IN THE

Supreme Court of Pennsylvania

No. 39 MAP 2014

ALLSTATE PROPERTY AND CASUALTY COMPANY, *Appellant*,
v.
JARED WOLFE, *Appellee*

BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS

On a question certified from the U.S. Court of Appeals for the Third Circuit and accepted April 24, 2014:

"Under Pennsylvania law, can an insured tortfeasor assign his or her bad faith claim against an insurer, under 42 Pa.C.S. Sec. 8371, to an injured third party?"

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

United Policyholders ("UP") is a non-profit 501(c) (3) organization founded in 1991 that is a voice and an information resource for insurance consumers in Pennsylvania and throughout the United States. The organization assists and informs disaster victims and individual and commercial policyholders with regard to every type of insurance product. Grants, donations and volunteers support UP's work. UP does not accept funding from insurance companies.

UP's work is divided into three program areas: *Roadmap to Recovery*™ (disaster recovery and claim help), *Roadmap to Preparedness* (insurance and financial literacy and disaster preparedness), and *Advocacy and Action* (advancing pro-consumer laws and public policy). UP hosts a library of tips, sample forms and articles on commercial and personal lines insurance products, coverage and the claims process at www.uphelp.org.

State insurance regulators, academics and journalists throughout the U.S. routinely seek UP's input on insurance and legal matters. UP's Executive Director has been appointed for six consecutive years as an official consumer representative to the National Association of Insurance Commissioners. UP works with insurance regulators, including the Pennsylvania Department of Insurance and Commissioner Consedine, on matters that impact insureds.

UP seeks to assist courts as *amicus curiae* in appellate proceedings throughout the United States, including the Pennsylvania Supreme Court, particularly in cases involving insurance principles that are likely to impact large segments of the public. UP has appeared as *amicus curiae* in the following Pennsylvania Supreme Court cases: *The Babcock and Wilcox Company, et al. v. American Nuclear Insurers, et al* (Case No. 2 WAP 2014); *ACE American Insurance Company vs. Underwriters at Lloyds and Companies, et al*. (Case No. 45 EAP 2008); and *American and Foreign Insurance Company et. al. vs. Jerry's Sport Center, Inc. et. al*. (Case No. 88 MAP 2008). A complete listing of all cases in which UP appeared as *amicus curiae* can be found in our online *Amicus* Project library at www.uphelp.org.

STATEMENT OF THE QUESTION

This Court granted the following Certified Question of Law: "Under Pennsylvania Law, can an insured tortfeasor assign his or her bad faith claim against an insurer, under 42 Pa.C.S. § 8371, to an injured third party. United Policyholders respectfully suggests that the answer is, "yes, a policyholder or insured may assign bad faith claims, including those arising under 42 Pa.C.S. § 8371, to injured third parties."

SUMMARY OF THE ARGUMENT

This Honorable Court should not limit the remedies available to policyholders to deter and punish bad faith insurance company conduct under 42 Pa.C.S. § 8371, because doing so would nullify the intent of the Legislature and undermine its declared public policy, without any demonstrable reason to do so.

When the Legislature passed Section 8371, it allowed courts to award against insurance companies the strongest remedies that the law allows: unlimited punitive damages, interest, and attorney's fees. The strong and deterrent bad faith remedies permitted by the Legislature, particularly awards of punitive damages, demonstrate the Legislature's emphatic desire to serve the public's interest in preventing and punishing bad faith conduct by insurance companies, in addition to compensating policyholders. At that time, the Legislature was aware this Court permitted common law bad faith claims to be assigned by policyholders and

insureds, and it did nothing to limit that practice, understanding and recognizing that such assignments may be a policyholder's only practical means of avoiding catastrophe when she is abandoned by her insurance company. The Legislature merely added additional monetary remedies that could be awarded in bad faith cases to *encourage* more such litigation. Since that time, assignments of bad faith insurance claims have not demonstrated any danger to public policy.

Removing a policyholder's ability to assign her bad faith claim would contradict the public interest by stripping away what has proven to be a time-tested and valuable tool for both keeping insurance companies honest and compensating injured parties. The Legislature's goal of deterring all bad faith by insurance companies is served by allowing Section 8371 claims to be assigned, as recognized by the Superior Court's decision in *Brown v. Candelora,* 708 A.2d 104 (Pa. Super. Ct. 1998). This same goal animated this Court's previous ruling allowing common law bad faith claims to be assigned in *Gray v. Nationwide Mutual Insurance Co.,* 422 Pa. 500, 511, 223 A.2d 8, 13 (1966). Consistent with the Legislature's clear intent and this Court's precedent, this Court should reject the request by Allstate and the Insurance Industry[1] *amici* to bar assignment of such claims.

[1] Allstate Property & Casualty Insurance Company, is referred to herein as "Allstate." When we refer to the "Insurance Industry" *amici*, we are referring to the *amicus* brief filed by the Pennsylvania Defense Institute, the Philadelphia Associate of Defense Counsel, Insurance Federation of Pennsylvania, American Insurance Association, Property Casualty Insurers Association of America, and the Pennsylvania Association of Mutual Insurance Companies.

ARGUMENT

I. ALLOWING ASSIGNMENT OF SECTION 8371 CLAIMS IS CONSISTENT WITH PUBLIC POLICY AS EXPRESSED BY PENNSYLVANIA COURTS AND THE LEGISLATURE.

A. This Case Demonstrates How The Ability To Assign Section 8371 Bad Faith Claims Is A Valuable Tool Necessary To Protect The Public Interest And Financially Vulnerable Policyholders.

When a liability insurance company causes a policyholder to suffer an uninsured verdict due to a bad faith refusal to defend or settle within policy limits, public policy strongly supports the right of the policyholder to assign his or her bad faith claim to the injured third party. The right to make assignments protects the most financially vulnerable policyholders from opportunistic breaches by their insurance companies at the crucial moments when policyholders rightfully expect their insurers to protect them as their fiduciaries.

As this Court has observed, "[b]ecause of the insurer's controlling role in the litigation, the insurer enters a fiduciary relationship with its insured and accepts the responsibility to protect its insured." *Birth Center v. St. Paul Cos.*, 567 Pa. 386, 407 n.17, 787 A.2d 376, 389 n.17 (2001); *Gray v. Nationwide Mut. Ins. Co.*, 422 Pa. 500, 508, 223 A.2d 8, 11 (1966) (noting that "by asserting in the policy the right to handle all claims against the insured . . . the insurer assumes a fiduciary position towards the insured and becomes obligated to act in good faith and with due care in representing the interests of the insured"); *Fedas v. Ins. Co. of State of*

Pa., 300 Pa. 557, 559, 151 A. 285, 286 (1930) (holding that "utmost fair dealing should characterize the transactions between an insurance company and the insured").

Therefore, where there is risk of exposing the policyholder to "personal pecuniary loss," an insurance company's decision to refuse to settle within limits must "be based on a bona fide belief . . . that it has a good possibility of winning the suit," and the insurer has no right "to hazard the insured's financial well-being." *See Cowden v. Aetna Cas. & Sur. Co.*, 389 Pa. 459, 471, 134 A.2d 223, 228 (1957) (quoted in *Birth Center*, 567 Pa. at 390, 787 A.2d at 379). Thus, where the insurer "unreasonably refuses an offer of settlement, it may be liable for the entire amount of the judgment secured against the insured." *Gray*, 422 Pa. at 504, 223 A.2d at 10. Eliminating the right to assign insurance claims would only increase the opportunity for insurance companies to abandon their policyholders by refusing to defend or deciding not to settle at the risk of their policyholders' financial well-being.

The importance of assignments of insurance claims is demonstrated in the facts of this case, in which the insurance company, Allstate, chose to gamble with its policyholder's livelihood, lost, and then sought to place the consequences on the shoulders of its policyholder rather than itself. Allstate had a clear opportunity to protect its policyholder, Zierle, from the risk of a punitive damages award by

settling the entire case, yet it intentionally and recklessly chose instead to expose Zierle to that risk by proceeding to trial. Allstate invited a disastrous punitive damages award to befall Zierle by repeatedly offering $1,400 or less to settle, many times less than even the compensatory damages awarded, in a case where Zierle and Allstate had no chance of "winning the suit" given Allstate's decision to concede liability. As a predictable result of Allstate's improvident gamble, Zierle soon faced a massive uninsured monetary judgment against him, which Allstate refused to pay.

To protect himself from the consequence of what the jury correctly recognized as Allstate's bad faith refusal to settle, Zierle paid the injured third-party plaintiff, Wolfe, with an asset of uncertain value: an assigned right to sue the insurance company for bad faith. For many policyholders in this unfortunate situation, such an assigned right is their *only* available asset to provide an injured party. For many injured parties, such an assignment is their only plausible route to being made whole. Fortunately for Wolfe, that asset proved valuable when the jury recognized Allstate's unnecessarily risky conduct as bad faith towards its policyholder, and awarded damages.

Allstate now asks this Court to take from the Commonwealth's policyholders the very tool that enabled Zierle both to protect himself from the consequences of Allstate's conduct and compensate Wolfe. Meanwhile, the

Insurance Industry *amici* are even more ambitious, presumptuously going far beyond the certified question at issue, to ask the Court to re-write Section 8371 to remove from its scope *all* liability insurance claims. Of course, the statute makes no such distinction between liability insurance and first-party insurance. *See* 42 Pa.C.S. 8371 (providing bad faith remedies for "an action arising under an insurance policy"). This Court should not accept either invitation from the insurers to limit the bad faith remedy unambiguously provided by the Legislature, which intended to deter and punish bad faith conduct by insurance companies.

This Court must remember that insurance policies are qualitatively different from ordinary contracts, which is why the Legislature created the remedies at issue here in Section 8371. Unlike other contracts in which an efficient breach is possible, the policyholder has no ability to "cover" if the insurer refuses to perform and pay a claim. *See E.I. du Pont de Nemours & Co. v. Pressman*, 679 A.2d 436, 447 (Del. 1996) (explaining why "insurance is different" from other contracts, and punitive damages are justified in the context of the unique financial vulnerability of policyholders when an insurance company breaches its policy). In other words, after the claim is made, there is no marketplace in which the policyholder can purchase insurance to pay for a claim that its insurer has refused to pay. *Id.*; *see also Cowden*, 389 Pa. at 469, 134 A.2d at 228 ("utmost good faith" by the insurer is required due to the "peculiar relationship existing between the parties").

When a policyholder is victimized by an insurance company's bad faith, she often has no financial means of satisfying a judgment other than assigning a claim against the insurer. Pursuing an insurance coverage action is impossible or unrealistic for many. Most policyholders are not litigation savvy. Even finding an attorney is an unfamiliar prospect for a significant percentage of the population. For those with means, litigation can be time-consuming and exhausting. Indeed, avoiding the need to worry about lawsuits is the reason many purchase liability insurance.[2] Accordingly, an immediate deal with an injured third party, which assigns insurance claims in exchange for an indemnity and hold harmless that protects the policyholder from the results of the insurer's breach, is often the only practical and preferred solution for policyholders. Therefore, the assignment remedy must be understood as a valuable and necessary tool for protecting the Commonwealth's diverse policy-holding citizens from insurance company bad faith and a means of deterring and punishing bad faith behavior.

B. Policyholders Should Be Permitted To Assign Section 8371 Bad Faith Claims For The Same Policy Reasons Courts Have Permitted Bad Faith Claims To Be Assigned For Many Years.

The Commonwealth's long experience in allowing third-party bad faith claims to be assigned by a policyholder to an injured claimant is based on sound

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[2] When a policyholder pays its premiums up front it has a right to expect insurance coverage when a claim is made, "not a lot of vexatious, time-consuming, expensive litigation with [the insurance company]." *Hayseeds, Inc. v. State Farm Fire & Cas.*, 352 S.E.2d 73, 79 (W. Va. 1986).

public policy, and it has not led to the parade of horribles imagined by Allstate and the Insurance Industry *amici*. In 1966, based on extensive analysis of public policy, discussed in the next Section, this Court recognized that common law bad faith claims may be assigned. *See Gray,* 422 Pa. at 511, 223 A.2d at 13. Subsequently, assignments have been routinely used by the Commonwealth's policyholders to protect themselves from the wrongs they suffer at the hands of their insurers.

When the Legislature created additional bad faith remedies by introducing Section 8371, it did nothing to upset this established view of public policy and common law practice. *See* 42 Pa.C.S. § 8371. The statute "merely provides an additional remedy and authorizes the award of additional damages." *Birth Center*, 567 Pa. at 402, 787 A.2d at 386, Consequently, sixteen years ago, based on the same public policy reasons noted in *Gray*, the Superior Court recognized that bad faith claims under Section 8371 could be assigned just as bad faith claims could be assigned at common law. *See Brown v. Candelora*, 708 A.2d 104, 112 (Pa. Super. Ct. 1998) ("Under Pennsylvania law, as well as in the majority of American jurisdictions, an insured's claim against his or her insurer, in the nature of breach of contract, breach of fiduciary duty, and bad faith, as well as claims under Section 8371 of the Judicial Code for punitive damages, counsel fees and interest, are assignable."). This Court previously assumed all bad faith claims could be

assigned, consistent with *Gray*. *See Johnson v. Beane*, 541 Pa. 449, 455 n.2, 664 A.2d 96, 99 n.2 (1995) (distinguishing bad faith claim via assignment from garnishment proceeding, noting "Beane could have expressly *assigned* his bad faith claim to Appellant pursuant to *Gray*").

Accordingly, the state and federal courts within this Commonwealth have for *many* years allowed statutory and common law bad faith claims to be assigned with all remedies available to them, including compensatory damages, interest, punitive damages, and attorney's fees. Despite these years of experience in allowing such claims to be assigned, the courts have not found the experience troubling. *See Candelora*, 708 A.2d at 110; *Haugh v. Allstate Ins. Co*., 322 F.3d 227 (3d. Cir. 2003); *Wolfe v. Allstate Prop. & Cas. Ins. Co.*, 877 F. Supp. 2d 228 (M.D. Pa. 2012). The public policy concerns laid down in *Gray* have not ceased to be true, and the additional statutory remedies have not altered the value of assignments in combatting insurance company bad faith conduct.

Even those federal courts that recently disapproved of the assignment of Section 8371 claims never suggested the policy rationales that were the basis of *Gray* and *Candelora* were no longer valid. *See Feingold v. Liberty Mut. Grp.*, 847 F. Supp. 2d 772 (E.D. Pa. 2012), *aff'd,* No. 13-1977, 2014 WL 1329155 (3d Cir. Apr. 4, 2014). Instead, those courts applied a mechanical rule based purely on the tort label affixed to those claims for statute of limitations purposes in *Ash v.*

Continental Ins. Co., 593 Pa. 523, 536, 932 A.2d 877, 885 (2007). These courts applied a rule against assignments of "statutory penalties" and "personal torts" discussed in ancient cases such as *Sensenig v. Pennsylvania Railroad Co.*, 229 Pa. 168, 78 A. 91 (1910) and *Osborn v. First National Bank of Athens*, 175 Pa. 494, 34 A. 858 (1896), but they did not consider whether those concerns outweighed the important public policy favoring assignments discussed in *Gray*, nor did they discuss the Legislature's judgment in not barring assignments when Section 8371 was enacted.

Allstate and the Insurance Industry *amici* also fail to identify any change in public policy since *Gray*, and they do not identify any existing problems created by the types of assignments at issue in this certified question. Allstate instead focuses on labels. In its estimation, this Court must bar assignment of bad faith claims as "personal torts" or "penalties" simply because this Court has classified Section 8371 as arising primarily from the law of torts. Allstate disregards three key facts: (1) the reasons that favor the assignment of common law bad faith claims apply with equal if not greater force to statutory claims, (2) assignment of Section 8371 claims furthers the intent of the Legislature in passing Section 8371, and (3) many years of allowing assignment of both statutory and common law bad faith claims have demonstrated the value of the assignment right.

As discussed in greater detail below, there is nothing in *Gray*, *Candelora*, Pennsylvania's experience with assignment of Section 8371 claims, or the Legislature's intent in passing Section 8371 that supports barring such assignments. Indeed, all of these support allowing assignments.

C. Assignment of Section 8371 Bad Faith Claims Is Consistent With Pennsylvania Public Policy Announced in *Gray*.

1. Assignments Do Not Threaten Public Policy.

The *Gray* Court rejected the very public policy arguments advanced by the insurers in this appeal, and they have not identified any reason this Court should change its conclusion. First, responding to concern that assignment between the policyholder and injured claimant might "foster fraud and collusion," the Court concluded that the possibility of collusion "is no way increased by an assignment." *Gray*, 422 Pa. at 510-11, 223 A.2d at 13. Particularly where, as here, "the insured's liability is terminated by the assignment . . . the possibility of collusion is more remote," as the insured "no longer has any pecuniary interest in the outcome of the litigation." *Id.*

Further, the Court summarily rejected objections based on the injured third party being a "stranger to the relationship between the insured and the insurer, the latter owing no duty" to the third party. *Id.* at 506, 223 A.2d at 11. These points were acknowledged as "true," but "immaterial" and "irrelevant in the factual

posture" of litigation in which the insured assigned his bad faith claim to the third party whose claim was at issue. *Id.*

Additionally, the Court dismissed concerns based on the view that "the result reached herein will cause more injured claimants to propose settlement for the policy limit when the insurance company is defending the action against an insured who is apparently judgment-proof." *Id.* at 511, 223 A.2d at 13. As the *Gray* Court explained: "the insurer has nothing to fear so long as its refusal to settle is made in good faith. And it is fundamental that the law favors settlements." *Id.* (quoting *Brown v. Guarantee Ins. Co.*, 319 P.2d 69, 69 (Cal. Ct. App. 1957)).

Concerning the distinction between tort and contract-based bad faith claims, the Court also cited with approval the California Supreme Court's decisions permitting insurance bad faith claims to be assigned, "even if based upon tort." *Id.* at 508 n.6, 223 A.2d at 12 n.6 (quoting *Brown*, 319 P.2d at 78). Though that discussion is *dicta*, whether a bad faith claim is characterized as an action in tort or contract or both, vague assertions that public policy would be harmed by assignment of these claims due to "promotion of champerty," have not been borne out over years of experience with these assignments. The courts have not been overrun by "profiteering and speculating in litigation" from "officious intermeddlers." *See* Allstate Br. at 12-13.

In any event, the *only* type of assignment at issue in this certified question involves a third party who claims injury by the policyholder, whose claims for damages were at issue when the insurer breached its policy. Such a person is directly affected by the insurer's bad faith in failing to assist the policyholder in an earlier settlement, not an officious gambler with nothing at stake. As recognized in *Gray*, there is no public policy harmed by permitting these assignments, though they do serve the important policy of encouraging earlier settlements. Further, it would make no sense to treat statutory bad faith differently from common law bad faith where the *conduct* of the insurer at issue is the same under both the common law and the statute. *See Birth Center*, 567 Pa. at 410, 787 A.2d at 391.

2. Assignments Compensate Injured Parties.

One of the chief public policy reasons to allow bad faith claims to be assigned is that they allow injured parties to be fully compensated. As this Court recognized in *Gray*, allowing policyholders to assign bad faith claims against insurance carriers benefits the injured party. *Gray*, 422 Pa. at 511, 223 A.2d at 13.

Allstate tries to obscure that salutary goal by focusing on the fact that the excess judgment in the case at bar was punitive and not compensatory. That circumstance, however, is rare, and focus on it misses the point, which is Allstate's blameworthiness in permitting the punitive damages to be imposed against its policyholder, which led to the bargain by policyholder and injured party to escape

the consequences of Allstate's actions. If the insurance company had settled the case when doing so could be accomplished cheaply, punitive damages would never have been imposed against Zierle, and Wolfe would have been made whole for his injuries without the trouble and expense of first litigating against Zierle through trial and then collecting on the judgment through the assignment against Allstate. As the *Gray* court observed, even if it appears that an injured claimant has "benefited" from an insurer's failure to settle, the insurer's breach typically forces him to "expend considerable more time and money" than if the insurer had acted appropriately in the first place. *Id.* at 507 n.5, 223 A.2d at 11 n.5.

Punitive damages are intended to deter and punish bad faith, and those goals are served regardless of what party presses the claim against the insurance company. Focus on the punitive damage remedy alone also ignores the two plainly compensatory remedies provided by Section 8371, i.e. an award of attorney's fees and interest. Allowing assignees/claimants to be awarded interest and attorney's fees compensates them, and those remedies, accompanied by punitive damages, encourage them to sue insurance companies who act in bad faith. That serves both the goal of Section 8371 in deterring bad faith, and the rationale of compensating injured parties.

3. Assignments Level The Field And Encourage Settlement.

This Court has recognized that allowing assignments of bad faith claims is necessary for a policyholder *or claimant* to level an unfair playing field during settlement negotiations and litigation with an insurance company. *See Gray,* 422 Pa. at 511, 223 A.2d at 13. In *Gray*, this Court reasoned that: "Permitting an insured to assign his claim to the injured claimant would put the claimant on more of an equal footing with the insured's insurance company in settlement negotiations without tipping the balance against an insurer who could still refuse to settle in good faith." *Id.* The same reasoning is true for Section 8371 claims.

Allstate suggests that because the insurance company is liable at common law for judgment in excess of the Policy's limits, the injured claimant is adequately compensated without the statutory remedies. This argument ignores the Legislature's determination that common law remedies were insufficient to combat insurance bad faith effectively. *See* 42 Pa.C.S. § 8371. The playing field remained too tilted, even with common law remedies. The Legislature concluded that additional remedies were required to overcome insurance companies' inherent advantages in litigation expertise and resources to engage in coverage litigation, including attorney's fees. Those unfair advantages are not diminished when the policyholder's injured assignee seeks to vindicate the public interest rather than the policyholder directly.

The availability of attorney fees and interest provides a measure of fairness to policyholders and claimants pressing insurance coverage claims, and punitive damages provide a means of better deterring bad faith. Because both policyholders and their assignees share a distinct disadvantage in settlement discussions and subsequent litigation with insurers, the Legislature's intent is furthered by permitting a third-party claimant to recover these damages in an assigned claims.

As discussed by the Superior Court in *Candelora*, "equalization of the contenders' strategic advantages" through assignment is particularly important where the insurer's bad faith "exposes its policyholder to the sharp thrust of personal liability." 708 A.2d at 113 (quoting *Smith v. State Farm Mut. Auto. Ins. Co.*, 5 Cal. App. 4th 1104, 1111 (1992)). That is what Allstate did here. In these circumstances, "by assigning his claim against the insurer in exchange for a covenant to hold harmless, the insured can turn the insurer's wrongful rejection into a bargaining strength in dealing with the claimant." *Id.* Accordingly, the assignment remedy provides the policyholder an opportunity to "bargain" with the injured party for a release of liability as consideration for the assignment, thus protecting both the policyholder and the injured party from the consequences of the insurer's bad faith.

Perhaps even more importantly, as noted above, this Court has previously recognized that to the extent the ability to assign bad faith claims leads to earlier

settlements to avoid unnecessary bad faith litigation, "it is fundamental that the law favors settlements." *Gray,* 422 Pa. at 511, 223 A.2d at 13 (quoting *Brown*, 319 P.2d at 69).

4. Assignments Protect Policyholders From Predatory Conduct And Bankruptcy.

The assignment right is perhaps most crucial in the all-too-frequent cases where the policyholder or insured has no ability to pay the judgment entered against it as a result of the insurance company's bad faith failure to settle. In *Gray*, the Court focused on the fact that permitting assignment of insurance bad faith actions from a policyholder to injured judgment holder, "prevents an insurer from benefiting from the impecuniousness of an insured who has a meritorious claim but cannot first pay the judgment imposed upon him." *See Gray,* 422 Pa. at 506, 223 A.2d at 10. The Court was concerned that it must not "impair the usefulness of insurance for the poor man." *Id.* If a poor policyholder or insured cannot resolve a judgment against him by negotiating an assignment with the claimant, he would face "real damage" from a judgment "because of the potential harm to his credit rating." *Id.*

Relatedly, insurance companies could drive their policyholders into complicated and expensive bankruptcy proceedings if they could not resolve the judgments against them through insurance assignments. These bankruptcies become "unnecessary" where the right to assign insurance claims exists. *Id.* at

510, 223 A.2d at 12. As explained in *Gray*, bankruptcy may be avoided if a judgment is entered against the policyholder who "can follow the more simple and less expensive procedure of assigning the cause of action against the insurer, directly, to his judgment creditor." *Id*.

5. Assignments Discourage and Punish Bad Faith By Insurers.

Perhaps most importantly, allowing Section 8371 bad faith claims to be assigned supports the Legislature's intent to protect the public by deterring insurance companies from acting in bad faith. There is nothing in the statute itself that suggests the Legislature wanted to immunize bad faith in any way, or limit the parties who had to that point in time been permitted by this Court to pursue bad faith actions in the Commonwealth. *See* 42 Pa.C.S. § 8371.

Rather, by providing that insurance companies could be liable for unlimited punitive damages, attorney fees, and interest damages, the Legislature intended to deter bad faith by them in the strongest possible fashion and punish them. *See Ash, supra*, 593 Pa. at 535, 932 A.2d at 885 ("[T]he legislature did precisely this when it enacted § 8371, thereby formally imposing a duty of good faith on insurers based on its apparent determination that such a provision was necessary to deter bad faith."); *see also Klinger v. State Farm Mut. Auto. Ins. Co.*, 115 F.3d 230, 236 (3d Cir. 1997) (recognizing the "obvious design" of the separate remedies in the bad faith statute is not just compensatory, but also to "punish" the insurance company

with punitive damages). Thus, allowing policyholders who have been victimized by insurance companies to assign their bad faith claims furthers the deterrent effect intended by the Legislature. Conversely, barring assignments would thwart the intended deterrent effect by restricting the additional remedies and penalties the Legislature believed to be necessary to deter bad faith.

A policyholder who is the victim of insurance bad faith is extraordinarily vulnerable. She may be left bereft of a defense in a liability case, or her home may be destroyed by fire, or she may suffer from a judgment in excess of the policy because the insurance company acted in bad faith during settlement negotiations. Those were precisely the results of bad faith the Legislature sought to avoid. In liability insurance cases, often only the injured claimant, armed with an assigned bad faith claim, has the resources and incentive necessary to challenge and correct the insurer's bad faith. Without an assignment right, in cases involving insureds without great resources or litigation savvy, insurance companies would be even more secure in flouting their responsibilities, knowing the consequences would not be as great, thus reducing the value of insurance for the poor man. Because disallowing assignments of Section 8371 bad faith claims undermines the Legislature's intent to deter bad faith conduct of all kinds to protect policyholders of all means, this Court should permit these assignments to continue to be made.

D. Section 8371 Evinces The Commonwealth's Policy Against Insurance Company Bad Faith In The Strongest Possible Terms.

When the Legislature passed Section 8371 in 1990, it declared in the strongest possible terms a public policy favoring the punishment of insurance companies that commit bad faith and the protection of policyholders who are its victims. Section 8371 provides for three substantial remedies: enhanced interest, attorney's fees, and unlimited punitive damages. To have any one of these remedies in a statute is unusual, but providing all three is unique. Indeed, Section 8371 may be the only Pennsylvania statute containing all three of these extraordinary remedies.

By allowing a court to award attorney's fees to a policyholder, the Legislature gave policyholders a means of suing insurance carriers on a more even footing, thereby *encouraging* a specific type of litigation the Legislature views as valuable and necessary to deter bad faith. Permitting this remedy also shows that the Legislature recognized that policyholders are vulnerable to insurance carriers, which have greater financial resources and litigation expertise.

Other Pennsylvania statutes allow attorney's fees to be awarded to vulnerable groups. The Wage Payment and Collection Law allows courts to award costs and attorney's fees to employees if their employers refuse to pay them their proper wages. *See* 43 Pa.C.S. § 260.9a(f). Similarly, Pennsylvania courts may award attorney's fees to consumers who have been victimized by businesses who

commit unfair trade practices. *See* 73 Pa.C.S. § 201-9.2(a). In each case, the Legislature recognized that one party was vulnerable, and it provided that the vulnerable party could obtain attorney's fees from the party with greater financial means. The same is true under Section 8371.

Section 8371, however, is stronger than either of the above statutes because it also provides for enhanced interest and an *unrestricted* amount of punitive damages. By providing these additional remedies, the Legislature demonstrated its goal was not merely compensation. *Ash, supra*, 593 Pa. at 535, 932 A.2d at 885. The punitive damages remedy in the bad faith statute serves "the twin goals of punishment and deterrence," while attorneys' fees, costs and interest are recognized as compensatory in nature. *Hollock v. Erie Ins. Exch.*, 842 A.2d 409, 419, 421 (Pa. Super. 2004).[3] These are not half-measures—these three remedies combined are the strongest that the law allows. They are a clear statement of public policy to deter insurance companies from victimizing policyholders and to protect policyholders.

[3] The Third Circuit agrees the different bad faith remedies provided in Section 8371 serve "both punitive and remedial" purposes, whereby "punitive damages are awarded to punish the defendant for its bad faith in failing to do that which it was contractually obligated to do," while attorney's fees, costs and delay damages are designed "to make the successful plaintiff completely whole." *Klinger*, *supra*, 115 F.3d at 236. The "attorney fees and costs provisions vindicate the statute's policy by enabling plaintiffs . . . to bring § 8371 actions alleging bad faith delays to secure counsel on a contingent fee," which helps to "perform a filtering function akin to prosecutorial discretion, because rational attorneys will refuse to work on a contingent fee arrangement when their investigation reveals the bad faith allegations of prospective clients to be meritless." *Willow Inn, Inc. v. Public Serv. Mut. Ins. Co.*, 399 F.3d 224, 236 (3d Cir. 2005). Simultaneously, punitive damages awards may "relieve the pressures on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes." *Id.*

Focusing solely on compensatory purposes, Allstate and the Insurance Industry *amici* ignore the Legislature's emphatic statement of policy to deter insurance companies from acting in bad faith and to punish those that act in bad faith. The Insurance Industry *amici* wrongly complain that punitive damages are an unfair "windfall" and that allowing assignment of Section 8371 bad faith claims "unfairly tilts the bad faith playing field against the insurer." Insurance Industry Br. at 7. It was the Legislature that believed the playing field already favored the insurance industry too much, and it was its judgment that public interest favored allowing bad faith damages, including both compensatory and punitive relief.

Thus, the core problem with Allstate's and the Insurance Industry's effort to bar assignments of statutory bad faith claims is doing so would shield insurers from a range of important remedies the Legislature designed to further public policy whenever a policyholder or insured is not financially capable of resolving an excess verdict caused by the insurer's bad faith settlement practices. That is, granting the insurance industry the relief it seeks would thwart the Legislature's intent both to protect the public and to deter and punish bad faith. By contrast, permitting these assignments helps to accomplish the Legislature's goals.

E. The Legislature Intended To Allow The Common Law Right Of Assignment Of Bad Faith To Continue.

1. The Legislature Was Aware Of But Did Not Alter The Common Law.

When the Legislature passed Section 8371 in 1990 it was aware that this Court has allowed bad faith claims to be assigned since 1966. *See Gray, supra*; *see also Birth Center,* 567 Pa. at 387, 787 A.2d at 404 (legislature presumed to be familiar with judicial decisions about bad faith law when it enacted Section 8371). As discussed in *Toy v. Metropolitan Life Insurance Co*., 593 Pa. 20, 41, 928 A.2d 186, 199 (2007), at the time the bad faith statute was passed, "bad faith" had "acquired a particular meaning in the law." Given the state of the law when Section 8371 was introduced, if the Legislature had any concerns that statutory bad faith claims should not be assignable along with the common law claims, it would have said so in the legislation itself. It did not. Similarly, if the Legislature believed that assigning Section 8371 bad faith claims would be against public policy because they were champertous, it would have prohibited them. It did not. In these circumstances, the absence of any prohibition on assignments demonstrates the Legislature's clear intent to allow assignments of bad faith claims to continue.

As this Court observed in *Birth Center*, "**[b]y failing to articulate any changes [in Section 8371], the legislature implicitly acknowledged that the existing standards remained applicable.**" 567 Pa. at 404, 787 A.2d at 387 (bold

added) (quoting *Polselli v. Nationwide Mut. Fire Ins. Co.*, 23 F.3d 747, 752 (3d Cir. 1994)). This Court concluded that because the Legislature did not prohibit the bad faith remedies that previously existed, it intended to *supplement* rather than *supplant* them: "The statute does not reference the common law, does not explicitly reject it, and the application of the statute is not inconsistent with the common law. Consequently, the common law remedy survives." *Id*. at 403, 787 A.2d at 386. The Legislature must "specifically preempt accepted common law for prior law to be disregarded." *Id.* at 403, 787 A.2d at 387 (quoting *Metropolitan Prop. & Liab. Ins. Co. v. Ins. Comm'r*, 525 Pa. 306, 311, 580 A.2d 300 (1990)).

The same analysis should apply here. Knowing that common law bad faith claims were already assignable, the Legislature took no action to limit the assignability of claims for bad faith under Section 8371. The Legislature merely provided additional bad faith remedies without showing any intent to limit policyholders' established right to assign bad faith claims. Accordingly, this Court should follow the same rationale as it did in *Birth Center*, and recognize that when the Legislature passed Section 8371, it intended to allow assignments of bad faith claims arising under it, supplemented with additional remedies. To hold otherwise would frustrate the Legislature's intent.

2. The Legislature Linked Statutory and Common Law Damages.

As further evidence that the Legislature intended statutory claims to be assignable with common law bar faith claims as an undifferentiated whole, the Legislature linked the remedies available by statute to those allowed by the common law. Specifically, Subsection 1 of Section 8371 allows a court to award interest on the amount of the claim. The principal on which the interest is measured is the amount of the claim, which is available in a breach of contract or a common law bad faith claim—but not under Section 8371. There is no logic to awarding interest, but not the principal. Accordingly, the manner in which the damages were interlinked shows that Legislature believed that the common law bad faith claim and the Section 8371 claim would be brought together. By linking Section 8371 to common law remedies in this way, while aware common law bad faith claims were assignable, the Legislature's evidenced its intention to permit Section 8371 claims to be assigned along with common law claims.

3. The Legislature Did Not Intend To Split Bad Faith Remedies.

The Legislature's decision to supplement existing common law bad faith remedies in a single judicial proceeding would be unnecessarily complicated by permitting assignment of some of these remedies but not others. Doing this would essentially split the bad faith cause of action in many cases, similar to the case at bar, potentially resulting in two separate insurance coverage lawsuits for the courts

to adjudicate relating to the same underlying acts of bad faith. That is, the statutory claim would be brought by the insured, and the common law claim would be brought by the insured's assignee, with separate remedies for each. Such a result would violate the public policy in favor of efficient judicial administration, and the Court should not presume the Legislature would favor such a wasteful rule without express direction.

II. SECTION 8371 BAD FAITH CLAIMS ARE NOT LIKE PERSONAL TORTS.

As noted above, Allstate argues that policyholders should be allowed to assign common law bad faith claims, but not bad faith claims under Section 8371, based on its characterization of the statutory bad faith remedy as a "personal tort." This argument is baseless for several reasons. First, whether Section 8371 claims may be assigned must be decided based on what the Legislature intended by adopting Section 8371. As discussed above, allowing assignments supports the Legislature's intent and barring them thwarts that intent. The Legislature knew assignments were routinely used in bad faith claims, and it did not forbid them when it added additional remedies for bad faith claims. The inquiry ought to end there.

Second, even if this Court looks deeper, the analogy that Allstate attempts to make does not work. Because common law bad faith claims can already be assigned, permitting assignment of Section 8371 claims also would only provide

additional remedies to the assignee. Where it applies (and it should not here), the goal of "avoiding champerty" is to prevent assignment of litigation claims at all—not to limit remedies. Instead, here, bad faith claims can already be assigned.

Third, Section 8371 is a statutory cause of action that affects the public and is not akin to the personal torts to which Allstate analogizes. The Legislature regulates the insurance industry for the benefit of the public. As discussed in the previous Section, the Legislature's aim in Section 8371 was to deter and punish bad faith conduct to protect the public and encourage good faith behavior by insurers in defending and settling claims. The Legislature knew that the need for deterrence to prevent bad faith by insurance carriers was not personal—it affects the public. Thus, although the circumstances of a punitive damages award might concern a single instance of conduct affecting a single policyholder, a fuller understanding recognizes the remedy is not so narrow in purpose or focus.

Last, the bad faith tort itself is nothing like personal torts, because bad faith is measured *by reference to the insurance policy*. The claim arises "under an insurance policy…" Bad faith exists when, *inter alia*, an insurance company unreasonably interprets the Policy, misrepresents the Policy, delays handling claims made under the Policy, or engages in bad faith settlement negotiations that arose under the Policy, among other things. No personal tort is akin to that.

Because the Section 8371 remedy is interpreted by reference to the insurance policy, it should not be treated differently from the common law remedy.

III. OTHER STATES ALLOW BAD FAITH TORTS TO BE ASSIGNED.

There is strong support from other states that allowing assignment of bad faith tort claims is in the public interest. In its 1998 decision allowing assignment of Section 8371 claims, the Superior Court reviewed the caselaw from other jurisdictions and concluded that there was a consensus that bad faith tort claims could be assigned because such assignments protect the public interest. *See Candelora, supra*, 708 A.2d at 112. It decided to follow that consensus. Similarly, the Maryland Supreme Court found that the consensus from other jurisdictions was to allow bad faith torts to be assigned, and it decided to join that consensus. *See Medical Mut. Liab. Ins. Soc'y v. Evans*, 622 A.2d 103, 116-17 (Md. 1993).

Many other states have rejected arguments identical to those put forth by Allstate here. A Mississippi appellate court rejected a challenge to an assignment of a bad faith and punitive damage claim in *Kaplan v. Harco Nat'l Ins. Co.,* 716 So. 2d 673, 680 (Miss. Ct. App. 1998). That court held that the public interest was furthered by allowing insurance bad faith claims and punitive damage claims to be assigned, reasoning, "the public policy goal of punitive damages is better served by allowing the injured person whose claim potentially has been egregiously complicated by the insurance company's actions to be assigned the punitive

damage claim." *Id.* The Court of Appeals of Indiana has held similarly. *See Allstate Ins. Co. v. Axsom*, 696 N.E.2d 482, 485 (Ind. Ct. App. 1998) ("If the excess judgment and resulting injury to [the policyholder]'s property is the consequence of oppressive, i.e. tortious, conduct by Allstate, then punitive damages, the remedy for such conduct, should also be assignable."). Such a rationale applies even more so here, where the Commonwealth's Legislature found that unlimited punitive damages were needed to deter insurance companies from acting in bad faith.

Further, a Florida appellate court squarely rejected the argument, made here by Allstate, that bad faith claims could not be assigned because they were akin to personal torts. The court held that "an insured's cause of action against his insurer for wrongful failure to settle within policy limits is not based on a personal tort, and is therefore assignable, and since such an assignment is not against public policy." *Selfridge v. Allstate Ins. Co*., 219 So. 2d 127, 129 (Fla. Dist. Ct. App. 4th Dist. 1969). That continues to be the law today in Florida. *See Wachovia Ins. Servs. v. Toomey*, 994 So. 2d 980, 989 (Fla. 2008).

These decisions are well-established. Forty years ago, relying on this Court's decision in *Gray*, *supra*, the Arizona Supreme Court held that a policyholder could assign his claims for bad faith and negligence against an insurer. *General Acc. Fire & Life Assur. Corp. v. Little*, 443 P.2d 690, 693-94

(Ariz. 1968). More recently, other state supreme courts and intermediate appellate courts across jurisdictions have likewise found that bad faith claims are assignable. *See, e.g.*, *Nunn v. Mid-Century Ins. Co*., 244 P.3d 116, 119 (Colo. 2010) ("[T]he insured must make a formal assignment of its bad faith [tort] claims to the third party before the third party can assert such a claim directly against the insurer."); *Safeco Ins. Co. v. Butler*, 823 P.2d 499, 508 (Wash. 1992) (*en banc*) (permitting assignment of bad faith tort claim); *Cotton States Mut. Ins. Co. v. Brightman*, 580 S.E.2d 519, 520 (Ga. 2003) (affirming judgment in favor of assignee (the injured party) of bad faith claim); *Gainsco Ins. Co. v. Amoco Production Co.*, 53 P.3d 1051, 1061 (Wyo. 2002) (recognizing that assignee may pursue claim for bad faith tort); *Goddard v. Farmers Ins Co. of Oregon*, 179 P.3d 645, 648 (Or. 2008) (*en banc*) (implicitly recognizing that bad faith tort awards may be assigned); *Ohio Bar Liab. Ins Co. v. Hunt*, 787 N.E.2d 82, 88 (Ohio Ct. App. 2003) (ruling that anti-assignment clause in policy did not invalidate bad faith tort claim); *Keith v. Comco Ins. Co.*, 574 So. 2d 1270, 1280 (La. Ct. App. 1991) (upholding trial court's bad faith tort award against insurer and in favor of policyholder's assignee). In sum, there is strong support from other states that the public policy of deterring bad faith by insurance companies favors allowing bad faith tort claims to be assigned.

IV. THIS COURT SHOULD DECLINE THE INSURANCE INDUSTRY'S INVITATION TO INTERPRET SECTION 8371 AS APPLYING ONLY TO "FIRST PARTY" CLAIMS.

This Court should decline the Insurance Industry *amici*'s outrageous invitation to read into Section 8371 a limitation that the bad faith statute and its remedies apply only to first party claims and not third party claims. *See* Insurance Industry Br. at 15. The insurers are not behaving as friends of the Court. Their suggestion is not within the narrow certified question at issue, and debating this extraneous issue requires unnecessary time and expense for the parties and the Court. Moreover, the suggestion itself is patently frivolous, ignoring the plain text of the statute and this Court's precedent.

The Insurance Industry asks the Court to inoculate insurance companies from an entire category of bad faith claims: all insurance actions that arise from liability insurance policies. i.e., third-party insurance claims. This is a massive category of insurance policies implicating the rights of millions of policyholders in the Commonwealth, including ordinary home owners and auto drivers who typically purchase both third-party and first-party protections within the same policies, as well as corporations small and large. Of course, there is nothing in the language of Section 8371 that supports this request. Indeed, to so hold would artificially limit the wide-ranging language of Section 8371 and the Legislature's over-arching intent to protect the public from bad faith by insurance companies.

The statute is broad and not ambiguous, applying to *all* lawsuits arising under *any* insurance policy. It plainly states: "In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions: . . . ." 42 Pa.C.S. § 8371. There is no distinction made between a first-party property insurance policy, a third-party liability policy, or any other subcategory of insurance. There is no distinction between breach of an insurer's duty to pay first party benefits or breach of a duty to defend and settle lawsuits brought by third parties. As this Court stated in *Toy*, when the Legislature used the term "bad faith" in the statute, it had "acquired a particular meaning in the law" and concerned breaches of the duty of good faith and fair dealing in both the third-party and first-party claim context. *Toy*, 593 Pa. at 41, 928 A.2d at 199. "In other words, the term captured those actions an insurer took when called upon to perform its contractual obligations of defense and indemnification or payment of a loss." *Id.*

The insurers' contrary interpretation of "In an action arising under an insurance policy," is farcical. As this Court has previously ruled, "arising out of" is a broad, unambiguous term construed to mean "causally connected with, not proximately caused by," in which "'but for' causation, i.e. a cause and result relationship, is enough" to satisfy it. *McCabe v. Old Republic Ins. Co.*, 425 Pa. 221, 224, 228 A.2d 901, 903 (1967) (quoting *Mfrs. Cas. Ins. Co. v. Goodville Mut.*

Cas. Co., 403 Pa. 603, 607-08, 170 A.2d 571, 573 (1961)). Despite this, the insurers suggest that a third-party insurance claim does not "arise under an insurance policy" because it is based on "a suit brought by an injured party against an insured tortfeasor," which arises "out of the insured's own tortious conduct." Insurance Industry Br. at 17. This is just a silly word game, of course, no different than claiming that a first-party fire insurance claim does not "arise under an insurance policy" because it actually arises from a fire on the insured's property. In either the first-party or third-party context, if the insurer of the policyholder breaches its policy, resulting in a coverage action brought in court, that court case is "an action arising under an insurance policy."

Given the Legislature's intent to deter and punish insurance company bad faith, there is no conceivable rationale for suggesting that it believed that an insurance company that acted in bad faith with respect to first party duties should be subject to punitive damages, but that an insurance company that acted in bad faith with respect to defending third party lawsuits should not be subject to punitive damages. In either case, the insurance company breached its insurance policy and harmed its policyholder, necessitating a lawsuit to compel it to honor its duties. Policyholders are prejudiced either way. Insurance company bad faith should be deterred and punished regardless of what type of the insurance policy is being breached.

The remainder of the Insurance Industry's effort to read third-party liability insurance policies out of Section 8371 is just as flawed. After stating that under the Statutory Construction Act, "the object of the interpretation is to ascertain and effectuate the intent of the General Assembly," the insurers acknowledge the first step is determining if the words "are clear and free from all ambiguity." Insurance Industry Br. at 17. In doing this, however, they ignore the silence of the statute in creating the distinction they seek to manufacture between types of insurance policies. Here, the words are explicit in broadly applying to any suit arising under an insurance policy. The statutory construction task should end there.

Nevertheless, the insurers elide the lack of ambiguity and push on to examine "the occasion and necessity of the statute, the circumstances of its enactment, and the consequences of a particular interpretation." *Id.* Noting that the bad faith statute was enacted in response to this Court differentiating between first-party and third-party bad faith claims in *D'Ambrosio v. Pennsylvania National Mutual Casualty Co.*, 494 Pa. 501, 431 A.2d 966 (1981), the Insurers ignore the result: the Legislature enacted a statute with additional bad faith remedies that were not reliant on the type of insurance policy involved. Essentially, the Insurance Industry asks this Court to resurrect the very distinction between third-party and first-party actions that the Legislature erased in Section 8371. The Court should not do that.

The Insurance Industry's discussion of the "consequences" of applying the statute's plain language is similarly misguided. They suggest "a host of unnecessary complications and inconsistencies," listing several issues without any discussion of how they are complicating anything. Insurance Industry Br. at 19. Jury trial rights, liability standards and privilege concerns are no different from the types of issues with which courts routinely deal every day. None of this trumps the statute's plain language.

The Insurance Industry next argues that applying Section 8371 to third-party bad faith cases "creates substantial impediments to the settlement of cases." *Id.* This prediction of substantial impediments to assignments should be disregarded because it has not proven true in the more than fifteen years since the *Candelora* court recognized these claims could be assigned. Further, in arguing that Section 8371 claims are unique in impeding settlements, the insurers acknowledge that no impediment to settlement is created when, "under common law bad faith, in the aftermath of a verdict against the insured in excess of policy limits, the claimant and the insured tortfeasor would typically enter into an assignment agreement." *Id.* at 19-20. This would result in two active parties litigating the matter, the claimant as assignee of the policyholder and the insurer. *Id.* Without any explanation, the insurers suggest that a statutory bad faith claim would introduce "a third active litigant with his own claim for punitive damages and a separate settlement

agenda." *Id.* at 20. This is nonsense. Where, as in this case, the statutory cause of action is assigned to the injured party, the case would proceed just as it would at common law, with the injured party as assignee pursuing the bad faith claims against the insurer. Indeed, settlements involving bad faith claims under Section 8371 and the common law routinely occur without incident.

The Insurance Industry then argues that the remedies provided by the statute "speak only to first party claims." *Id.* at 20. Of course, they do not. An award of interest "from the date the claim was made" does not "only make sense" in a first-party insurance context. In the third-party context, a claim is made when the policyholder seeks a defense or indemnity payment, and courts have no trouble calculating interest on that basis when the insurer breaches its related obligations in bad faith. Strangely, the insurers ask, "why provide court costs and attorney's fees to the insured in the context of a third party liability claim against that insured, where those costs have typically already been paid by the insurer?" *Id.* That question, of course, ignores that the claim for which court costs and attorney fees are allowed is the "action arising under an insurance policy," i.e., the coverage lawsuit against the insurer, not the injured claimant's underlying action against the policyholder. By providing the attorney's fee remedy, the Legislature intended to level the playing field and assist policyholders in fighting back in court when they become victims of bad faith, regardless of the type of insurance involved.

Similarly, the punitive damages remedy is valuable for deterring and punishing any type of bad faith. Where an insurance company decides to gamble with its policyholder's livelihood, it must make good on its lost bet, and where it acts outrageously in ignoring its policyholder's interests, it may find itself facing punitive damages. This is not "unnecessarily tilting the playing field"; it is enforcing the Legislature's judgment that the bad faith deterrent was necessary to even it. This Court should not take the Insurance Industry *amici*'s invitation to tilt the field back again.

Bad faith takes many forms. But it almost always leverages the insurance company's superior financial means against a vulnerable policyholder, and its motive is always the same: to increase profits by not paying claims at the expense of policyholders. Section 8371 was the Legislature's attempt to remedy, deter and punish bad faith of **all** kinds by insurance companies. Accordingly, Section 8371 applies to all breaches of duties arising under an insurance policy, regardless of the label.

CONCLUSION

For all of the above reasons, *amicus* United Policyholders respectfully requests this Court hold that a policyholder has the right to assign his or her Section 8371 bad faith claim to an injured third party claimant, and the statute applies to insurance company bad faith in relation to all types of insurance policies.

Dated: July 3, 2014

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CERTIFICATE OF COMPLIANCE WITH RULE 2135

I hereby certify that the foregoing Brief complies with the type-volume limitation provided by Rule of Appellate Procedure 2135. This Brief contains 9,320 words of Times New Roman 14-point font, including text, footnotes and section headings.

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