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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 RESPONSE TO *AMICUS CURIAE* BRIEF OF  
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION**

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The Amicus Brief submitted by the Washington State Association for Justice Foundation (the “WSAJF”) rehashes the same contract and common law arguments already briefed by the parties and addressed by the Court of Appeal. In the interest of judicial economy, State Farm refers to its prior briefing on those issues, rather than repeat them in full here. State Farm will, however, take this opportunity to briefly respond to three points made by WSAJF.

First, State Farm disagrees with WSAJF’s framing of the issue as whether an insurer may “take a subrogation recovery.” (WSAJF Brief, p. 3). No one disputes that State Farm had the right to pursue subrogation for its collision payment here. The issue is whether Ms. Daniels should have received more than the 70% collision deductible recovery that State Farm initially obtained from the tortfeasor’s insurer and paid pursuant to WAC 284-30-393.

Second, WSAJF’s statement that “[s]ubrogation allows an insurer to recover what it paid to its insured by suing the wrongdoer,” while true as a general proposition, overlooks the reality of how insurers typically pursue subrogation in *this* context. (WASJF Brief, p. 7). As this Court recognized in *Mahler*, auto insurers typically assert subrogation rights to recover collision payments through intercompany arbitration.

Insureds are typically not parties to, or bound by, intercompany arbitration. They are free to pursue their own lawsuit against a tortfeasor.

That leads to WSAJF's third point, which State Farm agrees with: reimbursement and subrogation rights are distinct. (WSAJF Brief, p. 5). That distinction matters because, in the typical reimbursement context, the insured has pursued its claim for all losses to completion, whether through judgment against or settlement with the tortfeasor. The insurer is typically bound by that result because the insured had standing to seek recovery of all of his or her losses. If the insurer instituted a separate suit, the tortfeasor could assert the judgment or settlement with the insured as a bar to further recovery by the insurer. In that typical reimbursement situation, the public policy of placing liability for the loss on the tortfeasor that caused it has been served. The issue left to decide is whether, and to what extent, the insurer may seek reimbursement from the insured's recovery from the tortfeasor, thereby reducing the insured's ultimate recovery for the loss.

WSAJF notes the distinction, then looks past it. But the Court should not. An insurer pursuing subrogation through intercompany arbitration is not prejudicing an insured's right to pursue a full recovery of all losses against the tortfeasor. If the insured disagrees with the fault allocation applied to the insurer's subrogation recovery, it can pursue the

tortfeasor directly for more. But an insured should not be permitted to further reduce the insurer's subrogation recovery, obtained through no effort of the insured, and recover the balance of their uninsured deductible where the insurer has no means to recoup it.

For all of the foregoing reasons, and those outlined in State Farm's other briefing, State Farm respectfully requests that the Court affirm the decision of the Court of Appeal.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of April, 2019.

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