No. 1042795

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 85589-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TIMOTHY LUNDQUIST and a class of similarly situated individuals,
Petitioners,

v.

STANDARD INSURANCE COMPANY,
Respondent.

TIMOTHY LUNDQUIST'S ANSWER TO PETITION FOR REVIEW BY STANDARD INSURANCE COMPANY

STOBAUGH & STRONG	SMITH GOODFRIEND	OGDEN MURPHY WALLACE
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A. Introduction

Standard's Petition highlights why Lundquist's Petition should be granted. Standard argues that the Court of Appeals erred in "relying on…extrinsic evidence to determine the meaning of contract terms." Standard.Pet.25-26. Lundquist agrees; the Court of Appeals erroneously remanded for trial on policy interpretation based *entirely* on extrinsic evidence of the meaning of words. The Court of Appeals thus failed to apply the well-established rule of insurance contract interpretation, namely, that undefined terms are given their plain, ordinary, and popular meaning. Standard, however, rejects use of the ordinary meaning found in dictionaries and argues that its *post hoc* extrinsic evidence can be used to add words to the policy to limit coverage. *Id.* 25-27.

Standard's position allows insurers to escape coverage merely by having a witness testify that the insurer

did not *intend* to provide coverage, regardless of what the language of the policy says. This Court should resolve the issue by accepting Lundquist's petition and affirming the longstanding rules that undefined terms are given their plain, ordinary, and popular meaning and that extrinsic evidence may not be used to add words to the policy.

Standard's argument regarding the IFCA claim is premised on mischaracterizations of disputed facts and misstatements of law and does not warrant review.

B. Statement of the Case

1. Teachers in Washington are paid a single salary funded by state and local funds.

This disability insurance case involves a question of whether locally funded pay of teachers is part of a teacher's covered "earnings" or "salary." Since well before 1983, when Standard first issued its policy to Seattle School District (SSD), Washington teachers' salaries have been funded by both State and local funds. CP1675-78. It was an

unconstitutional overreliance on local funding (levies) that led this Court in 1978 to require the State to provide for basic education "by means of dependable and regular [state] tax sources." *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 525, 585 P.2d 71 (1978). Following this Court's decision in *Seattle School District*, in 1987, the Legislature adopted a state-wide salary schedule establishing teacher salary minimums and maximums. Washington Laws 1987, 1st ex. s. ch. 2 § 205 (RCW 28A.400.200). The Legislature also authorized school districts to exceed the state maximums through "supplemental contracts" for "additional time, additional responsibilities, or incentives" ("TRI") for work beyond the "the basic education program." *Id.*; RCW 28A.400.200(4)(b); CP1676.

But the name "TRI" was just a new label for the locally funded portion of teacher salaries. CP1675-78; RCW 28A.150.276. Although the Legislature referred to TRI

contracts as "supplemental," RCW 28A.400.200(2)(c)(iv), *all* teachers receive TRI pay for *regular* work (*e.g.*, grading papers, preparing lesson plans) as part of each teacher's annual contract and regular monthly paycheck. CP830, 1337-38, 1345, 1364-65, 1374-75, 1673-80. In fact, this Court explicitly recognized that TRI is "*all just salary increases*" in holding that the State again failed in its duty to fund a basic education program. *McCleary v. State*, 173 Wn.2d 477, 537, 269 P.3d 227 (2012) (emphasis in original). As the Court later observed, "total [teacher] salaries consist[] of the current state allocations *and* supplemental salaries provided by school districts." *McCleary v. State*, No. 84362-7, 2017 WL 11680212, at *18 (Nov. 15, 2017) (emphasis added).

2. Standard's long-term disability policy has covered a teacher's entire salary, regardless of funding source, since Standard issued the policy to Seattle School District in 1983.

Standard issued a long-term disability policy to SSD

in 1983 and renewed the policy annually. Except for the maximum coverage amount, the coverage provision has never been amended. CP277-78. The coverage provision defines "Insured Earnings" as (CP1695):

> INSURED EARNINGS means the first $16,667 of one-twelfth (1/12th) of your annual rate of earnings from your EMPLOYER; including deferred compensation, but excluding bonuses, overtime pay, and any other extra compensation. The following rules apply to the computation of your annual rate of earnings: (1) If you are paid on an annual contract basis, your annual rate of earnings is your annual contract salary.

By its plain language, the coverage provision covers a teacher's entire "annual contract salary," without limitation as to the funding source for the salary. Deferred compensation is expressly included. Only "bonuses, overtime pay, and any other extra compensation" are excluded.

3. Relying on inadmissible extrinsic evidence stemming from its own misrepresentations, Standard argued the policy only covers "base salary."

In 2017, Lundquist became totally disabled with Parkinson's disease and applied to Standard for disability coverage. CP691-92. Standard refused to include, as part of his "earnings," TRI pay and employer contributions for deferred compensation and health insurance when calculating Lundquist's benefits but did not tell Lundquist that it was denying coverage for some of his regular earnings or even cite the coverage provision until after Lundquist engaged counsel to investigate. CP945-49.

Lundquist sued Standard seeking relief on behalf of a class. The trial court certified a class of 1,100 teachers in 18 districts across Washington. CP1461-66. The class moved for summary judgment on all policies, which the trial court denied. CP1468-97, 1617. Standard sought discretionary review of class certification, and the class sought review of the summary judgment order. CP1847,

1848. Both motions were denied. CP1857. In denying review, the Commissioner suggested "narrow[ing] the issues…through additional motions practice." CP1856.

Lundquist moved for partial summary judgment on the identical coverage provisions in the SSD and Central Kitsap School District policies,[1] explaining that the plain and ordinary meaning of the coverage language included TRI and employer-paid benefits. CP1863-92. Standard opposed the motion, sought summary judgment on all 18 policies, and moved to decertify. CP1640, 2079.

Instead of analyzing the plain language of the policy, Standard relied on testimony from four witnesses: Nathan Briggs, Noel Treat, John Donaghy, and Margaret White, purportedly to show that the School Districts and Standard

[1] The policy issued to Central Kitsap School District has coverage language identical to the SSD policy. CP770-71, 1682. The policies of the other 16 districts differ only by excluding "deferred compensation" from "earnings." CP758-816. *All* policies have the same coverage of TRI pay and employer contributions.

never intended to cover TRI. None of these witnesses were involved when Standard issued the SSD policy in 1983. And all of these witnesses traced their understanding of coverage back to one source—Standard's post hoc, subjective, and self-serving representations about coverage.

Briggs, a Standard employee hired in 2019, declared Standard intended "annual contract salary" to mean "an employee's annual salary not including an employee's receipt of Time Responsibility and Incentive Pay ('TRI Pay') or employer contributions to an employee retirement plan or the cost of health insurance." CP4077. The words "not including an employee's receipt of Time Responsibility and Incentive Pay ('TRI Pay') or employer contributions to an employee retirement plan or the cost of health insurance" are not found in the policy. Briggs' testimony, which expressly adds words to the policy, merely restated Standard's arguments in this case.

The other three witnesses all relied on Standard's view of its policy for their testimony. Ms. White, SSD's insurance broker, testified she relied entirely on Standard to interpret the policy, explaining "If we have a question, or an employee has a question about the contract, we refer them back to Standard" and "We have to ask the carriers to interpret those policies." CP983, 1025. It is unsurprising then, that when questioned about why she understood the policy's coverage is limited to only "base" pay, White answered, "Because it just is." CP983. White also testified that SSD did not interpret the policy. CP982, 985, 988-89, 1025.

In turn, White passed this misinformation along to the other two witnesses via her communications with the Joint Insurance Committee (JIC), an advisory committee comprised of employee representatives and SSD management. CP839. Notably, when the JIC was evaluating proposals to amend the policy to address TRI in

2015 and 2016, Ms. White *did not* provide the Standard policy to the JIC or share the relevant policy language with the JIC. CP1025. Rather, she simply shared Standard's view that TRI was not covered. CP1005, 1011.

This misrepresentation then spread to the other witnesses from the JIC. Mr. Treat, an SSD HR employee who testified about SSD's "understanding" of the policy, never read the Standard policy; instead, his understanding of the Standard policy was based on his review of "Joint Insurance Committee minutes, and a couple of emails." CP1348-49, 1356. He also said neither he nor SSD interpreted the policy. CP1066. Likewise, Mr. Donaghy, the former staff director of the SSD teachers' union and member of the JIC, testified that his understanding of the policy was based on him being at JIC meetings, JIC meeting notes, and the documents provided to the JIC.

CP1560.[2] He never read the Standard policy either. CP1545. In other words, all of the testimony from White, Treat, Donaghy, as well as the JIC documents,[3] were based on the same misrepresentations from Standard.

Based on the testimony described above, Standard maintained that "earnings" and "annual contract salary" meant "base pay." CP1910, 1912, 1918. But those words are not in the policy. The 1975 policy, which the 1983 policy replaced, included the terms "Basic Monthly Earnings" and "Basic Annual Earnings" in the coverage provision.

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[2] Standard erroneously treats Donaghy's personal opinion as a former employee as the intent of the union. Standard.Pet.10. The disability policy is not a union plan, CP1556-57, and there is no evidence about the intention of the teachers union.

[3] In the trial court, Standard said it was not offering the JIC documents to prove the truth of the matters asserted therein. CP2568. Now Standard is relying on testimony based entirely on those documents. One of these JIC documents is the Open Enrollment Memo for health insurance. Standard.Pet.13. It was drafted by the JIC (CP314) and was "for employees who wish to change medical or dental plans or add or drop dependents from coverage." CP309.

CP2030. But the limiting word "base" or "basic" is not in the 1983 policy.

Internally, Standard recognized the flaws in its arguments. Standard's in-house counsel, Jennifer Yeh, warned in an internal memo, "Please note, though, TRI is a supplemental contract for the teachers, so an argument could be made it is part of their 'annual contract' per the Policy definition of 'INSURED EARNINGS.'" CP1625. Ms. Yeh therefore recommended changing the Policy in the future to "clarify INSURED EARNINGS to be limited to 'basic salary' and/or expressly exclude TRI from the definition in an abundance of caution." *Id.* As Yeh acknowledged, the plain and ordinary meaning of the policy coverage grant encompassed TRI as part of a teacher's "annual contract salary."

4. Disregarding this Court's controlling precedents, both the trial court and the Court of Appeals improperly based their decisions on Standard's extrinsic evidence.

The trial court granted Standard summary judgment and decertified the class. CP2441-70, 2427-40. Lundquist appealed. The Court of Appeals reversed in part and affirmed in part. Rather than analyzing the text of the policy or using the ordinary and popular meaning of the text, the Court of Appeals pointed to extrinsic evidence and held "reasonable minds could easily differ on whether SSD and Standard intended to include TRI and employer contributions under 'Insured Earnings,'" meaning "genuine issues of material fact remain as to the interpretation of policy language." Op. 11-12. On its face the Court of Appeals opinion is erroneous because interpretation of insurance language is a question of law, not a question of fact for a jury to decide. Lundquist.Pet.13. Leaving aside this error, none of Standard's evidence the

Court of Appeals relied upon is admissible under the rules for interpretation of insurance policies this Court has used for decades, as explained in Lundquist's Petition for Review. Simply put, Standard's extrinsic evidence sheds no light on the intent of the parties *at the time of contracting* and it all conflicts with the plain language of the policy, which is interpreted as an ordinary insured would understand the language.

C. Argument

1. Standard's argument regarding the use of extrinsic evidence to interpret the policy emphasizes the Court of Appeals' error and demonstrates the necessity of granting Lundquist's Petition for Review.

Standard's argument regarding extrinsic evidence demonstrates that Lundquist's Petition should be granted because the insurance contract issues are of substantial public interest and the Court of Appeals disregarded controlling precedents. Standard.Pet.25-29. Standard agrees with Lundquist that the Court of Appeals seriously

erred by using "extrinsic evidence to find a dispute as to the meaning of the terms 'contract salary' and 'earnings'" and to find a dispute "as to the parties' intent in forming the contract." *Id.* at 25 (citing Op. 11-12); *see also* Standard.Pet.29-30. But Standard misapplies this Court's decisions and ignores the glaring problem with its own extrinsic evidence, namely that the testimony adds words to the policy to completely change the meaning of the coverage provision.

a. Standard agrees that the Court of Appeals erred but confuses undisputed facts with irrelevant extrinsic evidence.

Standard agrees with Lundquist that the Court of Appeals wrongly used extrinsic evidence to find an ambiguity in the "meaning of [coverage] terms and the parties' intent." Standard.Pet.25. As Standard notes, "courts must give contract terms 'their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent'" and extrinsic

evidence cannot be used to "show an intention independent of the instrument." *Id.* (quoting *Hearst Comm. v. Seattle Times*, 154 Wn.2d 493, 503-04, 115 P.3d 262 (2005)).[4]

While the above rules are correct, Standard fails to apply them. Standard nowhere explains how the plain, ordinary, and popular meaning, as found in the dictionary,[5] of the coverage terms "earnings from your

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[4] Insurance policies are given their ordinary and popular meaning because they are interpreted from the insured's point of view. These rules apply to group disability policies. *Fittro v. Lincoln Nat. Life Ins. Co.*, 111 Wn.2d 46, 50, 757 P.2d 1374 (1988).

[5] *See, e.g., Seattle Tunnel Partners v. Great Lakes Reinsurance*, 200 Wn.2d 315, 324-25, 516 P.3d 796 (2022) (using *Webster's Dictionary* to determine plain and ordinary meaning of undefined policy term); *Panorama Vill. Condo. Owners v. Allstate Ins.*, 144 Wn.2d 130, 139, 26 P.3d 910 (2001) (applying *Webster's*); *Lynott v. Nat'l Fire Ins. Co.*, 123 Wn.2d 678, 691, 871 P.2d 146 (1994) (same); *Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha*, 126 Wn.2d 50, 77, 882 P.2d 703, (1994) (same).

See also Adams v. Reliance Standard Life Insurance Co., 225 F.3d 1179, 1185 (10th Cir. 2000) (applying *Webster's* to determine the meaning of "earnings" in a (*continued*)

employer" or "annual contract salary" do not include TRI. Standard simply recites, without analysis, the language of its policy stating that "Insured Earnings" means the "annual rate of earnings from your employer" and that "[i]f you are paid on an annual contract basis, your annual rate of earnings is your annual contract salary." Standard.Pet.26.

Having eschewed any analysis of the policy's terms, Standard is left only with the extrinsic evidence erroneously relied on by the trial court to grant it summary judgment. Standard.Pet.10-13. Not only does this contradict well-settled precedent, but the extrinsic evidence Standard relies on (the testimony of Briggs, Treat, Donaghy, and White) is all derived from Standard's own self-serving misrepresentations about the meaning of

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teacher's disability policy); *Wegner v. Standard Ins. Co.*, 129 F.3d 814, 819 n.8 (5th Cir. 1997) (applying *Webster's* definition of "extra" in determining coverage of disability pay under Standard's policy text).

policy terms, generated long after the policy was issued.

Standard confuses evidence of what TRI actually is with extrinsic evidence of intent. The Court of Appeals recognized that TRI is part of the teachers' "annual salary." Op. 12. This is consistent with the undisputed evidence: TRI is undisputedly for regular teacher work, is paid to all teachers, is part of a teacher's annual contract, and is included as part of each teacher's regular monthly paycheck—*i.e.*, it is a substantial part of each teacher's annual contract salary. CP830, 1337-38, 1345, 1364-65, 1374-75, 1625, 1673-80.[6] Indeed, Standard's witness Donaghy testified that all teachers receive locally funded TRI (CP1376) and it was used to provide pay raises for

[6] Similarly, employer contributions to health benefits and retirement benefits are all part of an annual contract and included on each regular monthly paycheck. CP830, 1337-38, 1345, 1364-65, 1374-75, 1625, 1673-80; *Adams*, 225 F.3d at 1185 (holding that the term "earnings" in a teacher's disability policy included employer contributions for pensions and health insurance).

regular teacher work. CP1364, 1374-75. He testified that, at the time of Lundquist's disability, TRI made up 30% to 50% of total teacher pay. CP1365.

The teachers' collective bargaining agreement ("CBA"), a portion of which Standard selectively quotes (Standard.Pet.9-10), establishes explicitly that TRI is a *required* part of Lundquist's regular annual contract salary for his work as a teacher:

> State law allows additional compensation for additional time, additional responsibilities or incentives (TRI). Therefore, as incentive for the additional *services required of all employees outside of the basic contract*, *each employee will be issued a supplemental contract* in recognition of these additional responsibilities, services and time. Compensation for these duties shall be in accordance with the TRI Salary Schedule Appendix B and *payment will be made in equal monthly installments as part of the regular paycheck*.

CP1337 (emphasis added). The CBA establishes that Lundquist and other teachers receive a total "annual contract salary" under two annual contracts paid together in regular monthly paychecks "in equal monthly

installments."

Because it is an undisputed *fact* that TRI is part of each teacher's annual contract salary, the issue in this case is whether TRI is excluded from the coverage of "earnings" and "annual contract salary" by the terms of Standard's insurance policy. Resolving this issue therefore requires examining the actual text of the policy and then applying the terms to the facts—something Standard never does. *Ainsworth v. Progressive Cas. Ins.*, 180 Wn.App. 52, 78-80, 322 P.3d 6 (2014); *Adams*, 225 F.3d at 1185; *Wegner v. Standard Ins. Co.*, 129 F.3d at 819.

Standard erroneously asserts that its extrinsic evidence elucidates the meaning of specific policy terms. Standard.Pet.10-12. Of course, Standard's extrinsic evidence all stems from its *post hoc* attempts to add words to the policy to limit coverage. "The court, however, must distinguish the parties' intent at the time of formation from the interpretations the parties are advocating at the time of

the litigation." *International Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282, 313 P.3d 395 (2013). None of Standard's evidence reflects any party's intent at the time of contracting. Extrinsic evidence is only relevant when it demonstrates mutual intent around the formation of the contract. *Lynott*, 123 Wn.2d at 685-90 (rejecting much of insurer's extrinsic evidence as irrelevant because it was created *after* the policy was issued).[7]

Simply put, Standard's attack on the Court of Appeals misses the mark as to evidence regarding TRI, but nails precisely why the Court of Appeals erred in crediting Standard's extrinsic evidence.

b. TRI is annual contract salary paid to all teachers for usual and expected work, not "extra compensation."

Standard now wants to revive its previously

[7] The only evidence of intent in 1983 is the change in the coverage provision from the prior 1975 policy. *See* p. 11-12 *supra*.

abandoned argument that TRI is excluded as "extra compensation," an argument conspicuously absent from Standard's filing with the Court of Appeals. Standard.Pet.8-10, 31. In the trial court, Standard agreed with Lundquist that "extra" takes the *Webster's Dictionary* meaning of "beyond or greater than what is due, usual, expected, necessary or essential."[8] CP1875 (citing *Webster's Third New International Dictionary* at 806 (unabridged 1976 ed.)); CP1052, 1588. Accordingly, "extra compensation" is compensation that is beyond or greater than what is due, usual, expected, necessary or essential. As Standard concedes, the CBA establishes that TRI is part

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[8] Consistent with this, the Fifth Circuit applied *Webster's* definition of "extra" to a Standard long-term disability policy containing an exclusion for "extra compensation" identical to that here. *Wegner*, 129 F.3d at 819 n.8.

Similarly, the Tenth Circuit relied on *Webster's* definition of "earnings" in holding that employer contributions for pensions and health insurance were covered earnings in a disability policy. *Adams*, 225 F.3d at 1185.

of every teacher's annual salary; it is usual, expected, and paid as part of a teacher's monthly paycheck. Standard.Pet.9-10; CP1337. TRI is not "extra."

Nevertheless, Standard says that TRI pay is "extra compensation" because it is paid under a "supplemental" contract." Standard.Pet.8-9. But there is no exclusion for "supplemental" contracts in the policy. Indeed, Standard itself specifically interprets its disability policy for teachers to *include* coverage of their supplemental contracts. CP2141-42 (teacher's supplemental coaching contract is part of his contract salary). Because TRI is paid to all SSD teachers for regular teacher work as part of an annual contract and is included as part of each teacher's regular monthly paycheck, TRI is part of a teacher's annual contract salary.

2. The Court should not review the IFCA issues now and, in any event, Standard's arguments are meritless.

a. Standard's denial of Lundquist's claim for coverage of TRI and employer-paid benefits was unreasonable and nothing in the Court of Appeals decision is to the contrary.

The Court should not review the IFCA issues now because Standard's IFCA arguments are based on its contract issues for which both parties seek review. Moreover, the evidence shows that Standard violated IFCA.[9]

Under RCW 48.30.015(2), IFCA applies where the insurer "acted unreasonably in denying a claim for coverage or payment of benefits" or in denying coverage or benefits "violated one of the regulations enumerated in

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[9] If the Court accepts the arguments in Lundquist's Petition, the outcome on IFCA is self-evident. Applying this Court's well-settled rules of interpretation to the undisputed facts, TRI and employer-paid benefits are covered "Insured Earnings." Standard's denial of coverage without reference to the policy's text and refusal to pay for those portions of "Insured Earnings" was an unreasonable denial of coverage that resulted in actual damages.

RCW 48.30.015(5)." *Ainsworth*, 180 Wn.App. at 78-79.

Standard argues that "there was no denial" of coverage or benefits and therefore IFCA does not apply. Standard.Pet.21. Standard's "never-denied" argument is predicated on its contention that a partial denial of coverage or benefits is not a denial for purposes of IFCA, but is only a valuation dispute.[10] Its argument that a partial denial is merely a "valuation" dispute was the argument rejected by the decision Standard cites. *Ainsworth*, 180 Wn.App. at 61-62, 65-72 (insurer violated IFCA by providing coverage for only one of the insured's two jobs).

Standard violated IFCA because its denial of coverage is not based on the text of the policy, but solely on testimony, and the testimony put words into the policy that are not there.

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[10] There was actually no dispute over valuation. Standard determined the value of the three items of compensation for Lundquist. CP1221-23. The dispute is over whether those items were covered.

Because Standard's denial of coverage is not supported by the text (the words it would add limiting coverage are not in the text), it is unreasonable and violates IFCA. *Ainsworth*, 180 Wn.App. at 80 (insurer's "interpretation of the policy ignored the plain text" of the policy and therefore it was unreasonable and violated IFCA). Moreover, Standard's view of the undefined term "annual contract salary" is also not supported by reference to any dictionary definition and thus it is an unreasonable interpretation. *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997); *Spratt v. Crusader Ins.*, 109 Wn.App. 944, 950-51, 37 P.3d 1269 (2002); *Kut Suen Lui v. Essex Ins.*, 185 Wn.2d 703, 716, 375 P.3d 596 (2016).

Standard's denial of coverage also violates IFCA because it failed to comply with IFCA regulations, as shown by the undisputed evidence.

When Lundquist applied for disability benefits, SSD submitted with Lundquist's disability application an

Employer's Statement of Earnings (a Standard form) listing his annual earnings as $97,136.64. CP393, 945. This amount included TRI and the employer contributions for deferred compensation (pensions). CP2020.

Standard reduced Lundquist's earnings from $97,136.64 to $60,716.64, by denying coverage for TRI pay and pension contributions that were included in the Employer's Statement of Earnings. CP2020. Standard did not disclose the Employer's Statement of Earnings to Lundquist when it made these changes, it did not tell him that it had reduced annual earnings by over one-third, it did not tell him why it had removed those items of compensation, and did not cite any policy provision for the change to SSD's Statement of Earnings. (The Employer's Statement of Earnings was disclosed only in discovery.) CP390, 945-46, 2020.

Standard did no investigation of what TRI pay is. CP946, 948-49. (If it had, it would have found that it is for

ordinary work performed by all teachers and all teachers receive it. CP1337-38, 1345, 1365, 1374-75, 1625, 1673-80.) Standard denied coverage based on an undisclosed administrative policy that was not mentioned to Lundquist. CP940, 958. It did not disclose to Lundquist the coverage provisions it was relying on when it initially denied coverage for TRI, deferred compensation, and employer payments for health insurance in May 2017. CP946.

The undisputed evidence thus showed that Standard repeatedly violated regulations by misrepresenting "pertinent facts" and "insurance policy provisions" when it misrepresented the scope of coverage granted in the "Insured Earnings" provision (WAC 284-30-330(1)); failed to provide "a reasonable explanation in the insurance policy in relation to the facts or applicable law for denial of a claim" when it unilaterally reduced Lundquist's earnings without explanation or citation to the policy (WAC 284-30-

330(13)); failed to conduct an investigation of the coverage (WAC 284-30-370); and failed to fully disclose "all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented" (WAC 284-30-350(1)). CP945-49, 2010-12.

Standard's repeated assertion that its view of the policy is "reasonable" is unsupported by facts or law and is not a basis for granting review of the IFCA claim.

b. Contrary to Standard's contention, under the Court of Appeals opinion IFCA liability remains an issue of fact even where summary judgment is denied.

Ignoring the evidence, Standard argues that because the Court of Appeals found "reasonable minds could easily differ on whether SSD and Standard intended to include TRI and employer contributions under 'Insured Earnings,'" it is entitled to dismissal of Lundquist's IFCA claims as a matter of law. Standard.Pet.20-21 (citing Op.12). This is erroneous because the reasonableness of a denial is a fact question decided by a jury when the facts

are in dispute. *Ainsworth*, 180 Wn.App. at 80; *Am. States Ins. Co. v. Symes of Silverdale*, 150 Wn.2d 462, 470, 78 P.3d 1266 (2003).

The Court of Appeals concluded that "genuine issues of material fact remain as to the interpretation of policy language." Op.11-12. As explained in Lundquist's Petition, this was erroneous because interpretation of policy language is a question of law, not fact. *Seattle Tunnel Partners*, 200 Wn.2d at 324-25; *Hill & Stout v. Mutual of Enumclaw*, 200 Wn.2d 208, 218, 515 P.3d 525 (2022); *Peasley*, 131 Wn.2d at 424. Moreover, to the extent the Court of Appeals erroneously concluded that both interpretations were reasonable,[11] the teachers' interpretation would prevail. *Kaplan v. NW Mutual Life Ins. Co.*, 115 Wn.App. 791, 804-05, 812, 65 P.3d 16 (2003);

[11] Standard's interpretation is not reasonable because it is not based on the text but solely on testimony that adds words to the text. Lundquist's interpretation is based on the ordinary meaning in dictionaries.

McLaughlin v. Travelers Ins. Co., 196 Wn.2d 631, 642-43, 476 P.3d 1032 (2020).

But even accepting the Court of Appeals decision *arguendo*, a finding of disputed material fact on the interpretation of policy language *is not* a finding of reasonableness of the denial of coverage as a matter of law.

As this Court explained when rejecting a similar argument from an insurer regarding a bad faith claim, an insurer is entitled to summary judgment "if reasonable minds could not differ that its denial of coverage was based upon reasonable grounds." *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 486, 78 P.3d 1274 (2003). "However, the existence of some theoretical reasonable basis for insurer's conduct does not end inquiry." *Id.* (overruling *Ellwein v. Hartford Acc. and Indem. Co.*, 142 Wn.2d 766, 15 P.3d 640 (2001)).

Here, the Court of Appeals found that on the evidence presented on summary judgment, reasonable

minds could differ on "the interpretation" of "Insured Earnings," and therefore a trial was required to resolve genuine issues of material fact on the interpretation question. Op.11-12. In so holding, the Court of Appeals *did not* find that Standard's proposed interpretation, premised on contested extrinsic evidence, is reasonable as a matter of law, regardless of the facts. As the Court of Appeals stated, "Lundquist's assertion of unreasonable denial does not necessarily fail" because according to the Court of Appeals, a jury must decide the interpretation issue. Op.13. Under the Court of Appeals decision, because the material facts are disputed it is up to a jury to decide whether Standard improperly denied coverage and whether the denial was unreasonable under IFCA. *Ainsworth*, 180 Wn.App. at 80; *Am. States Ins. Co.*, 150 Wn.2d at 470; *Smith*, 150 Wn.2d at 486.

D. Conclusion

This Court should deny Standard's Petition and

accept review of Lundquist's Petition. Standard's Petition highlights the errors in the Court of Appeals decision and the fatal flaws in Standard's self-serving *post hoc* extrinsic evidence. The Court of Appeals decision conflicts with decades of Washington precedent holding that interpretation of an insurance policy is a question of law based on the plain language and that ambiguities in an insurance policy are construed in favor of the insured as a matter of law. The decision opens the door to unreliable, chaotic, and resource-wasting trial practice, putting policy text interpretation in the hands of the jury and undermining consistent outcomes in insurance interpretation disputes. The Court should use this opportunity to affirm the long-settled rules for interpreting undefined policy terms.

I certify that this brief is in 14-point Georgia font and contains 4,980 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 11th day of July, 2025.

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DECLARATION OF SERVICE

I, Anders Forsgaard, declare that I effected service of the foregoing document on the parties listed below through the Court's e-filing system.

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I declare under penalty of perjury in accordance with the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of July, 2025.

/s/ Anders Forsgaard
Anders Forsgaard

STOBAUGH & STRONG

July 11, 2025 - 3:17 PM

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