consequently, a pro rata deductible refund could not breach the policy terms.

Undeterred, Daniels filed this suit in 2016. Recognizing that their common law "made whole" rule arguments had failed in both *Averill* and *Somal*, and that current WAC 284-30-393 permits pro rata collision deductible refunds, Daniels' counsel claimed that this suit was different because Daniels based her claims solely on State Farm's policy language.[4] In fact, they argued to the Court of Appeals that the trial court erred precisely because it considered the common law "made whole" rule and the regulation in dismissing Daniels' complaint, instead of limiting its analysis to the contract theory.

That strategy failed too, because the Court of Appeals focused on the contract interpretation argument in deciding this appeal. The Court of Appeals' majority opinion (the "Opinion") found that the only reasonable interpretation of the term "fully compensated" in Daniels' State Farm auto policy form in this context was payment of the loss, less the collision deductible. Because State Farm pursued subrogation after making that payment, it did not violate the contract.

Daniels now claims that review should be granted because the Opinion focused on State Farm's policy terms. Her counsel argues that

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[4] State Farm's policy provides in part: "***Our*** right to recover ***our*** payments applies only after the insured has been fully compensated for the ***bodily injury***, ***property damage***, or ***loss***." (Clerk's Papers ("CP"), p. 80.)

the Court of Appeals should have instead revisited *Averill*'s holding under the common law "made whole" rule, and overruled it. Daniels' renewed focus on the "made whole" rule, after disclaiming reliance on it below, appears motivated by the dissenting opinion authored by Judge Becker (the "Dissent"). The Dissent argues that *Averill* was wrongly decided by relying on broad-brush assertions of Washington law, outdated treatise discussions and inapposite out-of-state authority. Notably, neither Daniels nor the Dissent cite any case involving subrogation and collision deductibles that conflicts with *Averill* on the merits. To the contrary, the authority cited in the Dissent supports that courts and regulators across the nation agree that the "made whole" rule should not apply in the collision deductible/subrogation context.

In addition, neither Daniels nor the Dissent explains how State Farm's policy terms could reasonably be construed to promise a full deductible refund out of a partial subrogation recovery reduced for fault. Daniels argues that the Court of Appeals should have interpreted "fully compensated" in her policy the same way this Court interpreted that phrase in the "made whole" rule context in *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 160 P.3d 31 (2001). But, that would mean that State Farm would have no right to pursue subrogation at all unless and until Daniels first recovered her entire deductible, either by State Farm paying the deductible outright or Daniels successfully pursuing recovery of the deductible on her own. As the Opinion reasoned, the former result would read the deductible out of the policy, and the latter would conflict with

WAC 284-30-393, which contemplates that an insurer's subrogation right arises upon payment of the collision loss, less the deductible. That regulation, not the contract, required State Farm to pursue her deductible, and expressly allowed State Farm to refund her deductible based on comparative fault.

RAP 13.4 limits this Court's authority to grant review to three enumerated grounds, none of which exist here.[5] The Opinion does not conflict with prior Washington decisions on rules of contract interpretation or the "made whole" rule. It applied well-established rules of contract interpretation and, consistent with *Averill*, distinguished the "made whole" rule cases Daniels cited as involving the reimbursement context, not the traditional subrogation/collision deductible context. While Daniels and the Dissent may disagree with *Averill*, this Court has already found that it does not create a decisional conflict sufficient to support review under RAP 13.4 (1) or (2). The Court implicitly made that finding when it denied review in *Averill*, then did the same when it denied review in *Somal*. Nothing has changed. Indeed, all of the Washington authority Daniels and the Dissent cite pre-dates *Averill*.

There is also no "issue of substantial public interest that should be determined by" this Court under RAP 13.4(4). The public's interest in the issue of pro rata deductible refunds has already been considered by the

[5] Daniels cites RAP 13.4(3), but that section relates to constitutional issues which this case does not raise. (Petition, p. 3). State Farm accordingly addresses RAP 13.4(1), (2) and (4) here.

Washington Insurance Commissioner, who promulgated and then amended WAC 284-30-393 to be consistent with *Averill*. That rule reflects the Commissioner's belief that requiring Washington insurers to pursue an insured's deductible, and to refund that deductible with a pro rata reduction for comparative fault, protects the interests of all Washington insureds. In contrast, Daniels' rule would benefit at-fault insureds at the expense of all others, whose collision coverage premiums would rise based on auto insurers' reduced subrogation recoveries.

In sum, the Opinion is sound, and no ground for review exists under RAP 13.4. Daniels' Petition should be denied.

## II. STATEMENT OF THE CASE

### A. Daniels' Complaint

On July 25, 2015, Daniels' vehicle was in the middle of a three-car collision. (CP, p. 2.) At the time, Daniels had a State Farm automobile policy including collision coverage for listed vehicles and providing:

> **12. Our Right to Recover Our Payments**
>
> * * *
>
> c. Underinsured Motor Vehicle Property Damage Coverage and Physical Damage Coverages
>
> If ***we*** are obligated under this policy to make payment to or for a party who has a legal right to collect from another, then the right of recovery of such party passes to ***us***.
>
> * * *
>
> ***Our*** right to recover ***our*** payments applies only after the insured has been fully compensated for the ***bodily injury***, ***property damage***, or ***loss***. (CP, pp. 2, 80.)

State Farm paid all estimated costs to repair Daniels' vehicle, less her $500 collision deductible.[6] (CP, p. 2) State Farm then sought to recover its payment and Daniels' deductible by making a subrogation claim against GEICO, which insured the vehicle behind Daniels. (*Id*.) GEICO initially accepted that its driver was 70% at fault, and paid State Farm 70% of its collision payment and 70% of Daniels' deductible. State Farm then paid Daniels 70% of her deductible, or $350.00. (*Id*.)

Unsatisfied with GEICO's initial payment, State Farm pursued arbitration. In May 2016, the arbitrator found GEICO's insured 100% at fault and ordered GEICO to pay the remaining 30% of State Farm's collision payment and Daniels' deductible. (CP, p. 65.) State Farm then paid Daniels the remaining 30% of her collision deductible. (*Id*.)

Daniels did not wait for State Farm's subrogation efforts to conclude, or pursue GEICO or the other driver for her unreimbursed deductible. Instead, immediately after receiving her 70% deductible payment from State Farm, she filed this suit alleging that the terms of her policy and "Washington law" obligated State Farm to pay her entire deductible out of its partial subrogation recovery reduced for fault.

**B. State Farm's Motion to Dismiss**

State Farm filed a Motion to Dismiss. State Farm explained that, to the extent Daniels' claims were based on the common law "made

[6] It is unclear whether Daniels herself incurred any costs *i.e.* whether she repaired her vehicle and paid her deductible, or retained the payment without making repairs.

whole" rule, they failed under *Averill*. (CP, pp. 19-22.) To the extent they were based on regulatory law, they failed because WAC 284-30-393 expressly permits pro rata deductible refunds. (CP, pp. 22-24.) Finally, to the extent they were based on the contract, they failed, because State Farm complied with the policy terms by asserting its subrogation right against GEICO *after* paying Daniels' entire property damage claim, less the collision deductible.

In opposing the Motion to Dismiss, Daniels argued that she based her claims on the terms of her State Farm policy, and that State Farm's arguments regarding the common law "made whole" rule and WAC 284-30-393 were "irrelevant." (CP, p. 42.) Daniels argued:

> "[T]his case is resolved not by turning to minimums required by common law doctrine or insurance regulation; rather, this case is resolved by looking to the clear language of the insurance contract."

(CP, p. 42-43.) Daniels' counsel reiterated that point at oral argument: "If we were relying on the argument that the common law provides the result here, we have a problem because of *Averill*; no question. But that's not what we're saying." (Verbatim Rep. of Proc. ("VRP"), p. 32:19-22)

In granting the Motion to Dismiss, the court rejected Daniels' arguments under the contract, the common law, and the regulation.

**C. <u>Daniels' Appeal</u>**

Daniels appealed, and argued that the court erred precisely because it considered *Averill* and the common law "made whole" rule in reaching its decision:

> "[F]ollowing State Farm's invitation, the trial court started with a recent interpretation of the common law made whole doctrine and the minimums imposed by insurance regulation. Neither was necessary for the court to apply the contract language as written. Worse, starting with this unnecessary analysis led the trial court down a misguided path that infected the court's analysis of the contract language, resulting in error."

(Appellant's Opening Brief ("AOB"), p. 3.) Daniels reiterated in her Brief to the Court of Appeals that this "is a case of contract interpretation" that "turns on the plain language of the State Farm contract." (AOB, p. 6.)

Daniels' counsel echoed that point at oral argument before the Court of Appeals.[7] (Appendix 1, p. 4:15-16; Audio Recording at 00:51 ("This case … can be resolved on the plain language of the contract.").) So as to leave no doubt as to the theory on which Daniels based her claims, the Court of Appeals asked whether her position was "based totally on the contract language and not on the WAC?" (Appendix 1, p. 23:14-15; Audio Recording at 21:33.) Daniels' counsel responded:

> We don't have to go any further in this instance, than the contract language, yes your honor.

(Appendix 1, p. 23:14-15; Audio Recording at 21:33.)

Consistent with Daniels' position, the Opinion centered on the policy terms. It adheres to well-established rules of contract interpretation

[7] The audio recording of the July 26, 2017 oral argument before Division One of the Court of Appeals (hereafter "Audio Recording") can be found online at the court's website. For the Court's convenience, a transcript of the Audio Recording is attached as Appendix 1 hereto.

in holding that "the only reasonable interpretation of 'fully compensated' as used in the insurance contract at issue in this case, does not include the amount of deductible paid by the insured." (Opinion, p. 7.) Instead, "fully compensated" in the context of Daniels' collision coverage means "payment of the insured's property loss less the deductible." (*Id*., p. 5.)

The Opinion explained why *Sherry* and *S&K Motors, Inc. v. Harco Nat. Ins. Co*.—common law "made whole" rule cases—were distinguishable:

> Daniels' reliance on *Sherry* [8] and *S&K Motors* [9] is misplaced. Those cases involved situations where the insured recovered directly from the tortfeasor. In those circumstances the term "fully compensated" takes on a more expansive meaning.

(Opinion, p. 10 n. 4.) Because *Sherry* and *S&K Motors* involved reimbursement—where an insurer seeks to recover its payments out of the insured's own recovery—the common law "made whole" rule, and case law interpreting "fully compensated" under that rule, applied. This case, in contrast, involved traditional subrogation—where an insurer asserts its own recovery right against a third party. *Averill* held that the common law "made whole" rule does not apply in the traditional subrogation context and, in any event, Daniels expressly disclaimed that she based her suit on the common law "made whole" rule.

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8 160 Wn.2d 611, 160 P.3d 31 (2001).
9 151 Wn. App. 633, 213 P.3d 630 (2009).

In contrast to the Opinion, and despite Daniels' disclaimer, the Dissent focuses almost exclusively on the common law "made whole" rule. It argues that *Averill* should be overruled based on a half-century old insurance treatise, inapposite out-of-state cases, and broad-brush assertions of "Washington law." The Dissent makes only cursory reference to Daniels' contract argument.

## III. NO GROUND FOR REVIEW EXISTS

### A. The Opinion Does Not Conflict With Rules of Contract Interpretation

Daniels argues that the Opinion "at least implicitly" finds the phrase "fully compensated" ambiguous, and thus "conflicts with 'well-established' rules of contract interpretation" by not interpreting the phrase in her favor. Not so. The Opinion expressly finds "fully compensated" in this context *unambiguous.* (Opinion, p. 7.)

The Opinion finds only one reasonable interpretation of "fully compensated" in this context by applying well-established rules of contract interpretation, including that a court should consider a policy as a whole and give its terms a "fair, reasonable and sensible construction" while avoiding "a literal, strained or forced interpretation which could lead to absurd results." (Opinion, pp. 1, 4 (citing, *inter alia*, *Morgan v. Prudential Ins. Co. of Am.*, 86 Wn.2d 432, 545 P.2d 1193 (1976)).)

The Opinion reached its conclusion only after considering, and rejecting, Daniels' competing interpretation based on *Sherry*. According to Daniels, "fully compensated" means payment of the entire loss,

including the deductible, and "[w]hatever rights State Farm may have to recover its payments, it does not have those rights until after its insured has been fully compensated for its loss." (AOB, p. 15 (emphasis added).) That would mean that State Farm has "no right to seek recovery at all, unless and until its insured obtains a full refund of his or her deductible." (Opinion, p. 6.) "Under that reading," the Opinion explained, one of two things would have to occur before State Farm could even pursue subrogation against a third party:

> First, State Farm would have to refund the deductible that Daniels paid, which would make the provision requiring payment of the deductible meaningless. Or, second, Daniels would have to obtain reimbursement from the third party on her own.

(Opinion, p. 6.) The latter result would be "inconsistent with WAC 284-30-393, which places the burden of pursuing a refund of the insured's deductible on the insurer." (*Id*., p. 6.) Moreover, the regulation "assumes that the insurer's ability to proceed with a subrogation claim precedes a refund of the deductible to the insured. Daniels' reading of the contract does just the opposite." (*Id*., p. 7.)

As the Court of Appeals explained, either State Farm had the right to subrogate under the subject policy language or it did not. If it did, then Daniels was "fully compensated" under the policy. (Opinion, p. 7.) If it did not, "then the issue isn't how State Farm allocated the funds it received, but instead that it was subrogating its claim at all. Daniels can't have it both ways." (*Id*.) Because *Sherry*'s interpretation led to absurd results in this context, the only reasonable interpretation of "fully

compensated" here was that offered by State Farm and contemplated by WAC 284-30-393: payment of the collision loss less the deductible.

Importantly, *Sherry* did not involve an issue of contract interpretation. *Sherry* involved how "fully compensated" should be interpreted under the common law "made whole" rule, where an insurer seeks to recover directly from an insured's recovery from a third party. (Opinion, p. 10 n. 4.) In that reimbursement context, the term "takes on a more expansive meaning." (*Id*.) Those circumstances did not exist here and, in any event, Daniels argued that she based her claims on the contract terms, not the common law.

Notably, neither Daniels' nor the Dissent explain how Daniels' competing interpretation based on *Sherry* could possibly make sense in the context of her policy. Instead, the Dissent criticizes the Opinion for considering Daniels' contract argument, which it characterizes as a "straw man" argument. (Dissent, p. 23.) That fails. Daniels repeatedly and "explicitly" argued that she based her claims *solely* on the policy terms. (Opinion, p. 7 n. 2; AOB, pp. 1, 3, 6; App. 1, pp. 1, 23.) The Opinion therefore correctly considered, and rejected, her contract theory in deciding her appeal.

**B. <u>The Opinion Does Not Conflict with Common Law "Made Whole" Rule Decisions</u>**

The Opinion also does not conflict with *Sherry*, or any other common law "made whole" rule decision. Consistent with *Averill*—the only published Washington decision that considered application of the

"made whole" rule in the collision deductible and subrogation context—it distinguished cases applying that rule. (Opinion, p. 10 n. 4.) There was no reason for the Court of Appeals to revisit *Averill*'s holding that the "made whole" rule does not apply here.

There is also no reason for this Court to revisit *Averill*. Since *Averill* came down in 2010, this Court has twice declined to review its holding that the common law "made whole" rule does not apply in the traditional subrogation/collision deductible context.

Daniels' counsel knows that, because they filed both of the earlier petitions for review. This Court denied the petition for review in *Averill* in 2010. Order Denying Review, *Averill v. Farmers Ins. Co. of Wash.*, 169 Wn.2d 1017, 238 P.3d 502 (Sept. 7, 2010). Two years later, the Court of Appeals followed *Averill* in deciding *Somal v. Allstate Prop. & Cas. Ins. Co.*, No. 64626–5–I, 2012 WL 119895, *3 (Wash. Ct. App. Jan. 17, 2012) ("Here, as in *Averill*, the made whole rule does not apply to Allstate's recovery in subrogation."). Again, Daniels' counsel petitioned for review, and this Court denied it. Order Denying Review, *Somal v. Allstate Prop. & Cas. Ins. Co.*, 174 Wn.2d 1007, 278 P.3d 1112 (June 6, 2012).

*Averill* does not "undermine" *Thiringer*[10] and its progeny as Daniels and the Dissent claim, much less "conflict" with those decisions as RAP 13.4 requires. *Averill* correctly distinguishes them on the ground that none involved a traditional subrogation claim (as opposed to a

[10] *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 588 P.2d 191 (1978).

reimbursement claim) or collision deductibles. *Averill*, 155 Wn. App. at 113. Thus, none considered the purpose and equitable considerations underlying collision deductibles. *Id*. Only *Averill* did.

The Dissent argues that *Averill* is "inconsistent with Washington case law on subrogation and reimbursement," (Dissent, p. 2), without appreciating the distinction between the two doctrines—a distinction this Court recognized in *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998). *Averill* explained: "'"The term "reimbursement" comes into play where an insurer is permitted to recoup its payment out of the proceeds of an insured's recovery from the tortfeasor. In this situation the insurer's right of recoupment is contingent upon a third party recovery by the insured."'" *Averill*, 155 Wn. App. at 113 n. 2 (quoting *Mahler*, 135 Wn.2d at 420 n. 9) (internal quotations omitted). Reimbursement "is distinct from subrogation, where the insurer pursues recovery from the wrongdoer." *Id*.

*Thiringer* arose in the *reimbursement* context and, as *Averill* aptly noted, subsequent decisions applied its "made whole" rule only "where the insurer sought reimbursement out of the third party funds recovered by the insured." *Id*. at 113 (citing, *inter alia*, *Sherry*, 160 Wn.2d at 615; *Mahler*, 135 Wn.2d at 404-405; *S&K Motors*, 151 Wn. App. at 635; and *Bordeaux, Inc. v. Am. Saf. Ins. Co*., 145 Wn. App. 687, 689, 186 P.3d 1188 (2008)). None of those cases involved subrogation or collision deductibles.

*Averill* also reasoned that not applying the "made whole" rule in the collision deductible and subrogation context was "consistent with the

purpose of a deductible," the portion of the risk that Averill contracted to retain. *Id.* at 114. The court continued:

> Allowing Averill to recover her deductible from Farmers' subrogation recovery would have changed the insurance contract to one without a deductible. We are not at liberty to rewrite the policy in this manner. *Id*.

The Dissent contradicts itself by arguing that *Averill* is "unsupported by authority or reasoned analysis," while citing decisions by other state supreme courts and treatises *consistent* with *Averill*. For example, in *Fireman's Fund Insurance Co. v. T.D. Banknorth Insurance Agency, Inc.*, the Connecticut Supreme Court relied on *Averill* in holding on a certified question that "the equitable considerations supporting the make whole doctrine are inapplicable to deductibles." 72 A.3d 36, 47 (Conn. 2013). Because, as *Averill* recognized, "[a] deductible represents the level of risk that the insured has agreed to assume, ordinarily in exchange for a lower premium cost for the insurance policy," the *Fireman's Fund* court was "not of the opinion that equity dictates a departure from the terms of the insurance contract into which the parties voluntarily entered." *Id.* at 46 (citing *Averill*, 155 Wn. App. at 114).

In *Jones v. Nationwide Prop. & Cas. Ins. Co.*, the Pennsylvania Supreme Court similarly followed *Averill* and the urging of the state's Insurance Commissioner in refusing to apply the "made whole" rule in the collision deductible context, despite the fact that Pennsylvania followed the "made whole" rule generally. 32 A.3d 1261, 1269 (Pa. 2011). The court explained that the purpose underlying the common law rule –"to

give consumers with excess damages priority over their insurer when there is a shortfall" in coverage—did not apply because "the loss of the deductible is not a 'shortfall' in the insurance coverage"—it is the portion of the risk the insured retained "to ensure risk-sharing and loss avoidance." *Id*. In addition, collision coverage "premiums are based upon the contractually determined deductible, such that applying the made whole doctrine would 'negate any differentials in premiums paid by consumers electing higher or lower deductibles and undermine' the rate structure approved by the Commissioner." *Id.* at 1270. Applying the "made whole" rule was also "inequitable" because the insurer bears the cost and risk of litigation in that context, and partial subrogation recoveries for collision payments generally result from "an apportionment of fault to the insured." *Id*.

The Dissent further acknowledges commentator Alan D. Windt's observation that "[t]he made whole rule does not apply to deductibles," but downplays it as based on a "single case" when made in 2007. (Dissent, p. 13) (citing 2 Alan D. Windt, *Insurance Claims and Disputes* (5th Ed. 2007) § 10:6). The Dissent ignores the most recent edition of that treatise, which cites four cases supporting the observation, including *Averill*, *Fireman's Fund*, and *Jones*. 2 Alan D. Windt, *Insurance Claims and Disputes* (6th Ed. 2018) § 10:6, n. 21.

The Dissent also relies on a half-century old insurance treatise by Professor Robert Keeton that discusses subrogation generally, but nowhere mentions collision deductibles. (Dissent, pp. 2-4, 28) (citing

Keeton, *Basic Text on Insurance Law* (West 1971) § 3.10(c)(2), pp. 160-162). It ignores Professor Keeton's 1988 treatise which *does* discuss deductibles. Keeton, et al., *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* (West 1988) §3.10(b)(4), pp. 239-240. That newer discussion supports considering both the fact and purpose of a collision deductible in deciding subrogation recovery rights—which *Averill* did—and recognizes arguments favoring pro rata deductible refunds in that context.[11]

The Dissent's and Daniels' criticisms of *Averill* also fall flat when considered in light of the fact that neither cites any case that disagrees with *Averill* and applies the "made whole" rule in the traditional subrogation/collision deductible context. The Dissent only cites cases that allowed putative class claims to "go forward," relying on *Powers v. Gov't Emps. Ins. Co*., 192 F.R.D. 313 (S.D. Fla. 1998), and *Ferguson v. Safeco Ins. Co. of Am*., 180 P.3d 1164 (Mont. 2008). Those decisions involved whether class treatment was appropriate; they did *not* decide the merits of the plaintiffs' theory that the "made whole" rule should apply in the collision deductible and subrogation context. *Id.* Moreover, a subsequent

[11] *Id.* ("Choice among the rules for allocating rights to a tort recovery from a third person could depend, at least in part, on why a share of the loss was to be borne by the insured in the absence of third party claims. … For example, if the contract provides for coinsurance of the loss, with the insured bearing part of the risk, this implies an agreement that the rule for allocation of recovery from a third party should be the second rule: proration.")

Florida decision *did* rule on the merits of that theory and, consistent with *Averill*, refused to apply the "made whole" rule to the subrogation context. *Schonau v. GEICO Gen. Ins. Co.*, 903 So.2d 285 (Fla. Ct. App. 2005). In affirming the dismissal of the class action complaint for failure to state a claim, *Schonau* made the same observation *Averill* did—that courts applied the "made whole" doctrine in the *reimbursement* context "to protect the insured's direct recovery from a tortfeasor." *Id*. at 287. No court applied the rule to "force[] an insurer to cover uninsured losses before the insurer can pursue a subrogation claim." *Id*.

**C. No Issue of Significant Public Interest Exists Here**

Finally, the mere fact that this case involves "insurance law" does not mean that it presents an "issue of significant public interest" that the Court should determine under RAP 13.4, as Daniels claims. This case involves the same issues raised in *Averill* and *Somal*, neither of which this Court found warranted review on *any* ground enumerated in RAP 13.4.

Daniels claims a "substantial interest" exists because undoing *Averill* will "advanc[e] the interests of insureds." (Petition, p. 16). The fundamental flaw in that argument is the assumption that a contrary rule would benefit insureds generally. If the "made whole" rule applied here, at-fault insureds would recover from their insurer more than they could against the other driver, and insurers would raise rates across the board to account for reduced subrogation recovery expectations. In other words, a few at-fault insureds would benefit at the expense of all of the others.

That reality could explain why, in the eight years since *Averill* was

decided, Washington's Insurance Commissioner has not sought to undermine or undo it. Instead, the Commissioner amended WAC 284-30-393 to be consistent with *Averill*, and expressly exempt the collision deductible/subrogation context from the common law "made whole" rule.[12]

## IV. CONCLUSION

For all of the foregoing reasons, State Farm respectfully requests that the Court deny Daniels' Petition for Review.

RESPECTFULLY SUBMITTED this 14th day of September, 2018.

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[12] Former WAC 284-30-393, effective 2009, enforced the "made whole" rule in the collision deductible context by requiring subrogating insurers to reimburse an insured's *entire* deductible from any subrogation recovery without regard to fault. *See Averill*, 155 Wn. App. at 115. In 2011, the Commissioner amended the regulation to permit pro rata deductible refunds with reduction for fault. WAC 284-30-393 (2011); (CP, p. 33-36).

# APPENDIX 1

THE COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

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| LAZURI DANIELS,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>STATE FARM MUTUAL AUTOMOBILE,<br><br>Defendant/Respondent. | Superior No. 16-2-08824-4 SEA<br><br>Appeal No. 75727-0-I |

ORAL ARGUMENT

July 26, 2017

Transcribed by: Shanna Barr, CET
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A P P E A R A N C E S

Presiding Judges:
MARLIN J. APPELWICK
MARY KAY BECKER
MICHAEL S. SPEARMAN

On Behalf of Plaintiff/Appellant:
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I N D E X  O F  P R O C E E D I N G S

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July 26, 2017

JUDGE APPELWICK: The matter this morning is Daniels v. State Farm.

Counsel?

MR. IDE: Good morning. Matthew Ide, may it please the Court, on behalf of the appellant and plaintiff below, Lazuri Daniels. I'd like to reserve four minutes for rebuttal.

JUDGE APPELWICK: Okay. Proceed.

MR. IDE: We're asking that the Court reverse the trial court's dismissal of the complaint for failure to state a claim.

This case can be resolved on the plain language of the contract. The contract here provided that State Farm promised its insured: We don't have any rights to recover our payments -- under any of the coverages, but today we're talking about the collision coverage -- until you've been fully compensated for your loss. So the only thing that we can really talk about to change what appears to be a --

JUDGE SPEARMAN: I take it there's nothing in the record, at least that I was able to discern, where the terms "fully compensated" or the term "loss" is defined in the policy?

MR. IDE: To the extent it could be -- it's defined in the

policy, the only part of the policy that's part of the record is the single page that deals with the recovery rights provision, Your Honor.

JUDGE APPELWICK: Do you know, is there a definition?

MR. IDE: There are definitions in the policy. I don't recall specifically as to "loss" or "damages." One of the two, at least, is defined. I don't recall there -- I don't want to represent what's not in the record, but I don't recall there being anything that would change any of the arguments I'm making here today.

JUDGE APPELWICK: They were not in the record before the trial court or not in the record sent to us?

MR. IDE: Not in the record before the trial court. In fact, before the trial court -- an actual example that's attached as Appendix A to State Farm's brief wasn't before the trial court. It was referred to, and the trial judge looked at it at the oral argument, but it hadn't been -- previously been part of the record, and it was made part of the record for this appeal.

JUDGE APPELWICK: Can I ask one other preliminary matter. Do you agree that State Farm followed the requirements of the WAC, so there's no question that they followed the WAC in terms of how they handled this, and that the claim is solely focused on whether the policy language requires more?

MR. IDE: No, Your Honor. And the reason is because the

current version of the WAC provides that it can be -- any recovery made by State Farm in this instance can be distributed pro rata based on applicable comparable fault. In this accident, there's no evidence of any fault on behalf of Ms. Daniels. It was a three-car accident.

JUDGE APPELWICK: But at the time they distributed 70 percent, that was based on an agreement or an allegation that there was 70 percent fault. So when that was resolved, they made a change; isn't that correct?

MR. IDE: That's incorrect, Your Honor. It was that the two other insurance companies argued about who was at fault. One insurance company -- not State Farm and not Ms. Daniels -- one insurance company said, "We don't have any fault." The other insurance company said, "Well, we think we have 70, you have 30." So one insurer remitted 70 percent of the total loss to State Farm. The other insurance company didn't remit anything at the time that this was filed.

JUDGE BECKER: Is this case -- does this case come up solely on the basis of collision damage, or was there some kind of personal injury also involved?

MR. IDE: This is just a collision damage case. I mean, there was a --

JUDGE BECKER: And what was the total amount of collision damage before the (inaudible)?

MR. IDE: I don't have that.
JUDGE BECKER: Oh.
MR. IDE: It's not -- it wasn't alleged in the complaint the actual amount of the damages. The important part was that the -- there was -- the loss exceeded the deductible.
JUDGE BECKER: I understand that. It's just it's sort of easier for me to picture these things if I know what the numbers really are.
JUDGE APPELWICK: And there --
JUDGE BECKER: I mean, I'm just wondering, was it a thousand dollars, 2,000, 5,000, 10,000?
MR. IDE: It was three or four thousand, if I recall. But again, I'm not positive, Your Honor. It's not alleged in the complaint.
JUDGE BECKER: All right.
JUDGE APPELWICK: And ultimately, the second party was a hundred percent responsible and the third party was not?
MR. IDE: Again --
JUDGE APPELWICK: Not determined to be negligent, did not pay toward the settlement; is that correct?
MR. IDE: Not part of the record, but, no. Later on, the other company ultimately agreed to pay 30 percent, so --
JUDGE APPELWICK: So they reimbursed the second party?
MR. IDE: The other two companies ultimately agreed to a hundred percent with zero percent attributed to Ms. Daniels.

So it becomes a --

JUDGE APPELWICK: But did Geico pay the hundred percent to State Farm, and then they were reimbursed?

MR. IDE: No. Geico paid the 70 percent as alleged in the complaint.

05:00 JUDGE APPELWICK: Oh.

MR. IDE: And then the other insurance company --

JUDGE APPELWICK: Oh.

MR. IDE: -- later on.

And just briefly, the reason that that doesn't comply with the WAC is the WAC says "unless applicable fault." State Farm says that means applicable fault of these other parties that are not related to the insurance contract. Our argument is that that's not -- that's just a ridiculous interpretation, that it's got to be the applicable fault of the insured. And that's why on the website the OIC says if you're partially at fault you may not get your whole deductible back, but if you're not at fault at all, then there's no reason to charge her.

JUDGE SPEARMAN: So your position is that State Farm should have known that there was no fault on behalf of your client, and so they should have just paid the entire deductible?

MR. IDE: Well, State Farm did know.

JUDGE SPEARMAN: As soon as they figured that out?

MR. IDE: Yeah. Well, State Farm did know. There was never an allegation Ms. Daniels was at fault.

But turning quickly back to the contract, so the contract is pretty plain. So State Farm makes some arguments based on that, the "fully compensated" or "loss." Well, the loss, it sort of is what it is. Let's say the property damage was $2,000. If State Farm comes in and pays everything but 500, the loss is still $2,000. Now, she's been compensated to the extent in this example of 1,500, but she's still out of pocket $500.

JUDGE SPEARMAN: Isn't there sort of an underlying premise of the contract that if I pay a $500 deductible that the insurance company charges me a lesser premium, and so I'm accepting the idea that my compensation for my loss is whatever is in excess of the premium? I mean, excess of the deductible I pay?

MR. IDE: That's actually a very good question, Your Honor, because it highlights the difference between the insurance contract and payment under collision coverage versus this totally separate matter of what happens when we get funds. Who gets those funds? And it -- oh.

(Timer sounds.)

MR. IDE: Continuing on into my time for a moment here, the S&K Motors case, for example, that I believe the judge was on, Judge Appelwick was on that panel, in that one,

there was an uninsured loss. The auto company had -- or car dealership had somebody stealing from it. They caught the person and said, "Okay. Don't do that anymore. Pay us back." And the person kept going forward and kept stealing. And this happened like two times. They go back to the insurance company and they file a claim. And the insurance company said, "We're responsible for the first set. After that, we're not responsible because that's an uninsured loss. You knew that he was stealing." You know, and the car dealership is, "Okay. That's fine."

So they had collected more money from the employee over the course of the ongoing stealing than ultimately would have been owed for the time that there was coverage. So there was an uninsured loss. I think it was like 70,000 total. They had collected 44,000 from the employee. They're still out of pocket like 30-some-odd thousand, and the insurance company is only -- only owes that first 21,000. And this court said, yeah, but that's -- yes, it's an uninsured loss, but that's a different matter. What now we're looking at is now that funds are coming in, who gets those. And this court said: No. The total loss is still the 70,000. They've recouped 40,000. They're still owed 30,000.

State Farm cites Meas and Chen. This court, even in the Averill case -- which of course, I disagree with -- in a

footnote said -- Chen and Meas. I'm sorry. Chen and Meas don't apply to this issue here. They didn't raise the question of who gets this money.

Then there was an issue of subrogation. Subrogation is different. It's different from what's at issue here. Subrogation is about putting the saddle on the right horse. It has nothing to do with the relationship between the insured and insurer other than that's how the insurance company may get some rights to pursue its payments.

JUDGE APPELWICK: And I just want to be clear. This is your total time.

MR. IDE: I understand, Your Honor.

JUDGE APPELWICK: Oh. You can use as much as you want.

MR. IDE: And I'll reserve the remainder. Thank you.

MR. FALZETTA: Good morning, Your Honors. May it please the Court, Frank Falzetta for Respondent State Farm Automobile Insurance Company, Mutual Automobile Insurance Company.

I wanted to correct a couple of things that Mr. Ide just mentioned during the questioning on his opening, and that is, first of all: Is any part of the policy in the record? Answer? Yes. The "our recovery from others" portion of the policy was put into the record during oral argument with Mr. Ide's permission. I gave it to him before the hearing. He said I could give it to the trial court, which I did.

And then we did the supplemental stipulation that it would be part of the record on appeal, and it is, and it's in the Court's record on appeal. And that one-page document sets forth our subrogation and reimbursement rights with respect to many coverages. I wanted to clarify that.

JUDGE SPEARMAN: But it does not define "loss" or "fully compensated"?

MR. FALZETTA: "Fully compensated" is not defined either there or elsewhere in the policy. "Loss" is, but that part of the policy is not in the record, and it's not pertinent to what we're talking about here today.

JUDGE SPEARMAN: Okay.

10:00 MR. FALZETTA: Second, Your Honor, Judge Appelwick asked about the payment, what actually went on here. What actually went on here was that Geico agreed preliminarily that its insured was 70 percent responsible, 70 percent at fault, and refunded 70 percent of our property damage payment to repair the car and the deductible, which we were obligated to insure as State Farm via the WAC, not because of the policy. When we got that 70 percent, Geico said, "We think Liberty's insured is responsible for the other 30 percent." But we paid the 70 percent to Ms. Daniels right away. Then we continued to pursue both Geico and Liberty via the intercompany arbitration process, and ultimately, contrary to what Mr. Ide said, Geico conceded that their

insured was a hundred percent responsible, we collected the rest of both our collision payment and the deductible and gave it to Ms. Daniels. That was post filing of the lawsuit, but those are the facts that are unavoidable. So she recovered everything ultimately from --

JUDGE APPELWICK: So he's claiming there, one --

MR. FALZETTA: And we recovered it for her.

JUDGE APPELWICK: -- that you should have done a hundred percent out of the first recovery.

MR. FALZETTA: Correct.

JUDGE APPELWICK: But I think that's based predominantly on the contract language that loss wasn't fully compensated and therefore you should have paid her a hundred percent?

MR. FALZETTA: I agree with Your Honor.

JUDGE APPELWICK: This policy language has been around for at least 20 years because --

MR. FALZETTA: Mahler --

JUDGE APPELWICK: -- it's identical to Mahler.

MR. FALZETTA: Mahler looked at it. It's essentially the same.

JUDGE BECKER: Can I ask you this then?

MR. FALZETTA: Yes.

JUDGE BECKER: Since we're -- we know we're talking about the contract language, and you just said it isn't important to have the contract's further definition of loss. But

Daniels in Daniels' reply brief makes this argument. It says, "For State Farm to prevail in its argument, a loss would have to be defined as the amount of property damage sustained by Daniels but minus the 500." Do you agree with that?

MR. FALZETTA: Not at all. And I --

JUDGE BECKER: Well, what does loss mean then, if it doesn't mean that?

MR. FALZETTA: Well, the loss means the property damage --

JUDGE BECKER: Does it mean the entire -- I mean, in other words, she lost -- if the amount of -- that had to be paid to repair the car was $3,000, then she lost $3,000; isn't that right?

MR. FALZETTA: That's correct, Your Honor.

JUDGE BECKER: Okay.

MR. FALZETTA: But I still think that the definition of loss isn't pertinent to what we're talking about here because of Meas and Chen. Chen --

JUDGE BECKER: Well, okay. But let's just start out with what the language says then. I mean, it says, "Our right to recover our payments." That's your payments. Your right to recover the 2,000 or the 70 percent, or whatever it was that you paid.

MR. FALZETTA: Right.

JUDGE BECKER: You know, that applies only after

Ms. Daniels has been fully compensated for her loss.

MR. FALZETTA: That's right.

JUDGE BECKER: Now, it would seem like the plain language of that means that -- since you just agreed that the loss is the entire amount, including the deductible, right? I mean, you've already paid her, let's say -- I don't have the actual numbers here, but you've paid her, let's say --

MR. FALZETTA: There was a $500 deductible.

JUDGE BECKER: Yeah. $2,500, but she's still $500 short. So she's still out that. She has not been fully compensated for that loss until she gets that last 500.

MR. FALZETTA: That's not correct, in my view.

JUDGE BECKER: Okay.

MR. FALZETTA: It is correct that the loss --

JUDGE BECKER: But doesn't it seem like a fair reading of that language, before you start talking about case law?

MR. FALZETTA: Well, no, I don't think so, because this is different. When you're talking about the loss being the property damage, it's different because there's a deductible. It's a first-party coverage and there's a deductible, and that makes it different in terms of what the insurance expectations should be with respect to our traditional subrogation right to go get our property damage payments. It can't be that suddenly because of that language, "fully compensated," that you're now going to read

the deductible out of the policy, you're going to say even if --

JUDGE BECKER: But you're not. Okay. Now, this is good.

MR. FALZETTA: Yeah.

JUDGE BECKER: I'm glad you're getting to that.

MR. FALZETTA: Yeah.

JUDGE BECKER: Because I know that's a statement that's made in the Averill case, but --

MR. FALZETTA: Right.

JUDGE BECKER: That's not really true, is it? I mean, the deductible is not written out of the policy. If you had not gone after your subrogation, you know, if you had done nothing but just give her $2,500 when her loss was 3,000, you know, the deductible is the reason why. She contracted and you contracted that you -- you know, if she -- whatever she did, if she had $3,000 in damage, you're not going to give her 3,000. You're going to give her 2,500.

MR. FALZETTA: That's correct.

JUDGE BECKER: Okay. So that deductible, that part of the policy is in effect, even if we agree with Daniels' argument. So we're not writing it out of the policy.

MR. FALZETTA: Well, you do effectively if, number one --

JUDGE BECKER: Only if you seek subrogation.

MR. FALZETTA: That's correct.

JUDGE BECKER: Yes.

MR. FALZETTA: So if we seek subrogation, which is our entitlement under Mahler, it's a traditional subrogation right, and we can do it --

JUDGE BECKER: Well, it's actually a contractual subrogation right here too, because you put it in your contract. "Our right to recover our payments."

MR. FALZETTA: Correct. But Mahler read this same provision and said that language conveys a traditional subrogation right. And if we were to say that suddenly because we pursue our traditional subrogation right, which we're entitled to do, and we recover our payment, and then via the WAC recover part or all of the insured's deductible, but if you say that we can't do any of that until the insured recovers all of their deductible from the --

JUDGE BECKER: No. You can do it.

MR. FALZETTA: -- front door --

JUDGE BECKER: You can recover from the -- I believe this is the argument that Daniels is making. You can certainly exercise your subrogation right and recover whatever it is, the 2,500 that you paid, but before you keep that, you have to give her -- you have to make her whole.

MR. FALZETTA: But that's --

JUDGE BECKER: You have to make her fully compensated for her loss.

MR. FALZETTA: But that's not what Daniels argues.

Daniels makes a light switch analogy. Daniels says we have no right at all, it isn't even vested in us unless and until the insured is fully compensated for the entire deductible regardless of fault. So that means --

JUDGE BECKER: Well, I don't know. I mean, I guess Daniels can speak to her argument, but it seems to me that that's your argument. You're saying that that's what she's arguing because then you can say that's an absurd argument. But suppose that that isn't the question. Suppose that this court, you know, in considering this case, reads this policy and says: Okay, first of all, you pay her everything but the deductible, okay. That transaction is now complete, and now you have a choice. Are you going to go after your subrogation right or not? Well, the contract gives you the right to do that. She agreed to let you do that. I mean, that was one of the things you extracted in the contract.

MR. FALZETTA: That's correct. Well --

JUDGE BECKER: Okay. You don't have to do it, but let's say you did do it. And you did do it here, okay. You go after that and you get your recovery, okay. Then, the question is -- as Daniels was just arguing, the question becomes: If this money starts coming in, who gets it and what is the priority? So just let's not get distracted by what you want to say Daniels argued, which might be an absurd argument. Let's just say that the actual fact in the

policy is that you do have the right to go after your subrogation, but the question is: Once you start recovering money, who gets it first? Does she get her 500 first? You say no.

MR. FALZETTA: Right.

JUDGE BECKER: And I don't understand how that result comes from this plain sentence here.

MR. FALZETTA: Because you have to read the subrogation rights still in the context of the coverage involved. And the coverage involved says that the insured retains a part of the risk up to their deductible. In her case, $500. So if you're going to say we can -- that the subrogation rights vested when we pay her the $2,500 less the 500 deductible -- I think that was Your Honor's hypothetical.

JUDGE BECKER: Are you familiar with the Bordeaux case?

MR. FALZETTA: Yes, I am.

JUDGE BECKER: Okay. And, you know, the Bordeaux case is cited as for a partial part of its holding here, but it seems like the end -- the way it comes out in Bordeaux is that the trial court properly ruled that Bordeaux and Cameray were entitled to be made whole before any third-party recovery funds were paid to the insurers.

MR. FALZETTA: No. Because Bordeaux dealt with reimbursement, and Bordeaux was not a traditional subrogation right. Bordeaux was a reimbursement case, and

the court went out of its way to say so. And that's like Averill. You know, if you're going to --

JUDGE APPELWICK: Well, Counsel, Averill was different. The language in that policy -- well, that policy did not have the language that's here. It was a pure subrogation issue. And of course, you're not -- recovering the deductible is not subrogation. But in light of the WAC now requiring that anytime you exercise subrogation rights you also recover the deductible, can't that sentence now be read differently to require that the entire loss be recovered and that your client be fully compensated before you retain compensation for the subrogated interest?

MR. FALZETTA: But I think that's what it says, the new WAC, the amended WAC that was amended after Averill: But reduced by applicable comparable fault. It's not like we have to suddenly reimburse 100 percent of the deductible.

JUDGE APPELWICK: (Inaudible).

MR. FALZETTA: No one is saying she doesn't get her money first. We did in this case. When we got the money, we paid her her 70 percent and then her remaining 30 percent before we kept any money. But what I'm saying is you can't say that it means she gets all of her deductible even if she's found to be partially comparably at fault. That truly reads the deductible out of the policy in a way that Meas and Chen don't contemplate. Because Meas and Chen said that the

trigger of cover, when the insured is fully compensated, is when we pay our collision loss and they accept the payment.

(Timer sounds.)

MR. FALZETTA: Thank you, Your Honor.

MR. IDE: Your Honor, the light switch. The light switch analogy was simply to describe how the difference in policy language between the Farmers policy in Averill and the policy here operate. In Farmers, the policy said, "We get everything except in these circumstances." This policy language is the polar opposite. I mean, it's literally like a light switch. It said --

JUDGE BECKER: Well, Counsel is arguing, apparently, that your argument is, is that they don't even have the right to go after subrogation until they've paid you the 500. Is that your argument?

MR. IDE: That is not my argument, Your Honor.

JUDGE BECKER: Thank you.

MR. IDE: And in fact, I'll go back to Thiringer. Even in Thiringer, the court said the plaintiff who recovers this money -- in that instance, it was the plaintiff that got the recovery -- holds everything in trust until we determine who gets it. I don't think anybody has a problem with State Farm or anybody else going out and -- if they're the ones that can most economically get this recovery and make the recovery of funds from the actual tortfeasor, but then we

still have to figure out who gets the money.
JUDGE APPELWICK: But your assertion is the insured gets the first $500 of any recovery under these facts?
MR. IDE: Under this contract language, yes.
JUDGE APPELWICK: The first $500. And sorting out where the fault is happens after the fact?
MR. IDE: It's meaningless -- yes, Your Honor. It's meaningless to the question of -- again, I think it's --
JUDGE APPELWICK: So that's a combination of the WAC and the contract.
JUDGE SPEARMAN: That's the first $500, is it? I mean, your position is that once the loss is determined to be $3,000, she's entitled to her $3,000?
MR. IDE: Right.
JUDGE SPEARMAN: Right?
MR. IDE: I took Judge Appelwick's question as she's already been paid, in your example --
JUDGE APPELWICK: Right.
MR. IDE: -- 2,500 by State Farm. So she's entitled to the next $500, and then she's made whole and she goes away. If State Farm recovered 100 cents on the dollar, they're going to be made whole. If not, they're going to be out. Again, in my limited time, I'd go back and reference the S&K case.
JUDGE APPELWICK: Well, let me try again. So once the

insurer pursues the subrogated interest, they're obligated to also pursue recovery of the deductible. And your assertion is --

(Timer sounds.)

JUDGE APPELWICK: -- that when there is a recovery in that action, the first use of the funds is to fully compensate the deductible?

MR. IDE: Yes, Your Honor.

JUDGE APPELWICK: And then to reimburse their subrogated interest?

MR. IDE: Keep whatever is left over for themselves.

JUDGE SPEARMAN: And further, that that's based totally on the contract language and not on the WAC?

MR. IDE: We don't have to go any further in this instance than the contract language. Yes, Your Honor.

JUDGE APPELWICK: Any more questions you want to ask before (inaudible)?

All right.

MR. IDE: Thank you.

(Conclusion of proceedings.)

C E R T I F I C A T E

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Shanna Barr, CET

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**Comments:**

As discussed, please attach this document to the end of the Answer filed this morning by State Farm in Daniels v. State Farm, Case No. 96185-9. Thank you.

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Sender Name: Karen Langridge - Email: klangridge@bpmlaw.com
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## CERTIFICATE OF SERVICE

I, Karen Langridge, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101.

2) By the end of the business day on September 14, 2018, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

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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.

DATED this 14th day of September, 2018.

Karen Langridge

Karen Langridge

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