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SUPREME COURT NO. 100846-5
COURT OF APPEALS NO. 38017-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOANN CASKEY,

Appellant,

v.

OLD REPUBLIC SURETY COMPANY, et al.,

Respondent.

RESPONDENT OLD REPUBLIC SURETY COMPANY'S
ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION AND RELIEF REQUESTED.....1

II. RESTATEMENT OF ISSUES.....2

III. RESTATEMENT OF THE CASE.....3

IV. ARGUMENT.....7

A. The Petition Does Not Involve Issues of Substantial Public Interest.....7

B. Caskey’s Failure to Properly File and Serve a Claim In Accordance With RCW 18.27.040(3) Is Not an Issue of Substantial Public Interest.....11

1. The Act Is Unambiguous.....14

2. Case Law Is Unambiguous.....16

3. Public Policy Warrants Denial of Review.....21

C. Caskey’s Lack of Standing to Pursue Her IFCA Cause of Action Is Not an Issue of Substantial Public Interest.....14

V. CONCLUSION.....29

VI. WORD COUNT CERTIFICATION.....29

TABLE OF AUTHORITIES

CASES

City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wash. 2d 38, 46, 959 P.2d 1091(1998).....22

Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc., 159 Wn.2d 292, 149 P.3d 666 (2006).....17,18

Dep't of Revenue v. Nat'l Indem. Co., 45 Wn. App. 59, 61-62, 723 P.2d 1187 (1986).....23

Devine v. State, Dep't of Licensing, 126 Wn. App. 941, 951, 110 P.3d 237 (2005).....23

Estate of Jordan by Jordan v. Hartford Acc. & Indem. Co., 120 Wn.2d 490, 497, 844 P.2d 403 (1993).....15

Hosea v. Toth, 156 Wn. App. 263, 268, 232 P.3d 576 (2010).....15

Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 803, 83 P.3d 419 (2004) 11

In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 819-20, 177 P.3d 675 (2008).....10

Int'l Commercial Collectors, Inc. v. Carver, 99 Wn.2d 302, 304, 661 P.2d 976 (1983).....15, 17

LK Operating, LLC v. Collection Grp., LLC, 181 Wn.2d 48, 68, 331 P.3d 1147 (2014).....23

Perez-Crisantos v. State Farm Fire & Cas. Co., 187 Wash. 2d 669, 686, 389 P.3d 476, 484 (2017).....28

State v. Peterson, 186 P.3d 1179, 1181 (2008).....10, 11

State v. Watson, 155 Wn.2d 574, 578, 122 P.3d 903 (2005)
.....8, 9

Stewart Carpet Serv., Inc. v. Contractors Bonding & Ins. Co.,
105 Wn.2d 353, 357, 715 P.2d 115 (1986).....17

Subcontractors & Suppliers Collection Servs. v. McConnachie,
106 Wash.App. 738, 24 P.3d 1112 (2001).....18, 19

Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 176
Wn. App. 185, 201, 312 P.3d 976 (2013).....24, 25, 26, 27

STATUTES

RCW 18.27.040.....*passim*

RCW 18.27.117.....12, 16, 20

RCW 18.27.140.....14, 23

RCW 48.30.015.....1, 24, 28

WASHINGTON RULES OF APPELLATE PROCEDURE

RAP 13.4(b).....*passim*

UNPUBLISHED DECISIONS

Kenco Constr., Inc. v. Porter Bros. Constr., Inc., 2018 WL 2966785.....27

INDEX OF APPENDICES

App. No. 1. *Caskey v. Old Republic Sur. Co.*, 506 P.3d 650 (Wash. Ct. App. 2022)

App. No. 2. Amicus Curiae Brief of Department of Labor & Industries

I. INTRODUCTION AND RELIEF REQUESTED

Respondent Old Republic Surety Company (“Old Republic”) files this Answer to Petitioner Joann Caskey’s (“Caskey”) Petition for Review (“Petition”) of the Division III, Court of Appeals’ March 17, 2022 Published Opinion (“Decision”), affirming the Trial Court’s order granting Old Republic’s Motion for Summary Judgment. *See* App. No. 1. Caskey’s Petition should be denied because it does not – and cannot – meet any test for discretionary review under RAP 13.4(b).

The Court of Appeals applied long-standing Washington precedent in holding that: (1) Caskey must file suit in order to perfect a claim against a contractor’s license bond; (2) Caskey, a non-party to the contractor’s license bond, is not a first party claimant, as defined by RCW 48.30.015(4), under the Insurance Fair Conduct Act (“IFCA”); and (3) the Trial Court properly dismissed Caskey’s claims against Old Republic. The Decision is supported by well-established Washington case law, consistent

with sound practical and public policy grounds, and does not present issues of substantial public interest, *the only basis for review presented by Caskey*. The Washington State Supreme Court (the “Court”) should deny the Petition.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Caskey asks the Court to grant review on two issues:

(1) Whether the Decision, holding that all claimants, including owners of manufactured homes, must file and serve a lawsuit, as required by RCW 18.27.040(3), in order to perfect a claim on a contractor’s license bond, presents an issue of substantial public importance, when numerous appellate courts and this Court have already concluded that RCW 18.27.040(3) is the exclusive procedure for maintaining a license bond claim?

(2) Whether the Decision, holding that a non-party to a contractor’s license bond is not a “first party claimant” under IFCA, presents an issue of substantial public importance, when numerous appellate courts have already held so?

III. RESTATEMENT OF THE CASE

The facts of this case, as summarized by the Court of Appeals on pages 1- 5 of the Decision, are not in dispute. As a preliminary matter, however, there are several mischaracterizations of the “facts” in Caskey’s Petition that warrant correction.

To begin, Caskey’s Petition misleadingly states that Old Republic “refused to investigate her claim” and, furthermore, mischaracterizes Old Republic’s April 16, 2019 letter informing Caskey of the correct procedure for maintaining a contractor’s license bond claim as a “categorical refusal to investigate, resolve, or even consider her claim.” Pet. at 5-6. Not only is Caskey’s inflammatory rhetoric misleading, it was soundly rejected by both the Trial Court and the Court of Appeals.

In actuality, on April 11, 2019, Caskey’s attorney sent a letter to Old Republic requesting that Old Republic pay the \$12,000.00 penal sum of the license bond (“Bond”) issued by Old Republic, as surety, on behalf of Bud’s & Doug’s Mobile

Home Service, LLC, as principal, and the State of Washington, as obligee, to her attorney's trust account. (CP 8, 77 – 78). Caskey did not include any documentation supporting her demand for payment or quantify her alleged damages; instead, she simply asserted that she “is entitled to recover much more than the \$12,000 limit of Bud's & Doug's contractor bond issued by [Old Republic].” (CP 78).

Old Republic timely responded to Caskey on April 16, 2019. (CP 80). Old Republic correctly informed Caskey that RCW 18.27.040 governs claims against license bonds under Registration of Contractors Act (the “Act” or “RCW 18.27 et seq.”), and that pursuant to RCW 18.27.040(3), Caskey would need to file a lawsuit in order to perfect a claim on the Bond to recover for Bud's & Doug's allegedly improper work. *Id.* Old Republic's statement to Caskey was consistent with the requirements in RCW 18.27.040(3), Washington case law, and the Department of Labor & Industries' (“Department”) interpretation of the Act. App. No. 2.

Neither Caskey nor her attorney sought clarification from Old Republic on its position. Instead, she filed a lawsuit against Old Republic in Spokane County Superior Court on July 6, 2020. (CP 4). Caskey asserted that Old Republic's April 16, 2019 letter violated the CPA and IFCA because Old Republic allegedly refused to investigate Caskey's purported "claim." (CP 9 – 12). To date, Caskey has yet to explain why she neglected to follow the mandatory requirements of RCW 18.27.040(3).

On December 31, 2020, Old Republic filed a motion for summary judgment seeking dismissal of Caskey's lawsuit. (CP 41 – 61). Old Republic asserted three distinct legal grounds each warranting dismissal of Caskey's lawsuit. First, Caskey was not a party to the Bond, and, therefore, she lacked standing to sue Old Republic for *per se* violations of the CPA and violations of IFCA. (CP 46 – 51). Second, Old Republic did not unreasonably deny a claim for coverage because its April 16, 2019 correspondence was legally correct under the Act and applicable

case law. (CP 51 – 58). Third, Old Republic did not cause any damages. (CP 59 – 60).

On February 2, 2021, the Trial Court granted Old Republic’s Motion for Summary Judgment and dismissed Caskey’s lawsuit against Old Republic with prejudice. (CP 180 – 182). The Trial Court concluded that Old Republic’s April 16, 2019 correspondence and its interpretation of the Act was correct. (CP 207). Caskey did not move for reconsideration of the Trial Court’s Order. Instead, she filed her Notice of Appeal on February 8, 2021. (CP 183).

In support of the Trial Court’s Order and Old Republic’s position on appeal, the Department, the agency tasked with administering the registration of contractors under the Act, filed an Amicus Curiae Brief, explaining in meticulous detail myriad practical and public policy reasons why RCW 18.27.040(3) is the exclusive method for asserting a claim on a contractor’s license bond and the Trial Court’s Order should be affirmed. See App. No. 2.

On March 17, 2022, the Court of Appeals affirmed the Trial Court's Order dismissing Caskey's claims against Old Republic. On April 18, 2022, Caskey filed her Petition seeking review from this Court.

Caskey's Petition is unwarranted, and the Court of Appeals correctly ruled that Caskey failed to comply with the claim filing procedures of RCW 18.27.040(3) and that she lacks standing under IFCA. The Decision is entirely consistent with settled Washington law and the Department's interpretation of the Act. Caskey provides no reasonable argument to support her contention that the issues in this case are of substantial public interest requiring further guidance by this Court. Accordingly, this Court should deny review.

IV. ARGUMENT

A. The Petition Does Not Involve Issues of Substantial Public Interest.

The Rules of Appellate Procedure provide that a petition for review will be accepted by this Court "only: (1) If the

decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b).

The sole basis for Caskey’s Petition is that it involves issues of substantial public interest under RAP 13.4(b)(4). Pet. at 7. Accordingly, Caskey concedes that the Decision: (1) does not conflict with a decision of this Court; (2) does not conflict with a published decision of the Court of Appeals; and (3) does not raise a significant question of constitutional law.

This Court has stated that “substantial public interest” under RAP 13.4(b)(4) refers to issues with “sweeping implications.” *State v. Watson*, 155 Wn.2d 574, 578, 122 P.3d 903 (2005). In *Watson*, for example, the Pierce County Prosecuting Attorney distributed a memorandum to all Pierce

County Superior Court judges stating that his office would no longer recommend certain drug sentences. *Id.* at 575. Nine months later, Watson was convicted of a drug offense and the prosecuting attorney attached a copy of the memorandum to the sentencing brief, showing it to defense counsel beforehand. *Id.* at 576. In affirming the trial court's sentence, the Court of Appeals declared *sua sponte* that the memorandum was an improper *ex parte* communication, but determined that it was harmless in this particular case. *Id.* On petition for review, this Court held that *Watson* “presents a prime example of an issue of substantial public interest. The Court of Appeals’ holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County . . . where [the drug] sentence was or is at issue.” *Id.* at 577. As a result, the Court noted that the decision “invites unnecessary litigation . . . creates confusion generally . . . [and] has the potential to chill policy actions taken by both attorneys and

judges.” *Id.* Accordingly, this Court granted the State's petition for review. *Id.* at 578.

Similarly, in the context of granting review in cases rendered moot, this Court accepts review under RAP 13.4(b)(4) “if guidance would be helpful to public officers and the issue is likely to recur.” *In re Pers. Restraint of Dalluge*, 162 Wn.2d 814, 819-20, 177 P.3d 675 (2008). The factors governing such review include: “(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.” *State v. Peterson*, 186 P.3d 1179, 1181 (2008) (internal quotes omitted). The standard is high.¹

¹ The RAP 13.4(b)(4) “substantial public interest” standard is consistent with this Court's “substantial public importance” test for resolving standing issues. In that context, an issue “is of substantial public importance, [if it] immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture.” *See, e.g., Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004) (internal quotes omitted). Again, this Court grants review only to those cases that will affect large segments of the population.

Other than unsupported conclusory assertions, Caskey offers nothing to explain why the Decision merits review under the stringent “substantial public interest” standard. As explained more fully below, the issues raised in this case do not come close to warranting review under this demanding standard.

B. Caskey’s Failure to Properly File and Serve a Claim in Accordance With RCW 18.27.040(3) Is Not An Issue of Substantial Public Interest.

The Court of Appeals held that “[a] claim against the bond requires a lawsuit according to the procedures set forth in RCW 18.27.040(3).” App. No. 1 at 16. Without citation to RAP 13.4(b)(1) or (2) and without identifying any specific Washington cases, Caskey nonetheless claims that the Decision “renders RCW 18.27.117(3) pointless” and creates “confusion and inconsistency,” and therefore constitutes an issue of substantial public interest. Pet. at 11, 12. Caskey’s arguments are without any legal basis.

The Court of Appeals simply and correctly applied the unambiguous language and statutory scheme of the Act,

supported by applicable administrative regulations, well-established Washington law, and strong public policy considerations, to conclude that the sole procedure for perfecting a claim against a contractor's license bond is by filing and serving a lawsuit in accordance with RCW 18.27.040(3). This conclusion has no impact on any party other than Caskey. It does not have "sweeping implications" for litigants in other cases, does not involve a public dispute, and does not change any existing parties' rights or remedies.

Furthermore, that the requirements of RCW 18.27.040(3) have not been applied to Caskey's exact circumstances in a published or unpublished decision prior to this case suggests that the issue is unlikely to recur, a conclusion that also cuts against allowing review. There is no reason, and Caskey has not offered any, that the affirmation the Department's interpretation of unambiguous provisions of the Act, requiring that Caskey pursue the exclusive procedure outlined under RCW 18.27.040(3) as a

precondition to asserting a contractor's license bond claim, presents an issue of substantial public interest.

Further, Caskey's claim that the Decision may lead to confusion and inconsistency is without merit. In fact, the opposite is true. The Decision "allows the Department to fulfill its duties to regulate contractors and provide information to the public." App. No. 1 at 14. The statutory scheme of the Act, together with applicable administrative regulations, supporting case law, and policy rationales, demonstrate that the Decision is not only legally correct, but also necessary to enable the Department to execute its statutory mandate to enforce the Act, monitor the registration of contractors, and keep public records of claims against contractors. Furthermore, it provides certainty, consistency, and transparency to all parties involved in contractor's license bond claims by establishing one procedure for filing and service of claims along with a repository (the Department) of those claims that is publicly available to the consumers, contractors, and attorneys.

1. The Act Is Unambiguous. The Act, RCW 18.27 et seq., is a comprehensive chapter regulating contractor business practices. The express purpose of the Act is to “afford protection to the public” from “unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. The Act requires contractors to be registered with the Department so that the Department can “regulate contractors.” App. No. 1 at 13. The Act is unambiguous in that it prescribes the exclusive method for asserting claims against a contractor’s license bond as outlined in RCW 18.27.040(3), which is accomplished by “serv[ing] three copies of the summons and complaint on the Department, who then serves the contractor and the surety.” App. No. 1 at 14.

Washington courts agree that RCW 18.27.040 “designates the persons and enumerates who may make claims against the bond, *the method of making the claims*, and the order in which claims shall be satisfied.” *Int’l Commercial Collectors, Inc. v.*

Carver, 99 Wn.2d 302, 304, 661 P.2d 976 (1983) (emphasis added).

Again, the Act outlines only one procedure for asserting a claim on a contractor's license bond. A statutory bond must be interpreted "in light of the requirements of the relevant statute." *Estate of Jordan by Jordan v. Hartford Acc. & Indem. Co.*, 120 Wn.2d 490, 497, 844 P.2d 403 (1993). "RCW 18.27.040(3) allows a residential homeowner with a breach of contract claim to bring action against the contractor and the surety on the bond in the superior court..." *Hosea v. Toth*, 156 Wn. App. 263, 268, 232 P.3d 576 (2010).

As noted by the Court of Appeals, no alternative claim filing procedures or mechanisms exist. App. No. 1 at 14. While Caskey argues that filing a claim against the bond can be accomplished with a demand letter, "[s]he does not cite any authority for this position, nor does she refer us to any examples where a demand letter was used to resolve a claim against a bond." *Id.* RCW 18.27.117 references claims by injured parties,

but it does not designate any alternative procedure for making a claim other than that set forth in RCW 18.27.040(3). There is no ambiguity in the Act as to the method for asserting a license bond claim because there is no alternative procedure other than the steps outlined in RCW 18.27.040(3).

2. Case Law is Unambiguous. Consistent with the Decision, Washington courts unanimously agree that RCW 18.27.040(3) prescribes the exclusive procedure for perfecting a claim on a contractor's license bond.

This Court has stated on three separate occasions that RCW 18.27.040(3) prescribes the exclusive procedure for making a claim on a contractor's license bond. In *Int'l Commercial Collectors, Inc. v. Carver*, the Court stated that "RCW 18.27.040 designates the persons and enumerates who may make claims against the bond, the method of making the claims, and the order in which claims shall be satisfied." 99 Wn.2d at 304 (emphasis added). Three years later, the Court made a similar proclamation in *Stewart Carpet Serv., Inc. v.*

Contractors Bonding & Ins. Co., and stated that “RCW 18.27.040 identifies the persons who may make claims against these bonds, specifies the procedures for making the claims, and sets forth an order of priority by which claims are to be paid.” 105 Wn.2d 353, 357, 715 P.2d 115 (1986) (emphasis added).

In *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 149 P.3d 666 (2006), the Court stated that “RCW 18.27.040(3) allows parties having a claim to bring suit against the bond. The statute recites filing requirements, statutes of limitations, and service requirements specifically for suits against the bond.” *Id.* at 297. In *Cosmopolitan*, the Court analyzed whether the attorney fee provision in RCW 18.27.040(6) applied both to the contractor and the surety bond. *Id.*, 299 – 300. As part of its analysis, the Court examined a prior Court of Appeals decision in *Subcontractors & Suppliers Collection Servs. v. McConnachie*, 106 Wash.App. 738, 24 P.3d 1112 (2001), regarding whether service through the Department conferred personal jurisdiction over the contractor for the debt

not covered by the bond. *Id.*, at 300. In the *Cosmopolitan* Court's analysis, it reiterated the *McConnachie* Court's holding regarding the statutory requirements for making a claim on the surety bond, and stated as follows:

The question before the court was whether service pursuant to RCW 18.27.040 conferred personal jurisdiction over the contractor for debt not covered by the bond. *Id.* In this context, the *McConnachie* court examined the entire legislative scheme and concluded that RCW 18.27.040 'spells out the requirements for realizing on a construction bond, including effecting service.'

Id. The *Cosmopolitan* Court agreed with the reasoning in *McConnachie*, stating:

The *McConnachie* court's reasoning applies equally here; considering the context of the overall legislative scheme, **the statute as a whole spells out the requirements and conditions for realizing on a contractor's bond.**

Id. (emphasis added).

The Decision is squarely aligned with prior decisions of this Court. This Court has repeatedly stated that the procedures and methods for making a claim on a contractor's license bond

are prescribed by RCW 18.27.040(3). Those procedures require that the claimant commence litigation by filing a summons and complaint in the superior court and serving it through the Department. App. No. 1 at 16 (“A claim against the bond requires a lawsuit according to the procedures set forth in RCW 18.27.040(3).”) No statute, regulation, nor any Washington court has identified an alternative method for making a claim against the license bond. Accordingly, the Court of Appeals correctly held that a claimant who seeks to initiate a claim against the license bond must comply with RCW 18.27.040(3).

Despite the unambiguous statute and the supporting case law, Caskey argues here – as she did below – that the Decision will render RCW 18.27.117(3) pointless because it requires claimants to file suit in order to trigger the surety’s duty to reasonably investigate and resolve claims. Pet. at 11-12. However, Caskey fails to explain how the surety’s duty to reasonably investigate following the filing of a lawsuit renders RCW 18.27.117 meaningless, as the Decision clearly imposes a

duty upon sureties to reasonably investigate claims once a claim has been filed and served in accordance with RCW 18.27.040(3) and, furthermore, creates a statutory cause of action under the Consumer Protection Act. For inexplicable reasons, Caskey, unlike approximately 1,600² claimants each year who comply with RCW 18.27.040(3), deliberately chose not to follow the procedures for maintaining a claim against Old Republic and, therefore, Old Republic's duty to investigate was not triggered.

In summary, both case law and the plain language of the Act unquestionably support the Decision, and Caskey's efforts to circumvent the established procedure for asserting a contractor's license bond claim were properly rejected by both the Trial Court and the Court of Appeals.

3. Public Policy Warrants Denial of Review. Lastly, Caskey misapprehends the purpose of the Act as *solely* affording protection to owners of manufactured homes. Pet. at 11-12.

² See App. No. 2 at 5.

However, as the statutory scheme of the Act and amicus curiae illustrate, the requirement that all claimants who seek to recover against a contractor's license bond follow the procedures of RCW 18.27.040(3) accomplishes the *dual* purpose of affording protection to the general public, including owners of manufactured homes, *and* contractors. See App. No. 2 at 12-15. The Washington State Legislature has tasked the Department with the regulation of contractors in this State. RCW 18.27.020. As such, the Department is the entity responsible for enforcing the procedures and requirements of the Act, and adopting rules, set forth in the Washington Administrative Code, to effectuate the purpose of the Act. Accordingly, the Department's interpretation of a statute is accorded "substantial weight" and "deference" when undergoing judicial review. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash. 2d 38, 46, 959 P.2d 1091(1998).

As noted by the Court of Appeals, there are significant public policy rationales supporting the Decision holding that

RCW 18.27.040(3) prescribes the exclusive procedure for making a claim on a contractor's surety bond – namely: “using the proscribed bond claim process allows the Department to fulfill its duties to regulate contractors and provide information to the public.” App. No. 1 at 14. The Court of Appeals correctly recognized that RCW 18.27.040(3), which establishes the Department as the exclusive conduit for contractor's license bond claims, is the only procedure which allows the Department to effectuate the purpose of the Act: to administer and monitor the registration of contractors and to keep the public informed of unreliable, fraudulent, financially irresponsible, or incompetent contractors. See RCW 18.27.140. Furthermore, Caskey's proposed alternative claim filing scheme, whereby a claim could be initiated by merely sending a demand letter to the surety, without notice to the Department or contractor, would strip contractors of their due process right to be notified of bond claims and have an opportunity to respond to claims arising out

of their work.³ The Court of Appeals properly recognized that such proposal “is not workable because it fails to trigger the collateral ramifications of an action on the bond” – that is, notice to the Department and the contractor, among others. App. No. 1 at 15.

No “substantial public interest” or other purpose would be served by this Court engaging in review of the Decision, which is consistent with: (1) prior holdings of this Court addressing RCW 18.27.040; and (2) the Department’s interpretation of RCW 18.27.040.

C. Caskey’s Lack of Standing to Pursue Her IFCA Cause of Action Is Not An Issue of Substantial Public Interest.

Caskey fails to effectively explain why the lower courts’ routine application of well-settled Washington case law in a private dispute with Old Republic involves an issue

³ *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 68, 331 P.3d 1147 (2014)(“[D]eprivations of one’s professional license clearly implicate interests subject to due process protections.”). *Devine v. State, Dep’t of Licensing*, 126 Wn. App. 941, 951, 110 P.3d 237 (2005)(“Due process requires both notice and the opportunity to be heard.”); *Dep’t of Revenue v. Nat’l Indem. Co.*, 45 Wn. App. 59, 61-62, 723 P.2d 1187 (1986).

of substantial public interest. Pet. at 14. Instead, she simply offers the same arguments that both lower courts rejected, now urging this Court to overturn governing law for an approach previously rejected by the Court of Appeals, Division I, in *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 201, 312 P.3d 976 (2013). The *Trinity* court firmly slammed the door shut on third-party IFCA claims in Washington, stating:

IFCA clearly vests a cause of action with *first party claimants*. RCW 48.30.015(1). That is, individuals and businesses who own an insurance policy may bring suit against their insurer for unreasonably denying a claim of coverage. The purpose of IFCA is to protect individual policy holders from unfair practices by their insurers.... Just like the CPA, nothing in the language of IFCA gives third party claimants the right to sue.

Trinity, 176 Wn. App., at 201. (italicized emphasis in original, underlined emphasis added) (internal citations omitted).

Caskey attempts to circumvent the clear authority set forth in *Trinity* and the Decision by claiming that whether she is a party to the Bond is irrelevant. Pet. at 13-14. Caskey asserts that her status as a statutory claimant, or beneficiary, under RCW

18.27.040 makes her a first-party claimant. *Id.* In doing so, Caskey misinterprets the law and her relation to the Bond.

Bud's & Doug's, the bond principal, is the entity "insured under the insurance policy or insurance contract[.]" WAC 284-30-320(17). Caskey's claim arises out of Bud's & Doug's defective installation of her manufactured home. Caskey, therefore, fits squarely within the definition of a "third-party claimant" because she is "asserting a claim against [an]... entity insured under an insurance policy or insurance contract[.]" WAC 284-30-320(17).

The plain language of RCW 18.27.040 further clarifies Caskey's status as a third-party claimant. Pursuant to RCW 18.27.040(1), the license bond is only liable for "amounts that may be adjudged against the contractor by reason of breach of contract[.]" RCW 18.27.040(1); App. No. 1 at 7. Caskey does not have a direct right to payment from Old Republic. The license bond is only secondarily liable for the statutorily enumerated claims that may be asserted by the claimant against the principal.

Id. Any claim against Old Republic is derivative of her primary claim against Bud's & Doug's. Caskey is asserting a claim against the entity covered by the license bond; thus, the Court of Appeals correctly held that she is a third-party claimant with no standing to assert an IFCA claim against Old Republic.

Importantly, Caskey has not identified a single case from any jurisdiction in which a statutory third-party claimant had standing to assert an IFCA or any statutory unfair claims practices cause of action against a surety. On the other hand, the Court of Appeals, Division I, has extended the *Trinity* holding to a case involving a surety in *Kenco Constr., Inc. v. Porter Bros. Constr., Inc.*, 2018 WL 2966785 (unpublished). There, Porter, the bond claimant, argued that the surety failed to conduct a reasonable investigation and that Porter was entitled to assert an IFCA claim against the surety. *Id.*, at *15. The Court of Appeals rejected Porter's argument, explaining that Porter, as a bond claimant, "was not a party to the contractual relationship"

between the subcontractor and its surety and therefore lacked standing as a “third-party claimant[.]” under IFCA. *Id.*, at *16.

Caskey is not a first party claimant because she does “own an insurance policy,” she is not a “policyholder[.],” and she is not an insured under the Bond. *Trinity*, 176 Wn. App., at 201. She is a third-party claimant who had the right to assert a breach of contract claim against Bud’s & Doug’s, and Old Republic may have been liable for any “amounts adjudged against [Bud’s & Doug’s] by reason of breach of contract[.]” RCW 18.27.040(1). As a third-party claimant, she lacks standing to sue Old Republic for violations of IFCA as properly determined by the Court of Appeals.

Furthermore, even if Caskey had standing under IFCA, her IFCA claim fails as a matter of law because she cannot establish the statutory prerequisite of an IFCA cause of action under RCW 48.30.015(1). An absolute precondition to an IFCA cause of action is an unreasonable denial of a “claim” for coverage or payment of benefits. *Perez-Crisantos v. State Farm Fire & Cas.*

Co., 187 Wash. 2d 669, 686, 389 P.3d 476, 484 (2017). Here, the Court of Appeals held that because “Ms. Caskey did not file a claim against the bond, Old Republic did not have a duty to investigate her claim against the contractor.” App. No 1. at 16. Absent any claim or duty to investigate, it cannot be said that Old Republic unreasonably denied a claim and, therefore, Caskey cannot establish the statutory prerequisite for an IFCA cause of action. Accordingly, even if the Decision on the issue of Caskey’s standing was incorrect (it is not), her IFCA claim still fails and, therefore, the lower courts’ decisions do not warrant review.

Caskey deliberately failed to avail herself of the remedies available under the Act by circumventing the established statutory procedure for commencing a contractor’s license bond claim under RCW 18.27.040(3). Caskey’s individual failure to comply with the statutory requirements of the Act does not implicate the public interest. The Trial Court and the Court of Appeals got it right. There is no basis for review by this Court.

V. CONCLUSION

This matter does not warrant Supreme Court review. The Court of Appeals applied established Washington law and correctly determined all issues raised. Caskey's Petition fails to meet any of the considerations governing acceptance of review by the Supreme Court. RAP 13.4(b). The Court should deny Caskey's Petition.

VI. WORD COUNT CERTIFICATION

The undersigned hereby certifies that the foregoing content, not including cover page, tables, and this certification and signature, consists of 4,778 words in compliance with RAP 18.17.

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DATED this 27th day of May, 2022.

WILLIAMS KASTNER & GIBBS, PLLC

/s/Paul K. Friedrich

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DECLARATION OF SERVICE

Elizabeth Morris declares under penalty of perjury under the laws of the State of Washington that I am over the age of 18 years, not a party to this action and am competent to be a witness herein. On May 27, 2022, I caused to be delivered a true and correct copy of the above to the following:

Brian Cameron Attorney at Law	
----------------------------------	--

<p>421 W Riverside Ave Ste 660 Spokane, WA 99201-0410</p> <p>Email: bcameron@cameronsutherland.com kmiller@millerlawspokane.com tbracken@cameronsutherland.com</p>	<p><input checked="checked" type="checkbox"/> Via E Mail</p> <p><input checked="checked" type="checkbox"/> Via E Service</p>
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SIGNED at Seattle, Washington, May 27, 2022.

/S/Elizabeth Morris
Elizabeth Morris, Legal Assistant

Appendix No. 1

FILED
MARCH 17, 2022
In the Office of the Clerk of Court
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JOANN CASKEY, an individual,)	
)	No. 38017-3-III
Appellant,)	
)	
v.)	
)	
OLD REPUBLIC SURETY COMPANY,)	PUBLISHED OPINION
a Wisconsin corporation,)	
)	
Respondent.)	

STAAB, J. — While a surety company is generally not liable for tort damages to a third party, the legislature has carved out a specific exception for the setting up and siting of mobile homes. Under RCW 18.27.117(3), it is a per se violation of the Consumer Protection Act (CPA), chapter 19.86 RCW, when a bonding company’s failure to reasonably and professionally investigate and resolve claims made by injured parties causes a safety risk or severely hinders the use of the mobile home. Joann Caskey hired a bonded contractor to set up her new mobile home. Ms. Caskey contends that the contractor set up her mobile home incorrectly resulting in damages. Approximately a year after the contractor stopped working, Ms. Caskey’s attorney wrote a letter to Old Republic, the surety company that issued the contractor’s licensing bond, demanding the

bond proceeds. By response letter, Old Republic informed Ms. Caskey's attorney that claims against the bond must be brought by way of a lawsuit in superior court pursuant to RCW 18.27.040.

Ms. Caskey did not file suit against the contractor or the bond. Instead, two-and-one-half years after the contractor stopped working on her home, she filed a complaint directly against Old Republic, alleging violations of the Washington "Insurance Fair Conduct Act" (IFCA), RCW 48.30.010-.015, and the CPA. On Old Republic's motion, the superior court dismissed all of Ms. Caskey's causes of action on summary judgment.

On appeal, we hold that RCW 18.27.117(3) creates a duty for surety companies who issue licensing bonds under the "Registration of Contractor's Act" (RCA), chapter 18.27 RCW, to reasonably and professionally investigate claims made by injured parties when their mobile homes are not set up correctly. For purposes of this statute, the injured party's "claim" is a claim against the bond. A claim against the bond is not made unless and until a lawsuit is filed in superior court using the substitute process procedures required by RCW 18.27.040(3). Once a claim against the bond is made by filing suit, the surety has an obligation to reasonably and professionally investigate and resolve the claim.

In this case, since Ms. Caskey never filed suit against the bond, she did not make a claim against the bond, and Old Republic's duty to investigate under RCW 18.27.117(3) did not ripen. For the same reason, Ms. Caskey's independent CPA claim, based on Old

Republic's response letter, was not misleading or an unfair and deceptive trade practice. Finally, we also reject Ms. Caskey's claim that Old Republic's actions violated the IFCA because Ms. Caskey was not a first-party claimant and did not qualify for protection under RCW 48.30.015. We affirm the superior court's dismissal on summary judgment.

BACKGROUND

The relevant facts are not in dispute. Joann Caskey bought a manufactured home for her and her sister. She paid Bud's & Doug's Mobile Home Service LLC (Contractor) to install the mobile home on property in Kettle Falls. The contractor was registered with the Department of Labor & Industries (Department) and bonded through Old Republic Surety Company (Old Republic), for \$12,000.

Ms. Caskey alleges that in December 2017, shortly after beginning the project of setting up her mobile home, the contractor breached the installation contract. She asserted that the contractor caused significant damage to the home by installing the mobile home with defective skirting on bare ground without any pad, gravel, leveling, or access stairs. The home failed inspection and was denied an occupancy permit in January 2018. The contractor requested additional funds to effect repairs. Ms. Caskey resolved the mobile home's alleged defects through the manufacturer and the dealership by hiring other contractors. The existence of the contract and the allegations of breach against the contractor are asserted but not proven. The parties concede that Ms. Caskey did not file suit against the contractor.

In January 2019, the contractor dissolved its limited liability company. In April 2019, Ms. Caskey's attorney sent Old Republic a demand letter for payment under the contractor's bond. In the letter, Ms. Caskey asserted that she was directly "entitled to recover much more than the \$12,000 limit of Bud's and Doug's contractor bond issued by your company. Please consider this correspondence to be a formal claim to the limits of the bond #YL1230029 that was issued to Bud's and Doug's." Clerk's Papers (CP) at 78.

Old Republic responded to Ms. Caskey's letter with its own letter, informing her that any claim against the contractor's bond must be made by filing a lawsuit in superior court. The specific language of the letter provided:

This is to acknowledge receipt of your correspondence, which was received in this office on April 15, 2019, asserting a claim under the above-captioned bond.

From reviewing the information received, it would appear that your client is experiencing problems with the above referenced contractor [Buds & Dougs Mobile Home Service]. Unfortunately, to have a proper claim under this bond, your client must comply with the provisions of RCW 18.27.040. *This statute specifically states that to have a proper claim under the bond, suit must be filed against the Principal and Surety in Superior Court.* There are specific requirements for service of the suit and the timeframes for filing same. Therefore, this means that we will be unable to be of any further assistance to your client at this time.

Please do not construe this letter as a waiver of any rights of the surety. Any and all rights and defenses are hereby specifically reserved.

CP at 15, 80 (emphasis added).

Ms. Caskey did not file suit against the contractor and the bond. Instead, in July 2020, she filed suit against Old Republic raising several causes of action, including violations of the CPA and the IFCA. Ms. Caskey claimed to be the obligor of the surety as a “first-party claimant.” CP at 10. She claimed to have a per se violation of the CPA based on RCW 18.27.350 and RCW 18.27.117. Ms. Caskey appeals from the superior court’s order dismissing all of her causes of action by summary judgment.

ANALYSIS

A. STANDARD OF REVIEW

Summary judgment rulings are reviewed de novo, undertaking the same inquiry as the trial court. *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 394, 823 P.2d 499 (1992). When the record demonstrates no genuine issue of material fact, summary judgment is appropriate when reasonable persons could reach but one conclusion and the moving party is entitled to judgment as a matter of law. *Id.* at 394-95; CR 56(c). Facts and reasonable inferences are made in the light most favorable to the nonmoving party. *Safeco Ins. Co. of Am.*, 182 Wn.2d at 394-95. Once this initial burden is established, the nonmoving party must rebut the moving party’s contentions by setting forth specific facts showing there is a genuine issue for trial. *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986); CR 56(e).

Likewise, the interpretation of a statute is a question of law subject to de novo review. *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 298, 149 P.3d 666 (2006).

B. OVERVIEW OF LICENSING BONDS

The RCA is a comprehensive chapter regulating contractor business practices. The express purpose of the RCA is to “afford protection to the public” from “unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. The RCA requires contractors to be registered with the Department. *Int'l Com. Collectors, Inc. v. Carver*, 99 Wn.2d 302, 304, 661 P.2d 976 (1983). The RCA also requires contractors to maintain a continuous bond or provide proof of a security deposit. *Id.* at 304; RCW 18.27.040(1). For general contractors, the surety bond amount is \$12,000; for specialty contractors, the surety bond amount is \$6,000. RCW 18.27.040(1).

The bond required by RCW 18.27.040(1) is considered a noncontractual license bond.¹ It is a type of performance bond. 33 DAVID K. DEWOLF & MATTHEW C. ALBRECHT, WASHINGTON PRACTICE: CONSTRUCTION LAW MANUAL § 13.4 (2d ed. 2018). Like other sureties, a licensing bond creates a tripartite relationship between the

¹ “There are two general categories of surety bonds: contract bonds and noncontract bonds. Contract bonds include bid bonds, performance bonds, payment bonds, maintenance bonds, advance payment bonds, and supply bonds. Noncontract bonds include: judicial bonds, license and permit bonds.” KEVIN L. LYBECK ET AL., THE LAW OF PAYMENT BONDS 1 n.1 (2d ed. 2011) (citing 1 JOHN B. FITZGERALD, RAY H. BRITT & DANIEL D. WALDORF, PRINCIPLES OF SURETYSHIP, ch. 2 n.13 (1991))

No. 38017-3-III
Caskey v. Old Republic Surety Co.

surety, the principal (contractor), and the obligee. *See Colorado Structures, Inc. v. Ins. Co. of the W.*, 161 Wn.2d 577, 605 n.15, 167 P.3d 1125 (2007) (plurality opinion). The obligee of the license bond issued under this chapter is the state of Washington.

RCW 18.27.040(1).

Washington's licensing bond is continuous with several conditions, including that the contractor "will pay all amounts that may be adjudged against the contractor by reason of breach of contract including improper work in the conduct of the contracting business." RCW 18.27.040(1). When a bonded contractor fails to pay a judgment for damages covered by the bond, the extent of a surety's liability is limited to the penal amount of the bond. RCW 18.27.040(4).

Performance bonds are similar but distinct from insurance policies. While Washington recognizes that insurance companies have a good faith obligation to investigate and handle claims of their insureds, this duty of good faith has never been extended to sureties. *See Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 394, 715 P.2d 1133 (1986). Even in the context of direct insurance (as opposed to surety), our Supreme Court has repeatedly held that third-party claimants may not sue insurance companies directly for alleged breach of the duty of good faith. *See id.* at 393.

In this case, Old Republic is a surety, not an insurance company. Ms. Caskey is not a party to the bond. And yet she has filed a tort action, alleging that Old Republic violated a duty to investigate her claim. While this claim would generally be summarily

decided on the case law set forth above, Washington recognizes a surety's duty of good faith in the very narrow circumstances presented by Ms. Caskey.

C. DERIVATIVE CPA CLAIM

Under RCW 18.27.117, the legislature has declared that the "setting up and siting mobile/manufactured homes must be done properly for the health, safety, and enjoyment of the occupants:"

Therefore, when any of the following cause a health and safety risk to the occupants of a mobile/manufactured home, or severely hinder the use and enjoyment of the mobile/manufactured home, a violation of RCW 19.86.020 shall have occurred:

(1) The mobile/manufactured home has been improperly installed by a contractor registered under chapter 18.27 RCW, or a mobile/manufactured dealer or manufacturer licensed under chapter 46.70 RCW;

(2) A warranty given under chapter 18.27 RCW or chapter 46.70 RCW has not been fulfilled by the person or business giving the warranty; and

(3) A bonding company that issues a bond under chapter 18.27 RCW or chapter 46.70 RCW does not reasonably and professionally investigate and resolve claims made by injured parties.

RCW 18.27.117.

The parties disagree on whether this statute creates a private cause of action under the CPA. To answer this question, we must interpret the statute. In doing so, our primary goal is to carry out the legislature's intent. *Subcontractors & Suppliers Collection Servs. v. McConnachie*, 106 Wn. App. 738, 741, 24 P.3d 1112 (2001) (citing *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001)).

No. 38017-3-III
Caskey v. Old Republic Surety Co.

Legislative intent is derived primarily from the statutory language in the context of the overall legislative scheme. *Id.* If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as the expression of legislative intent. *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007).

To determine whether the legislature intended to imply a private right of action, a reviewing court applies a three-part test established in *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784 P.2d 1258 (1990). *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 727, 406 P.3d 1149 (2017). “First, we determine whether the plaintiff is within the class for whose ‘especial’ benefit the statute was enacted; second, whether the explicit or implicit legislative intent supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation.” *Id.*

RCW 18.27.117 states that it benefits “occupants of a mobile/manufactured home.” However, RCW 18.27.350 governing CPA violations states, “The surety bond shall not be liable for monetary penalties or violations of chapter 19.86 RCW.” LAWS OF 1986, ch. 197, § 11. Together, these statutory provisions suggest that damages for violations of the CPA will be imposed against the surety and not the bond. Otherwise, the legislature’s explicit intent to create a per se CPA violation is clear from the statute’s language.

Despite the unambiguous language in RCW 18.27.117, Old Republic contends that third-party tort actions against an insurance company or surety are not recognized in

No. 38017-3-III
Caskey v. Old Republic Surety Co.

Washington, citing *Tank*. As noted above, *Tank* held that under common law “third party claimants may not sue an insurance company directly for alleged breach of duty of good faith under a liability policy.” 105 Wn.2d at 391. *Tank* was decided in 1986. RCW 18.27.117 did not become law until 1987. See LAWS OF 1987, ch. 313, § 2. Old Republic fails to cite any authority suggesting that the legislature may not carve out a statutory exception to the common law rule precluding third-party tort claims against an insurer or surety. Instead, Old Republic contends that according to *Tank*, any right of enforcement created by RCW 18.27.117 rests exclusively with the Washington Insurance Commissioner (Commissioner). This argument misconstrues the holding in *Tank*.

Tank held that the Commissioner has the authority to develop comprehensive unfair practice regulations under the Washington Administrative Code. 105 Wn.2d at 393. The regulations adopted by the Commissioner did not give third-party claimants the right to enforce the regulations. Whether such a right should be granted under the regulations “should be the province of the Insurance Commissioner, not individual third party claimants.” *Id.* But nothing in *Tank* suggests that the legislature has no authority to carve out a statutory exception to the regulations.

Having determined that RCW 18.27.117 creates a private cause of action for a CPA violation, the next question is whether Ms. Caskey is entitled to bring this claim. The statute provides a per se violation of the CPA when “A bonding company that issues a bond under chapter 18.27 RCW or chapter 46.70 RCW does not reasonably and

professionally investigate and resolve *claims made by injured parties.*” RCW 18.27.117(3) (emphasis added). Old Republic argues that even if the statute creates a private right of action, Ms. Caskey’s action fails because she never made a claim against the bond.

To determine if Ms. Caskey’s demand letter qualified as a claim made by an injured party, we must determine (1) against whom or what the claim is made, and (2) how the claim is made. To answer these questions, we must interpret the statute. Statutory interpretation includes context. Like any statute, the contractor registration statute should be read as a whole. *Pope & Talbot, Inc. v. Productization, Inc.*, 74 Wn. App. 197, 201, 872 P.2d 78 (1994).

In the context of recovering against a “bonding company that issues a bond,” the “claims” referenced in RCW 18.27.117(3) can only mean a claim against the bond as opposed to a claim against the contractor. The surety bond required by RCW 18.27.040 only covers specific claims against a contractor. *See Ahten v. Barnes*, 158 Wn. App. 343, 354, 242 P.3d 35 (2010) (holding that substitute service procedure required by RCW 18.27.040 does not convey personal jurisdiction for claims against a contractor that are not covered by bond). For instance, a homeowner alleging breach of a contract would have six years to file against the contractor but only two years to bring an action upon the bond. *See* RCW 4.16.040; RCW 18.27.040(3) (two-year statute of limitation on actions against bond).

A homeowner may have a claim against both the bond and the contractor, but a claim against the contractor will ripen before a claim against the bond. *See* RCW 18.27.040(3) (“Any person, firm, or corporation having a *claim against the contractor* for any of the items referred to in this section may bring suit against the contractor and the bond or deposit in the superior court.”) (Emphasis added.) While all claims against the contractor do not necessarily include a claim against the bond, all claims against the bond require a claim against the contractor. *See Cosmopolitan Eng’g Grp.*, 159 Wn.2d at 300 (“[A]n action against the bond must also necessarily claim that a contractor breached a contract or failed to pay.”).

In this case, Old Republic is the surety who issued the contractor’s licensing bond. As the surety, Old Republic would have no obligation to investigate or resolve a claim against the contractor that is not covered by the bond. Because Old Republic’s duty to investigate only arises from claims against the bond, the “claim” referenced in RCW 18.27.117(3) is a claim against the bond.

Having determined that RCW 18.27.117(3) imposes a duty on a surety to investigate claims against the bond, we must next determine how a claim against the bond is made. Our review of the RCA convinces us that the only way to file a claim against a licensing bond is to file a lawsuit pursuant to the procedures set forth in RCW 18.27.040.

While licensing bonds are a type of performance bond, they are unique in their nature. The purpose of the licensing bond is to protect the public as opposed to a specific obligee. The bond accomplishes this purpose by providing a guarantee for adjudicated claims that are left unsatisfied, and by providing the Department with a means to suspend a contractor's registration and notify the public of claims against the contractor and the bond. The process set forth in RCW 18.27.040 provides the only means for notifying the Department of actions against the bond and the only means for the Department to direct payments from the bond toward an unsatisfied judgment.

As noted above, the RCA requires contractors to register with the Department and show proof of securing a bond. RCW 18.27.040. The bond's obligee is the State of Washington. RCW 18.27.040(1). The Department is responsible for maintaining contractors' licenses and publishing information to the public, including bond status and complaints against the bond. RCW 18.27.040(3), .120.

The bond is conditioned upon the contractor paying all amounts "adjudged" against the contractor for breach of contract. RCW 18.27.040(1). In other words, a bond is a guarantee that if a contractor fails to pay an adjudicated claim, the bond can be applied toward the judgment amount. 33 DEWOLF, *supra*, § 13:1; 12 AM. JUR. 2d *Bonds* § 25 (2019). If a plaintiff prevails in a lawsuit and receives payment that impairs the bond, the Department will suspend the contractor's license, post the suspension on its

public website, and notify the contractor of the suspension. RCW 18.27.040(7), .060(3), .120.

When suit is filed against the surety for a claim against the bond, service of process is made exclusively through the Department. RCW 18.27.040(3). The plaintiff must serve three copies of the summons and complaint on the Department, who then serves the contractor and the surety. RCW 18.27.040(3). “Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.” WAC 296-200A-080(1). In Washington, the only way to bring an action upon a bond is to file a lawsuit in superior court, naming the principal/contractor and the surety. RCW 18.27.040; 33 DEWOLF, *supra*, 13.8 (“A residential homeowner who seeks to recover on the bond must file a summons and complaint within two years from the date of substantial completion of the project.”). As the amicus curiae points out, using the proscribed bond claim process allows the Department to fulfill its duties to regulate contractors and provide information to the public. Amicus Br. at 1-2.

Ms. Caskey argues that filing a claim against the bond can be accomplished with a demand letter. She does not cite any authority for this position, nor does she refer us to any examples where a demand letter was used to resolve a claim against a bond. Instead, she argues that this alternative is not foreclosed by RCW 18.27.040(3), which reads:

Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had.

Ms. Caskey focuses on the word “may” and argues that filing a lawsuit is discretionary. She asks this court to interpret the word “may” as a choice between filing a lawsuit and other unspecified recovery methods. Old Republic and amicus argue that “may” refers to the choice of venue and not discretion in how to make a claim against the bond.

“Words in a statute must be given their usual and ordinary meaning unless a contrary intent appears.” *Stenge v. Clarke*, 89 Wn.2d 23, 28, 569 P.2d 60 (1977) (district court possesses jurisdiction to hear consumer protection claims). The word “may” conveys the idea of choice or discretion. *Id.* In *Stenge*, the petitioner argued that the word “may” in the phrase “may bring a civil action in the superior court” or district court indicated that an injured party is under no compulsion to sue at all. 89 Wn.2d at 28-29. However, the court disagreed, holding that the word “may” merely permits the petitioner to make a choice of forum because a prospective litigant may always choose whether or not to pursue civil action. *Id.* Under *Stenge*, Ms. Caskey’s argument is not persuasive.

In addition, Ms. Caskey’s argument that a demand letter suffices as a claim against the bond is not workable because a letter fails to trigger the collateral ramifications of an action against the bond. Assuming the surety was able to resolve a claim made by demand letter, the surety is required by statute and bond to pay the obligee, the State of

Washington. Without a lawsuit, there is no procedure for the State of Washington to direct those funds to the claimant. *See* WAC 296-200A-080(1). In addition, the lawsuit provides notice to the Department and triggers an automatic suspension of the contractor's license if the bond is used against an unpaid judgment. If more than one person has a claim against the bond pending, the procedures set forth in RCW 18.27.040 establish the priority in the event the bond is insufficient to pay all the claims.

We hold that RCW 18.27.117(3) creates a derivative cause of action for a consumer protection violation against a surety separate from the bond. The surety's duty to investigate "claims made by injured persons" requires the surety to investigate claims made against the bond. A claim against the bond requires a lawsuit according to the procedures set forth in RCW 18.27.040(3). Once the Department serves the surety, the claimant can provide its information to the surety, and the surety has an obligation to perform a reasonable investigation and resolve the case.

Since Ms. Caskey did not file a claim against the bond, Old Republic did not have a duty to investigate her claim against the contractor. Thus, the trial court did not err in dismissing Ms. Caskey's derivative CPA claim on summary judgment.

D. IFCA VIOLATION

Ms. Caskey also alleges that Old Republic's refusal to investigate and resolve her claim constituted a violation of the IFCA. Specifically, she argues that she is a first-party

claimant of an insurance policy (the license bond), and Old Republic unreasonably denied her claim to the bond in violation of RCW 48.30.015(1).

Ms. Caskey's cause of action for violation of the IFCA fails because she is not a first-party claimant to the contractor's licensing bond. A "first-party claimant" is "an individual . . . asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract." RCW 48.30.015(4); WAC 284-30-320(7). Ms. Caskey was not a party to the bond. As such, she was not a "covered person under an insurance policy or insurance contract." Instead, she is a third-party claimant because she is asserting a claim against the contractor and against the contractor's bond. *See* WAC 284-30-320(17) (A third-party claimant is "any individual . . . asserting a claim against any . . . corporation . . . or other legal entity insured under an insurance policy or insurance contract of the insurer.").

E. INDEPENDENT CPA CLAIM


Ms. Caskey also filed a cause of action for violating the CPA, alleging that Old Republic's response letter, advising her she must file a lawsuit to make a claim against the bond, was misleading and constituted an unfair and deceptive act or practice under RCW 19.86.020. She acknowledges, however, that if we hold that the only way to file a claim against the contractor's bond is to file a lawsuit under RCW 18.27.040, then Old

No. 38017-3-III
Caskey v. Old Republic Surety Co.

Republic's letter was not misleading and would not provide a factual basis for an independent CPA violation.

CONCLUSION

We affirm the superior court's summary dismissal of Ms. Caskey's causes of action against Old Republic. As such, we deny Ms. Caskey's request for attorney fees.

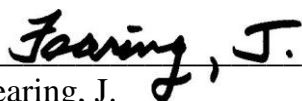


Staab, J.

WE CONCUR:



Siddoway, C.J.



Fearing, J.

Appendix No. 2

FILED
Court of Appeals
Division III
State of Washington
10/18/2021 11:35 AM

NO. 38017-3-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

JOANN CASKEY,

Appellant,

v.

OLD REPUBLIC SURETY CO.,

Respondent.

**AMICUS CURIAE BRIEF OF
DEPARTMENT OF LABOR & INDUSTRIES**

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	IDENTITY AND INTEREST OF AMICUS.....	2
III.	ISSUE ADDRESSED BY AMICUS	3
IV.	STATEMENT OF THE CASE.....	4
	A. Background of Contractor Registration Law.....	4
	B. Caskey Did Not File a Lawsuit Against the Bond and Did Not Serve the Department with Her Claim.....	6
V.	ARGUMENT	7
	A. The Plain Meaning of RCW 18.27.040 Reflects the Legislature’s Intent that Claims Must be Initiated by Filing and Service of a Lawsuit.....	7
	B. The Language of RCW 18.27.040 Makes Clear that the Legislature Did Not Contemplate Resolution of Claims Outside the Context of Litigation.....	9
	C. Caskey’s Proposed Alternative Claims Process Would Prevent the Department from Fulfilling its Duties Under the Contractor's Registration Act.	12
VI.	CONCLUSION	15

TABLE OF AUTHORITIES

State Cases

<i>Dep't of Ecology v. Campbell & Gwinn</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	8
<i>Dep't of Revenue v. Nat'l Indem. Co.</i> , 45 Wash.App. 59, 723 P.2d 1187 (1986)	15
<i>State v. Larson</i> , 184 Wn.2d 843, 365 P.3d 740 (2015).....	8

State Statutes

RCW 18.27.020(1)	4
RCW 18.27.030	3
RCW 18.27.040	passim
RCW 18.27.040(1)	4
RCW 18.27.040(3)	passim
RCW 18.27.040(4)	4, 10, 11
RCW 18.27.040(7)	5, 9, 11, 13
RCW 18.27.040(10)	10, 11, 12
RCW 18.27.040(11)	3, 5, 13
RCW 18.27.060	3, 5
RCW 18.27.120	5

RCW 18.27.120(1)	3
RCW 18.27.120(2)	3
RCW 18.27.140.....	1, 4, 13, 14

I. INTRODUCTION

The purpose of the Contractor’s Registration Act is to “afford protection to the public . . . from unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. To advance this purpose, RCW 18.27.040 requires contractors to obtain bonds to pay for claims by laborers, property owners, subcontractors, and state taxing agencies. The pool of money is limited—\$12,000 for general contractors and \$6,000 for specialty contractors. This makes it critical that prospective bond claimants follow the case filing and service procedures prescribed by the Contractor’s Registration Act RCW 18.27.

The plain language of RCW 18.27.040 requires a lawsuit to be filed in superior court and served on the Department of Labor and Industries to initiate a claim against the bond. The prescribed bond claims process allows the Department to fulfill its duties relating to the registration and regulation of

contractors and the maintenance and publication of information regarding individual contractors for the benefit of the public.

In this case, Joann Caskey did not file a claim against the bond; instead, she sent a letter to the surety asking for payment. Allowing such a shortcut would disregard the rights of other bond claimants and would cause the contractor information that the Department maintains and publishes to be inaccurate. This Court should reject Caskey's attempt to craft a new procedure not provided by the Legislature.

II. IDENTITY AND INTEREST OF AMICUS

Amicus Curiae is the Department of Labor and Industries of the State of Washington. The Department submits this amicus brief to urge this Court to hold that the only method to initiate a claim against a Contractor's Registration Act bond is to file and serve a lawsuit as prescribed in RCW 18.27.040(3).

The Contractor's Registration Act requires contractors to register with the Department in order to conduct business in the state. The Department is tasked with registering contractors

(RCW 18.27.030), maintaining public records relating to registration (RCW 18.27.120(1)), including whether a contractor is properly bonded (RCW 18.27.120(2)), suspending registration when a bond is impaired (RCW 18.27.060), and increasing the bond amount for contractors with previous judgments (RCW 18.27.040(11)).

The Department files this brief because the alternative claim procedure advanced by Caskey would prevent the Department from fulfilling its obligations and would eliminate the safeguards created by the Contractor's Registration Act.

III. ISSUE ADDRESSED BY AMICUS

Did Caskey initiate a claim against the contractor registration bond by sending a demand letter to the surety instead of filing and serving a lawsuit as prescribed in RCW 18.27.040(3)?

IV. STATEMENT OF THE CASE

A. Background of Contractor Registration Law

All contractors doing business in this state must register with the Department. RCW 18.27.020(1). To qualify for registration, general and specialty contractors must post bonds in the amount of \$12,000 or \$6,000, respectively. RCW 18.27.040(1). Four classes of claimants can seek recovery from these bonds: (1) laborers; (2) property owners alleging breach of contract; (3) subcontractors and suppliers providing material and equipment; and (4) state taxing agencies. RCW 18.27.040(4). The purpose of the Contractor's Registration Act, RCW 18.27, is "to afford protection to the public . . . from unreliable, fraudulent, financially irresponsible, or incompetent contractors." RCW 18.27.140.

Under the Act, a claimant initiates a claim against the bond when a lawsuit is filed and the Department is served with three copies of the summons and complaint. RCW 18.27.040(3). On average, the Department is served with 1,600

bond claims in this manner each year. CP 140. Within two days after receiving the summons and complaint, the Department transmits copies to the contractor and the surety. RCW 18.27.040(3).

As required by the Act, the Department maintains and publishes individual contractors' license information, including bond status (RCW 18.27.120) and any complaints filed against a bond (RCW 18.27.040(3)), on its website. If a claimant prevails in the lawsuit and receives payment impairing the bond, the Department will suspend the license of the contractor (RCW 18.27.040(7)), post that information on its website (RCW 18.27.060 and RCW 18.27.120) (CP 142), and will notify the contractor of the suspension (RCW 18.27.060). The Department may require a contractor who seeks to renew or reinstate its registration to file a bond up to three times the normally required amount if the applicant has prior judgments against it. (RCW 18.27.040(11)). The Department encourages

the public to check the contractor registration and bond status before contracting with a contractor. CP 143.

B. Caskey Did Not File a Lawsuit Against the Bond and Did Not Serve the Department with Her Claim

The Department relies primarily on the facts stated in the brief of Respondent, Old Republic Surety Company. The essential facts are not disputed.

Contractor Bud's & Doug's allegedly improperly installed Caskey's manufactured home. Caskey sent a letter to the surety, Old Republic Surety Co., demanding payment of \$12,000 from the contractor's bond for the improper installation. CP 77. The letter was not copied to the Department. CP 77. The surety responded to Caskey, informing her that RCW 18.27.040 requires her to file a lawsuit against the contractor and the surety in order to perfect a claim on the bond. CP 80.

Caskey did not file an action against the bond. Instead, Caskey filed a complaint against the surety, alleging violations

of the Insurance Fair Conduct Act and the Consumer Protection Act. CP 1, 9, 11.

The superior court granted the surety's summary judgment motion, concluding that the process advanced by the surety, the filing of a lawsuit to initiate a claim, was consistent with the statutory scheme and the Supreme Court's and the Department's interpretations. CP 180-82, 207.

V. ARGUMENT

A. **The Plain Meaning of RCW 18.27.040 Reflects the Legislature's Intent that Claims Must be Initiated by Filing and Service of a Lawsuit.**

Caskey argues that she is not required to comply with the procedure [the filing and service of a lawsuit] that an average of 1,600 other claimants in this state follow each year. CP 140.

The crux of Caskey's argument is based on the first sentence of RCW 18.27.040(3):

Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section *may* bring suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which

jurisdiction of the contractor may be had.
[emphasis added]

The fundamental purpose in interpreting a statute is to give effect to the Legislature’s intent. *State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740 (2015). If the statute’s meaning is plain then the court must give effect to that plain meaning as an expression of the Legislature’s intent. *Id.* The court discerns plain meaning from the ordinary meaning of the language, the context of the statute in which that provision is found, related provisions, and the statutory scheme. *Id.*; *Dep’t of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002).

Caskey contends that the word “may” permits claims to be made against a contractor’s bond without filing a lawsuit. But, as pointed out by the surety, the word “may” does not create an alternative method of initiating a claim against a contractor’s bond. Rather the provision gives a claimant a choice of venue—the claimant may bring suit in the county in which the work was done or the county in which jurisdiction of

the contractor may be had. The ordinary meaning of the provision read in the context of the rest of RCW 18.27.040 and the Contractor’s Registration Act expresses the Legislature’s intent that claimants bring their claims in an orderly process that gives sufficient notice to the Department—i.e., through the filing and service of a lawsuit as prescribed in RCW 18.27.040(3).

B. The Language of RCW 18.27.040 Makes Clear that the Legislature Did Not Contemplate Resolution of Claims Outside the Context of Litigation.

When drafting RCW 18.27.040 the Legislature did not contemplate resolution of claims outside the context of litigation.

For example, RCW 18.27.040(7) states that “[i]f a *final judgment* impairs the liability of the surety upon the bond . . . the registration of the contractor is automatically suspended . . .” (Emphasis added.) This provision automatically suspends a contractor’s registration when a final judgment impairs the contractor’s bond. But the Legislature did not provide a

procedure to suspend a contractor's registration following other types of bond payments (like a payment after a demand letter to the surety).

Similarly, RCW 18.27.040(10) requires a prevailing party to provide certified copies of the final judgment and order, or a certified copy of the dispositive settlement documents if the case is not disposed of by trial, to the Department within ten days after resolution of a case. The Contractor's Registration Act includes no similar requirement to notify the Department of resolution of claims outside the context of a lawsuit.

Along the same lines, RCW 18.27.040(4) allows a surety to deposit with the court clerk (similar to an interpleader action) "an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom." This provision allows a surety to account for the amounts paid toward judgments but not for any other type of

disbursements (such as if it had paid Caskey based on the letter).

If the Legislature contemplated the resolution of claims outside the context of litigation (such as Caskey's informal letter), the language of the Contractor's Registration Act would have provided for it—i.e., RCW 18.27.040(4) would specify that a surety may deposit with the court clerk the bond amount less all disbursements (not just the amounts paid toward judgments); RCW 18.27.040(7) would suspend a contractor's registration when a bond becomes impaired by any payment (not just by payment toward a final judgment); and RCW 18.27.040(10) would require notice to the Department after any resolution of a claim (not just after resolution of a lawsuit).

When taking into consideration the ordinary meaning of the text at issue with the rest of the statute, the legislative intent is evident: a person must file a lawsuit and serve it on the Department to initiate a claim against a contractor's bond.

C. Caskey’s Proposed Alternative Claims Process Would Prevent the Department from Fulfilling its Duties Under the Contractor’s Registration Act.

The claims process prescribed in RCW 18.27.040 ensures that the Department is sufficiently involved and informed of claims against contractor’s bonds in order to administer the registration of contractors and to keep the public informed of the same. RCW 18.27.040(3) requires three copies of the summons and complaint to be served on the Department to effect service on the contractor and surety, and RCW 18.27.040(10) requires the prevailing party to provide certified copies of the final judgment and order, or certified copies of the dispositive settlement documents when the case is not disposed of by trial, to be provided to the Department within ten days of resolution of the case. The Contractor’s Registration Act ensures that the Department learns of the claim from the first moment it is made and of the claim’s resolution within ten days of its occurrence.

This level of notification is necessary so that the Department can fulfill its numerous duties under the Contractor's Registration Act, including providing notice of a lawsuit to the surety and contractor (RCW 18.27.040(3)), maintaining a record available for public inspection of all suits commenced against a contractor's bond (*id.*), automatically suspending a contractor's registration when a final judgment impairs the contractor's bond (RCW 18.27.040(7)), and increasing the required bond amount for those contractors with a prior judgment against their bond (RCW 18.27.040(11)). An alternative claims process would circumvent these safeguards and would disregard the Contractor's Registration Act's purpose.

The Department's maintenance and publication of individual contractor bond statuses are critical to protecting the public from "unreliable, fraudulent, financially irresponsible, or incompetent contractors." RCW 18.27.140. The public refers to the Department's website to determine whether the contractor

with whom they are considering doing business is registered and bonded. The current claims process allows for the Department and the public to be aware of lawsuits that are commenced against the bond, but they would be uninformed of claims made through a process like the one advanced by Caskey. With the Department having only partial or incorrect information regarding bond claims, the Department's published list of contractors and their registration and bond statuses would be inaccurate. This important safeguard provided by the Contractor's Registration Act would become ineffective and misleading, leaving the public unknowingly exposed to hiring "unreliable, fraudulent, financially irresponsible, or incompetent contractors." RCW 18.27.140.

Potential bond claimants also consult and rely on the information on the Department's website. If the website shows that a contractor's bond is available, initiation of a lawsuit against the bond may be worthwhile. But if the website shows

that the bond is fully impaired by an earlier lawsuit, the potential claimant will know to forgo the bond claim.

And while a contractor's registration is automatically suspended after payment of a final judgment, the suspension would not be automatic after payment of an informal claim. *Dep't of Revenue v. Nat'l Indem. Co.*, 45 Wash.App. 59, 62, 723 P.2d 1187 (1986) ("Forcing a contractor to discontinue business when he is unable to reinstate his bond serves to protect the public from financially irresponsible contractors, a primary function of the statute.").

Caskey's alternative claims procedure conflicts with the purpose of the Contractor's Registration Act and would prevent the Department from fulfilling its duties. Accordingly, the Court should affirm the lower court's dismissal.

VI. CONCLUSION

The Department asks that this Court affirm the superior court and hold that to initiate a claim against a Contractor's Registration Act bond, the claimant must file and serve a

lawsuit against the contractor and surety as prescribed in RCW
18.27.040.

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RESPECTFULLY SUBMITTED this 18th day of
October 2021.

ROBERT W. FERGUSON
Attorney General

/s/ Angie S. Lee

ANGIE S. LEE
Special Assistant Attorney General
WSBA No. 47104

CERTIFICATE OF SERVICE

I, Quinn Ferrar, declare under penalty of perjury under the laws of the state of Washington that I caused to be served, via United States Postal Service and electronic mail, a true and correct copy of the foregoing document upon the following:

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DATED this 18th day of October 2021, at Seattle,
Washington.

/s/ Quinn Ferrar
Quinn Ferrar

OFFICE OF THE ATTORNEY GENERAL, BANKRUPTCY AND COLLECTIONS UNIT

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