Supreme Court No. 101913-1
Court of Appeals No. 83078-3-I

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CORONUS XES LTD. and MATTHEW AARSVOLD,

Petitioners,

v.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO POLICY NO. ESG00317241 with Unique Market References B087517C9N5007 and B1161LS12017, an unincorporated foreign insurance syndicate,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Appellants Coronus XES Ltd and its owner, Matthew Aarsvold (together, "Coronus"), seek review of the Unpublished Opinion of a unanimous Division I panel affirming the trial court's forum-non-conveniens dismissal of their complaint against Respondents Certain Underwriters at Lloyd's, London ("Underwriters"). Coronus does not seek review of Division I's holding that the trial court appropriately weighed the "private interest" and remaining "public interest" *Gulf Oil* factors and found they all favored California. Coronus' Petition seeks review only of certain aspects of the Division I's analysis of which state—Washington or California—would be more "at home with the state law that must govern the case," under *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09, 67 S. Ct. 839 (1947). Specifically, Coronus narrowly seeks review of Division I's conclusion that California law would apply to the CPA and tort claims relating to alleged negligent claims-handling.

Review is not warranted. Division I's Opinion reflected a straightforward application of well-established conflict-of-law principles to the particular facts of this case. Coronus has not identified any genuine conflict with any decisions of this Court or the Court of Appeals under RAP 13.4(b)(1) or (2). As for "substantial public interest" under RAP 13.4(b)(4), Coronus argues that application of Washington law to the "performance of the insurer's duty to defend and indemnify" is of "substantial public interest." But Coronus is mischaracterizing the issue. It was undisputed that California law governs whether Underwriters had a duty to defend and indemnify here. Regardless, as the Court of Appeals soundly concluded, the Washington public has no cognizable, substantial interest in this Court creating a new rule requiring its courts to apply Washington law to every insurance-related claim between out-of-state insureds and foreign insurers.

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II. COUNTER-DESIGNATION OF ISSUES

a. Does the Division I opinion conflict with any decision of this Court or any published decision of the Court of Appeals under RAP 13.4(1) or (2), or raise any issue of "substantial public interest" requiring a determination by the Supreme Court under RAP 13.4(4)? (Answer: No.)

b. Does the Unpublished Opinion by a unanimous panel of the Court of Appeals, Division I, finding that the Superior Court acted within its discretion in dismissing Coronus' complaint under the doctrine of forum non conveniens, warrant review? (Answer: No.)

III. STATEMENT OF THE CASE

A. Underwriters issued the Policy in 2017-2018 to Coronus in California to cover Coronus' California-based commercial liability associated with software development.

The relationship between the parties to this appeal stems from an insurance policy. Underwriters issued Policy No.

ESG00317241 (the "Policy") to QX Acquisitions Corporation ("QX") for the period August 7, 2017 to August 7, 2018. CP 460-87. The Policy was underwritten by participating syndicates in the United Kingdom and delivered to QX at its California headquarters. CP 155; 463. The Policy was negotiated and purchased through a surplus lines broker in Los Angeles, California. CP 166.

The Policy covers certain types of commercial liability stemming from QX's enterprise software development business. CP 464. The Policy provides: "In the event of a dispute between **you** and **us** regarding this Policy, the same shall be governed by the laws of the State of the United States of American shown in the Choice of Law section of the Declarations." CP 487. The Declarations page, under Choice of Law, designates "California." CP 464. The Policy also contains a California-required form regarding Underwriters status as "nonadmitted" or "surplus lines" insurers in California. CP 460-61, 464. It also

provides for service of suit on Underwriters through a firm in California. CP 464.

While Coronus is not mentioned by name in the Policy, Coronus qualifies as an "insured" by virtue of being a subsidiary of QX. CP 1, 480. Like QX, Coronus is headquartered in Laguna Beach, California. CP 129. Aarsvold is president of QX and Coronus and qualifies as an "insured" solely in his capacity as such. CP 1, 480. In February 2018, Aarsvold filed an affidavit stating that his primary residence was in Orange County, California and that he rented property in Minnesota. CP 817-18. In this action, Aarsvold now alleges that his primary residence is in Minnesota, but Coronus and all of his other businesses are still located in California. CP 129; 133-38.

B. The Underlying Litigation

1. Aarsvold worked for non-insureds Higher Upstream and Glomad, and Coronus did not exist, during the relevant period (2016).

From 2013 to December 2016, Aarsvold was Executive Vice President of Strategy for Higher Upstream, LLC ("Higher Upstream"). CP 817. Higher Upstream provided project

management and business analyst services to clients in Texas, Florida, California, Utah, Wisconsin, but **not** Washington. *Id.* Higher Upstream was a Wyoming company owned by Daniel Webb, a Washington resident. CP 173-74; 215. There has never been any allegation that Higher Upstream, LLC was an insured under the Policy.

From 2014 to December 2016, Aarsvold was also working as a project manager and business analyst for Glomad Services, Ltd. ("Glomad"), also not an insured under the Policy. CP 817. Glomad likewise did no business in Washington. CP 818.

In December 2016, Aarsvold departed both Higher Upstream and Glomad. CP 817. Around that same time, Aarsvold became President of QX, of which he was 100% owner. CP 529-30, 538. In April 2017, Aarsvold created Coronus as a subsidiary of QX. CP 519-24.

2. In January and June of 2017, Bright Morning Consulting filed suits to recover a $200,000 loan it made to Higher Upstream.

In April 2016, a Colorado company called Bright Morning Consulting, LLC ("BMC") loaned $200,000 to Higher Upstream. CP 185. According to BMC, in December 2016, Higher Upstream defaulted on the $200,000 note. CP 176. On January 10, 2017, BMC filed a breach of contract action against Higher Upstream in Colorado to enforce the note, which resulted in a default judgment. CP 176. On June 1, 2017, BMC filed suit against Higher Upstream (which had changed its name to Red River Solutions, LLC) and Webb personally, in further attempt to collect the default judgment (the "BMC Action"). CP 173 *et seq*. As Webb personally resided in King County, Washington, the June 2017 BMC Action was filed there. CP 174.

3. On October 31, 2017, Webb filed a third party complaint against Coronus and Aarsvold alleging financial malfeasance by Aarsvold when he was EVP of Higher Upstream in 2016.

On October 31, 2017, Webb, appearing pro se, answered the BMC complaint and filed a third-party complaint against

Coronus, Aarsvold, and others (the "Webb TPC") in the BMC Action. CP 214 *et seq*. The Webb TPC alleged that in the summer of 2016 (before Coronus existed), Aarsvold used his access to Higher Upstream's bank account to transfer the proceeds of the BMC loan to Aarsvold's company, Glomad, which caused Higher Upstream's default on the BMC Loan. CP 226-29; 235-36. The Webb TPC alleged that Aarsvold's goal was to devalue Higher Upstream in order to pressure Webb to sell his company at an artificially deflated price. CP 228. The Webb TPC named Coronus as a defendant only because Coronus was Aarsvold's company at the time of filing in October 2017 and thus allegedly became part of Aarsvold's general "conspiracy" to gain control over Higher Upstream's business. CP 233-34; 238.

C. Underwriters Investigate, Then Disclaim Coverage for the Webb TPC

On July 12, 2018, Coronus tendered the Webb TPC to Underwriters for defense and indemnification. CP 254. Underwriters promptly acknowledged Coronus' tender and reserved their rights under the Policy. CP 264. Underwriters then

conducted a thorough investigation, focused particularly on the "insured" status of Coronus and the relationship (if any) of that status to the Webb TPC. CP 502 *et seq*. Underwriters retained a California firm as coverage counsel, which corresponded with Coronus regarding Underwriters' investigation. *Id*. Coronus had retained Washington counsel who made assertions under Washington law, but Underwriters (through California counsel) maintained that California law applied. CP 503.

On October 23, 2018, via a letter from California coverage counsel, Underwriters declined coverage on various grounds including that the allegations in the Webb TPC did not arise out of (or even mention) the insured's "business activities" of software development. CP 577-98. On February 22, 2019, Coronus contested Underwriters' coverage position. CP 621. On May 14, 2019, after additional investigation, California counsel reaffirmed Underwriters' disclaimer. CP 623-30.

On November 14, 2019, the parties to the BMC Action reached a comprehensive settlement that included a release of

Webb's claims against Coronus and Aarsvold in exchange for $17,500, thereby terminating the interests of the only Washington party (Webb) ever involved. CP 300-13.

D. History of This Lawsuit

1. In October 2020, Coronus and Aarsvold sued Underwriters with primary emphasis on negligent claims handling.

On October 19, 2020, Coronus filed its Complaint in this lawsuit against Underwriters. CP 1 et seq. The Complaint asserted causes of action for Declaratory Judgment, Breach of Contract, Insurance Bad Faith, Negligent Claims Handling, and Violation of the Washington Consumer Protection Act ("CPA"). CP 18-22. Most of the Complaint focused on Coronus' communications with Underwriters' London-based coverholder, CFC, and California coverage counsel, including allegedly overburdensome information requests; California counsel's alleged failure to respond quickly enough to communications during their coverage analysis; and the alleged failure to "investigate or consider" an issue (the "business activities" of QX rather than Coronus) with no apparent relevance to whether

Underwriters actually had a duty to defend. CP 13-18 (¶¶ 4.31-4.61). Coronus also asserted that Underwriters breached the insurance contract by declining to defend the Webb TPC, but with very little explanation. CP 18-20. However, the Complaint contained no elaboration or even assertion that the Webb TPC actually contained any cause of action that was conceivably covered by the Policy.

Coronus conceded that the question of whether Underwriters had any duty to defend or indemnify Coronus was governed by California law, pursuant to the Policy's Choice of Law clause. CP 356. Coronus asserted, however, that it was entitled to assert Washington tort and CPA claims regarding Underwriters' negligent handling of the claim. *Id.*

2. On August 5, 2021, the Superior Court dismissed this action without prejudice to re-file in California.

On May 7, 2021, Underwriters moved to dismiss this action under the doctrine of forum non conveniens. CP 66 *et seq*.; 812-13. On June 7, 2021, the Superior Court granted Underwriters' motion. CP 774-76. On August 5, 2021, the

Superior Court denied Coronus' motion for reconsideration except that it issued a detailed order with findings of fact and conclusions of law and clarified that the dismissal was without prejudice to allow re-filing in California. CP 827 *et seq*.

The Superior Court found that California was an adequate alternate forum and that both the public interest and private interest factors under *Gulf Oil* favored Washington. CP 827-35. With respect to the private interest factors, the Superior Court noted that the primary insurance-related witnesses resided in California and any documentary evidence, such as Coronus' business records and claims-related communications, was also in California. CP 833-34. With respect to public interest factors, the Superior Court found that California law applied to the entire case (and not only to the breach of contract claim, as Coronus had argued) (CP 829-32); that California has a public interest in presiding over insurance disputes involving its own policyholders (CP 834); and that no Washington party had any interest in this dispute between a California company and UK

underwriters (*id.*). The Superior Court also found that Coronus' choice of forum was not entitled to deference because the record and arguments reflected an attempt at forum shopping for favorable local laws which do not, in any event, apply to this action. CP 833 n.2.

3. On appeal, the Division I panel unanimously affirmed

Coronus then appealed the Superior Court's ruling. A panel of the Court of Appeals, Division I unanimously affirmed the Superior Court's decision. A-001 *et seq.* The panel found that the Superior Court's findings and conclusions regarding all of the private and public interest factors under *Gulf Oil* were supported by substantial evidence. A-007-14. This included the public interest factor considering the "forum that is at home with the state law that must govern the case." A-010-14. On that point, the Court of Appeals began by noting that "the parties did not dispute that California law would apply to the contractual claims in the case." A-010. With respect to the tort and CPA claims, the Court of Appeals agreed with the Superior Court that California

law applied, based on the broad "plain language" of the Policy's "Choice of Law" clause as applied to the particular facts of this case, which involves a dispute over Underwriters' investigation of coverage under the Policy. A-010-11. The Court of Appeals also agreed that under each of the factors under Restatement (Second) Conflict of Laws § 145, California law applied to Coronus' extra-contractual claims. A-010-14.

IV. ARGUMENT

A. The Court of Appeals Properly Applied an "Abuse of Discretion" Standard

The only trial court orders that Coronus appealed to Division I were the June 7, 2021 order granting Underwriters' motion to dismiss based on forum non conveniens and the August 5, 2021 order on reconsideration of that same motion. The Court of Appeals properly held that those orders were reviewed for abuse of discretion. Opinion, p. 5. Specifically, the doctrine of forum non conveniens requires a "fact specific" analysis involving "a number of factors to be considered and weighed in the discretion of the trial court." *J.H. Baxter & Co. v.*

Cent. Nat. Ins. Co. of Omaha, 105 Wn. App. 657, 662, 20 P.3d 967 (2001). The trial court's balancing of factors "is not subject to the same mathematical certainty as an accountant's financial statements"; rather, the court "must consider the evidence presented and make what is necessarily a subjective judgment." *Id*. at 665 (quoting *Lynch v. Pack*, 68 Wn. App. 626, 635, 846 P.2d 542 (1993)).

By fixating on certain factors within the conflict of law analysis, which is relevant to only one of several forum-non-conveniens factors, Coronus attempted to convert the standard of review to de novo, and attempts to do so again in its Petition here. Coronus also contends, without any explanation or citation, that the Court of Appeals conflict-of-law analysis was "fundamental" to its decision.

It was not. Any alleged error of law committed on one point in the context of a larger, discretionary analysis merely serves as one potential "untenable reason" that could support an abuse of discretion, if other "tenable reasons" are lacking.

Farmer v. Farmer, 172 Wn.2d 616, 625, 259 P.3d 256 (2011). Even if a trial court made one error of law in the context of a discretionary ruling that was still supported by other factors and within the "range of acceptable choices," there is no abuse of discretion, and the ruling stands. *See, e.g., In re Marriage of Pilant*, 42 Wn. App. 173, 181, 709 P.2d 1241 (1985).

Here, the trial court did not issue a distinct ruling on choice of law, nor did it decide any issue of law on which there was a conflict between different states. Rather, it identified the applicable law for future issues as it bears on which forum is likely to be more "at home with the state law that must govern" that case for purposes of forum non conveniens. *J.H. Baxter & Co. v. Cent. Nat. Ins. Co. of Omaha*, 105 Wn. App. 657, 662, 20 P.3d 967 (2001). The Superior Court found that California law would govern the entire case. CP 830-32. This factor, among several others, weighed in favor of dismissal, supporting the trial court's discretionary ruling. CP 834. The Court of Appeals agreed. A-010-14.

Even if the Petition's arguments regarding certain conflict-of-law factors had any merit—which they do not—they would not impact the overall discretionary analysis of the forum-non-conveniens ruling. Indeed, even as to the "at home with the state law" factor, Coronus did not dispute that California law applied to the contract issues, which include the issues of actual coverage and whether a duty to defend attached. CP 356. Thus, the choice of law issue disputed on appeal represented only part of one factor, which was itself only one of multiple "public interest" factors, which themselves represented only part of the court's discretionary factor-weighing exercise.

B. The Court of Appeals Properly Found California to be the "Place of Injury" and "Place of Conduct Causing Injury."

1. Coronus was allegedly injured where it is located—California.

Coronus' Petition first criticizes the Court of Appeals' analysis of the related factors of place of injury and place of the conduct causing the injury. Petition, pp. 11-20. Coronus relies on a general statement in a factually dissimilar case—that an injury

"occurs" in Washington if the "last event necessary to make the defendant liable for the alleged tort occurred in Washington"—as somehow supportive of the Petition. *See Harbison v. Garden Valley Outfitters*, 60 Wn. App. 590, 598, 849 P.2d 669 (1993) (involving long-arm jurisdiction over an Idaho hunting outfitter).

Coronus fails to identify any genuine, specific conflict between this general principle and the Court of Appeals' opinion. Both the trial court and the Court of Appeals found persuasive the simple logic of Judge Robart that "when an insurance company acts in bad faith or violates IFCA or CPA, its insured will experience that injury where the insured is located." A-013 (*quoting MKB Constructors v. Am. Zurich Ins. Co.*, 49 F. Supp. 3d 814, 833 (W.D. Wash. 2014)). Parsing the "last event" does not alter where the insured is located, and accordingly, where it is injured.

Coronus focus on federal court decisions involving liability insurance that have applied the law of the state where the underlying lawsuit was filed. But others have applied the law

of the insured's home state, for reasons that apply more strongly here. *See Tilden-Coil Constructors, Inc. v. Landmark Am. Ins. Co.*, 721 F. Supp. 2d 1007, 1011 (W.D. Wash. 2010); *Milgard Mfg., Inc. v. Illinois Union Ins. Co.*, C10-5943 RJB, 2011 WL 3298912, at *8 (W.D. Wash. Aug. 1, 2011); *Insurance Auto Auctions, Inc. v. Indian Harbor Ins. Co.*, No. C09-1522RAJ, 2010 WL 11688494, at *7 (W.D. Wash. Sept. 16, 2010). The Court of Appeals aptly observed that one common thread of the federal decisions is whether a judgment against the insured was entered in the underlying case. A-013. As an alternative basis, *Tilden-Coil* observed a common thread that the "place of injury and place of conduct … are of less significance where, as here, the alleged injury did not occur in a single, ascertainable state, as with personal injuries and injuries to tangible things." 721 F. Supp. 2d at 1011. Here, as in *Tilden-Coil*, the underlying complaint did not involve any personal injury or damage to tangible property that occurred in Washington.

2. The alleged negligent claims-handling occurred in California or the UK, not Washington.

Coronus argues, in Section E.2.b., that the "conduct causing injury was the failure to defend in Washington." Coronus also points out that Underwriters declined to pay defense costs incurred by Washington legal professionals—even though it was Coronus that was injured in California by having to ***pay*** those professionals. Regardless, this argument is nothing but misdirection. Once again, Coronus has **conceded throughout this litigation that the question of whether Underwriters breached the duty to defend is governed by California law**.

In that regard, the Court should note the primary conflict between California and Washington law that this dispute anticipates. Washington allows recovery of damages caused by negligent claims handling, even in the absence of actual coverage. *See Marine Ins. Co. v. Onvia, Inc.*, 165 Wn.2d 122, 132, 196 P.3d 664 (2008). California does not. *Waller v. Truck Ins. Exch., Inc.*, 900 P.2d 619, 639 (Cal. 1995). Moreover, even

in Washington, Coronus could not recover its underlying defense costs as damages for negligent claims-handling. *See Onvia*, 165 Wn.2d at 133. In either California or Washington, Coronus could only recover its underlying defense costs if it were to somehow establish that Underwriters breached the duty to defend—**an issue undisputedly governed by California law**. Thus, the conflict concerns only recoverability of damages specifically caused by negligent claims handling, ***not*** Underwriters' failure to defend or liability for defense costs.

This potential standalone "procedural bad faith" claim represents Coronus' obvious motivation for forum-shopping in Washington State, all the way to this Court, rather than simply file suit in its home state of California. Underwriters issued the Policy **in 2017-2018** to cover certain tech liability associated with QX's software development business for "clients." CP 460-87. The Webb TPC (CP 214 *et seq*.) does not even mention any software business. It concerns alleged financial misconduct by Aarsvold **in 2016** when Aarsvold was employed by non-insured

Glomad and served as an outside executive for non-insured Higher Upstream. CP 226-27; 235-36. Higher Upstream could not possibly have been a "client" of either QX or Coronus, ***which did not even*** exist during the relevant time period. CP 519-24. Even once Coronus did exist, it still never did any work for QX or Coronus. CP 818. Nor does the Webb TPC contain anything resembling even the ***types*** of claims covered under the Policy's insuring clauses. *See* Respondent's Brief, pp. 26-30. In short, the Policy does not even contain anything resembling the right ***type*** of coverage, nor was it in effect during the relevant time period. Coronus's insurance claim was akin to seeking coverage for a 2018 auto accident under a 2016 homeowners policy.

Despite having no conceivable basis for coverage, Coronus hired Washington coverage counsel to exchange letters and document requests with Underwriters, and then used this exchange to manufacture "procedural bad faith" claims based on alleged delays and burdensome requests. Then, in its pleadings and briefs, Coronus barely even attempted to state any basis for

its claim that Underwriters should have provided a defense—because none exists. Rather, Coronus focused on its interactions with Underwriters and their California coverage counsel. Those interactions were between Underwriters' California counsel and California-based Coronus.

Therefore, the Court of Appeals correctly found that this contact "favors California as that is where Underwriters counsel investigated and denied coverage to Coronus," according to Coronus' own allegations. A-014.

C. The Court of Appeals Correctly Applied the Choice of Law Clause to Coronus' Tort and CPA Claims

1. The Court of Appeals' application of the choice of law clause was consistent with longstanding Washington precedent

The Court of Appeals correctly held that the Policy's Choice of Law clause favors application of California law to this entire case.

As this Court held over 35 years ago, "[a]lthough a choice of law provision in a contract does not govern tort claims arising out of the contract, it may be considered as an element in the

most significant relationship test used in tort cases." *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 159 (1987). "To determine whether the parties intended the choice-of-law clause to cover the tort and CPA claims, the Court must focus on the objective manifestations of their agreement" as reflected in the contract. *Washington Land Dev., LLC v. Lloyds TSB Bank, PLC*, No. C14-0179-JCC, 2014 WL 3563292, at *5 (W.D. Wash. July 18, 2014).

The clause here plainly reflects an intent that California law should apply to this lawsuit in its entirety. This entire lawsuit is a "dispute between [Coronus] and [Underwriters] regarding this Policy." The Policy's broad choice-of-law clause is similar to those applying to claims "arising out of" the contract and stands in contrast to clauses limited to construction of the contract terms. *See, e.g., In re McGraw-Hill Glob. Educ. Holdings LLC*, 909 F.3d 48, 68 (3d Cir. 2018) (holding that choice of venue clause as to disputes "regarding" the contract applied to related non-contract claims).

Washington "bad faith" tort and CPA claims, while they do not sound in contract, wholly arise from and depend on the fiduciary relationship created by the insurance contract. *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986). This Court has held that, for this reason, only a party to the insurance contract may bring such claims. *Id.* at 394; *Keodalah v. Allstate Ins. Co.*, 194 Wn.2d 339, 351, 449 P.3d 1040 (2019). The Washington Supreme Court has specifically acknowledged that the tort of insurance bad faith is an exception to the "economic loss rule," allowing for recovery of economic losses even though they *do* "arise from contractual relationships." *Eastwood v. Horse Harbor Found, Inc.*, 170 Wn.2d 380, 388, 241 P.3d 1256 (2010). Coronus' tort and CPA claims are not contract claims, but they *do* arise from the contract, and this lawsuit as a whole is clearly a "dispute regarding [the] Policy." Indeed, the Court of Appeals' analysis was particularly apt when considering the nature of the tort and CPA claims in this particular case, which all concern

Underwriters' investigation of their duty to defend—itself an analysis of coverage under the Policy.

Coronus does not even attempt to identify a conflict between the Court of Appeals' analysis of the choice-of-law clause and published case law. Rather, Coronus argues, without support, that it was "improper" to apply *Haberman* to insurance policies. But there was nothing new (and certainly nothing "improper") about the Court of Appeals' opinion. For example, in *Insurance Auto Auctions, Inc. v. Indian Harbor Ins. Co.*, No. C09-1522RAJ, 2010 WL 11688494, at *7 (W.D. Wash. Sept. 16, 2010), Judge Jones held that a choice of law clause in favor of New York law was enforceable and applied it to dismiss the plaintiff's Washington-based claims of bad faith and violations of IFCA and CPA. Coronus has cited ***no case law*** limiting a similarly-worded clause, in either insurance policies ***or*** other contracts, to contract-law claims only.

2. The Choice of Law Clause need not have been separately "negotiated" to be enforceable

The Petition suggests that since the Policy was written on "standard forms," and there is no "evidence" that the choice of law clause was specifically "negotiated," it is not enforceable. Coronus is wrong, on at least two levels. First, the Policy's designation of California is not a "standard" term, and it is not embedded in the policy form. It is an insured-specific designation within the Declarations page for this particular Policy. CP 464. Nothing could have been unexpected about this designation, given that the Policy was issued there to a California-based business.

Second, it is axiomatic that "[i]nsurance policies are contracts," and Washington courts "will enforce an insurance contract as written if the contract is clear and unambiguous." *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, 394, 161 P.3d 406 (2007). As a term within a binding contract, it is part of the parties' bargain. There is no requirement that an

insurer (or insured) produce "evidence" of specific, separate "negotiation" of a policy term for that term to be enforceable.

3. Coronus' position finds no support in the RCW's "Scope of Code" provision.

The "Scope of Code" provision cited by Coronus is similarly irrelevant. That provision merely states the general scope of the insurance code, which covers insurance transactions "affecting subjects located" in Washington. It has nothing to do with the analysis of Washington's "local interest" relative to another state's interest in a lawsuit for purposes of forum non conveniens ***or*** conflicts of law, and certainly does not invalidate choice-of-law clauses contained within policies issued ***in other states***. The Policy here was issued in California to cover "subjects located" primarily in California. *See* RCW 48.01.020. By Coronus' own admission, the Policy was not issued to cover any Washington operations, as there never were any such operations.

There is a Washington statute invalidating choice of law clauses in policies ***issued in Washington*** that provide for

application of another state's laws. *See* RCW 48.18.200. However, no such statute or public policy rule has ever been extended to policies issued in other states. One federal case has soundly rejected such an argument. *See Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1218, 1232 (W.D. Wash. 2014). Indeed, such a rule would be manifestly unreasonable and would actually violate the spirit of the statute. Consistent with that spirit, the choice of law clause here provides for application of the law of the state **where the Policy was issued**; that is, California.

In that regard, overriding the Choice of Law clause would also violate the "the protection of justified expectations" and "certainty, predictability and uniformity of result," under Restatement (Second) Conflict of Laws § 6(d) and (f). Washington courts have held that where a policy is issued in a state and is expected to cover operations based in or located primarily in that state, the parties' "justified expectations" are that this same state's law will apply to their relationship

generally, including tort claims, especially when the parties expressly agreed to application of that state's law in the insurance contract. *See Milgard*, 2011 WL 3298912, at *8; *Tilden-Coil*, 721 F. Supp. 2d at 1016; *Polygon Nw. Co. v. Nat'l Fire & Marine Ins. Co.*, C11-92Z, 2011 WL 2020749, at *6 n.10 (W.D. Wash. May 24, 2011) (finding, for purposes of Section 6, that parties expected Oregon law to apply because the policy was purchased there through an Oregon broker with respect to operations located primarily in Oregon).

Until Coronus retained Washington coverage counsel in an attempt to manufacture some liability when the Policy itself provided none, the parties' expectation was clearly that California law would govern any dispute, as stated in the Policy's Declarations. Having that single state's law control any dispute provides "certainty, predictability and uniformity of result" to the respective rights, obligations and liabilities of Underwriters and their insureds throughout their relationship.

V. CONCLUSION

For all of the foregoing reasons, the Petition for Review should be denied.

The undersigned certifies that the present brief is 4,947 words of text in compliance with RAP 18.17(c)(10).

DATED this 20th day of June, 2023.

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DECLARATION OF SERVICE

The undersigned states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 18 years, I am not a party to this action, and I am competent to be a witness herein.

On this 20th day of June, 2023, I caused to be filed the foregoing RESPONDENT'S ANSWER TO PETITION FOR REVIEW. I also served a copy of said document on the following parties as indicated below:

Steven A. Stolle, WSBA No. 30807 Stolle Law Group, P.S. 321 First Avenue West Seattle, Washington 98119 Telephone: (206) 228-2214 Email: sstolle@stollelawgroup.com *Attorneys for Plaintiffs Coronus XES Ltd. and Matthew Aarsvold*	☐ U.S. Mail ☐ Email ☐ Legal Messenger ☒ Electronic Filing

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Enumclaw, Washington, 20th day of June, 2023.

/s/ Bonnie L. Buckner
Bonnie L. Buckner, Legal Secretary

COZEN O'CONNOR

June 20, 2023 - 2:21 PM

Transmittal Information

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