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Supreme Court No. 100168-1

SUPREME COURT OF THE STATE OF WASHINGTON

SEATTLE TUNNEL PARTNERS,

Petitioner,

vs.

GREAT LAKES REINSURANCE (UK) PLC, et al.,

Respondents.

**SEATTLE TUNNEL PARTNERS' ANSWER TO AMICUS
CURIAE MEMORANDUM OF VULCAN LLC**

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ANSWER

Amicus Curiae Vulcan LLC cogently identifies the many ways in which the Court of Appeals misapplied Washington law in ruling that the mechanical breakdown exclusion in the Policy excludes coverage for damage caused by design defects. As Vulcan further notes, the Court of Appeals' untethered analysis imperils coverage for Washington policyholders, thus warranting review under both RAP 13.4(b)(1) and (b)(4).

In response to Vulcan's argument that the Court of Appeals violated the rule that "ambiguities are construed in favor of coverage" (Amicus Br. at 10), Insurers will presumably repeat their erroneous argument that this issue "is not properly before this Court" because "[n]o party argued to the trial court that the exclusion is ambiguous" (Answer to Petitions for Review at 26). Because Insurers are mistaken, the Court can and should consider Vulcan's ambiguity argument (as well as its other arguments).

While both STP and Insurers have argued they prevail on the plain language of the machinery breakdown exclusion, STP

expressly recognized in the trial court the possibility that the court could conclude that the machinery breakdown exclusion (or the relevant portion of the exclusion) is ambiguous. In its motion for summary judgment, STP argued:

Where a policy term is subject to more than one reasonable interpretation, the term is ambiguous and is interpreted in favor of coverage. . . . This principle applies with added force to limitations upon coverage.

CP 491 (citing cases). In its motion for reconsideration, STP likewise asserted:

It is Hornbook law that where a clause in an insurance policy is ambiguous, the meaning and construction most favorable to the insured must be applied, even though the insurer may have intended another meaning.

CP 2520 (citing cases), 2521 (same). Because STP preserved the ambiguity issue, Vulcan's ambiguity argument is properly before this Court.

The Court of Appeals acknowledged the rule that ambiguities are construed in favor of coverage in *other* portions of its opinion, but failed to acknowledge or apply the rule in the

portion of its opinion regarding the machinery breakdown exclusion. *Compare* App. 11 & 22 *with* App. 12-17. The machinery breakdown exclusion excludes damage “in respect any item by its own explosion mechanical or electrical breakdown, failure breakage or derangement.” CP 3865. If the exclusion or any part thereof is ambiguous, this Court’s opinions – as cited by Vulcan (Amicus Br. at 10-11) – require that the ambiguity be strictly construed against Insurers. As Vulcan correctly argues, the Court of Appeals’ analysis conflicts with the Court’s opinions and raises issues of substantial importance that should be determined by this Court, thus warranting review under RAP 13.4(b)(1) and (b)(4).

This brief contains 434 words, in compliance with RAP 18.17.

DATED: 12/15/2021 PETERSON | WAMPOLD |
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CERTIFICATE OF SERVICE

I certify that on the date shown below this document was
was efiled via the Washington State Appellate Courts website,
which electronically serves all counsel of record.

SIGNED at Seattle, Washington this 15th day of
December, 2021.



Mary Monschein, Paralegal

PETERSON WAMPOLD ROSATO FELDMAN LUNA

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