SUPREME COURT
OF THE STATE OF WASHINGTON

No. 90617-3

COURT OF APPEALS
DIVISION 1
OF THE STATE OF WASHINGTON

No. 70143-6-I

WESTERN NATIONAL ASSURANCE COMPANY,
a Washington corporation,

Respondent,

v.

SHELCON CONSTRUCTION GROUP, LLC,
a Washington limited liability company,

Appellant.

WESTERN NATIONAL ASSURANCE COMPANY'S ANSWER TO SHELCON CONSTRUCTION GROUP, LLC'S PETITION FOR REVIEW

John P. Hayes, WSBA #21009
FORSBERG & UMLAUF, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164-1039
(206) 689-8500

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

1. INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should deny Petitioner Shelcon Construction Group, LLC's ("Shelcon") Petition For Review of the May 5, 2014 Court of Appeals decision ("Decision") pursuant to RAP 13.4(b). The Decision is not in conflict with a Supreme Court decision. There is no conflict within the Courts of Appeals. There is no legal question implicating the constitutions of Washington or the United States. Lastly there is no substantial public interest requiring Supreme Court intervention. This matter involves the application of an insurance policy to faulty construction work that has limited interest to and effect on public policy considerations. The Decision follows two Court of Appeals precedents for which this Court denied review.

The Court of Appeals, following precedent, properly affirmed the trial court orders on summary judgment motions that Western National Assurance Company's ("WNAC") denial of a defense obligation was well grounded and correct. WNAC properly applied its policy provisions in the context of Washington's liability insurance duty to defend rules to a Complaint filed by developer A-2 Venture, LLC ("A-2"), an underlying plaintiff, against its insured Shelcon in Pierce County Superior Court (the "Underlying Action").

WNAC argued multiple policy based grounds in support of its denial of a defense obligation to Shelcon. The A-2 Complaint against Shelcon did not allege "property damage," as defined in the Insuring Agreement and Definitions sections of the insurance policies issued by WNAC so as to invoke a duty to defend. *See* CP 82 to 86. No tangible physical injury or loss of use was alleged. Decision at pp. 2-3. The gravamen of the underlying Complaint was a diminution in value claim.

The Complaint allegations also triggered several coverage exclusions in the WNAC policies. *See* CP 93 to 94. These exclusions included Exclusions j.(5), j.(6), and m. The Court of Appeals based its decision solely on the application of Exclusion j.(5).[1]

As alleged in its Complaint, A-2, a developer, suffered purely economic loss by way of diminished land value when it ultimately sold its property following Shelcon's work. During its ongoing work period, Shelcon removed dirt settlement measurement stakes it had installed along with 3-4 feet of dirt fill it added over the entire 11 acre A-2 construction site. The removal of stakes made it impossible to measure dirt subsidence levels to support the original scope of intended housing development. CP 82-86. Neither the dirt or stakes were physically damaged. A-2 ultimately

---

[1] The failure to prove property damage as defined and exclusions j.(6) and m, cited in multiple denial letters issued by WNAC, are alternative grounds that precluded the duty to defend in the Underlying Action.

sold its property to another developer albeit at a diminished sales price. It sought damages from Shelcon solely for the reduced property development market difference. CP 82-86.

Despite statements to the contrary in Shelcon's multiple filings, the Underlying Action Complaint, the focus of the duty to defend analysis, does *not* allege tangible physical injury to any real or personal property nor loss of use which might constitute defined "property damage." The core of the Underlying Complaint alleged, in pertinent part:

> The employees of defendant [*i.e.*, Shelcon] removed the settlement markers without the knowledge of the plaintiff or plaintiff's engineers and continued to install fill on top of the area. . . . The said actions by defendant reduced the value of the property substantially.

Emphasis added. *See* CP 84 to 85.

Shelcon makes repeated statements that the settlement markers it installed for A-2 were "destroyed." That claim is not supported by record and is completely unfounded and misleading. Nowhere in the *Complaint* is destruction of markers or any tangible property damages alleged. CP 84-85.

Even if the A-2 Complaint had alleged "property damage", Exclusions j.(5), j.(6) and m. were triggered by the Underlying Action Complaint allegations. The Court of Appeals relied solely on Exclusion j.(5) which is dispositive.

2. ISSUES ON APPEAL

Whether the Court of Appeals was correct in affirming the trial court orders granting WNAC's motion for summary judgment (and denying Shelcon's cross-motion for summary judgment) that WNAC had no duty to defend Shelcon in the Underlying Action filed by A-2?

3. UNDISPUTED FACTS

A. A-2 Claim, Complaint and Tenders of Defense.

On or about February 10, 2011, A-2, a developer, filed a lawsuit against Shelcon in Pierce County Superior Court (the "Underlying Action"). CP 82-86. The A-2 Complaint alleged that Shelcon performed improper soil preparation work under a January 10, 2006 written contract with A-2 for a residential construction project. The Underlying Action Complaint alleged:

> During the site preparation by defendant [*i.e.*, Shelcon], settlement markers were put in place as required. The Markers were required to be monitored until the full amount of settlement had occurred during and after fill compaction.
>
> The employees of defendant [*i.e.*, Shelcon] *removed* the settlement markers without the knowledge of the plaintiff or plaintiff's engineers and continued to install fill on top of the area. This made it impossible to accurately measure the settling. There was therefore a total failure to meet the geotechnical requirements of the job so that the property could be used to construct improvements on. *When defendants said negligent actions had been discovered, the costs and time of remedying the errors was impractical.*

> *The said actions by defendant reduced the value of the property substantially.*
>
> ...
>
> Prior to defendant commencing work on the subject property the plaintiff, on December 12, 2005, entered into a purchase and sale agreement of the subject property to Sound Built Homes for the price of $8,550,00.00 being 57 lots at $150,000.00 per lot.
>
> ...
>
> On August 15, 2007 Sound Built Homes rescinded its agreement to purchase the land because of the failure of the soil preparation to meet the requirements of the geotechnical soil report. The soil preparation had been negligently and improperly done by defendant as aforesaid.
>
> Plaintiff then reduced the price of the land to $6,412,500.00 by purchase and sale agreement to Harbour Homes dated October 19, 2007 based upon buyer's knowledge of the soil preparation errors of defendant and an estimate of the costs of rectifying them. Harbour Homes thereafter rescinded the lower priced agreement in February, 2008.
>
> One loss to plaintiff was the immediate reduction in value of the property from $8,550,000.00 to $6,412,500.00, i.e. $2,137,500.00 and further losses because of resulting loan defaults and market changes because the property could not be developed or sold.

Emphasis added. *See* pp. 3 through 5 of Underlying Action Complaint, CP 84-86. No costs were incurred to correct the improper work. All of the allegations occurred during Shelcon's active operations at the A-2 site. *Id.* All lots were ultimately sold. CP 423. A-2 never suffered a loss of use

of the property. CP 84-86; CP 423. Its expectations of profit were however diminished. *Id.*

On October 4, 2011, counsel for Shelcon, Larry Linville, sent a tender of defense letter to Loralee Thatcher of WNAC of the A-2's lawsuit. CP 106-108. This letter was received on October 7, 2011. CP 301. In response, Ms. Thatcher wrote to Shelcon counsel Linville providing Shelcon with WNAC's position regarding the A-2 Venture lawsuit tender:

> A-2 maintains that Shelcon failed to adhere to the Riley Group Geotechnical Report dated October 24, 2005 that was part of the contract documents. Soils conditions at the site called for the installation of settlement markers to be inspected until 95% compaction was achieved at each level of fill. A-2 asserts that Shelcon removed the markers and simply continued to install fill material. Their actions resulted in 'a total failure to meet the geotechnical requirements of the job so that the property could be used to construct improvements on. When defendant's said negligent actions had been discovered, the costs and time of remedying the errors was impractical. The said actions by defendant *reduced the value* of the property substantially.'

Emphasis added. *See* December 19, 2011 letter, CP 110.

The letter went on to cite portions of the insuring agreement of the January 20, 2006 to January 20, 2007 WNAC's CGL policy issued to Shelcon as well as exclusions j. and m. *Id.*

The letter closed with the following conclusion:

> *We have reviewed the allegations contained in the A-2 Complaint and they do not meet the definition of 'property damage.' Moreover, even if the allegations did allege 'property damage,' the 'property damage' exclusions j. and m. would exclude the claim.* Therefore, the claim is not covered by the Western National policy. Accordingly, Western National will not defend nor indemnify Shelcon from this suit.

Emphasis added. *See* December 19, 2011 letter, CP 111.

The absence of proof of soil settlement measurements to support land sales value expectations was the alleged harm, not a physical injury or loss of use of the property. No amended Complaint adding new information or damage claims was ever filed by A-2. The original Complaint determined the duty to defend.

On March 20, 2012, WNAC responded to the February 17, 2012 re-tender letter. The letter stated as follows:

> The A-2 Venture ('A-2') Complaint alleges that Shelcon Construction Group, LLC ('Shelcon') removed settlement markers in violation of the soils report and contract documents. A-2 further alleges that as a result of Shelcon's removal of the markers, the property in question became less marketable because it cannot prove soil compaction. *There is no claim that Shelcon's work resulted in physical injury to or loss of the property; only that the property became less attractive to potential buyers.*
>
> Even if the Complaint did allege 'property damage' as that term is defined in the policy, exclusions in the policy would eliminate coverage. Removal of the settlement markers occurred while Shelcon was 'performing operations' at the site and policy CP30007658 excludes damage occurring while the insured is performing operations on a job site[.]

Emphasis added. *See* March 20, 2012 letter, CP 141-143.

The letter then quoted the Damage to Property exclusions 2.j.(5) and (6) and 2.m.(1) and (2), for "impaired property." CP 142. The denial letter went on to explain the application of the exclusions to negate coverage of the claim in the Complaint.

> The alleged damages in the A-2 Complaint are not "property damage" as defined in the policy. *The land has not sustained a physical injury. Although it is less marketable, it can be used and therefore has not sustained a loss of use. Moreover, even if the allegations did allege 'property damage,' the alleged damage occurred at the time Shelcon removed the settlement markers which was during the operation of their work and exclusions j.(5) and (6) would exclude the claim.*
>
> *Any loss of use of the property that was not damaged is deemed to have occurred at the time of the 'occurrence' that caused the loss of use. Here, that would be the removal of the markers. However, because the markers were removed during operations, j.(5) and j.(6) exclude any subsequent loss of use.*
>
> *Exclusion m also excludes coverage. The property is tangible property that has not been physically injured or is less useful because of the removal of the settlement markers. It could be restored or used by replacement of the settlement markers and therefore satisfies the definition of 'impaired property.'* Exclusion m excludes coverage for any 'property damage' to impaired property.

Emphasis added. *See* March 20, 2012 letter, CP 143.

B. <u>The WNAC Policies Issued to Shelcon</u>.

WNAC issued Shelton Policy No. CP-300007658-00, with effective policy dates January 20, 2006 to January 20, 2007, Policy No.

CP-300007658-01, with effective policy dates January 20, 2007 to January 20, 2008, and Policy No. CP-300007658-02, with effective policy dates January 20, 2008 to January 20, 2009. See CP 353-367; CP 369-391; CP 393-410.

The insurance policies contained the following provisions:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" and "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply.

2. Exclusions

This insurance does not apply to:

. . .

j. Damage to Property

"Property damage" to:

. . .

(5) That particular part of real property on which you or any contractors or subcontractors, working directly or indirectly on your behalf, are performing

operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

. . .

m. Damage to Impaired Property or Property Not Physically Insured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

See relevant portions of Western National issued Policies, CP 360, 362, 363, 382, 384, 385, 403, 405, 406.

The term "property damage" is defined in the policies as follows:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

CP 366, 390, 409.

4. ARGUMENT

A. Standard of Review.

The standard of review on appeal of a trial court's granting (and denying) of summary judgment is de novo with the appellate court engaging in the same inquiry as the trial court. *See Keith v. Allstate Indemn. Co.*, 105 Wn. App. 251, 254, 19 P.3d 1077 (2001).

B. Affirmation of Dismissal of Shelcon's Breach of Duty to Defend Claims Against WNAC Was Correct.

The interpretation of an insurance policy is an issue of law. *Schwindt v. Underwriters at Lloyd's of London,* 81 Wn. App. 293, 298, 914 P.2d 119, 122 (1996). Determining whether coverage exists is a two-step process. The insured must show the loss falls within the scope of the promise of coverage which is set forth in the Insuring Agreement section of the policy. *Allstate Ins. Co. v. Bowen*, 121 Wn. App. 879, 91 P.3d 897 (2004). In this case, that means that Shelcon must meet its obligations under the Insuring Agreement language and show facts supporting covered "property damage." If Shelcon meets its obligation, the burden would then shift to WNAC to show that the alleged "property damage"

loss is excluded by specific policy language. *McDonald v. State Farm Fire and Casualty Company,* 119 Wn.2d 724, 730, 837 P.2d 1000, 1003-1004 (1992). WNAC's motion for summary judgment was properly granted because Shelcon failed in its burden and Western, in addition, showed exclusions would apply even if Shelcon met its burden on "property damage."

C. Shelcon Erroneously Argues That Property Damage Arising Out of a Contractor's Operations Can Be Parsed Between Initial and Secondary Damage to Avoid Exclusion j.(5).

Factually there was no initial/secondary damage dichotomy. The stakes were never damaged. Neither was the land. There was no cost to repair anything. In addition, Shelcon's initial/secondary distinction is not supported by the Exclusion j.(5) language. Lastly, the argument was rejected in the *Vandivort*[2] and *Schwindt*[3] decisions.

There similarly was no loss of use of the settlement markers or the land owned by A-2. The markers were simply removed. The land was sold albeit at a reduced price. The analysis could stop there. The initial / subsequent damage thesis fails on the factual level. Diminution in land value was the sole claim. Because there was no property damage at all, the proposed Shelcon j.(5) dichotomy never gets a foothold in the analysis.

---

2 *Vandivort Const. Co. v. Seattle Tennis Club*, 11 Wn. App. 303, 522 P.2d 198, review denied, 84 Wn.2d 1011, (1974).

3 *Schwindt v. Underwriters at Lloyd's of London*, 81 Wn. App. 293, 914 P.2d 119, review denied, 130 Wn.2d 1003, (1996).

Exclusion j.(5) in the Western policy reads as follows:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

j. Damage to Property

"Property damage" to:

. . .

(5) That particular part of real property on which you or any contractors or subcontractors, working directly or indirectly on your behalf, are performing operations, if the "property damage" arises out of those operations; . . .

The "particular part" of A-2's real property where Shelcon was performing operations was the entire A-2 property as the stakes and fill dirt covered the whole 11 acre site. The exclusion focus is on the real property on which a contractor like Shelcon is working resulting in "property damage" to the real property. Here A-2's entire property was affected by Shelcon's stake removal. The results were excluded by the language. It is inescapable that the entire real property of A-2 is the focus of the Complaint allegations and is the same focus of the j.(5) exclusion. The exclusion applies to prevent coverage for the alleged harm to real property resulting from or arising out of the ongoing operations of

Shelcon. There is no temporal or "other property" distinction as long as the alleged damages arise out of the insured's ongoing work on the real property. STEVEN PLITT, ET AL., COUCH ON INSURANCE, 3D, § 129:20 (1997) Work in Progress Exclusions, well describes the principle:

> Exclusion j.(5) has generally been applied to preclude coverage for damages to particular real property resulting from or arising out of the ongoing operations of the insured. The purpose of exclusion j.(6) is to preclude coverage for the costs to repair or replace particular work which is discovered to be defective or otherwise incorrectly performed while the insured is still performing its work.
>
> Both of these exclusions are limited in their application by both time and scope. In order for these exclusions to apply, the claims must arise at the time the insured is actually performing the work on the property. Conversely, the exclusions do not apply to claims which arise after the insured's operations are complete. These exclusions will further only apply to that "particular part" of the subject property where the operations were being performed by the insured."

The inquiry is whether the alleged property damage to the particular property occurred during ongoing operations and arose out of the insured's operations. Here, the answer is "yes." The facts set forth in the underlying Complaint fall within the exclusionary j.(5) language and fit the COUCH discussion of the exclusion's application. Dirt surcharge of up to 4 feet was applied across the entire property by Shelcon in tandem with the removal (not the destruction) of pre-placed settlement markers. Shelcon removed (not destroyed) the markers when it was placing the dirt

on the entire A-2 land. All of this occurred during Shelcon's ongoing operations on the entire real property of A-2.

The A-2 Complaint alleges that Shelcon's legal liability arose from its actual removal of the stakes making it impossible for the 4 feet of surcharge and underlying peat to be measured to determine subsidence. The development potential of the property accordingly was reduced. The ongoing operations of Shelcon, namely the placement and removal of dirt and markers was the alleged cause of A-2's diminished development potential. The claim arose while Shelcon was performing the soil work on the property. The exclusion applies to that "particular part" of the subject property where Shelcon was performing its operations. The particular part" of the subject property was all of the A-2 property.[4]

D. Shelcon Cannot Avoid the *Vandivort* and *Schwindt* Decisions.

In *Vandivort,* the building owners on an assignment from their contractor sued four carriers for coverage for damage to their building by the contractor. *Vandivort*, 11 Wn. App. at 294. The trial court granted summary judgment for the carriers holding that the policy did not cover the property damage claims because the damage fell within the policy's exclusion for faulty construction work on "particular property" during

[4] These same facts support application of exclusion m. regarding impaired property which the Court did not need to address in its decision relying solely on exclusion j. There is no physical damage to A-2's property but there was a loss of value without tangible injury. Exclusion m. also precludes coverage.

ongoing operations. *Id.* at 295. The exclusion at issue is almost identical to the j(5) exclusion in the Western policy. The *Vandivort* policy had the following exclusion:

> for damage to "that particular part of any property, upon which the assured is or has been working caused by the faulty manner in which the work has been performed.... *Id.*

The damages sought were for repair and replacement of tangible physical property. *Id.* at 298. The court denied coverage on the policy exclusion which it characterized as the "faulty work" exclusion. The owners like Shelcon argued that "consequential" damage resulting from the faulty work was covered under the policy's provision relating to damage to the property of the owner. The court considered and rejected the argument that the exclusions do not extend to claims of bad work beyond removal and replacement of the defective work of the contractor. *Id.* Because all damages arose from the contractor's faulty work, the faulty work exclusion applied to all claims of damages. *Id.* at 303. There was no distinction between initial work by the contractor and the consequent damage to the owner's building or land or third party property.

Exclusion j.(5) precludes coverage of all property damage, if such damage arises from the actual work of the contractor on the real property at issue. In *Vandivort* there was physical injury to property as a consequence of the contractor's faulty work but still there was no

coverage. Here there is no defined property damage but even if there were such actual damage, it is excluded under j.(5). Exclusion j.(5) precludes coverage for all damages to real property arising from Shelcon's placement and or removal of settlement markers preventing the ability to monitor dirt subsidence causing the diminished value of A-2's property.

Vandivort also sought to recover damages it incurred to repair an earth slide and road damage caused by its negligence. *Vandivort*, 11 Wn. App. at 303. Coverage was denied. The court stated: "Vandivort was performing operations on the property and the injury here for which damages are claimed arose out of those operations." *Id.* In applying the exclusionary language, the decision recognized no distinctions between "initial" and "secondary" damage. Coverage was denied for all damage categories. The court did not recognize any distinction between initial damage to work or the product of Vandivort the contractor or the consequential damage to the land of the tennis club or the public road.

E. The *Schwindt* Decision is Consistent.

Schwindt was a construction defect case where the general contractor insured constructed a defective building. *Schwindt*, 81 Wn. App. at 294. The applicable policy included an exclusion for property damage "to that particular part of any property upon which the assured is or has been working caused by the faulty manner in which the work has

performed..." *Id.* at 296. There was actual, physical damage to the building. *Id.* at 296. This included water leakage. *Id.* Extensive rework and repair had to be done to the general contractor's work. *Id.* The trial court nonetheless granted summary judgment to the carrier denying coverage. *Id.* at 297. Like Shelcon here, the contractor in *Schwindt* contended that the insurance policy exclusion covered damage to the "property of others." *Id.* at 297. The court nonetheless applied the exclusion even though there was damage to the "property of others." *Id.* The court recognized no distinction between damage to the property of the contractor and damage to the property of the building owner. The court rejected the limited scope of the exclusion argued by the general contractor and echoed here by Shelcon. All damages from ongoing operations by a contractor are excluded by j.(5). *Schwindt* sustains the Court of Appeals decision denying coverage.

F. WNAC Raises Additional Issues for Review Should Shelcon's Petition be Granted.

In the event Shelcon's Petition for Review of the exclusion j.(5) issue is granted, WNAC seeks review of certain issues raised but not decided by the Court of Appeals. RAP 13.4(d). WNAC raises alternate grounds, including the failure of Shelcon to demonstrate "property

damage" as defined in the WNAC policy and the application of exclusions j.(6) and m.

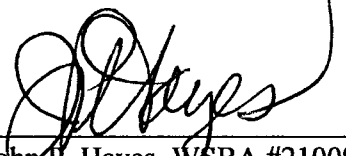
5. CONCLUSION

This Court of Appeals relied on established precedents construing exclusion j.(5) language in finding that Shelcon's work in progress caused A-2's damages at the time of the work. *Id.* This Court rejected Shelcon's argument that the j.(5) exclusion applies only to the settlement markers which in any event were never damaged. *Id.* at p.7. The Court similarly and properly rejected Shelcon's contention that the exclusion does not apply to consequential property damage caused by removal of the markers. *Id.* The Court properly stated that "We considered and rejected the same argument in *Vandivort Construction Co. v. Seattle Tennis Club,* 11 Wn. App. 303, 522 P.2d 198 (1974), and *Schwindt v. Underwriters at Lloyd's of London,* 81 Wn. App. 293, 914 P.2d 119 (1996)." *Vandivort* and *Schwindt* specifically rejected the insured's argument that consequential property damages were not covered by the reach of exclusion j. *Vandivort,* 11 Wn. App. at 308; *Schwindt,* 81 Wn. App. at 302-03. The Court of Appeals here correctly relied on its decision in *Schwindt* that "The exclusion is not limited to the component out of which the damage arose." 81 Wn. App. at 304. The analysis is sound. This

court twice rejected petitions for review in *Vandivort* and *Schwindt*. It should do so again.

RESPECTFULLY SUBMITTED this 19th day of August, 2014.

FORSBERG & UMLAUF, P.S.



By: _____

John P. Hayes, WSBA #21009
Attorneys for Respondent
Western National Assurance Company
Forsberg & Umlauf, P.S.
901 Fifth Avenue, Suite 1400
Seattle, Washington 98164-1039
Phone: 206-689-8500
jhayes@forsberg-umlauf.com
cgibson@forsberg-umlauf.com

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

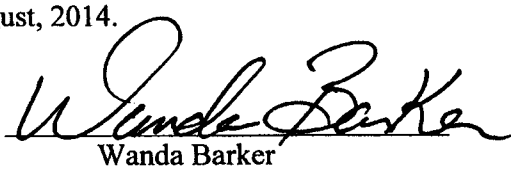
I am employed by the law firm of: Forsberg & Umlauf, P.S.. At all times hereinafter mentioned I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served Western National Assurance Company's Answer to Shelcon Construction Group, LLC's Petition for Review on the following individual:

Mr. Lawrence B. Linville
Linville Law Firm, PLLC
800 Fifth Ave., Suite 3850
Seattle, WA 98104-3101

[X] Via Hand Delivery

DATED this 19th day of August, 2014.



Wanda Barker

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Western National Assurance Company,
Respondent

vs

Shelcon Construction Group, LLC,
Appellant.

No. 90617-3
DECLARATION OF
EMAILED DOCUMENT
(DCLR)

I declare as follows:

1. I am the party who received the foregoing email transmission for filing.
2. My address is: 3400 Capitol Blvd. SE #103, Tumwater WA 98501
3. My phone number is (360) 754-6595.
4. I have examined the foregoing document, determined that it consists of 25 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: August 19, 2014 at Tumwater, Washington.

Signature: _____

Print Name: Jacob Josephsen