Supreme Court No. 1042795
Court of Appeals Cause No. 855891-1

SUPREME COURT
OF THE STATE OF WASHINGTON

TIMOTHY LUNDQUIST and a class of similarly situated individuals,

Petitioners,

v.

STANDARD INSURANCE COMPANY,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

I. INTRODUCTION

This Court should deny Lundquist's Petition for Review. Lundquist seeks review of Division One's holdings affirming the denial of his motion for summary judgment and decertification of the class. However, Division One correctly applied Washington law in holding that genuine factual disputes precluded summary judgment for Lundquist and that the trial court did not abuse its discretion in decertifying the class.

Division One followed Washington law in affirming the denial of Lundquist's summary judgment motion. The Opinion does not contradict *McCleary*, which is not controlling authority on the policy interpretation issues presented in this case, which turn on the contracting parties' intent.

Standard agrees with Lundquist that the policy interpretation question should not go to a jury, but for different reasons than Lundquist asserts. As set forth in Standard's Petition for Review of the Opinion, this Court should overturn Division One's reversal of summary judgment for Standard, after which no issue of contract interpretation will remain and

Lundquist's arguments regarding sending a policy interpretation question to the jury will be moot.

If this Court does not grant the relief requested in Standard's Petition, however, remand is appropriate to resolve the factual issues that precluded summary judgment for Lundquist. Under Washington law, determination of intent is a question of fact where, as here, it depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence. This examination of the evidence may resolve any ambiguity. Thus, there can be no ambiguity to be construed against Standard until *after* trier of fact makes a determination as to intent. Given that intent is a question of fact under Washington law, a remand to a jury would follow established precedent and would not raise any issue of substantial public interest.

Lundquist's Petition also fails to identify any viable basis for review of Division One's holding affirming the decertification of the class. This holding correctly applies controlling authority and raises no issue of substantial public importance. Lundquist seeks review based on his disagreement

with the trial court's decertification decision, while failing to acknowledge that the applicable standard of review is "manifest abuse of discretion." Division One correctly held that the trial court did not abuse its discretion in decertifying the class.

This Court should deny Lundquist's Petition for Review.

II. STATEMENT OF THE CASE

Standard adopts by reference its Statement of the Case in its June 11, 2025 Petition for Review to this Court.

III. ARGUMENT: THIS COURT SHOULD DENY LUNDQUIST'S PETITION FOR REVIEW

A. Division One correctly applied Washington law in affirming the denial of summary judgment for Lundquist

1. *McCleary* does not govern the contract interpretation issue presented, and is not conflicting authority

Lundquist erroneously contends that Division One's holding affirming the denial of his motion for summary judgment conflicts with language in *McCleary v. State* regarding the components of teachers' "total salaries." Petition, 11. *McCleary* does not support review under RAP 13.4(b)(1) or (b)(2). *McCleary* is not conflicting authority, nor does it govern any issue of Policy interpretation in this case.

McCleary did not involve contract interpretation issues. It held that the state had not complied with its constitutional duty to provide for the education of all children in Washington. *McCleary v. State*, 173 Wn.2d 477, 539 (2012); *McCleary v. State*, 84362-7, 2017 WL 11680212, at *20 (Nov. 15, 2017).

Lundquist relies on a misleading partial quotation of the following sentence of *McCleary*, which is not a holding by this Court but merely a summary of the State's description of salary figures: "The new salary figures, according to the State, are derived from evidence based, market rate salary levels, with figures derived from total salaries consisting of the current state allocations and supplemental salaries provided by school districts." *McCleary*, 2017 WL 11680212, at *18. Lundquist takes this quotation out of context, attempting to transform it into a holding that teachers' "total salaries" consist of state-funded allocations plus locally funded supplemental salaries. Petition, 4, 11. Contrary to Lundquist's assertions, *McCleary*'s discussion of derivation of salary figures is not binding precedent regarding interpretation of insurance policies.

Lundquist incorrectly contends that a finding that TRI "is *not* a part of a teacher's earnings" would be contrary to *McCleary*. Petition, 11. Whether TRI is "part of a teacher's earnings" is not an issue in this case because the Policy term at issue is not "earnings" but "Insured Earnings," which, for teachers, is defined in the Policy as their "annual contract salary." CP 4123; Op., 2-3. *McCleary* does not speak to this issue, and is not binding precedent on the contracting parties' intended meaning of "annual contract salary."

Incorrectly suggesting that teachers would not understand that "Insured Earnings" is a subset of total earnings, Lundquist further argues that it would be inconsistent with *McCleary* for "Insured Earnings" to represent only a portion of total earnings "because of a budgeting label." Petition, 12. However, under Washington law, interpretation of the Policy terms is not based on "a budgeting label" but on the contracting parties' intended meaning of the language used. *Hearst Commc'ns, Inc., v. Seattle Times Co.*, 154 Wn.2d 493, 503 (2005).

In sum, *McCleary*'s comment about derivation of salary figures is inapposite to the Policy interpretation issues in this case, which turns on the contracting parties' intended meaning of the Policy terms "Insured Earnings" and "annual contract salary." *McCleary* is not binding precedent as to this interpretation issue. There is no conflict of authority and *McCleary* provides no basis for review.

2. A remand for the trier of fact to determine the contracting parties' intent would be consistent with binding precedent

As discussed in Standard's Petition for Review, this case should *not* be remanded for interpretation of the Policy because this Court should overturn Division One's reversal of summary judgment for Standard on grounds that it conflicts with binding authorities. If, however, this Court declines Standard's requested relief, then Washington law requires a remand to resolve factual issues regarding the contracting parties' intent.

In affirming the denial of Lundquist's MSJ, Division One complied with Washington precedent requiring denial of summary judgment on policy interpretation where, as here, the

non-moving party has presented evidence creating a genuine dispute of material fact as to the contracting parties' intent.

Under Washington law, contract interpretation "is a determination of fact," as "it is the process that ascertains the meaning of a term by examining objective manifestations of the parties' intent." *Denny's Restaurants, Inc. v. Sec. Union Title Ins. Co.*, 71 Wn. App. 194, 201 (1993) (reversing summary judgment for insured and remanding for examination of extrinsic evidence to resolve factual issue of intent regarding extent of coverage); *Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn. App. 507, 517 (2004) ("Generally, what the parties intend is a question of fact."); *see also Kelley v. Tonda*, 198 Wn. App. 303, 312-13 (2017) ("[c]ontract interpretation is a question of fact when a court relies on inferences drawn from extrinsic evidence").

A question of contract interpretation "is to be determined by the trier of fact if it depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence." *Berg v. Hudesman*, 115 Wn.2d 657, 668 (1990). "Interpretation of a contract provision

is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence." *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674 (1996).

Lundquist again misstates the law and Division One's Opinion when he alleges that, in affirming the denial of his MSJ, Division One contradicted binding authority by requiring a jury to resolve a *question of law*. Petition, 19. He also seeks review under RAP 13(b)(4) on grounds that Division One committed "the absurdity of asking a jury to resolve the legal question of insurance contract interpretation." Petition, 22. Lundquist is wrong on both counts. Given that Division One found genuine issues of fact as to the contracting parties' intent, a remand would require resolution of those disputed *questions of fact* as to intent, which are appropriate for determination by a jury.

Lundquist relies on *Kaplan v. Nw. Mut. Life Ins. Co.*, 115 Wn. App. 791 (2003) to argue that Division One cannot remand for a jury to resolve factual issues as to Policy

interpretation. Petition, 20-21. But unlike this case, *Kaplan* did not involve extrinsic evidence of the contracting parties' intended meaning of specific policy terms under *Berg*. *Kaplan* acknowledged that policy interpretation should be decided in favor of the insured as a matter of law only "[i]f policy language is ambiguous, and no genuine issues of material fact are placed in dispute." 115 Wn. App. at 800. In *Kaplan*, the trial court erred in denying the insured's MSJ because the disputed fact on which the court relied was "not a *material* issue of fact upon which the ultimate legal question of whether the clauses are ambiguous depends." *Id.* at 803. Here, in contrast, Standard's extrinsic evidence created genuine issues of *material* fact as to the contracting parties' intent, disputing Lundquist's interpretation and requiring denial of his MSJ.

Lundquist acknowledges that extrinsic evidence is relevant to prove the contracting parties' mutually intended meaning of contract terms. Petition, 24-25. Yet he relies on *Fiscus Motor Freight v. Universal Sec. Ins.*, 53 Wn. App. 777, 782 (1989) to argue that the evidence of Standard's and SSD's mutual intent "is nothing more than an opinion on a legal issue

to be decided by the court." Petition, 25. *Fiscus* is distinguishable because the "opinion on a legal issue" consisted of an underwriter's statement that an accident did not "arise out of" a use of the vehicle, whereas here, Standard presented evidence of the contracting parties' mutually intended meaning of Policy terms, which is admissible to resolve factual questions of intent.

In sum, Division One correctly applied Washington law in determining that factual issues precluded summary judgment for Lundquist, and if this Court does not reinstate summary judgment for Standard, the case should be remanded for the trier of fact to resolve those issues.

3. In finding a genuine factual dispute precluded summary judgment for Lundquist, Division One correctly applied Washington law on Policy interpretation

a. Division One appropriately considered Standard's extrinsic evidence of the contracting parties' intended meaning of specific Policy terms

Lacking grounds for review based on a remand to resolve disputed questions of fact, Lundquist advances the same contract interpretation arguments that both the trial court and

the Court of Appeals have already rejected. He expresses disagreement with the trial court's consideration of Standard's extrinsic evidence of the contracting parties' intent, arguing that the Policy's "plain language" is dispositive because TRI and employer contributions are paid pursuant to "annual teaching contracts," and therefore the consideration of Standard's evidence created an ambiguity. Petition, 15-16. "Annual teaching contracts" is not a Policy term, however, and Standard's evidence was admissible to aid in ascertaining the parties' intended meaning of the Policy term "annual contract salary."

Lundquist attempts to reframe the contracting parties' mutually agreed meaning of the Policy as Standard's unilateral interpretation, arguing that evidence of "[u]nilateral or subjective purposes and intentions about the meanings of what is written do not constitute evidence of the parties' intentions." Petition, 17. Lundquist argues that the trial court should not have considered testimony of a Standard employee, while ignoring the fact that Standard also presented evidence showing that SSD, SSD's broker, Lundquist's union, and Standard all

agreed as to the intended meaning of the relevant Policy terms. Standard's evidence included testimony of SSD employees, Union representatives, and SSD's insurance broker, all of whom agreed that "Insured Earnings" did not include TRI or employer contributions and that the Policy term "annual contract salary" means teacher base pay under the IEC, not including TRI. Standard's evidence of the contracting parties' mutual intent is admissible to aid in interpretation of the Policy under Washington law. *See Berg*, 115 Wn. 2d at 673; *Hearst*, 154 Wn.2d at 503-04.

Ignoring the fact that Standard's extrinsic evidence of the contracting parties' intent included testimony by SSD, SSD's broker, and the Union regarding the parties' shared intent, Lundquist focuses on the testimony by Standard employees to argue that insurers should not offer "*post hoc* testimony regarding subjective intent." But as Division One correctly recognized, Washington follows the "objective manifestation theory" of contract interpretation, under which courts consider extrinsic evidence of the surrounding circumstances and subsequent conduct. Op., 10.

Lundquist relies on *Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wn.2d 678 (1994), in which a report of a third party that was not involved in policy negotiations did not resolve an ambiguity because there was no showing that either of the contracting parties had any knowledge of it prior to the litigation and it was not relevant to their intent. Lundquist incorrectly represents that *Lynott* rejected the evidence "because it was created after the policy was issued," but such a holding would conflict with *Berg*, which expressly permits evidence of "all the circumstances surrounding the making of the contract [and] the subsequent acts and conduct of the parties to the contract." 115 Wn.2d at 673. However, "*Lynott* did not change the rule of *Berg*." *R.A. Hanson Co. v. Magnuson*, 79 Wn. App. 497, 504 (1995).

Division One correctly followed *Berg* in recognizing that extrinsic evidence of the contracting parties' intent is admissible for contract interpretation and that no ambiguity need exist before evidence of the surrounding circumstances is admissible. Op., 10, quoting *Berg*, 115 Wn.2d at 669.

b. Division One did not find an ambiguity to be construed against Standard

Lundquist mischaracterizes Division One's determination that genuine issues of fact remain as to the contracting parties' intent as holding that the policy was ambiguous. The Opinion, however, does not reach that conclusion, and a finding of ambiguity would be premature. *See* Petition, 19. Rather, Division One held that summary judgment was not appropriate for either party because a genuine dispute existed as to interpretation, given its conclusion that reasonable minds could differ as to the contracting parties' intent. Op., 7, 12. However, the Opinion does not support the existence of any ambiguity to be construed against Standard.

As Lundquist himself acknowledges, ambiguities are construed against the insurer only where extrinsic evidence of the contracting parties' intent "does not resolve an ambiguity." Petition, 18, citing *Lynott*, 123 Wn.2d at 697. As explained in *Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 171–72 (2005) (a case on which Lundquist relies), even if a clause is fairly susceptible to two different reasonable interpretations,

that does not necessarily mean that there is an ambiguity to be resolved against the insurer. Rather, the court "may rely on extrinsic evidence of the intent of the parties to resolve the ambiguity," and only if an ambiguity remains *after* examination of the applicable extrinsic evidence will it be resolved against the insurer. *Id.*

Moreover, the contracting parties' agreed meaning "resolves any ambiguity regarding the provision," and "the interpretation which the parties have placed upon it is entitled to great, if not controlling, weight in determining its meaning." *Mercer Place Condo. Ass'n v. State Farm Fire & Cas. Co.*, 104 Wn. App. 597, 602 (2000), quoting *Toulouse v. New York Life Ins. Co.*, 40 Wn. 2d 538, 541 (1952).

Lundquist himself relies on cases holding that if policy language is ambiguous, "extrinsic evidence of the intent of the parties may be relied upon to resolve the ambiguity" and that only ambiguities remaining *after* examining applicable extrinsic evidence are resolved against the drafter-insurer and in favor of the insured." *Am. Nat. Fire Ins. Co. v. B & L Trucking & Const. Co., Inc.*, 134 Wn.2d 413, 428 (1998); *see also* Q*ueen*

City Farms, Inc. v. Cent. Nat. Ins. Co. of Omaha, 126 Wn.2d 50, 82 (1994) ("Under our general rules for construing insurance policies, ambiguity in a policy may be resolved through extrinsic evidence as to the parties' intent … [h]owever, no extrinsic evidence as to the parties' intent is in this record.")

As Division One recognized, "[a] trial court may not weigh evidence, assess credibility, or otherwise resolve issues of material fact on summary judgment." Op., 7, citing *Haley v. Amazon.com Servs., LLC,* 25 Wn. App. 2d 207, 217 (2022). Accordingly, Division One's determination that the evidence presented triable issues of fact as to intent did not result from any weighing of evidence, assessment of credibility, or other resolution of these factual issues. Likewise, the holding that summary judgment is not appropriate for either party does not mean that any ambiguity will remain *after* the trier of fact makes a determination as to intent. Prior to such resolution of the factual issues, there is no ambiguity to be construed against Standard under Washington law.

Because the trier of fact may find that the extrinsic evidence supports the contracting parties shared a mutual intent which would resolve any ambiguity, it cannot be said at this stage that an ambiguity exists that must be resolved against Standard. *See e.g.*, *Mercer Place*, 104 Wn. App. at 602; *Quadrant Corp.*, 154 Wn.2d at 171–72.

In arguing that any ambiguity must be construed against the insurer, Lundquist relies on cases that discuss ambiguities in policies that were not negotiated, but instead drafted solely by the insurer using a "standard form policy." Petition, 17. Here, in contrast, the undisputed evidence reflects that the Policy was the product of negotiations between Standard and SSD. Indeed, Division One affirmed the trial court's ruling that interpretation of the policies would require evaluation of non-common evidence of intent as to each contract. Op., 15-16.

In sum, remand to the trier of fact to resolve issues of interpretation is supported by controlling precedent, and there is no ambiguity to be construed against Standard under Washington law. Lundquist's Petition should be denied.

B. Division One correctly applied settled law in affirming decertification of the class based on its finding that the trial court did not abuse its discretion

Lundquist disagrees with the trial court's determination that commonality was lacking, and seeks review of Division One's holding affirming decertification on that basis. Petition, 26-27. Lundquist's Petition, like his briefing in the Court of Appeals, ignores the applicable standard of review – manifest abuse of discretion. In holding that the trial court did not abuse its discretion, Division One followed Washington law.

Under the applicable abuse of discretion standard, the trial court's decision is entitled to substantial deference, and it is not the appellate court's "place to substitute [its] judgment for that of the trial court." *Admasu v. Port of Seattle*, 185 Wn. App. 23, 30 (2014). Thus, as Division One recognized, Washington law requires the decertification decision to be upheld "if the record shows that the court considered the criteria for class certification, and the decision is based on tenable grounds and is not manifestly unreasonable." Op., 13, citing *Pellino v. Brick's Inc.*, 164 Wn. App. 668, 682 (2011).

In this case, the trial court properly considered CR 23's criteria and issued a 13-page order providing detailed findings and conclusions explaining that new information revealed Lundquist failed to satisfy the requirements of commonality, typicality, and adequacy of representation. CP 2427-40. Regarding commonality, the trial court found that non-common evidence and circumstances must be considered to interpret the Policy and that this evidence will not apply to any other district in this case, noting that Standard's evidence of intent regarding the Policy included testimony from union representatives, insurance brokers, and school district representatives. CP 2437.

Lacking any basis for review of Division One's holding that the trial court did not abuse its discretion, Lundquist reargues the merits of whether Rule 23's commonality requirement was satisfied. He cites no authority to support that the trial court abused its discretion in decertifying for lack of commonality.

Expressing disagreement with the trial court's class decertification decision, Lundquist argues that in general, insurance disputes routinely raise common issues based on

"standard policy language." Petition, 28. In this case, however, the record evidence showed the policies in the class were individually negotiated, as discussed above.

Lundquist erroneously contends that Standard did not present non-common evidence to support decertification, but merely "hypothetical" evidence. Lundquist's assertions that "the record had not changed" are false. As the record evidence developed (and particularly after Judge Cahan denied Lundquist's third MSJ based on non-common evidence), it became clear that Rule 23's requirements were not in fact met. *See* CP 2428-36.

Among the new evidence supporting decertification was an April 2023 declaration of Vancouver School District ("VSD") broker Anne Bailey, which demonstrated that non-common evidence precluded class treatment (including that the VSD Policy was amended to expressly exclude TRI, that VSD provided Standard with "census data" that included only "base pay," and it did not pay premiums for TRI). CP 4819-20, ¶¶6-9.

Moreover, as Division One correctly noted, "[i]n dropping 16 of the 18 policies [when filing his fourth MSJ], Lundquist essentially concede[d] that those 16 excluded policies are distinct." Op., 15. Lundquist attempts to evade the consequences of this concession by pointing to Commissioner Koh's ruling on discretionary review. Although Lundquist attempts to reframe this ruling to support serial summary judgment motions for every policy in the class, Commissioner Koh stated there were factual differences between the policies which could provide a basis for decertification, as "reflected both in the language and the subsequent conduct of the parties." *See* Petition, 31, n. 4; CP 1853, 1855.

Lacking authority to support his disagreement with the trial court's ruling that he failed to meet his burden, Lundquist improperly attempts to flip that burden to Standard. Lundquist incorrectly contends that because Standard's evidence defeated commonality as to only two of the 18 policies in the class, the trial court needed to rely on "hypothetical" evidence regarding the other 16 policies in order to decertify. Petition, 29-30. This is not the law.

Lundquist relies on authorities that do not support his position, including *Moeller v. Farmers Ins. Co. of Washington*, 173 Wn.2d 264, 278 (2011), *Elter v. United Servs. Auto. Ass'n*, 17 Wn. App. 2d 643, 659 (2021), *Brown v. Brown*, 6 Wn. App. 249, 255, (1971) and *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 825 (2003).

These cases have no bearing on Lundquist's failure to demonstrate a common question of insurance policy interpretation where the evidence showed the different policies were individually negotiated, and they do not support an abuse of discretion by the trial court.

Moeller is inapposite, as it expressly states that "CR 23(a) … is not at issue here." *Id.* at 278. Lundquist quotes from *Moeller*'s discussion of CR 23(b)'s predominance requirement, which he mischaracterizes as a ruling on commonality under CR 23(a). Petition, 30.

Elter does not support an abuse of discretion, as it held that commonality was established by the insurer's course of conduct of not paying loss of use damages to insureds who declined a rental car. Although the trial court also mentioned

that a common fact pattern existed based on common policy language, the Court of Appeals did not evaluate whether that finding constituted an abuse of discretion. *Elter*, 17 Wn. App. 2d at 659.

Likewise, *Brown* did not involve interpretation of individually-negotiated insurance policies and does not support an abuse of discretion in this case. *Brown* held that commonality was satisfied where there was a "threat of a racially discriminatory policy" common to the class. *Brown*, 6 Wn. App. at 255.

Miller, which reversed a trial court's certification of a class in an employment dispute, is also inapplicable. In *Miller*, the commonality requirement was satisfied by the fact that the employer "classified all of the class members as exempt and thereby failed to pay them overtime." *Miller*, 115 Wn. App. at 825. Like the other cases on which Lundquist relies, *Miller* does not support an abuse of discretion by the trial court in decertifying the class where new evidence showed Lundquist failed to meet his burden of demonstrating a common question of law or fact.

The decertification decision follows Washington law and presents no issue of substantial public importance. The record does not support Lundquist's argument that decertification would deny disability benefits to disabled teachers who are "owed" money by Standard. *See* Petition, 31-32. Standard has paid and continues to pay teacher's disability claims pursuant to the policies, and there can be no credible concern that decertification would impact teacher's receipt of such benefits.

In sum, Lundquist failed to meet his burden of satisfying Rule 23 at the trial court level, and his Petition provides no argument or authority to support an abuse of discretion by the trial court in decertifying the class. Lundquist's mere disagreement with the trial court's ruling cannot support review by this Court.

IV. CONCLUSION

Lundquist's petition fails to identify any sufficient basis for review, and should be denied.

This document contains 4,149 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated: July 11, 2025

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