No. 101561-5

SUPREME COURT
OF THE STATE OF WASHINGTON

P.E.L., a minor, and P.L. and J.L., a married couple and guardians of P.E.L.,

Plaintiffs/Respondents,

v.

PREMERA BLUE CROSS, a Washington health carrier,

Defendant/Petitioner.

On Appeal from Court of Appeals, Division I
of the State of Washington, Case No. 82800-2

BRIEF OF AMICI CURIAE NORTHWEST HEALTH LAW ADVOCATES, THE NATIONAL HEALTH LAW PROGRAM, THE CENTER FOR HEALTH LAW AND POLICY INNOVATION OF HARVARD LAW SCHOOL, THE KENNEDY FORUM, THE AUTISM LEGAL RESOURCE CENTER, AND THE NATIONAL AUTISM LAW CENTER

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I. INTRODUCTION

This case will decide whether Washington consumers have a right to enforce their insurance contracts when those contracts incorporate federal and state laws requiring mental health parity. This question has broad public policy impact. Policyholders require a remedy when their insurers make a contractual promise to follow the law and then fail to do so. Maintaining insureds' access to this remedy ensures that insurers' promises to abide by the mental health parity mandates are enforceable and meaningful. Access to the courts to enforce such promises is critical when it comes to mental health coverage (or the lack thereof), given that Washington State is in the midst of an acute mental health crisis. Our state's dire shortage of access to mental health services is unlikely to improve without better enforcement of the coverage rights consumers have, and that the governing law already affords.

Defendant/Petitioner Premera would have the Court believe that Congress intended to cut off access to traditional

state judicial remedies for insureds like P.E.L. Specifically, Premera argues that the only entity authorized to enforce violations of mental health parity is the Office of the Insurance Commissioner ("OIC"), a resource-limited state agency. Premera is wrong – Plaintiff/Respondent P.E.L. and other consumers can enforce the parity laws via breach of contract claims. Premera ignores the purpose and intent of the parity laws, which were designed to remedy critical problems in accessing mental health treatment. It further disregards the common law origins of insurance law. And, it fails to address the injustices that will arise if individual market consumers are blocked from pursuing meaningful remedies for coverage decisions that violate parity.

All Washington consumers need access to the courts to hold Premera and other health insurers accountable to provide the mental health coverage promised by the Patient Protection and Affordable Care Act of 2010 ("ACA"), and the Paul Wellstone and Pete Domenici Mental Health Parity and

Addiction Equity Act the ("Federal Parity Act"). *See* 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26. The Court of Appeals correctly held that breach of contract, bad faith, and other common law claims remain available to challenge an insurer's violation of ACA parity requirements, where, as here, the insurer promised in their contract to follow these laws, even if another contract term conflicted. *P.E.L. v. Premera Blue Cross*, 24 Wn.App.2d 487, 495, 520 P.3d 486 (2022).

The Court should affirm the portion of the Court of Appeals' decision that properly concluded that insureds may bring a common law breach of contract claim to enforce their contractual coverage rights, as modified by the ACA. *Id.* Further, as the Court of Appeals recognized, the Court should not impose unnecessary procedural hurdles to prevent plaintiffs from seeking further remedies that may be available under the common law, such as an insurance bad faith claim. *Id.* at 512.

The Court should also find that a blanket exclusion, applied without an individual medically necessity

determination, violates the ACA's parity requirements as interpreted by the OIC's WAC 284-43-7080(2), reversing that portion of the Court of Appeals decision. *See id.,* at 507.

II. ARGUMENT[1]

A. Washington Consumers Need Significant Protection From Insurance Discrimination Based On Mental Health.

Congress enacted the Federal Parity Act and related ACA provisions in response to decades of entrenched discrimination by health insurers against individuals with mental health conditions. *See* App. Amicus Br. at 8-16. Unfortunately, since then, the acute mental health crisis in Washington State has only worsened.

Washington residents continue to face an uphill battle in accessing mental health treatment at parity. Recent data confirms the trend: In a 2023 report, researchers compared the

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[1] Amici incorporate by reference the amicus brief of Northwest Health Law Advocates before the Washington Court of Appeals (hereinafter "App. Amicus Br.")

need for behavioral health treatment in each state (as measured by the prevalence of serious mental illness therein) with the availability of access to behavioral health care capable of fulfilling that need. Sadly, Washington continues to perform poorly, ranking 30th for adults and slipping to 40th for youth.[2] According to the Kaiser Family Foundation, in May 2022, 34.4% of Washington adults who reported experiencing symptoms of anxiety and/or depressive disorder reported not receiving counseling or therapy in the previous four weeks.[3]

Washington's poor performance in meeting its residents' need for mental health treatment is strong evidence that Washington insurers are still not providing mental health coverage at parity with medical/surgical coverage. A 2021

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[2] *Ranking the States 2023: Washington*, MENTAL HEALTH AMERICA, https://www.mhanational.org/issues/2023/ranking-states (last visited 07/20/2023).

[3] *Mental Health in Washington*, KAISER FAMILY FOUNDATION, https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/washington/ (last visited 07/24/2023).

Office of the Insurance Commission ("OIC") analysis of behavioral health claims found evidence of significant access gaps, stating "the data from this study indicate there may be unmet need for services in Washington."[4] For example, 12.4% of individuals had at least one mental health claim during the year, significantly *below* the nationwide average of 20.6%.[5] After more than a decade on the books, federal and state parity laws, standing alone, have not been sufficient to motivate insurers to provide mental health coverage at parity.

Federal regulators agree. On July 25, 2023, the United States Department of Labor released new proposed regulations implementing the Federal Parity Act. *See* Requirements Related to the Mental Health Parity & Addiction Equity Act: Proposed

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[4] *Washington Office of the Insurance Commissioner (WA OIC) Behavioral Health Crisis Study*, ONPOINT HEALTH DATA (2021) at 12, https://www.insurance.wa.gov/sites/default/files/documents/behavioral-health-crisis-study.pdf (last visited 07/21/2023).

[5] *Id*.

Rules (proposed July 25, 2023) (to be codified at 26 C.F.R. pt. 54; 29 C.F.R. pt. 2590; & 45 C.F.R. pts. 146 & 147 (hereinafter "proposed rules"). Requirements Related to the Mental Health Parity and Addiction Equity Act: Proposed Rules, Internal Revenue Serv., Dep't of Lab., & Dep't of Health & Hum. Servs. (forthcoming Aug. 2023), https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/requirements-related-to-mhpaea-proposed-rules.pdf. The preamble to the proposed rules paints a sobering picture, outlining a mental health "crisis" that has only worsened in recent years, and "disproportionately affects marginalized and underserved communities" – particularly among children and adolescents. *See* Proposed Rules at 5 *et. seq.*

The proposed rules confirm the stringent analysis insurers must perform in order to meet federal parity requirements, and specifically re-affirm previous guidance that prohibited categorical exclusions for residential mental health. Proposed Rules at 376; *compare* Example 9 at 45 CFR §

146.136 (c)(4)(iii). Specifically, both the existing and proposed rules address such categorical exclusions; for example, the proposed rules state:

> A plan generally covers inpatient, in-network and inpatient out-of-network treatment in any setting, including skilled nursing facilities and rehabilitation hospitals, provided other medical necessity standards are satisfied. The plan also has an exclusion for residential treatment, which the plan defines as an inpatient benefit, for mental health and substance use disorder benefits. This exclusion was not generated through any broader nonquantitative treatment limitation (such as medical necessity or other clinical guideline.)

Proposed Rules at 376. This reaffirms Example 9 in current regulations. 45 CFR § 146.136(c)(4)(iii).

The current and proposed rules confirm that this situation is a parity law violation, with the proposed rules explaining:

> Because the plan does not apply a comparable exclusion to inpatient benefits for medical/surgical conditions, the exclusion of residential treatment is a separate nonquantitative treatment limitation applicable only to mental health and substance use disorder benefits in the inpatient, in-network and inpatient, out-of-network classifications that does not apply with respect to any medical/surgical benefits in the same benefit classification.

Proposed Rules at 376.

The preamble to the Proposed Rules draws a direct line between insurer non-compliance with Federal Parity Law and the worsening mental health crisis in America, noting:

> …against the backdrop of this mental health and substance use disorder crisis, when patients seek benefits under their health plan or coverage, they often find that coverage for treatment of mental health conditions or substance use disorders operates in a separate – and too often disparate – system than their health plan's coverage for treatment of medical/surgical conditions. These disparities exacerbate the hardships faced by people with mental health conditions and substance use disorders.

See Proposed Rules at 8-9. An accompanying statement from the White House similarly highlights the policy concerns that are also at the core of the present case:

> Despite the repeated bipartisan efforts aimed at mental health parity, ***insurers too often make it difficult to access mental health treatment, causing millions of consumers to seek care out-of-network at significantly higher costs and pay out of pocket, or defer care altogether.*** One study shows that insured people are well more than twice as likely to be forced to go out-of-network and pay higher fees for mental health care than for physical health care. And the problem is getting worse: in

> recent years, the gap between usage of out-of-network care for mental health and substance use disorder benefits versus physical health benefits increased 85 percent. As a result, millions of people are paying for out of network care for mental health services they need…[6]

The proposed regulations, guidance, and White House statement all demonstrate the continued need for vigilant and aggressive consumer protections for insured people who seek access to mental health care and coverage.

B. Breach of Contract and Other Common Law Remedies Are Available and Necessary When Insurance Consumer Rights Are Abridged.

1. The Foundation of Insurance Regulation Is Common Law Contract.

P.E.L. brought a common law breach of contract claim to enforce her mental health parity rights. Premera asserts that breach of contract and other common law remedies are

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[6] Press Release, White House, Biden-Harris Administration Takes Action to Make it Easier to Access In-Network Mental Health Care (July 25, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/25/fact-sheet-biden-harris-administration-takes-action-to-make-it-easier-to-access-in-network-mental-health-care/ (emphasis added).

unavailable because Congress did not expressly grant a private right of action to individuals to directly enforce the Federal Parity Act or ACA, and the lack of a direct private right of action precludes any state breach of contract claim for Premera's legal violation. Premera misreads 150 years of insurance law. Insurance regulation is fundamentally rooted in common law, contract law and related principles of good faith and fair dealing.

Basic contractual principles underlie insurance regulation, as revealed by the history of Washington's insurance code. States have been the primary regulators of insurance since 1868. *See Paul v. Virginia*, 75 U.S. 168 (1868); McCarran-Ferguson Act of 1945, 15 U.S.C. §§ 1011–1015. In Washington, the Legislature enacted the modern Insurance Code (Title 48 RCW) in 1947. S. Res. 47 c. 79, 30th Cong. (Wash. 1947) (enacted); Rem. Rev. Stat § 45 (Supp. 1947). The Legislature grounded this enactment in contract law, defining "insurance" as a "contract whereby one undertakes to

indemnify another or pay a specified amount upon determinable contingencies." RCW 48.01.040; S. Res. 47 c. 79, 30th Cong. § .01.04 (Wash. 1947) (enacted); Rem. Rev. Stat. §45.01.04 (Supp. 1947). The Legislature devoted a whole chapter of its modern code to the "Insurance Contract." *See* RCW Chapter 48.18; S. Res. 47 c. 79, 30th Cong § .18 (Wash. 1947); Rem. Rev. Stat. § 45.18 (Supp. 1947). Premera mistakenly ignores this history, looking only to remedies expressly granted in federal statute. But insurance law *starts* with a state common law framework as its foundation.

Over time, additional regulatory structures emerged to help protect consumers from potential harm in insurance dealings, given the one-sided nature of modern insurance contracts. Congress gradually established a role for parallel federal regulation to ensure additional consumer protections above and beyond those offered by various states. *See U.S. v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944); Gramm-Leach-Bliley Act, S. 900, 106th Cong. (1999); Dodd-

Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010). But these additional layers of regulation at the federal level do not abrogate the fundamental nature of insurance law – that it is a creature of common law regulated primarily by states with additional federal protections. Congress recognized this framework when it enacted the ACA by including a preemption clause that explicitly recognizes states' primary role. Congress directed states to implement the new federal law together with existing state insurance regulation, by applying whichever standard is more protective of consumers. 42 U.S.C. § 300gg-23(a). In doing so, Congress recognized that the body of federal insurance law is built on a chassis of the common law and state regulation.

2. Courts Are Essential to Fair Enforcement of Insurance Contracts.

Premera incorrectly suggests that only the OIC may enforce parity law, at least at the state level. But courts have a significant role to play, as well as state regulators. Courts have long recognized the need for judicial interpretation of insurance

contracts with a consumer lens, given that insureds are typically unable to negotiate their terms. Specifically, while insurance policies are undoubtedly contracts, they:

> are simply unlike traditional contracts, i.e., they are not purely private affairs but abound with public policy considerations, one of which is that the risk-spreading theory of such policies should operate to afford to affected members of the public … the maximum protection possible consonant with fairness to the insurer.

McLaughlin v. Travelers Commercial Ins. Co., 196 Wn.2d 631, 641 (2020), quoting *Or. Auto. Ins. Co. v. Salzberg,* 85 Wn.2d 372, 367-77, 535 P.2d 816 (1975). Accordingly, at every stage of courts' interpretation of insurance contracts, the perspective and interests of insureds must be considered. When a court reads an insurance contract's plain language, it does so from the perspective of the average insurance purchaser. *Spratt v. Crusader Ins. Co.,* 109 Wn. App. 944, 950-51 (2002). When an insurance contract is subject to more than one reasonable interpretation, "the interpretation most favorable to the insured will be applied." *Id.* Insurance contracts must be

"liberally construed in favor of the object to be accomplished." *McLaughlin*, 196 Wn.2d at 643. And, insurance policy exclusions "are to be construed strictly against the insurer." *Eurick v. Pemco Ins. Co.,* 108 Wn.2d 338, 340-41 (1987).

These rules are based on the public policy recognition that insurance policies are unlike other contracts, in key respects. Here, the services (medical treatment) for which a health insurance purchaser "bargains" may be necessary to maintain the purchaser's or family members' health, or even to save their lives. In this context, courts correctly take the perspective of insureds in reading and applying such agreements. Removing courts' longstanding authority to enforce insurance carriers' promises to comply with consumer protection law would deprive consumers of their right to have their interests placed front and center when their insurance contract is interpreted and enforced. There is no basis for this in law or public policy. To the contrary, insureds must be allowed

to continue to pursue violations of their rights through common law claims brought in the state judicial system.

C. Premera's contract violated the ACA's parity requirements.

Premera's blanket exclusion constitutes a violation of parity because it does not allow for individualized consideration of medical necessity. WAC 284-43-7080(2). Since the passage of the ACA, federal and state authorities have consistently stated that categorical exclusions of treatment are impermissible. *See* App. Amicus Br. at 16-28.

The OIC made this intention clear in its 2014 rulemaking to implement the Federal Parity Act. The record shows that although Premera submitted comments on the proposed rules that ultimately became WAC 284-43-7080, the OIC rejected Premera's approach. Instead, the OIC concluded that federal and state law together require coverage of all medically necessary mental health services without limitation. Clerk's Papers ("CP") 480-85. The state rule incorporates the federal approach to parity that requires health insurers to evaluate

mental health claims for medical necessity before applying a categorical exclusion. *See* WAC 284-43-7000, *et. seq*. The rule specifically prohibits the type of categorical exclusion Premera applied here, indicating that: "If a service is prescribed for a mental health condition and is medically necessary, it may not be denied solely on the basis that it is part of a category of services or benefits that is excluded by the terms of the contract." WAC 284-43-7080(2).

Premera's contract expressly promises that in this exact situation – where a contract term conflicts with state or federal law – it will comply with the statutory or regulatory requirements, not its contract's literal terms. CP 85, 110, 1558:1-4. Not only is this required under Premera's contract, it is also mandated by the Washington Insurance Code. *See* RCW 48.18.510 (contract provisions that do not comply with the Insurance Code must be construed and applied to comply with the code).

P.E.L. asked Premera to engage in an individualized medical necessity review of her treatment at Evoke when she submitted her claims, and in her internal and external appeals. *See P.E.L.*, 24 Wn.App.2d at 492. But Premera's blanket exclusion blocked any evaluation of individual medical necessity at every step of the appeal. *See e.g., Z.D. v. Grp. Health Coop.*, 2012 U.S. Dist. LEXIS 76498, at *13 (W.D. Wash. June 1, 2012); RCW 48.43.535(6) (external reviewer cannot override literal plan terms even if they conflict with state and federal law). Unlike with other insurance denials, in which an insured's arguments about individual medical necessity would be considered by Premera and/or an external reviewer, the blanket wilderness exclusion wholly prevented it. Plaintiff P.E.L. had no opportunity to have the medical necessity of the program at Evoke considered by either Premera or an external reviewer.

D. Premera's Arguments, If Accepted, Would Leave Washington Insureds in the Individual Market Without Recourse for Parity Violations.

If the Court were to adopt Premera's argument, P.E.L. and 244,000 other Washington residents who purchase individual market health plans[7] could not challenge mental health parity violations in court when they find them. And, they may not have a meaningful opportunity to see state and federal parity requirements enforced by the OIC, given its limited resources. While Washington consumers can file complaints with the OIC, there is no publicly available information showing that the OIC has taken enforcement action related to state or federal parity laws in response to any past consumer complaints. *See* App. Amicus Brief at 28-30.

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[7] *See "Fourteen insurers request average 9.11% rate change for 2024 individual insurance health insurance market,"* OFF. OF THE INS. COMM'R (May 30, 2023), https://www.insurance.wa.gov/news/fourteen-insurers-request-average-911-rate-change-2024-individual-health-insurance-market (last visited 7/26/23).

To be clear, this lack of publicly available information about OIC's enforcement activities does not indicate disinterest in mental health parity.[8] To the contrary, the OIC has adopted clear rules and worked to eliminate blanket exclusions, such as those outlawed by the state's parity rules.[9] It is possible that OIC may be conducting insurer oversight that is not in the public eye, given that market conduct activity is statutorily confidential. *See* RCW 48.37.080. However, the OIC cannot catch and remedy every parity violation, given its limited staff and other resources. Indeed, the OIC's existing regulatory duties are significant. Currently, there are fourteen insurers

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[8] There is, however, no guarantee that future Insurance Commissioners will prioritize this kind of compliance activity to maintain even the current levels of regulatory enforcement. The Insurance Commissioner is an elected official. *See* RCW 48.02.020. Premera's interpretation of the parity laws' regulatory regime would thus leave any enforcement of Washington residents' rights under parity laws dependent on the priorities of a future Commissioner.

[9] *See Mental Health Parity*, OFF. OF THE INS. COMM'R, https://www.insurance.wa.gov/mental-health-parity (last visited 07/24/2023).

selling individual insurance in Washington State.[10] Each insurer offers multiple plans, each of which carries its own contractual policy. Each year, the OIC has only a few months to review every individual health insurance policy to ensure it complies with hundreds of state and federal laws, before moving on to reviewing the many other insurance policies it regulates.[11] And every year, the agency must add to the list of laws it checks policies against, as new kinds of violations become evident and new laws take effect.[12] This is an extraordinarily resource-intensive process. Even though the OIC reviews each plan for mental health parity compliance as

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[10] *Individual & Family Health Plans & Premiums*, OFF. OF THE INS. COMM'R, https://www.insurance.wa.gov/individual-and-family-health-plans-premiums.

[11] *See generally, Speed to Market Tools for Health Coverage Analysis*, OFF. OF THE INS. COMM'R, https://www.insurance.wa.gov/speed-market-tools-health-coverage-analysts.

[12] *See generally, Health Care & Disability Filings*, OFF. OF THE INS. COMM'R, https://www.insurance.wa.gov/health-care-and-disability-filings.

part of its compliance "checklist," as a practical matter it may not be able to spot every potential violation before the policies take effect. *See generally Speed to Market Tools for Health Coverage Analysis, supra,* n. 10. Washington residents' rights to mental health treatment should not be limited by the resources allocated by the Legislature or the OIC to their enforcement.

As the Seattle Times Editorial Board concluded more than nine years ago: enforcement of the parity laws cannot be left to the OIC alone. Rather, mental health consumers need to be able to enforce their parity rights on their own. *See* Editorial: State Needs Parity Mandate to Cover Autism Therapy, SEATTLE TIMES, May 20, 2014 (noting that the OIC and "the Legislature left enforcement to" consumers and plaintiffs' counsel including those representing P.E.L.), *available at https://www.seattletimes.com/opinion/editorial-state-needs-parity-mandate-to-cover-autism-therapy/* (last viewed July 27, 2023).

By contrast, Premera's approach would allow insurers to promise mental health benefits consistent with parity laws while evading meaningful enforcement of that promise. This would undermine the rights afforded to Washington consumers under the state and federal Parity Acts and the ACA. RCW 48.01.030 states that "The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters." Premera's approach would go against the public interest by denying consumers any meaningful remedy for mental health parity violations. Insureds must be able to exercise their own rights under common law when their insurers and regulated entities have provisions that violate the ACA, rather than having to wait for the OIC to take action.

E. Premera Has Available Remedies If They Disagree With the OIC's Rules Implementing the Parity Law.

Premera has many options if it disagrees with OIC's implementation of state and federal parity laws. Instead of

ignoring OIC's parity rules, Premera has the right to petition the OIC to re-open rulemaking under the Administrative Procedure Act. *See* RCW 34.05.330 ("Any person may petition an agency requesting the adoption, amendment, or repeal of any rules"). The OIC must act in response to such a petition, and if Premera were dissatisfied with the response, it could pursue further review by the Governor. *See id.* There is no evidence that Premera has pursued such a petition.

Premera could have sought judicial review of the rulemaking under Chapter 7.24 of the Revised Code of Washington, the Uniform Declaratory Judgments Act. Again, there is no evidence that Premera sought this remedy. Further, if Premera had sought judicial review, the OIC would have been brought in as a party to the litigation to satisfy RCW 34.05.570(2)(a) which states "in an action challenging the validity of a rule, the agency shall be made a party to the proceeding." Premera could have had its day in court to address

its objections to the OIC's WAC 284-43-7080, but it did not pursue it.

Finally, Premera could have sought clarification from the Washington Legislature about the proper application of the State Parity Act in light of the Federal Parity Act. It did not. Instead, the opposite occurred: in 2020, the Washington Legislature amended the State Parity Act to affirm the OIC's efforts at harmonizing the Federal Parity Act and the State Parity law. The legislative record indicates that the Washington Legislature amended the state law to conform with federal law, recognizing that the ACA had already raised the floor for the requirements for mental health coverage. App. Amicus Br. at 24-25.

In sum, Premera did not take any of these legitimate and proper approaches to resolving its disagreement with the OIC's WAC 284-43-7080. Rather, Premera flouted the federal law and state regulatory guidance interpreting it.

F. Bad Faith Claims Must Be Available to Protect Health Insurance Consumers.

As previously discussed, decades of effort toward bringing the health insurance industry to the goal of mental health parity have not yet resulted in full parity for consumers. Given this history, it is vital to ensure that individual insurance consumers have an opportunity to pursue all remedies available under the law. P.E.L. has a right to bring a bad faith claim because a breach of contract remedy may not be sufficient. As the Court of Appeals stated: "We have recognized that traditional contract damages do not provide an adequate remedy for bad faith breach of contract because an insurance contract is typically an agreement to pay money, and recovery of damages is limited to the amount due under the contract plus interest." *P.E.L.*, 24 Wn. App. 2d at 511 (internal citations omitted). This Court should affirm the Court of Appeals' decision that P.E.L.'s bad faith insurance claim was not precluded by any lack of objective symptomology of emotional distress.

III. CONCLUSION

This Court should affirm the portion of the Court of Appeals decision that insured individuals can assert a common-law breach of contract claim to enforce an insurer's promise to comply with the ACA, and that proof of bad faith insurance does not require objective symptomology of emotional distress. The Court should reverse the Court of Appeals determination that insurers are free to ignore the requirements of insurance regulations when the insurer decides, on its own, that the rule does not comply with state law.

CERTIFICATE OF COMPLIANCE

Pursuant to RAP 18.17(b), the undersigned counsel for Appellants hereby certify that the foregoing document contains 4,193 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).

RESPECTFULLY SUBMITTED: July 31, 2023.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on July 31, 2023, I served a copy of this document, via Appellate Courts' Portal e-mail, on the following parties/counsel of record:

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