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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 94771-6

IN WASHINGTON STATE SUPREME COURT

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BRETT DURANT, On Behalf of  
Himself and all other similarly situated,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY, a foreign automobile insurance company,

Defendant.

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FROM THE US DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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**PLAINTIFF'S ANSWER TO *AMICUS CURIAE* BRIEF  
OF THE WASHINGTON SOCIETY OF  
INTERVENTIONAL PAIN PHYSICIANS**

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## I. INTRODUCTION

Plaintiff agrees and adopts the argument in the Amicus Curiae Memorandum of Washington Society of Interventional Pain Physicians (WSIPP). Plaintiff argues that (1) this Court should give a high level of deference to what physicians in our state say medical necessity means in the medical community, and (2) the fact that WSIPP shows there are necessary medical services that that would not be covered under the MMI standard, means this Court must find that the MMI standard is not consistent with WAC 284-30-395.

## II. ARGUMENT

### **A. The Court should give a high level of deference to physicians about the meaning of “necessary medical treatment” to the medical community in Washington state.**

The term “necessary” in WAC 284-30-395 refers to necessary medical or hospital services. The WAC does not define the word “necessary”, thus indicating that the term should be defined by its normal usage. Unlike lawyers and insurance companies, Washington state pain physicians actually treat patients who are suffering from pain, impairment and disability on a daily basis. They are, therefore, ideally situated to inform this Court of the common understanding of the word “necessary” as it relates to medical treatment. They are also ideally situated to tell this Court the impact it would have on patients, their families, and society if necessary

medical treatment could be denied by insurance companies in the name of “cost containment,” under the MMI standard, based on an erroneous construction of the term necessary. Plaintiff asserts that WSIPP’s understanding of the term “necessary” should inform this Court’s analysis in answering both certified questions.

**B. The fact that WSIPP shows there are necessary medical services that that would not be covered under the MMI standard, means this Court must find that the MMI standard is not consistent with WAC 284-30-395.**

WAC 284-30-395 unambiguously prohibits an insurer from denying payment of medical or hospital service except on the basis that the services are not reasonable, necessary, related or incurred within three years. No other grounds for denial are allowed. Therefore, if there is even *one* single category of medical treatment that would be covered under the “reasonable, necessary and related standard,” but is *not* covered under the MMI standard, this Court must find that the MMI standard impermissibly expands the grounds for denial and therefore violates the regulation.

WISSP tells the Court that, in fact, there are two major categories of medical services—interventional pain management and palliative medicine—that are considered medically necessary but would not be covered under State Farm’s “essential in achieving maximum medical improvement” standard. WISSP Amicus Br. 8. Because the MMI standard

allows denial of necessary medical treatment, the Court must find that the standard violates the regulation.

Lastly, should the Court find it necessary to define the term “medically necessary” in answering the Certified Questions, Plaintiff notes that the definition offered by WISPP for necessary medical treatment from *Taber’s Cyclopedic Medical Dictionary* is consistent with the definition proposed in Plaintiff’s Opening Brief. *Taber’s Cyclopedic Medical Dictionary* at 1478 (23d ed. 2017) (definition for medically necessary).<sup>1</sup> The Plaintiff approves of WISPP’s definition of medically necessary.

DATED this 26<sup>th</sup> day of February, 2018.

/s/ David Nauheim

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Attorneys for Plaintiff Brett Durant  
and all other similarly situated  
people.

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<sup>1</sup> To find the definition for “medically necessary” online, the Court may navigate to Google Books [<https://books.google.com/>]; search “Taber’s Cyclopedic 23”; search “medically necessary” in the “Search in this book” bar; then click on page 1478.

**CERTIFICATE OF SERVICE**

I certify that I served a copy of the forgoing documents on the following individuals specified below on February 26, 2018. Service was made by the means specified below.

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