No. 100312-9

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 53381-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

TERRI LYN HALL,

Appellant,

v.

GROUP HEALTH COOPERATIVE,

Respondent.

RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

STAMPER RUBENS, P.S.

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Grp. Health Coop. v. Hall, 53381-2-II, 2021 WL 3361789 (Wash. Ct. App. Aug. 3, 2021).

III. STATEMENT OF THE ISSUE PRESENTED

Whether the Appellant has met her burden under RAP 13.4(b) when the Appellant fails to identify a specific decision of this Court or the Court of Appeals which is in conflict with the decision of the Court of Appeals in this matter, and fails to demonstrate that review should be granted as to an issue of substantial public interest.

IV. STATEMENT OF THE CASE

Respondent Group Health Cooperative ("GHC") is a Washington nonprofit corporation providing healthcare coverage in Washington State. (CP 1). Appellant Terri Hall ("Hall") contracted for medical coverage with GHC beginning

January 1, 2012. (CP 1665-1726). The Medical Coverage Agreement ("MCA") contains a reimbursement provision:

> If GHC provides benefits under this Agreement for the treatment of the injury or illness, GHC will be subrogated to any rights that the Member may have to recover compensation or damages related to the injury or illness and the Member shall reimburse GHC for all benefits provided, from any amounts the Member received or is entitled to receive from any source on account of such injury or illness, whether by suit, settlement or otherwise.

The MCA required Hall and her agents to "do nothing to prejudice GHC's subrogation and reimbursement rights," to "promptly notify GHC of any tentative settlement with a third party," and to "not settle a claim without protecting GHC's interest." (CP 1709). If Hall recovered funds from "any source that may serve to compensate for medical injuries or medical expenses," she was required "to hold such monies in trust or in a separate identifiable account until GHC's subrogation and reimbursement rights are fully determined." (CP 1709).

The MCA also required Hall and her agents to cooperate in GHC's efforts to collect its medical expenses by, among other things, giving GHC information regarding the cause of her injuries or illness:

> The Injured Person and his/her agents shall cooperate fully with GHC in its efforts to collect GHC's Medical Expenses. This cooperation includes, but is not limited to, supplying GHC with information about the cause of injury or illness, any potentially liable third parties, defendants and/or insurers related to the Injured Person's claim and informing GHC of any settlement or other payments relating to the Injured Person's injury.

(CP 1708). If Hall "fail[ed] to cooperate fully with GHC in recovery of GHC's Medical Expenses," then she would "be responsible for directly reimbursing GHC for 100% of GHC's Medical Expenses." (CP 1709).

On September 18, 2012, Hall fell down a set of stairs at an office building in Olympia, Washington, fracturing her right leg and her left pinky finger. (CP 370-372, 1083). On October 4, 2012, Hall informed GHC of her fall and that she had filed a

personal injury claim with the building owner's insurance carrier. (CP 1220). On May 8, 2013, attorney Ron Meyers sent GHC a letter informing it that Hall had retained his firm to represent her in "all matters arising from" her fall. (CP 1290). GHC responded informing Meyers of its reimbursement rights. (CP 1296).

In December 2014, Hall filed suit against the owner of the building, Labor 1992 Corporation. (CP 370-77). Between August 2013 and February 2016, GHC sent eleven letters to Meyers' office reminding him of GHC's reimbursement claim, providing an updated list of providers that GHC had paid on Hall's behalf, and requesting that Hall's attorneys keep GHC informed of any settlement negotiations. (CP 1221, 1301-44).

On March 18, 2016, Hall's attorneys informed GHC that Hall had mediation scheduled for March 23. (CP 1221). GHC asked Hall's attorneys to contact GHC during the mediation. (CP 1221, 1806). Hall's attorneys did not contact GHC during

the mediation. (CP 1221). A week after the mediation, on March 30, 2016, Hall's attorney contacted GHC to inform it that Hall intended to accept a post-mediation settlement offer of $600,000 (CP 1221), and that they did not think Hall had been fully compensated because her special damages exceeded $600,000. (CP 1806, 1903).

On April 5, 2016, Hall executed a settlement agreement "releas[ing] and forever discharg[ing]" "all claims . . . resulting from the accident." (CP 1172-74). The same day Hall settled her lawsuit, GHC's attorney sent her attorney a letter informing him that Hall was "not authorized to release any of the funds at issue/Group Health's subrogation claim." (CP 1201) (emphasis in original).

On April 27, 2016, GHC's attorney again wrote to Hall's attorney stating that based on GHC's claim file and "the information made available to us to date" Hall had been fully compensated. (CP 1207). Hall was asked that if she disagreed

with his determination, she should "provide additional evidence," including "a copy of your mediation statement, as well as all materials provided to the mediator, copies of medical records, expert reports and any other information you believe supports your position." (CP 1207). That same day, Hall's attorney disbursed the settlement funds from his trust account to Hall, withholding only $45,002.91. (CP 1430). Hall did not provide GHC any additional information. (CP 1209).

On June 10, 2016, GHC's attorney again wrote Hall's attorney requesting "information in support of your claim for a reduction in Group Health's subrogation claim," and reminded him that Hall's failure to provide the requested information was a violation of her duty to cooperate. (CP 1217-18). Hall's attorney never responded, nor did Hall ever provide GHC the requested information. (CP 1199).

GHC filed a complaint on September 16, 2016, seeking a declaratory judgment that Hall was required to reimburse it

$83,580.66 for medical expenses related to her personal injury claim. (CP 1-6; *see also* CP 1221, 1312). Hall counterclaimed for breach of contract, bad faith, and violation of the Consumer Protection Act. (CP 15-25).

GHC moved for summary judgment, and the trial court granted GHC's motion (CP 1920-22), because "based on the undisputed facts and the case law . . . Ms. Hall has not fully cooperated" (11/2/18 RP 76-77), and denied Hall's cross-motions for partial summary judgment. (CP 1923-28). The trial court entered judgment in favor of GHC for $83,329.66. (CP 1945-48).

Hall appealed, and the Court of Appeals issued an unpublished opinion affirming the Superior Court's decision. Hall filed two motions for reconsideration resulting in the Court of Appeals withdrawing its first opinion and issuing a unanimous second opinion on August 3, 2021. This petition follows.

V. ARGUMENT

A. The Standard for Review

Hall seeks review of the Court of Appeals decision under RAP 13.4(b)(1), (2), and (4). In order for review to be warranted under RAP 13.4(b), Hall must persuade the Court that the decision by the Court of Appeals conflicts with a decision of this Court or another division of the Court of Appeals, or that it presents an issue of substantial public interest. *See also, In re Pers. Restraint of Coats*, 173 Wn.2d 1213, 132-33, 267 P.3d 324 (2011).

Hall provides no meaningful support for her argument that she is able to meet the criteria of RAP 13.4(b). Instead, Hall provides nearly 30 "rules" in support of her proposition that review by this Court is appropriate. Nevertheless, Hall's "rules" fail to identify what specific decisions of this Court or the Court of Appeals allegedly conflict with the Court of Appeals decision in this matter, and fail to articulate how an unpublished opinion, which has no precedential value and only

affects Hall, somehow raises an issue of substantial public interest.

For these reasons, Respondent respectfully requests that Hall's Petition for Review be denied.

B. The Duty to Cooperate

"The interpretation of language in an insurance policy is a matter of law." *Moeller v. Farmers Ins. Co. of Washington*, 173 Wn.2d 264, 271, 267 P.3d 998, 1001 (2011) (citing *Allstate Ins. Co. v. Peasley,* 131 Wash.2d 420, 423–24 (1997)). An insurance contract should be viewed in its entirety; a phrase cannot be interpreted in isolation, and the court should attempt to give effect to each provision in the policy. *Moeller*, 173 Wn.2d at 271-72. Unless a provision is susceptible to two different interpretations, it should be interpreted in accordance with its ordinary meaning. *See, Ames v. Baker*, 68 Wn.2d 713, 716, 415 P.2d 74, 76 (1966).

Hall's medical coverage with GHC is governed by the MCA. (CP 1665-1726). This contract clearly defined the nature and scope of the cooperation required: "The Injured Person and his/her agents shall cooperate fully with GHC in its efforts to collect GHC's Medical Expenses." The MCA goes on to state:

> This cooperation includes, but is not limited to, supplying GHC with information about the cause of injury or illness, any potentially liable third parties, defendants and/or insures related to the Injured Person's claim and informing GHC of any settlement or other payments relating to the Injured Person's injury.

The MCA also states that:

> To the extent that the Injured Person recovers funds from any source that may serve to compensate for medical injuries or medical expenses, the Injured Person agrees to hold such monies in trust or in a separate identifiable account until GHC's subrogation and reimbursement rights are fully determined . . .

"Cooperation is essential to the insurance relationship because that relationship involves a continuous exchange of information between an insurer and an insured interspersed

with activities that affect the rights of both, and the relationship can function only if both sides cooperate." 16 Williston on Contracts § 49:108 (4th ed.). Notably, the MCA did not limit cooperation to efforts to collect from third parties. (CP 1708).

Hall's attempt to distinguish the meaning of the words "collect," "recover," "evaluate," and "investigate" in its petition to this Court are entirely unpersuasive. The term at issue here is "cooperate." It is clearly defined and should be interpreted using the meaning assigned to it in the MCA. Therefore, Hall had a duty to cooperate, i.e. supply information related to the cause of injury, liability, and settlement, with GHC in GHC's efforts to collect reimbursement of its expended funds from any source.

Hall would also like this Court to overlook the fact that Hall's position is, and has always been, that she never owed GHC a duty to cooperate.

The Court: So up to this day - - your client still has zero obligation to cooperate with Group Health according to your argument; is that correct?

Mr. Friedman: To cooperate under the cooperation clause at issue in this case, the one that specifically couched in terms of their recovery of or their collection of their medical expenses, yes.

The Court: Let's just talk about in general.

Mr. Friedman: Okay.

The Court: Based on any clause in the contract, it's your position that your client has no obligation up until today to cooperate with Group Health?

(Nov. 2, 2018 RP at 57-58)

The Court: Can you answer my question?

Mr. Friedman: Yes. So if they have not – if she is not made whole, and if they - - more importantly, if they haven't proven, if they haven't satisfied their burden to establish she is made whole, there is no duty to cooperate.

(Nov. 2, 2018 RP at 58)

The Court: Can you answer my question?

Mr. Friedman: There is no duty to cooperate.

The Court: Up until today?

Mr. Friedman: Up until today.

(Nov. 2, 2018 RP at 59)

The Court of Appeals poignantly revealed the absurdity of this position.

> If insureds are not required to cooperate until an insurer proves the insured is made whole, an insured's duty of cooperation would never arise because an insurer cannot provide that the insured has been made whole without the insured's cooperation.

Grp. Health Coop. v. Hall, 53381-2-II, 2021 WL 3361789, at *6 (Wash. Ct. App. Aug. 3, 2021).

Hall fails to show that the Court of Appeals decision regarding her duty to cooperate is in conflict with any decision of this Court or any other decision of the Court of Appeals. In the absence of any such showing, the Court should deny this petition for review.

C. Hall's Duty To Cooperate

The Court of Appeals decision regarding Hall's duty to cooperate is in accordance with this Court's previous decisions.

The scope of Hall's duty to cooperate with GHC is first determined by the relevant policy language. *See, Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 225, 961 P.2d 358, 363 (1998) ("[T]o determine the scope of [an insured's] duty to cooperate with the insurer, we must first look to the relevant policy language."). The only limitation to the scope of the duty to cooperate is that GHC's "request for information must be material to the circumstances giving rise to liability on its part." *Id.* at 224. "Information is material when it 'concerns a subject relevant and germane to the insurer's investigation as it was then proceeding' at the time the inquiry was made." *Id.* (*citing Fine v. Bellefonte Underwriters Ins.* Co., 725 F.2d 179, 183 (2d Cir. 1984)).

In *Tran*, this Court upheld the trial court's dismissal of the plaintiff's claims for declaratory relief, damages, and relief under the Consumer Protection Act on summary judgment due to the plaintiff's failure to comply with the cooperation clause

under the policy. *Tran*, 136 Wn.2d at 222. The plaintiff's duty to cooperate contained in the policy provided:

> 3. **Duties in the Event of Loss.** You must see that the following are done in the event of loss to covered property:
> ....
> e. at our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed;
>
> f. permit us to inspect the property and records proving the loss;
>
> g. if requested, permit us to question you under oath at such times as may be *reasonably required about any matter relating to this insurance or your claim, including your books and records.* ...
> ....
> i. cooperate with us in the investigation or settlement of the claim;

Id. at 225 (emphasis in original text). The plaintiff had submitted a claim for theft from his business and submitted an inventory form, but refused to provide additional documentation that described or placed a value on the items listed despite several request by the insurer. *Id.* at 218-19.

Believing the plaintiff was attempting to commit fraud, the insurer requested access to the plaintiff's financial records under the cooperation clause. *Id.* at 226. The plaintiff refused and the trial court found this failure to be a breach of the policy's cooperation clause and prejudicial to the insurer. This Court, agreeing with the trial court, found that the possibility of fraud was distinct, that the plaintiff's financial records were relevant and material, and that the plaintiff had a duty to cooperate as a matter of law. *Id.* at 227-228.

Similarly, GHC's cooperation clause required Hall and her attorneys to "cooperate fully with GHC in its efforts to collect GHC's Medical Expenses." (CP 1708). The MCA expressly stated that such cooperation required Hall to supply GHC with information about the cause of her injury, any potentially liable third parties, defendants and/or insureds related to her claim, and to inform GHC of any settlement or other payments relating to her injury. (CP 1708).

The Court of Appeals and the Trial Court have properly recognized that the process of obtaining reimbursement for GHC paid medical expenses requires obtaining information from Hall, determining whether Hall has been made whole, and then taking appropriate action to seek or not seek reimbursement.

As in *Tran*, the need for the requested information was distinct under the MCA for purposes of evaluating Hall's claim that she was not made whole. The information was relevant and material to GHC's review of their ability to recover under the policy. The MCA clearly and unambiguously provided that Hall had a duty to cooperate and provide such information to GHC as it undertook its review.

The Court of Appeals has properly held that Hall had a duty under the MCA to cooperate with GHC. Hall has failed to provide any contrary authority, and, therefore, her petition for review should be denied.

D. The Dismissal of Hall's Counterclaim for Insurance Bad Faith was Appropriate.

Insurance bad faith claims are analyzed the same as any other tort and require the showing of a duty, a breach of that duty, and proximate cause. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485, 78 P.3d 1274, 1277 (2003). To succeed, "a policyholder must show the insurer's breach of the insurance contract was unreasonable, frivolous, or unfounded." *Id.* The entirety of Hall's bad faith claim is based upon the underlying premise that GHC's request for pertinent information related to Hall's claim that she was not made whole under the MCA's cooperation clause was improper.

Hall first asserts that the Court of Appeals wrongly held that GHC had a right to pursue reimbursement and to request information in order to investigate and determine whether Hall had been fully compensated. Appellant's Petition for Review (hereinafter, *Brief of Appellant,*) pg. 12. Hall relies on *Grp. Health Coop. v. Coon*, 193 Wn.2d 841, for the premise that the

right to reimbursement doesn't accrue if the policyholder had not been "made whole," and, therefore, GHC has no right to even investigate whether Hall had been fully compensated or not. *Id.* Hall ignores that cooperation with GHC was a necessary prerequisite to GHC's analysis as to whether she had been made whole.

The MCA"s cooperation clause requires that Hall "cooperate fully with GHC in its efforts to collect GHC's Medical Expenses." It is not limited to efforts to collect medical expenses from third parties. GHC's request for documentation proving that Hall had not been made whole was reasonable. GHC did not act improperly by asking Hall to cooperate with its investigation of its right to reimbursement.

Hall next asserts that GHC engaged in bad faith by sending letters to her attorney that included "material misrepresentations" and "mislead Ms. Hall about the rights under the contract and Washington subrogation law." *Brief of*

Appellant, pg. 14. Hall avers that GHC's instruction that payment should be made by check and payable at the time of settlement and should be made to Group Health was a material misrepresentation. *Id.* In doing so Hall's attorney disregards previous correspondence in which GHC told Hall that it would have the right to reimbursement "if the at-fault party is liable and the at-fault party has *sufficient assets to compensate you.*" (CP 112 (emphasis added)). Hall also fails to explain how the alleged misrepresentation proximately caused any damages to her, given that her attorney was undisputedly aware of the "made whole" doctrine. (CP 1209).

Hall further asserts that GHC's counsel engaged in bad faith letter writing in a series of correspondence in 2016 dated April 5, April 27, May 5, and June 10. *Brief of Appellant*, pg. 19-21. Hall incorrectly argues that April 27 letter from counsel for GHC "did not specifically request any information from Ms. Hall." *Id.* In fact, what counsel communicated was, with the

information it had to date, GHC had determined Hall owed GHC reimbursement and if Hall disagreed, she should provide evidence to support her position. (CP 1201, 1206, and 1207). Hall did not provide any of the evidence identified in the April 27, 2016 letter, and she did not pay GHC its reimbursement. Instead, her attorneys continued to make threats against GHC and its counsel and maintained that there was no valid reimbursement claim. As a result, counsel for GHC again requested the documentation identified in its April 27, 2016 letter. The records were requested on May 5, 2016 (CP 1213), and again Hall refused to provide those records. (CP 1217-1218).

Finally, Hall argues that she did in fact cooperate and that GHC had the information they were entitled to under the MCA's cooperation clause. *Brief of Appellant*, pg. 23. This is patently untrue. The record shows that Hall withheld all documentary evidence related to her claims. (CP 1209). There

is no scenario under the established facts of this case, whereby GHC had any of the necessary documentary evidence prior to filing a declaratory action against Hall. The documentation Hall withheld were related to her claims and the underlying litigation and contained significant, material evidence that directly contradicted her made whole claim, and that is why she refused to provide them, refused to cooperate, and threatened GHC and its counsel for even requesting the very information it required to evaluate her claims.

Again, Hall fails to cite a specific decision of this Court or the Court of Appeals that would dictate a decision different than that which has already been provided. For this reason, and the reasons provided above, review should be denied.

E. The Dismissal of Hall's Counterclaim for Violation of the Consumer Protection Act was Appropriate.

Hall relies heavily on her bad faith claim as the basis for her claim for violation of the Consumer Protection Act ("CPA") without any reference or analysis to the five-element test

provided in *Hangman Ridge Training Stables, Inc. v Safeco Title Ins. Co. See*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Even if bad faith is found, it does not constitute a per se violation of the CPA. *See, Villegas v. Nationstar Mortgage, LLC*, 8 Wn. App. 2d 878, 895, 444 P.3d 14, 22, *review denied*, 194 Wn.2d 1006, 451 P.3d 343 (2019) (There is "no authority in support of the proposition that a bad faith finding per se satisfies the CPA's injury requirement."). Furthermore, as has been demonstrated, GHC did not act improperly by asking Hall to cooperate with its investigation of the its right of reimbursement.

The only other argument Hall has raised in regard to the CPA is a single violation of WAC 284-30-330, and that in turn is a per se violation of the CPA. GHC is a nonprofit **health maintenance organization** ("HMO"). (CP1665) (emphasis added). Hall claims that she "has shown in detail how GHC has violated WAC 284-30-330" in support of her claim for a per se

violation of the CPA. *Brief of Appellant*, pg. 28. For purposes of WAC 284-30-300 through 284-30-400, "Insurer" is defined as:

> any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal mutual insurer, fraternal mutual life insurer, and any other legal entity engaged in the business of insurance, authorized or licensed to issue or who issues any insurance policy or insurance contract in this state. WAC 284-30-320 (10).

WAC 284-30-320(10) goes on to state that insurer does not include **health maintenance organizations**. (emphasis added). Therefore, as a matter of law, GHC is incapable of violating WAC 284-30-330, and the Court of Appeals decision to dismiss her claim for violation of the CPA was in accordance with the plain language of the cited administrative code. *See, Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 151, 930 P.2d 288, 297 (1997) (Washington Supreme Court finding that the failure to meet the definition of "Insurer" under

WAC 284-30-320 precludes the application of WAC 284-30-330).

F. The Decision of the Court of Appeals Does Not Involve an Issue of Substantial Public Interest.

Hall fails to address and provides no legal authority as to how the Court of Appeals decision involves a substantial public interest as required by RAP 13.4(b)(4). Seemingly tying it to the public interest prong of her failed CPA claim, Hall's petition under this standard must similarly fail as GHC is incapable of violating the CPA under the claims alleged by Hall.

This Court has stated that "substantial public interest" refers to issues with "sweeping implications." *State v. Watson*, 155 Wn.2d 574, 578, 122 P.3d 903, 904 (2005). A prime example of an issue of substantial public interest must not only affect the parties to the proceeding, but must also affect every future proceeding in which a parties subrogation and/or right of reimbursement is at issue. *See, Id.* at 577. The Court of

Appeal's decision is without any such sweeping implications as it is unpublished decision, with no precedential value, and only affects Hall. As a result, Hall's petition for review should be denied.

VI. CONCLUSION

Hall has failed to meet her burden under RAP 13.4(b) in all respects. The Court of Appeals decision follows well settled law and is appropriate. As a result, GHC respectfully requests that Hall's petition for review be denied.

Dated this 18th day of November, 2021.

CERTIFICATION OF WORD COUNT

According to the word processing software's word count, the count is 4,570.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 18, 2021, I arranged for service of the foregoing Respondent's Answer to Appellant's Petition for Review, to the court and to the parties to this action as follows:

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Laurel Vitale

STAMPER RUBENS, P.S.

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