NO. 1014031
Court of Appeals No. 827880-I

SUPREME COURT
OF THE STATE OF WASHINGTON

ANDREW D. HAMBLIN,

Respondent,

v.

NATIONAL GENERAL INSURANCE AND INTEGON,

Appellants.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

National's Petition raises two issues.[1] First, National seeks review of the trial court's admission of a document into evidence that the insurer relied upon in making decisions regarding its claims handling—a focus of the underlying trial. Second, National seeks review of the trial court and Court of Appeals decisions to award attorney fees under *Olympic Steamship,* even though the plaintiff at trial prevailed on issues addressing insurance coverage, breach of the insurance contract, and the failure by the insurer to meet the minimum standards required for the protection of its insured. The Petition does not articulate a conflict between the decision in the Court of Appeals and any Supreme Court precedent, any conflict between Court of Appeals decisions, any issue of substantial public interest, or any other of

[1] This Answer refers to National General and Integon Preferred as "National." The insurers have attempted to avoid a judgment against National General by claiming that National General does not exist, contrary to filings with the Washington Insurance Commissioner. CP 1308–14, 1383–92. However, the judgment below was against both National General and Integon, and National has not assigned error to that portion of the judgment.

the specified grounds for review by this Court. RAP 13.4(b). The Petition should be denied.

The trial in this case involved the failure of the insurers to act in good faith and to comply with minimum standards under Washington law. National failed to protect the insured (Louis Castillo Garcia) when a policy limits demand was provided to the insurer in the context of a severe injury. National repeatedly refused to offer policy limits even after internally concluding that the case was worth more than the policy limits. This led the insured and the injured party (Andrew Hamblin) to enter into a stipulated judgment, a covenant not to execute on that judgment, and an assignment of Castillo Garcia's rights against National to Hamblin (collectively, the "covenant judgment").

The jury found against National on Hamblin's claims for bad faith, breach of contract, negligence, and violation of the Consumer Protection Act.

National's Petition to this Court now concedes that the trial court's ruling on Hamblin's motion for partial summary

judgment correctly set Hamblin's minimum damages at the covenant judgment amount of $1,500,000. Although addressed by the Court of Appeals, this issue should be considered abandoned and not considered for purposes of the Petition for Review. *Blue Spirits Distilling LLC v. Washington State Liquor & Cannabis Bd.,* 15 Wn. App. 2d 779, 794, 478 P.3d 153 (2020).

II. ISSUES REGARDING THE PETITION

1. Given the coverage dispute over whether the insurers owed a full or partial policy limit of coverage for the claims against the insured, did the trial court appropriately allow into evidence the relevant portions of the police report relied upon by the insurers in their coverage analysis? **Yes.**

2. Should this Court affirm the trial court and Court of Appeals decisions to award attorney fees and costs against the insurers? **Yes.**

III. RESTATEMENT OF THE CASE

The underlying claim arose from a motor vehicle accident on February 6, 2016. National-insured Castillo Garcia caused two separate motor vehicle accidents—the second accident involving Hamblin. *See Hamblin v. Castillo Garcia,* __

Wn.App.2d __, 517 P.3d 1080 (2022) (App. A to the Petition) (hereafter, *Hamblin II*) at 2[2]; Trial Exhibit ("EX") 3.

A. National's Claim Representative Rejected Hamblin's Policy Limits Demand Without Even Reading the Demand Letter and Without Understanding the Medical Issue Presented.

On November 4, 2016, one of Hamblin's attorneys, Lauren Parris Watts, sent National a letter describing Hamblin's injuries and prognosis in detail, including an upcoming TOS surgery, and giving National an opportunity to settle for the policy limits of $100,000 in exchange for a full release of Hamblin's claims against Castillo Garcia. *Hamblin v. Castillo Garcia*, 9 Wn. App. 2d 78, 82-83, 441 P.3d 1283 (2019) (hereafter, *Hamblin I*), EX 18.[3]

[2] For the Court's convenience, all page references to the Court of Appeals decision challenged by National are identified as "Hamblin II" since there are two opinions by the Court of Appeals in this matter, and refer to the Slip Opinion page numbers. The earlier opinion (Hamblin I), which was not appealed, is found at 9 Wn. App. 2d 78, 441 P.3d 1283 (2019).

[3] National falsely claims in its Petition that it first learned of Hamblin's claim when it received the November 4, 2016 demand letter. Pet. At 4. National's claims file shows that National knew about Hamblin's claim by April 19, 2016, and National began communicating with Hamblin's counsel on June 28, 2016. EX 11, 14.

On December 5, 2016 (the expiration date of the policy limits demand), "[w]ithout reading the demand letter, National rejected the offer and made a counteroffer for $21,000, which Hamblin rejected." *Hamblin II*, at 2.

At the time of those interactions, the National representative handling this matter: had never handled a TOS case; did not know what TOS was; had "no idea" what symptoms someone suffering from TOS would experience; and did not know the value of a TOS claim. RP 1422:19–1423:1; 1428:16–1430:7. So he just gave it no value. RP 1422:7. National also never informed its insured of the policy limits offer or the rejection of that offer. RP 625:1–24.

B. Castillo Garcia's Appointed Counsel Immediately Recognized the Risk to Their Client and Communicated That Risk to National.

Hamblin ultimately brought a lawsuit for damages against Castillo Garcia in late December 2016. *Hamblin II*, at 3. Upon receiving the case assignment, National appointed attorneys from the Smith Freed firm as counsel for Castillo Garcia.

Counsel immediately advised National of their concern regarding a verdict against the insured in excess of his policy limits. EX 27, p. 3; RP 965:9–965:25.

C. National Ignored the Alarms and Unnecessarily Delayed a Prompt, Fair, and Equitable Settlement of the Claim Against Its Insured.

On May 2, 2017, National informed the attorneys at Smith Freed that "[t]he decision is now to try to resolve the case up to the remaining limits. This is a $100CSL and $99,374.10 is left on the policy." EX 39; RP 785:5–786:22. However, five minutes later, National sent another email stating: "See if we can get it in the medium range of the prior update." *Id.*[4] Upon receiving National's instruction, defense counsel called National and encouraged National to increase its offer to $90,000. RP 1252:21–1253:5.

After that phone call, National authorized Smith Freed to offer $90,000—still less than the policy limits. *Id.*[5] Hamblin was

[4] The medium range of the prior update was $50,000-$70,000. EX 32 p. 7, RP 1252:2–1252:12.

[5] Again, National had already evaluated the claim at policy limits, but chose not to offer that amount. RP 1255:23–1256:24, 1258:4–1258:7.

undergoing his second TOS surgery at the time the $90,000 offer was communicated. EX 40; RP 1254:13–1254:15. Hamblin rejected the $90,000 offer on May 11, 2017. EX 43, p. 2; RP 1070:18–1070:19. Finally, on May 15, 2017, National offered $99,374.10—which National claimed were the "remaining limits." EX 43; RP 1070:20–1070:24. Hamblin rejected that offer. RP 1070:22–1070:24, 1233:1–1233:3.

D. National Failed to Analyze Whether a Full Policy Limit Covered Castillo Garcia for the Hamblin Accident.

The issue of whether a full $100,000 policy limit applied to Hamblin's claim was relevant at trial because, in making offers to Hamblin, National reduced its offers to account for payment to the other vehicle hit by Castillo Garcia. *Hamblin II*, at 5; RP 785:5–785:11.

As part of the "standard practice" in its claims handling process, National ordered a copy of the police report applicable to this incident. RP 546:1–546:4; *Hamblin II*, at 6, n. 5. Castillo Garcia had originally reported to National that he had fallen asleep at the wheel, struck Sumner from behind, and pushed her

vehicle into another vehicle. Pet. at 6; *Hamblin II*, at 20. The police report showed that Castillo Garcia bumped into Sumner, went left into the next lane, passed several stopped vehicles waiting at the red light, drove into the intersection against the red light, and broadsided Hamblin who was proceeding through the green light applicable to his lane of traffic. *Hamblin II*, at 5–6, EX 3; CP 630–33; RP 548–50.

Upon receiving the police report, National accepted the police report version of events as accurate. National also consistently used that version of events in its liability and coverage analysis, and even used the language of the police report narrative in its own internal description of the accident. *Hamblin II*, at 7–8. National's corporate representative testified that he copied the police report accident description into his reports on the facts of the accident, and National did not object to the testimony. *Id*.

Treating the two accidents as one, National claimed that less than $100,000 remained available to pay to Hamblin.

Hamblin II, at 5; EX 42; EX 45, p. 2. National never researched whether, under Washington law, the two collisions constituted one or two accidents for purposes of the limits of the insurance coverage. RP 557:15–559:25.

E. The Settlement and the Reasonableness Hearing.

On September 25, 2017, after months of negotiations and only two and half months before the trial date set for the underlying injury case, Castillo Garcia and Hamblin reached a stipulated settlement agreement in the amount of $1,500,000, subject to a reasonableness hearing. *Hamblin I*, 9 Wn. App. 2d at 83. In consideration of Hamblin not enforcing the judgment against Castillo Garcia personally, Castillo Garcia stipulated to a judgment of $1,500,000 and assigned all rights and causes of action he may have against National (and Integon) to Hamblin. *Id.*

The trial court held a reasonableness hearing on January 3, 2018, including live testimony. *Hamblin I*, 9 Wn. App. 2d at 84. On February 1, 2018, the trial court entered its order finding the

settlement reasonable. *Id.* National appealed the trial court's finding of reasonableness. *Id.* The Court of Appeals affirmed the judgment amount on appeal and found no fraud or collusion in the negotiation of the reasonable settlement amount.[6] *Id.* at 92. Following a minor amendment as directed by the Court of Appeals, the Settlement Agreement became final and a judgment was entered. *Hamblin II*, at 4, n.4.

F. The Trial Court Granted Hamblin's Motion for Partial Summary Judgment on the Issue of Bad Faith Damages.

After the Settlement Agreement became final and a judgment was entered, Hamblin brought the current action against National as assignee of Castillo Garcia. *Hamblin II*, at 4. Shortly before trial, Hamblin moved for partial summary judgment on the issue of damages with respect to the bad faith claim. *Id.* Hamblin argued that, under the applicable case law, if the jury found that National had acted in bad faith, then the

[6] National did not further appeal from the decision of the Court of Appeals in *Hamblin I*. Therefore, *Hamblin I* provides the "law of the case" in this appeal as to all issues resolved in *Hamblin I*. National has not challenged the decision in *Hamblin I* under RAP 2.5(c)(2). *Lodis v. Corbis Holdings, Inc.,* 192 Wn. App. 30, 58, 366 P.3d 1246 (2015).

amount of the stipulated judgment would set the measure of damages for the bad faith claim. *Id.* The trial court granted Hamblin's motion. *Id*. In *Hamblin II*, the Court of Appeals affirmed. National does not seek review of the Court of Appeals decision to affirm the partial summary judgment ruling.

G. The Jury Found that National Acted in Bad Faith, Violated the Consumer Protection Act, and Breached the Contract of Insurance.

The trial court instructed the jury on the elements of Hamblin's claims against National. CP 1210–19. The instructions included a statement of the law regarding the factual issue of whether Garcia Castillo's collisions with Sumner and Hamblin were one or two accidents. CP 1220. National has not assigned error to that instruction.

At the conclusion of trial, the jury found in favor of Hamblin on his bad faith, Consumer Protection Act, negligence, and breach of contract claims. *Hamblin II*, at 12; Pet., App. B. The trial court then entered judgment in favor of Hamblin in the amount of $1,400,627.90 (the amount of the stipulated judgment

less the deposit made by National into the Clerk of the Court),[7] plus attorney fees and costs. *Id*.

IV. ARGUMENT

National's Petition only seeks review of the admission of the redacted police report into evidence at trial and the award of attorney fees and costs. Pet. at 1.

A. The Court of Appeals Correctly Affirmed the Trial Court's Discretionary Ruling Admitting the Police Report into Evidence with a Limiting Instruction.

1. The insurer's reliance on the description of the accident in the police report was directly relevant to the issue of the policy limit applicable to Hamblin's claim.

At trial, Hamblin argued that a full $100,000 limit of liability under Castillo Garcia's policy applied to Hamblin's injury. National claimed a single limit applied both to Hamblin's claim and to the claim made by Sumner. *Hamblin II*, at 5. The resolution of that issue rested in large part on the police report narrative outlining the facts of the accident because National

[7] The deposit was paid in "partial satisfaction" of the stipulated judgment. CP 1809–1810. The balance of the stipulated judgment remains unsatisfied, and remains on Castillo Garcia's record to this day.

relied on that narrative in its investigation of the facts of the accident. *Hamblin II*, at 5–7.

National ordered a copy of the police report as part of its standard claims investigation and thereafter relied on that report in determining what occurred in the events leading up Castillo Garcia broadsiding Hamblin in the intersection. *Hamblin II*, at 5–7; EXs 5, 9, 12, 13, 14, and 17; RP 553:7–559:25.[8] The trial court found that the police report was obtained by National in the regular course of its business as an insurer and qualified as a business record—a finding that National has not challenged. *Hamblin II*, at 6, n.5.

The police report version of events—which National relied upon—described two separate occurrences, or accidents. *Hamblin II*, at 21. Each had a different proximate cause, and two separate limits applied to the Sumner and Hamblin collisions under the Castillo Garcia policy. *Id.*

[8] Therefore, even if the admission of the police report was error, which it was not, any error was harmless as the police report description of the accident was admitted into evidence within National's claim documents.

The controlling case on this issue is *Greengo v. Pub. Emps. Mut. Ins. Co.* In *Greengo*, the Court detailed its approach to resolving such issues:

> Washington follows the cause theory…Under our approach if each accident, collision, or injury has its own proximate cause then each will be deemed a separate "accident" for insurance policy purposes even if the two accidents occurred coincident, or nearly coincident, in time… If, however, the collisions or injuries were all caused by a single, uninterrupted proximate cause, then the multiple collisions or injuries will be deemed a single accident.

135 Wn.2d 799, 813–14, 959 P.2d 657 (1998).

National argued at trial and in the Court of Appeals, as it does in its Petition, that there was one "accident" in this case for insurance purposes because there was one police report. Pet. at 2, 7, 16. Yet Hamblin established at trial that National never considered the "two accidents" coverage issue nor did it advise its insured of the issue. Instead, National steadfastly refused to offer the full policy limits to Hamblin even after National had become convinced that the exposure to its insured far exceeded

the applicable limits. *Hamblin II*, at 7–8; RP 557:22–558:6; 1760:17–1762:11. Rather than offer the full policy limits, National repeatedly subtracted various amounts from the $100,000 limits in its offers to settle Hamblin's claim, asserting that some reserves or offsets related to Sumner or property damage had to be subtracted. *Id.; see also* TE 25; RP 800:18 – 801:7.

Greengo explains that the threshold issue of whether the mechanics of the accident constitute one or two accidents is a question of fact for the jury to resolve. National's Petition does not question the accuracy of the trial court's instruction to the jury on how to resolve this issue, and the jury is presumed to have correctly followed those instructions. *Spivey v. City of Bellevue*, 187 Wn.2d 716, 738, 389 P.3d 504 (2017); CP 1220.[9]

Instead, National argues that since one police report covered both the Sumner and Hamblin collisions, National had

[9] Notably, National's Petition does not seek review of the meaning of its policy. Rather, National **only** challenges the admissibility of the police report. National has not preserved any issue on appeal regarding the trial court's instructions to the jury as to the language of the insurance policy.

the right to treat them as one accident, and that the trial court erred by allowing this contested coverage issue to go to the jury. Pet. at 7. *Greengo* specifically discredits such a claim as that case also involved a single police report that covered two accidents. 135 Wn.2d at 815.[10]

Hamblin offered the description of the accident in the redacted police report as evidence for the permissible purpose of proving what National knew, when it knew it, and what National did with that information as to the factual issue of whether there were one or two accidents for insurance purposes. *Hamblin II*, at 19–20. At National's request, the trial court provided a limiting instruction to the jury to that effect. *Hamblin II*, at 6–7. The jury is presumed to have correctly followed this instruction. *Spivey*, 187 Wn.2d at 738.

2. <u>The trial court properly admitted the police report.</u>

a) Standard of review

[10] Citing events reported in a single police report, the Court stated: "If the events transpired as described in this police report, both Ferulli and Hampshire were separately negligent and each of the two collisions has its own separate proximate cause."

The standard of review for a trial court's ruling on the relevance and admissibility of evidence is abuse of discretion. *Peralta v. State,* 187 Wn.2d 888, 894, 389 P.3d 596 (2017). Trial judges have "wide discretion in balancing the probative value of evidence against its potential prejudicial impact." *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 213, 258 P.3d 70 (2011). A trial court abuses that discretion when its ruling is "manifestly unreasonable or based upon untenable grounds or reasons." *Veit v. Burlington N. Santa Fe Corp.,* 171 Wn.2d 88, 99, 249 P.3d 607 (2011) (internal citations omitted.). However, "[e]videntiary error is grounds for reversal only if it results in prejudice." *City of Seattle v. Pearson*, 192 Wn. App. 802, 817, 369 P.3d 194 (2016).

b) Police reports are not excluded from evidence under RCW 46.52.080.

National incorrectly argues that RCW 46.52.080 required exclusion of the police report from evidence as a matter of law, regardless of whether National collected the police report in the

ordinary course of business and relied upon the police report in making claims decisions.

National is simply wrong. This Court has previously ruled that while the statute prohibits the use at trial of "accident" reports **created by motorists**, it does not apply to reports created by police officers. As recognized by the Court of Appeals, this point is fatal to National's argument. *Hamblin II*, at 18–19, relying upon *Guillen v. Pierce Cty.,* 144 Wn.2d 696, 714–15, 31 P.3d 628, 639, *opinion modified on denial of reconsideration,* 34 P.3d 1218 (2001), and *rev'd in part sub nom. Pierce Cty., Wash. v. Guillen,* 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003) ("We have held that the phrase 'accident reports and supplemental reports' in RCW 46.52.080 refers to reports prepared … by persons involved in the accidents, not to official 'police officer's reports' or 'investigator's reports'")(internal citations omitted); *see also Gendler v. Batiste,* 174 Wn.2d 244, 253, 274 P.3d 346, 350 (2012) (upholding *Guillen's* distinction

between motorist reports and reports submitted by law enforcement officers).

National argues that these cases only address the discoverability of police reports, not their admissibility. Pet. at 12–13. National's argument ignores the distinction made in those cases between a motorist's "accident report" and a "police report." *Guillen* and *Gendler* both **hold** that the evidentiary prohibition of RCW 46.52.080 applies only to accident reports prepared by motorists under RCW 46.52.030 and does not apply to reports prepared by police officers under RCW 46.52.070.

c) The trial court properly overruled National's hearsay objection to the police report.

National next argues that the police report should have been excluded as hearsay. This issue is resolved by a basic evidence rule analysis. The police report was not admitted for the "truth of the matter asserted;" therefore, it was not hearsay. ER 801(c). In *Rice v. Offshore Systems, Inc.*, 167 Wn. App. 77, 86, 272 P.3d 865 (2012) the court held that police and fire reports can be admitted into evidence where those reports are offered,

not for the truth of the contents, but for how the reports were used by a party opponent in making a decision. 167 Wn. App. at 86. National attempts to distinguish *Rice* by arguing that *Rice* did not involve a motor vehicle accident. Pet. at 13-14. But *Rice* holds that when a party uses fire or police reports to guide the party's actions, those reports are then admissible if the report is offered for its effect on the actor's conduct, rather than for the truth of the matters asserted in the report. As stated in *Rice*:

> The reports were not offered to show Rice was drunk and disorderly. They were offered to show Davis's motivation for the decision to terminate Rice's employment. *See* ER 803(a)(3) (an exception to the hearsay rule is a statement of the declarant's then existing state of mind, such as motive); *Domingo v. Boeing Employees' Credit Union,* 124 Wash.App. 71, 79, 98 P.3d 1222 (2004) ("Walsh's testimony was not offered for the truth of the matter asserted. Rather, it was offered to show Walsh's motivation for the decision to reprimand and eventually terminate Domingo's employment.").

Rice, 167 Wn. App. at 86–87.

National relied upon the description in the police report as an accurate description of what happened in the collisions

between Castillo Garcia, Sumner, and Hamblin. *Hamblin II*, at 7. Hamblin argued at trial that National improperly defaulted to the "one accident" analysis to save itself money by limiting the coverage available to its insured. This disputed issue of fact was submitted to the jury, and National has not assigned error to the instruction on this issue in this appeal. *Hamblin II*, at 19–20.

National incorrectly argues that admission of the police reports raises a matter of substantial public interest. Pet. at 14. *Guillen* and *Gendler* conclusively establish that RCW 46.52.080 does not bar police reports from being used in a civil trial. *Rice* demonstrates that courts appreciate that the while such reports may not be admissible when offered for the truth of the statements contained, they can be admitted to prove how the report was used by a party opponent, if relevant to an issue in the case. 167 Wn. App. at 87. There is nothing controversial, novel, or noteworthy in the trial court's ruling on this issue. This Court should deny review.

B. The Court of Appeals Correctly Affirmed the Trial Court Ruling Awarding Attorney Fees and Costs to Hamblin.

National agrees that in a coverage dispute, attorney fees and costs are recoverable under *Olympic Steamship Co., Inc. v. Centennial Ins. Co.,* 117 Wn.2d 37, 53, 811 P.2d 673 (1991). Pet. at 16–17. In this case, the coverage dispute at trial focused on whether there was a full policy limit applicable to Castillo Garcia's liability to Hamblin, or—as National claimed—whether one limit applied such that payments to the other victim could be deducted from the "combined single limit." The entire discussion above regarding the admission of the police report and the testimony on that issue demonstrates that there was a fiercely fought coverage issue in the trial court on which Hamblin prevailed. This fact alone completely rebuffs this portion of National's Petition.

National' Petition does not quarrel with the amount of fees and costs awarded, nor does it claim that some alternative allocation of fees should have been made. Rather, National argues that no fees or costs should have been awarded at all. National loses on that issue

for the simple reason that there *were* coverage issues at trial, which Hamblin prevailed on. The Court of Appeals correctly upheld the trial court findings that Hamblin prevailed on coverage claims against National. There is no conflict with any prior case law precedent on this issue. *Hamblin II*, at 26–27.[11]

In addition, the jury concluded that National breached its duties to its insured. The trial court instructed the jury on the minimum standards of insurer conduct. CP 1210. The jury found that National violated these minimum standards, which deprived the insured of the "full benefit of his insurance contract . . ." *Olympic Steamship*, 117 Wn.2d at 53. Denied the full benefit of his insurance, Castillo Garcia acted to protect himself and assigned his claims against the insurer to Hamblin. That assignment included the insured's right to recover attorney fees and costs under *Olympic Steamship*.

[11] National argues without citation in the record that it "paid its policy limits before suit was filed in this case." Pet. at 17–18. In making that statement, National ignores the fact that it deposited less than the full limits into the Superior Court. The Court of Appeals properly recognized that there were questions of fact at trial as to whether National properly analyzed these coverage issues, that the trial court properly submitted these issues to the jury, and that the jury found for the insured. *Hamblin II*, at 26–27.

National correctly notes that in UIM cases Washington courts do not award attorney fees where the *only* dispute is as to the value of the claim. However, this is not a UIM case. Instead, the dispute was not as to the value of Hamblin's claim, but rather the damages caused by the insurer's failure to provide a full policy limit of coverage to its insured and its failure to comply with the minimum standards of conduct imposed on the insurer by the policy and by Washington law.

Here, the insured was required to hire counsel at his own expense and had to submit to a covenant judgment, which resulted in the present action against National to obtain relief from that judgment. The insured had "to assume the burden of a legal action, to obtain the full benefit of his insurance contract, regardless of whether the insurer's duty to defend is at issue." *Olympic Steamship*, 117 Wn.2d at 53.

Hamblin, standing in the shoes of the insured, litigated the claim against the insurer and the jury found that National breached

the insurance contract and failed to meet the minimum standards of conduct applicable to insurers. Pet., App. B.

Hamblin was therefore entitled to fees and costs under *Olympic Steamship* due to National's breach of its duties to its insured. *Id*. As stated by this Court, *Olympic Steamship* fees are recoverable when the insured is forced to file a suit for damages to obtain the benefit of the insurance contract:

> Whether the insured must defend a suit filed by third parties, appear in a declaratory action, or as in this case, file a suit for damages to obtain the benefit of its insurance contract is irrelevant. In every case, the conduct of the insurer imposes upon the insured the cost of compelling the insurer to honor its commitment and, this, is equally burdensome to the insured.

17 Wn.2d at 53. In an action for *damages* against an insurer—as distinct from a valuation dispute—the insured (or assignee) is entitled an award of attorney fees and costs.

The cases National relies upon are otherwise inapposite. *Leingang v. Pierce County Medical Bureau*, 131 Wn.2d 133, 930 P.2d 288 (1997) and *McGreevy v. Oregon Mut. Ins. Co.*, 128 Wn.2d

26, 904 P.2d 731 (1995) both dealt with applying *Olympic Steamship* to coverage issues. Those cases do not limit such a recovery in cases where the insured pursues a damage claim against the insurer.[12]

In addition, *Colorado Structures, Inc. v. Insurance Co. of the West*, 161 Wn.2d 577, 167 P.3d 1125 (2007) dealt with the application of *Olympic Steamship* to construction performance bonds. While the Justices were divided on the performance bond issue, they overwhelmingly recognized that the insured is entitled to recover attorney fees against an insurer who violates the terms of the policy and fails to adhere to the minimum standards of conduct based on the court's equitable power. *Colorado Structures, Inc.*, 161 Wn.2d at 607, 620–21, 627.

There is no conflict between the decision of the Court of Appeals and any prior precedent which would justify review by this Court. Hamblin was entitled to recover his fees and costs, and the

[12] "All that is necessary to recovery attorney fees under [*Olympic Steamship*] is that the insurer compels the insured to assume the burden of legal action to obtain the full benefit of the insurance contract." *Leingang*, 131 Wn.2d at 148–49, *citing McGreevy*, 128 Wn.2d at 32.

Court of Appeals correctly affirmed the trial court award of attorney fees and costs.

V. CONCLUSION

National's Petition fails to raise any issue of the nature set forth in RAP 13.4(b). Respondent Hamblin requests that this Court deny the Petition.

Respectfully submitted this 11th day of November, 2022.

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The undersigned hereby certifies that on November 11, 2022, the foregoing document was sent for delivery on the following party in the manner indicated:

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