102593-9

NO. 84448-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JASON and AMANDA GATES,

Appellants,

v.

HOMESITE INSURANCE COMPANY,

Respondent.

RESPONDENT HOMESITE INSURANCE COMPANY'S PETITION FOR REVIEW TO WASHINGTON SUPREME COURT

Eliot M. Harris, WSBA # 36590
Miles J. M. Stewart, WSBA # 46067
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Tel: (206) 628-6600
Fax: (206) 628-6611
eharris@williamskastner.com
mstewart@williamskastner.com

Attorneys for Respondent Homesite Insurance Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

STATE CASES

FEDERAL CASES

STATE STATUTES (*SEE* APPENDIX A, PP. 17-20)

RULES (*SEE* APPENDIX A, PP. 21-23)

CONSTITUTIONAL PROVISIONS (*SEE* APPENDIX A, PP. 24-26)

OTHER AUTHORITIES (*SEE* APPENDIX A, PP. 27-29)

I. IDENTITY OF PETITIONER

Petitioner is Homesite Insurance Company ("Homesite"). Homesite issued a policy of homeowners insurance to appellants Jason and Amanda Gates (the "Gates"), which is the subject of the underlying trial court litigation.

II. COURT OF APPEALS DECISION

On September 18, 2023, Division 1 of the Washington Court of Appeals issued its Opinion on the Gates' appeal, granting the appeal and reversing the trial court's dismissal of the Gates' default judgments against Homesite under Civil Rule 60(b). It is this Opinion of which Homesite seeks review. A copy of the Opinion is attached hereto in **Appendix A**.

On October 30, 2023, the Washington Court of Appeals issued an Order Granting Motion to Publish its Opinion.

III. ISSUES PRESENTED FOR REVIEW

As a matter of first impression for this Court, whether the Court of Appeals improperly held that an insured's failure to provide its insurer with a 20-day "cure" notice prior to filing suit

under the Washington Insurance Fair Conduct Act (IFCA) merely rendered the trial court's subsequent IFCA judgment "voidable" rather than "void," thus: (1) undermining the legislative intent behind the notice requirement; *i.e.*, to protect insureds by allowing an insurer sufficient time to "cure" an alleged improper denial of coverage or benefits, thereby creating an issue of substantial public interest that merits review by the Supreme Court—especially given that IFCA was enacted via referendum; and (2) diverging from Washington Supreme Court precedent that a trial court's decision based on a mistaken or erroneous interpretation of law is in itself erroneous, despite the trial court having the jurisdiction and power to issue such a decision.

IV. STATEMENT OF THE CASE

A. Introduction

In 2007, the Washington State Legislature adopted the Insurance Fair Conduct Act (IFCA) (*see* 2007 Wash. Laws. Ch. 498 (codified at Wash. Rev. Code § 48.30.010-.015)) and the

voters of the state approved it by referendum. *See* Referendum Measure No. 67, Wash. Leg. Serv. (2007).[1] The Act provides a remedy, including treble damages and attorney fees, against first-party insurers for unreasonable denial of a claim for coverage or benefits under an insurance policy and for violation of certain regulations adopted by the Washington State Insurance Commissioner. *Id*. Importantly, the bill was amended to add a provision requiring 20-day pre-suit notice before an IFCA lawsuit can be filed. *See* ENGROSSED SECOND SUBSTITUTE S.B. 5726 H. IFCP Comm. Amd. 545, 60th Leg., Reg. Sess. (Wash. 2007). Under the statute, the 20-day notice period grants the insurer an opportunity to "resolve the basis for the action" before suit is filed.

Courts have construed the pre-suit written notice as a "mandatory condition precedent" to an IFCA action. *See MKB Constructors v. American Zurich Ins. Co.*, 49 F.Supp.3d 814, 840

[1] https://www2.sos.wa.gov/elections/initiatives/text/r067.pdf

(W.D. Wash. 2014); *Freeman v. State Farm Mut. Auto. Ins. Co.*, No. C11-761-RAJ, 2012 WL 2891167, at *4 (W.D. Wash. 2012); *see also Polygon Nw. Co. v. Nat'l Fire & Marine Ins. Co.*, No. C11-92Z, 2011 WL 2020749, at *2 n.3 (W.D. Wash. 2011) (dismissing IFCA claim, as an alternative holding, where the plaintiff failed to wait twenty days after giving notice before suing) (discussed in *Scottsdale Ins. Co. v. LFH Care LLC*, No. C20-1026-JCC-MLP, 2021 WL 2458610, at *2 (W.D. Wash. Apr. 13, 2021)).

Here, the trial court set aside two default judgments under Civil Rule 60(b) by weighing the equities—including the Gates' failure to comply with the 20-day pre-suit notice requirement. The trial court vacated the default judgments based on CR 60(b)(5) because it lacked power to award IFCA damages or attorney's fees in the absence of a 20-day notice.

Upon appeal, the Court of Appeals ruled in the Gates' favor, holding that their failure to provide the requisite 20-day notice rendered the trial court's default judgments "voidable, but

not void." In so ruling, the Court of Appeals ruled contrary to established Supreme Court precedent holding that a trial court's judgment arising from its mistaken view of the law or upon the erroneous application of legal principles is in itself inherently erroneous, and thus undermined the legislature's and the public's intent by essentially granting trial courts broad discretion to side-step the "mandatory" 20-day notice to cure.

B. Statement of Facts and Procedure

1. Background Facts

On April 20, 2018, the Gates submitted a claim to Homesite for loss at the Property, which they purchased on April 4, 2018 – the same day that the Policy period began. CP 1, ¶¶ 2.3, 2.8. The Gates claimed that the Property had tested positive for methamphetamine shortly after they had moved in. CP 91, Ex. B. The Gates claimed that Bio Clean, Inc. ("Bio Clean") inspected the Property, which tested positive for the presence of methamphetamine. *Id.*, Ex. C. On April 20, 2018, Homesite acknowledged the claim and advised the Gates that Homesite

was commencing an investigation. *Id*., Ex. D. On April 23, 2018, Homesite notified the Gates that the claim did not appear to be covered because: (1) the alleged contamination occurred before the policy period; and (2) the Policy contained an exclusion for contamination by pollutants. *Id*., Ex. E.

On May 8, 2018, the Gates' counsel at the time, Janna J. Annest at Mills Meyers Swartling, P.S., wrote to Homesite and disputed the lack of coverage for the Gates' personal property, and estimated damage to personal property at "just over $10,000." CP 91, Ex. F. However, the Gates' counsel acknowledged, and did not dispute, that the Policy did not provide coverage for the Property structure because the contamination occurred before the Policy took effect. *Id*.

On June 6, 2018, Homesite advised the Gates' counsel that it would continue investigating coverage under a reservation of rights and requested that the Gates provide the following information and documents to support the personal property claim: (1) the Bio Clean test results; (2) the sales agreement

indicating that the methamphetamine levels were not disclosed to the Gates by the sellers of the Property; and (3) a list of items that were contaminated. CP 91, Ex. C.

On July 24, 2018, the Gates' counsel advised Homesite that it could communicate directly with the Gates as they "do not want me to be a middleman in what should, hopefully, be routine claims handling from here forward." CP 91, Ex. G. On or around September 17, 2018, Homesite paid the Gates $11,552.62 for their damaged personal property. *Id*., Ex. H.

By May 9, 2019, Homesite had heard nothing further from the Gates or their counsel about the claim. Based on the May 8, 2018 letter from the Gates' counsel acknowledging no coverage for structure, and the September 17, 2018 check to the Gates for their damaged personal property, Homesite considered the matter resolved and closed its file. CP 91, ¶ 3.

2. Procedural Facts

Unbeknownst to Homesite, the Gates retained new counsel and filed their lawsuit on January 28, 2019. CP 1; CP

91, ¶ 4. The Gates alleged in the lawsuit that Homesite breached the Policy by improperly denying coverage for damage to the structure. CP 1. The Gates also included a claim against Homesite in the lawsuit for violation of IFCA. *Id*.

The Gates never sent a copy of the Complaint directly to Homesite, or even a courtesy copy to the Homesite adjusters with whom the Gates had been communicating. CP 91, ¶¶ 4-6. Moreover, prior to filing the lawsuit, the Gates did not send a 20-day IFCA notice to Homesite (*Id*., ¶ 6) as mandated under RCW 48.30.015, and as required by the Policy as a condition precedent to coverage.

The Gates served the lawsuit on the Washington State Office of the Insurance Commissioner (OIC), which accepted service on January 29, 2019. CP 512-514. The Gates did not serve Homesite or the OIC with a copy of the motion for default or the motion for entry of default judgment; neither did they provide Homesite with any notice or warning that they intended to file for default or default judgment. CP 91, ¶¶ 4-6. The Gates

moved for default judgment on March 18, 2019. CP 186-187. On August 5, 2019, the Gates obtained a supplemental judgment for attorney's fees and costs. CP 188-190. The Gates and their counsel sent no documents or notices to Homesite about the lawsuit until they sent the default judgments and demanded payment for the same *exactly one year later* – on August 5, 2020. CP 185.

Upon receipt of the Gates' demand, Homesite contacted the OIC, which responded on August 14, 2020. CP 91, Ex. J. On August 17, 2020, Homesite's counsel wrote to the Gates' counsel advising that Homesite was unaware of the default judgments prior to receiving the August 5, 2020 letter. CP 86, Ex. A. Homesite advised that it would be bringing its motion to vacate the default judgments at the earliest possible opportunity after it had time to determine when, if ever, it had been served with the lawsuit or any of the other pleadings filed subsequently in this lawsuit. *Id*.

On December 28, 2020, Homesite filed its Motion to Set Aside Order of Default Judgment and Supplemental Judgment. CP 69-85. The trial court granted Homesite's Motion on February 11, 2021. CP 213-215.

On February 17, 2021, the Gates filed a Motion for Reconsideration of the Court's February 11, 2021 Order. CP 216-226. On March 12, 2021, the trial court denied the Gates' Motion for Reconsideration on the grounds that: (1) the court properly imposed "such terms as are just" under CR 60(b) by weighing the equities in this matter, including the Gates' failure to comply with the procedural requirements for serving an IFCA notice; (2) the Gates' pre-filing concession that their claim was invalid, and the fact that Homesite failed to timely defend was due to inadvertent error in processing its mail; and (3) the court properly vacated the default judgment and findings based on CR 60(b)(5), because the court lacked the power to award IFCA damages (or attorney's fees based in part on those damages) in

the absence of the mandatory 20-day notice to Homesite. CP 248-250.

On April 22, 2022, Homesite filed a Motion for Partial Summary Judgment on the Gates' IFCA cause of action. CP 277-292. Homesite argued that there was no question of fact that: (1) the Gates failed to provide the mandatory 20-day IFCA notice; (2) the Gates' subsequent purported IFCA notice (provided almost three years after suit was filed) could not "cure" their original defect, as it undermined the ultimate reason behind the notice requirement – which is to allow the insurer an opportunity to "cure" any potential claims handling error; and (3) the Gates' purported IFCA cause of action – which began to run when Homesite indicated a lack of coverage for certain portions of the Gates' claim – is time-barred under the three-year statute of limitations. *Id*. The trial court agreed, and on June 6, 2022, granted Homesite's Motion for Partial Summary Judgment on the Gates' IFCA claim, dismissing the Gates' IFCA cause of action. CP 410-414.

Also on April 22, 2022, the Gates filed a Cross Motion for Summary Judgment as to Liability, in which they argued that their "loss," defined by the Gates as their financial detriment arising from the contamination, occurred during the policy period. CP 309-316. Homesite responded on May 9, 2022, and argued that: (1) the Policy provides coverage for loss defined as "direct physical loss to property; (2) the Gates provided no evidence of financial detriment; and (3) any loss in value would be purely economic in nature – not a potentially-covered physical loss. CP 353-368. On June 6, 2022, the trial court denied the Gates' Cross Motion for Partial Summary Judgment. CP 415-418.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The court is the "final arbiter" of legislative intent and statutory construction. *Davis v. King County*, 77 Wn.2d 930,934,468 P.2d 679 (1970); *Short v. Clallam County*, 22 Wn. App. 825,832,593 P.2d 821 (1979). As discussed at length by Division 2 of the Washington Court of Appeals in *Beasley v.*

GEICO Gen. Ins. Co., 23 Wash. App. 2d 641, 517 P.3d 500 (2022), *review denied*, 200 Wash. 2d 1028, 523 P.3d 1188 (2023), "[t]he court's goal when interpreting a statute "is to ascertain and carry out the legislature's intent." *Keodalah v. Allstate Ins. Co.*, 194 Wash.2d 339, 344, 449 P.3d 1040 (2019). Crucially, the primary indicator of legislative intent is the plain and unambiguous meaning of the words in a statute. *State v. Johnson*, 104 Wash.2d 179, 181, 703 P.2d 1052 (1985). When considering the plain meaning of the words in a statute, this court must examine the meaning of the words in the context of the statute as a whole and related provisions, related amendments, and " 'the statutory scheme as a whole.' " *Keodalah*, 194 Wash.2d at 344, 449 P.3d 1040 (internal quotation marks omitted) (quoting *State v. Evergreen Freedom Found.*, 192 Wash.2d 782, 789, 432 P.3d 805 (2019)). Division 2 held in *Beasley* as follows:

> If after reading the statute in context, it 'remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to

> resort to aids to construction, including legislative history.' " *Perez-Crisantos*, 187 Wash.2d at 676, 389 P.3d 476 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 12, 43 P.3d 4 (2002)). Because IFCA was ratified by referendum measure, this court must also consider "the intent of the voters who ultimately ratified IFCA" when examining legislative intent.

23 Wash. App. 2d 641, 656 [emphasis added].

Significantly, the *Beasley* court held that: "[T]he inclusion of a notice and cure period that offered the insurer an opportunity to correct any unreasonable behavior before being hauled into court also suggests that the intent of the legislation was to protect the insured rather than punish the insurer." 23 Wash. App. 2d 641, 665 [emphasis added]. Referendums, such as that which enabled the enactment of IFCA, give the people the power to review laws enacted by the legislature. Wash. Const. art. II, § 1(b). As such, there can be no dispute that the intent of the legislature—and consequently the people—behind the 20-day cure period was to protect insured members of the public by allowing the insurer the opportunity to correct its perceived

wrongful denial of coverage or benefits before the parties and the court invest significant time and resources into litigation.

The Court of Appeals' decision in this case grants the judiciary broad discretion to ignore the 20-day pre-suit written notice required under IFCA—effectively undermining the legislature's (and the public's) intent behind establishing this "cure" period. It effectively permits an insured to file an IFCA lawsuit without any notice to the insurer, and if the trial court grants IFCA damages despite the lack of notice, the trial court can simply ignore this significant procedural omission. This approach discourages pre-suit resolution and encourages unnecessary litigation, and creates confusion for insurers and insureds alike as to how properly to apply IFCA. It is of critical importance that this 20-day "cure" period was enacted by the people to protect the public—not insurance companies. Review is therefore necessitated given this substantial question of public interest.

Whether the lack of a 20-day IFCA notice renders a judgment awarding punitive IFCA damages void or voidable is a matter of first impression for the Washington Supreme Court. In its September 18, 2023 Opinion, the Court of Appeals did not address case law cited by Homesite in support its argument that an IFCA pre-suit notice is a condition precedent to a court issuing a punitive IFCA award. The Court of Appeals relied on *Rabbage v. Lorella*, 5 Wn. App. 2d 289, 297, 426 P.3d 768 (2018), which held that a judgment is void if the issuing court lacks personal jurisdiction over the claim. 5 Wn. App. 2d 289, 297. The Court also cited *In re Marriage of Orate*, 11 Wn. App. 2d 807, 813, 455 P.3d 1158 (2020), in which Division Three agreed that "a judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in connection therewith." *Id*. at 812-813. However, neither *Rabbage* nor *Orate* involved lack of a 20-day IFCA "cure" notice. The former addressed a failure to provide notice of a motion for default judgment, 5 Wash. App. 2d 289, 297; the

latter, a lack of a parent's notice of intent to relocate with their child. 11 Wash. App. 2d 807, 809.

Further, the Court of Appeals did not fully address Homesite's argument that the trial court's IFCA rulings, by ignoring the lack of IFCA notice, were based on an erroneous application of legal principles. Specifically, Homesite cited the Washington Supreme Court case of *Dike v. Dike*, 75 Wash.2d 1, 7, 448 P.2d 490 (1968), in the Court held that: "A judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void." 75 Wash. 2d 1, 7. The Court in *Dike* stated:

> Where a court has jurisdiction of the parties and of the subject matter, and has the power to make the order or rulings complained of, but the latter is based upon a mistaken view of the law or upon the erroneous application of legal principles, it is erroneous.

Id.

Homesite argued in its Respondent's Brief that the trial court misinterpreted IFCA by ignoring the lack of the mandatory 20-day notice. Despite the trial court having jurisdiction of the parties and ostensibly the "power" to issue the default judgments, the trial court's decision to award IFCA damages was based on a mistaken view of the law (IFCA) and an erroneous application of the legal principals upon which IFCA is based; *i.e.*, a "cure" period—for the insured's benefit, per *Beasley*—affording the insurer an opportunity to rectify its perceived error in advance of litigation. The Court of Appeals did not address the *Dike* ruling or the principle behind it, and instead focused on the fact that the trial court had jurisdiction, and thus for that reason, it decided, the default judgment rulings were merely voidable. This is contrary to the Supreme Court's ruling in *Dike* addressing the trial court's "mistaken view of the law or upon the erroneous application of legal principles."

VI. CONCLUSION

For the reasons discussed herein, the Supreme Court should accept review under RAP 13.4(b)(1) and 13.4(b)(4), because: (1) this issue is now of substantial public interest in that insurers, insureds, and trial courts are left with no clear guidance of how to interpret and apply IFCA in similar circumstances, and the judicial intent behind IFCA—based on the intent of the voters who ratified IFCA—is at risk of being undermined by granting the trial courts broad discretion to ignore the notice requirement that is intended to protect insured members of the public and avoid either party being unnecessarily hauled into court; and (2) the Opinion is in conflict with a decision of the Washington Supreme Court, namely *Dike*, *supra*, in that it does not consider that the trial court's decision to award IFCA damages was based on a mistaken view of the law and / or upon the erroneous application of legal principles (*i.e.*, the mandatory 20-day IFCA notice requirement).

RESPECTFULLY SUBMITTED this 29th day of November, 2023.

I certify that this document contains 3204 words in compliance with RAP 18.17(b).

/s/ Eliot M. Harris
Eliot M. Harris, WSBA # 36590
Miles J. M. Stewart, WSBA # 46067
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Tel: (206) 628-6600
Fax: (206) 628-6611
eharris@williamskastner.com
mstewart@williamskastner.com

Attorneys for Respondent Homesite Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served upon counsel of record at the address and in the manner described below a copy of the document to which this certificate is attached for delivery to the following:

Dan R. Young, WSBA #12020 Camille Minogue, WSBA #56405 **LAW OFFICES OF DAN R. YOUNG** 1000 Second Avenue, Suite 3200 Seattle, WA 98104 Tel: (206) 829-9947 Fax: (206) 641-3208 Email:dan@truthandjustice.legal camille@truthandjustice.legal ***Attorneys for Appellants Jason Gates and Amanda Gates***	☑ Via ECF/Filing ☑ Via Electronic Mail ☐ Via Facsimile ☐ Via Legal Messenger ☐ Via Overnight Courier ☐ Via U.S. Mail

DATED this 29th day of November, 2023.

s/ Kristen L. Mosebar
Kristen L. Mosebar
Legal Assistant

WILLIAMS KASTNER & GIBBS PLLC

November 29, 2023 - 12:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84448-2
Appellate Court Case Title:	Jason Gates and Amanda Gates, Appellants v. Homesite Insurance Company, Respondent

The following documents have been uploaded:

- 844482_Other_20231129123339D1047864_1800.pdf
  This File Contains:
  Other - Appendix A
  The Original File Name was Gates Appendix A to Homesites Petition for Review to WA Supreme Court.PDF
- 844482_Petition_for_Review_20231129123339D1047864_2988.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Gates Respondent Homesites Petition for Review to WA Supreme Court.PDF

A copy of the uploaded files will be sent to:

- camille@truthandjustice.legal
- dan@truthandjustice.legal
- mstewart@williamskastner.com

Comments:

Sender Name: Eliot Harris - Email: eharris@williamskastner.com
Address:
601 UNION ST STE 4100
2 UNION SQ
SEATTLE, WA, 98101-1368
Phone: 206-628-6600 - Extension 2977

Note: The Filing Id is 20231129123339D1047864

APPENDIX A

FILED
9/18/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JASON GATES and AMANDA GATES, husband and wife, Appellants, v. HOMESITE INSURANCE COMPANY, a foreign insurance company, Respondent.	No. 84448-2-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — Jason and Amanda Gates obtained default judgments against Homesite Insurance Company after Homesite failed to appear or respond to their lawsuit for breach of contract and violation of the Insurance Fair Conduct Act (IFCA), RCW 48.30.010 to .015. More than a year later, Homesite moved to vacate the judgments. The court granted the motion under CR 60(b)(5) and dismissed the Gates' claims at summary judgment. The Gates appeal. Because Homesite was not entitled to relief from the default judgments under CR 60(b)(1), (4), (5), or (11), we reverse, vacate the orders of dismissal, and remand for the trial court to reinstate the default judgments.

FACTS

In 2018, the Gates bought a home in Maple Valley. They closed on the property on April 4 and moved in immediately. The Gates insured the home through Homesite. Homesite issued the Gates a policy effective April 4, 2018 to April 4, 2019.

Shortly after moving in, the Gates learned that the previous occupants used drugs in the home. They "promptly" arranged for sampling to determine whether the home contained harmful residues. The sampling showed methamphetamine residue that exceeded Washington State clean-up guidelines.

The Gates made a claim to Homesite for loss of personal property and structural damage, but Homesite denied the claim. In a letter dated April 23, 2018, Homesite told the Gates that their policy did not cover "discharge or release of pollutants or chemicals" or "loss prior to the policy period."

The Gates hired an attorney to pursue the claim. On May 8, 2018, their attorney e-mailed Homesite a letter, acknowledging that "[we] understand that the activities resulting [in] the methamphetamine contamination occurred before the Homesite policy took effect, and that damage to the structure is therefore not covered." But the attorney explained that the Gates were still seeking coverage for their personal property losses, "which occurred when the family moved their possessions into the home and exposed them to the chemical residue during the policy period."

Ultimately, Homesite paid the Gates for their damaged personal property. It mailed them a check for $11,552.62 on September 17, 2018. But Homesite maintained its denial of coverage for the Gates' structural damage.

On January 28, 2019, the Gates sued Homesite. They alleged breach of contract and violation of the IFCA, seeking compensation for their structural damage, attorney fees, and costs. The Gates served the Office of the Insurance

Commissioner (OIC) with a summons and complaint.[1] But they did not give Homesite 20 days' notice of their lawsuit as required under the IFCA.[2] The OIC accepted service on January 29, 2019. It forwarded the summons and complaint to Homesite the next day. But the Homesite employee who received the summons did not inform others in the company about the lawsuit. Homesite did not appear or respond to the complaint.

In March 2019, the Gates obtained an order of default and default judgment for their remediation costs, totaling $87,913.92 plus interest. Because the Gates alleged Homesite unreasonably denied their claim, the court doubled the award.[3] The court also awarded $260.39 in costs, for a total judgment of $176,088.03. On August 5, 2019, the Gates obtained a supplemental judgment for attorney fees and costs for $16,935.28 plus interest. Homesite did not pay the judgments.

One year later on August 5, 2020, the Gates contacted Homesite. They sought to collect on the judgments, which had been accruing interest, for a total payoff amount of $224,989.04. Homesite then filed a notice of appearance with the trial court, and on December 28, 2020, moved to set aside the judgments. The court scheduled a hearing on Homesite's motion for January 11, 2021 without oral argument.[4]

---

[1] The OIC is a statutorily designated registered agent for Homesite under RCW 48.05.200.

[2] RCW 48.30.015(8)(a).

[3] RCW 48.30.015(2).

[4] The "Notice for Hearing" incorrectly sets the hearing date for January 11, 2020. It is clear from the record this was a scrivener's error, and the correct hearing date was January 11, 2021.

Homesite argued that the court should set aside the default judgments for good cause under CR 55(c)(1) and vacate them for mistake, inadvertence, or excusable neglect under CR 60(b)(1). The Gates responded that Homesite was not entitled to relief under CR 60(b)(1) because Homesite moved to vacate more than a year after the court entered the judgments. Although not raised by Homesite, the Gates also argued extraordinary circumstances did not warrant relief under CR 60(b)(11). In reply, Homesite argued that the court also had grounds to vacate the judgments for misrepresentation and misconduct under CR 60(b)(4) and that CR 60(b)(11) applied.

On February 11, 2021, the court granted Homesite's motion and vacated the default judgments under CR 60(b)(5). It concluded that the judgments were void because the Gates filed and pursued their claims without giving Homesite the 20-day notice required under the IFCA. The court then "weighed the equities" and awarded the Gates their attorney fees and costs incurred in litigating their motions for default and default judgment and Homesite's motion to vacate.

The Gates moved for reconsideration, which the court denied. The Gates then appealed, seeking discretionary review from this court. A commissioner of this court denied review, concluding that the Gates failed to show review was warranted under RAP 2.3(b).

In April 2022, Homesite moved for partial summary judgment on the Gates' IFCA claims. The Gates cross moved for summary judgment as to Homesite's liability. The court granted summary judgment for Homesite and

denied it for the Gates. Homesite then moved for partial summary judgment on the Gates' breach of contract claim, which the court granted. The court dismissed the Gates' lawsuit with prejudice.

The Gates appeal.

ANALYSIS

The Gates argue the trial court improperly vacated the default judgments because Homesite failed to show it was entitled to relief under CR 60(b). The Gates also seek attorney fees.

1. Default Judgment

When interpreting court rules, we apply principles of statutory construction. Plein v. USAA Cas. Ins. Co., 195 Wn. 2d 677, 685, 463 P.3d 728 (2020). "But we do not resort to statutory construction if a rule is unambiguous. We determine its meaning from the language of the rule itself." WESCO Distrib., Inc. v. M.A. Mortenson Co., Wn. App. 712, 715, 946 P.2d 413 (1997).

Under CR 55(c), "[f]or good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b)." CR 60(b) provides that "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding" for these reasons:

> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
>
> . . . .

> (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (5) The judgment is void;
>
> . . . ; or
>
> (11) Any other reason justifying relief from the operation of the judgment.[5]

The party seeking relief under CR 60(b) bears the burden of showing relief is warranted. Fowler v. Johnson, 167 Wn. App, 596, 605, 273 P.3d 1042 (2012).

A. CR 60(b)(5)

The trial court granted Homesite's motion to vacate under CR 60(b)(5). It concluded that "the default finding and default judgment previously entered in this matter are properly vacated pursuant to CR 60(b)(5)" because "[i]t is undisputed that [the Gates] filed and pursued their claims in this matter without first presenting the requisite notice under RCW 48.30.015(8)."[6] The Gates argue the trial court erred by setting aside the default judgments under CR 60(b)(5) because notice under RCW 48.30.015(8)(a) is not a jurisdictional requirement. We agree.

CR (60)(b)(5) provides relief from a final judgment on a showing that "[t]he judgment is void." A judgment is void if the issuing court lacks personal jurisdiction or subject matter jurisdiction over the claim. Rabbage v. Lorella, 5 Wn. App. 2d 289, 297, 426 P.3d 768 (2018). Courts have a nondiscretionary

[5] The omitted grounds for relief under CR 60(b) are not applicable here.

[6] Though the court's order appears to address only the Gates' IFCA claim, in operation, it vacated the judgments on both the IFCA and breach of contract claims.

duty to vacate a void judgment and can vacate such a judgment at any time. Id. at 300; Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994). We review a trial court's ruling under CR 60(b)(5) de novo. Ahten v. Barnes, 158 Wn. App. 343, 350, 242 P.3d 35 (2010).[7]

Generally, a trial court has personal jurisdiction over a party-defendant that receives lawful service of a summons and complaint. See Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces, 36 Wn. App. 480, 483-84, 674 P.2d 1271 (1984). And there are very few limitations on the subject matter jurisdiction of superior courts in Washington. Outsource Servs. Mgmt. LLC v. Nooksack Bus. Corp., 181 Wn.2d 272, 276, 333 P.3d 380 (2014). Under our constitution, superior courts "have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court." WASH. CONST. art IV, § 6.

The Gates properly served Homesite by serving the OIC with a summons and a copy of their complaint. See RCW 48.05.200(1); Prest v. Am. Bankers Life Assur. Co., 79 Wn. App. 93, 99-100, 900 P.2d 595 (1995). As a result, the trial court had personal jurisdiction over Homesite. And the court's original jurisdiction includes contract claims and statutory causes of action, the subject

[7] Citing Morris v. Palouse River & Coulee City Railroad, 149 Wn. App. 366, 370, 203 P.3d 1069 (2009), Homesite argues we should review the court's ruling for an abuse of discretion. While we generally review a trial court's ruling on a motion to vacate a default judgment for an abuse of discretion, see Little v. King, 160 Wn.2d 696, 702, 161 P.3d 345 (2007), we review CR 60(b)(5) rulings de novo. Ahten, 158 Wn. App. at 350. We recognize that Morris reached a different result. But Morris relied on Showalter v. Wild Oats, 124 Wn. App. 506, 510-11, 101 P.3d 867 (2004), which addressed an order vacating a default judgment under CR 60(b)(1), so we decline to follow Morris.

matter at issue here. Outsource, 181 Wn.2d at 276. So, the court had the authority to issue the default judgments, and they were not void.

Homesite argues the court "lacked the power or authority" to enter the judgments. It points to the Gates' failure to comply with the IFCA's notice requirements. Under the IFCA, individuals may bring a private cause of action against insurers for unreasonable denial of a claim for coverage or benefits. RCW 48.30.015(1). And 20 days before filing an IFCA claim, a claimant "must provide written notice of the basis for the cause of action to the insurer and the [OIC]." RCW 48.30.015(8)(a). That gives the insurer an opportunity to "resolve the basis for the action" before litigation. RCW 48.30.015(8)(b). But where, as here, the court has personal and subject matter jurisdiction, " 'a procedural irregularity renders a judgment voidable,' not void." Rabbage, 5 Wn. App. 2d at 298 (quoting Mu Chai v. Yi Kong, 122 Wn. App. 247, 254, 93 P.3d 936 (2004)).

In Rabbage, the petitioner obtained a decree of dissolution by default but failed to properly serve the respondent with notice of the motion for default. 5 Wn. App. 2d at 293-94. The trial court set aside the default dissolution decree under CR 60(b)(1) and the matter proceeded to trial. Id. at 294-95. The petitioner later sued her attorney, asserting that the attorney was negligent for failing to serve notice of the motion for default, which she argued rendered the decree void. Id. at 295. We rejected the petitioner's argument that the decree was void and concluded that "only a jurisdictional defect can make a judgment void." Id. at 299-300. In doing so, we recognized that several Court of Appeals cases conclude otherwise. Id. at 297-99 (citing Servatron, Inc. v. Intelligent

Wireless Prods., Inc., 186 Wn. App. 666, 679, 346 P.3d 831 (2015); In re Marriage of Daley, 77 Wn. App. 29, 31, 888 P.2d 1194 (1994)). But we disagreed with those cases and described them as "incautious" and not to be repeated because they lead to "analytical error." Id. at 300.

Division Three of our court later reached the same conclusion in In re Marriage of Orate, 11 Wn. App. 2d 807, 813, 455 P.3d 1158 (2020). There, the petitioner obtained a default order allowing relocation without serving proper notice on the respondent. Id. at 810. Respondent moved to set aside the order as void, but the court rejected his motion. Id. at 810-11. Division Three agreed with the trial court. Id. at 813-14. It recognized that

> "where a court has jurisdiction over the person and the subject matter, no error in the exercise of jurisdiction can make the judgment void, and that a judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in connection therewith."

Id. at 812-13 (quoting In re Marriage of Ortiz, 108 Wn.2d 643, 649-50, 740 P.2d 843 (1987)). The court also recognized that a "string of Court of Appeals cases . . . have wrongly concluded that default judgments entered by courts, even courts with jurisdiction, are void." Id. at 813 (citing Servatron, 186 Wn. App. at 679; Hous. Auth. v. Newbigging, 105 Wn. App. 178, 190, 19 P.3d 1081 (2001); Daley, 77 Wn. App. at 31). And it identified the error as starting with Shreve v. Chamberlin, 66 Wn. App. 728, 731, 832 P.2d 1355 (1992), "which misconstrued our Supreme Court precedent."[8] Id.

[8] In Shreve, the court concluded that a trial court "acts without authority when it purports to enter a default judgment without notice against a party who has previously appeared." 66 Wn. App. at 731.

Here, the Gates failed to notify Homesite of their intent to file a lawsuit as required under the IFCA. And the statutory notice procedure is a prerequisite to pursuing a lawsuit. RCW 48.30.015(8)(a). But the Gates' failure to provide that notice did not deprive the court of personal or subject matter jurisdiction. So, the Gates' failure to comply with the notice requirements of IFCA rendered the judgments voidable, not void.[9]

The trial court erred by vacating the Gates' default judgments under CR 60(b)(5).

B. CR 60(b)(1)

Homesite argued below that it was entitled to relief under CR 60(b)(1). We disagree.

A court may grant relief under CR 60(b)(1) for "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." A party must move to vacate under CR (b)(1) within one year of entry of the judgment. CR 60(b). Here, the court entered the supplemental default judgment on August 5, 2019.[10] Homesite moved to vacate on December 28, 2020. Because Homesite moved to vacate more than a year after the court entered the judgments, the trial court could not grant relief on this basis. Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990).

[9] Homesite cites Long v. Harrold, 76 Wn. App. 317, 884 P.2d 934 (1994), and In re Adoption of Hickey, 18 Wn. App. 259, 567 P.2d 260 (1977), in support of their argument that the court lacked authority to issue the default judgments. We decline to rely on those cases as they predate Rabbage and Orate.

[10] The court entered the initial default judgment on March 18, 2019. It then issued a supplemental judgment on August 5, 2019. We use the later judgment date here.

In any event, Homesite offers no grounds for relief under CR 60(b)(1). Homesite did not respond to the Gates' lawsuit because of an internal communication issue. We have repeatedly concluded that a company's failure to respond to a properly served complaint because of an internal communication issue does not warrant relief under CR 60(b)(1). See Ha v. Signal Elec., Inc., 182 Wn. App. 436, 450, 332 P.3d 991 (2014); Prest, 79 Wn. App. at 99-100; TMT Bear Creek Shopping Ctr. Inc. v. PETCO Animal Supplies, Inc., 140 Wn. App. 191, 212-13, 165 P.3d 1271 (2007); Johnson v. Cash Store, 116 Wn. App. 833, 848-49, 68 P.3d 1099 (2003).

Homesite is not entitled to relief from the default judgments under CR 60(b)(1).

C. CR 60(b)(4)

Homesite argues that it is also entitled to relief from the default judgments under CR 60(b)(4). We disagree.

Under CR 60(b)(4), a trial court can vacate a judgment for "[f]raud . . . , misrepresentation, or other misconduct of an adverse party." Fraudulent conduct or misrepresentation under CR 60(b)(4) must cause the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense. Lindgren, 58 Wn. App. at 596. And "[t]he party attacking a judgment under CR 60(b)(4) must establish the fraud, misrepresentation, or other misconduct by clear and convincing evidence." Id.

Homesite alleges the Gates engaged in several acts of misrepresentation and misconduct. It claims the Gates misled it to believe they would not sue when

their attorney sent the May 2018 letter agreeing there was no coverage for structural damage, and they did not provide 20-day's notice under the IFCA that they intended to sue. It also alleges the Gates engaged in misconduct when they served only the OIC with their summons and complaint and waited a year before presenting Homesite with the default judgments.

Homesite fails to show that the Gates' conduct amounts to misrepresentation or misconduct. Nor does it show that the alleged conduct caused entry of the judgments. Neither the attorney's letter nor the failure to comply with statutory notice prevented Homesite from fully and fairly presenting its case, particularly when the Gates properly served Homesite with a summons and complaint through the OIC. And Homesite fails to show that the Gates engaged in misconduct by serving only the OIC. Indeed, under RCW 48.05.200(1), "[s]ervice of legal process against the insurer can be had only by service upon the [OIC]." Finally, it is not "deceptive or unfair for a plaintiff to wait a year to collect on a default judgment." See Trinity Universal Ins. Co. of Kan. v. Ohio Cas. Ins. Co., 176 Wn. App. 185, 195-96, 312 P.3d 976 (2013).

Homesite is not entitled to relief from the default judgments under CR 60(b)(4).

D. CR 60(b)(11)

Homesite argues that even if none of the other provisions of CR 60(b) apply, it is entitled to relief under CR 60(b)(11). Again, we disagree.

Under CR 60(b)(11), a court may grant a party relief for "[a]ny other reason justifying relief from the operation of the judgment." This is a "catchall

provision" of the rule, and relief is "limited to situations involving extraordinary circumstances" not covered in any other section of CR 60(b). In re Welfare of R.S.G., 172 Wn. App. 230, 243-44, 289 P.3d 708 (2012); Topliff v. Chi. Ins. Co., 130 Wn. App. 301, 305, 122 P.3d 922 (2005). And "those circumstances must relate to 'irregularities extraneous to the action of the court or questions concerning the regularity of the court's proceedings.' " Topliff, 130 Wn. App. at 305 (quoting In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985)).

Homesite's mismanagement of the Gates' service of process does not amount to an extraordinary circumstance warranting relief from the judgments. It is a circumstance to be analyzed under CR 60(b)(1). But Homesite's motion is time-barred under CR 60(b)(1). And CR 60(b)(11) cannot be used to circumvent the time limit of CR 60(b)(1). Friebe v. Supancheck, 98 Wn. App. 260, 267, 992 P.2d 1014 (1999).

Homesite is not entitled to relief from the default judgments under CR 60(b)(11).

E. Equitable Relief

Finally, Homesite argues that the trial court properly vacated the default judgments under principles of equity. According to Homesite, the trial court "relied on its authority under CR 60(b), which empowers it to impose 'such terms

as are just.' " Homesite mischaracterizes the trial court's order[11] and misconstrues the language of the rule.

CR 60(b) provides that on motion and "upon such terms that are just, the court may relieve a party . . . from a final judgment . . . for the following reasons." The plain language of the rule then limits relief to those reasons enumerated in CR 60(b)(1) to (11). See also Gustafson v. Gustafson, 54 Wn. App. 66, 70-71, 772 P.2d 1031 (1989) (the purpose of CR 60(b) listing grounds for relief is "to 'cover the field' of vacation and to eliminate writs of [error] and bills of review"). Homesite cites no authority in support of its proposition that a trial court can vacate a final judgment for reasons other than those enumerated in the rule.[12] So, we presume it found none. Helmbreck v. McPhee, 15 Wn. App. 2d 41, 57, 476 P.3d 589 (2020).

The trial court erred by vacating the Gates' default judgments.[13]

---

[11] Homesite suggests that the court's order shows it used its equitable powers to set aside the default judgments based on "such terms that are just." CR 60(b). But in its order granting Homesite's motion, the court explained that it was vacating the default judgments under CR 60(b)(5) because the Gates "filed and pursued their claims . . . without first presenting the requisite notice under RCW 48.30.015(8)." Then, citing its authority under CR 60(b) to impose relief under "such terms as are just," the court ordered Homesite to pay the Gates' attorney fees and costs incurred by litigating the default motions, default judgments, and motion to vacate. The court determined that the terms against Homesite were just because even though the Gates failed to comply with RCW 48.30.015(8)(a), Homesite "was served and failed to timely defend only because of an internal error in processing its mail."

[12] Homesite suggests that the court's authority may arise under the "good cause" standard in CR 55(c)(1). But that rule applies to motions to vacate default orders, not default judgments. See CR 55(c)(1) ("[f]or good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b)").

[13] Because we reinstate the default judgments, we do not reach the Gates' argument that the trial court erred by granting summary judgment for Homesite.

2. Attorney Fees

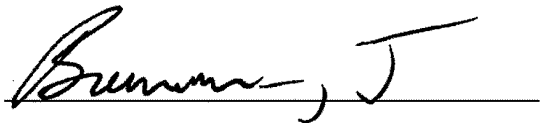
The Gates ask for attorney fees under Olympic Steamship Co. v. Centennial Insurance Co., 117 Wn.2d 37, 53, 811 P.2d 673 (1991). That case provides for attorney fees to a prevailing insured "in any legal action where the insurer compels the insured to assume the burden of legal action, to obtain the full benefits of [their] insurance contract." Id.

Olympic Steamship broadly applies "[w]hether the insured must defend a suit filed by third parties, appear in a declaratory action, or . . . file a suit for damages to obtain the benefit of [their] insurance contract." 117 Wn.2d at 52-53. This is so because in each instance, "the conduct of the insurer imposes upon the insured the cost of compelling the insurer to honor its commitment and, thus, is equally burdensome to the insured." Id.

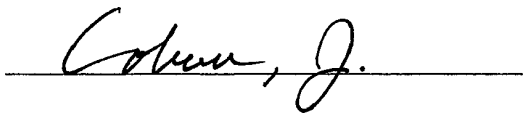
Olympic Steamship attorney fees are available to a party that obtains a default judgment. Pro. Marine Co. v. Those Certain Underwriters at Lloyd's, 118 Wn. App. 694, 711-12, 77 P.3d 658 (2003) (citing Olympic S.S., 117 Wn.2d at 52-53). And attorney fees under Olympic Steamship are available to parties prevailing on appeal. Singh v. Zurich Am. Ins. Co., 5 Wn. App. 2d 739, 764, 428 P.3d 1237 (2018). We award attorney fees to the Gates as the prevailing parties on appeal subject to compliance with RAP 18.1.

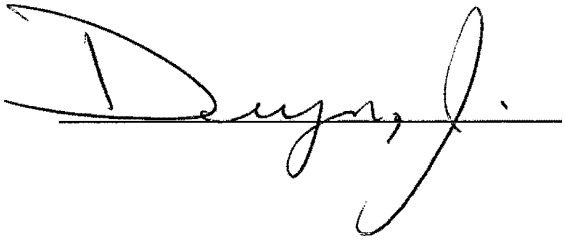
Because Homesite was not entitled to relief from the Gates' default judgments under CR 60(b), we reverse, vacate the orders of dismissal, and

remand for the trial court to reinstate the judgments. And we award attorney fees to the Gates as the prevailing party on appeal.



WE CONCUR:





RCW 48.30.010 Unfair practices in general—Remedies and penalties. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015. [2007 c 498 § 2 (Referendum Measure No. 67, approved November 6, 2007); 1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Short title—2007 c 498: See note following RCW 48.30.015.

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

RCW 48.30.015 Unreasonable denial of a claim for coverage or payment of benefits. (1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions";

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first

party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection. [2007 c 498 § 3 (Referendum Measure No. 67, approved November 6, 2007).]

Short title—2007 c 498: "This act may be known and cited as the insurance fair conduct act." [2007 c 498 § 1.]

CR 60
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

RAP 13.4
DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed. Failure to serve a party with the petition for review or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the Clerk of the Supreme Court to dismiss the petition for review if not cured in a timely manner. A party prejudiced by the failure to serve the petition for review or to file proof of service may move in the Supreme Court for appropriate relief.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) Content and Style of Petition. The petition for review should contain under appropriate headings and in the order here indicated:

(1) *Cover.* A title page, which is the cover.

(2) *Tables.* A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where cited.

(3) *Identity of Petitioner.* A statement of the name and designation of the person filing the petition.

(4) *Citation to Court of Appeals Decision.* A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) *Issues Presented for Review.* A concise statement of the issues presented for review.

(6) *Statement of the Case.* A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record.

(7) *Argument.* A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.

(8) *Conclusion.* A short conclusion stating the precise relief sought.

RAP 18.17
WORD LIMITATIONS, PREPARATION, AND FILING OF DOCUMENTS SUBMITTED TO THE COURT OF APPEALS AND SUPREME COURT

(a) Formatting Requirements. All documents covered by these rules, such as briefs, motions, petitions, responses, replies, answers, objections, statements of grounds for direct review and answers thereto, or statements of additional grounds for review, should conform to the following requirements:

(1) All documents filed with the appellate court should be printed or typed with margins of at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom. Documents submitted in electronic format should be submitted in .pdf format and follow the electronic filing instructions published by the court. Documents submitted in hard copy should be printed on 20-pound substance, 8-1/2-by-11-inch, white paper. Documents should not contain tabs, colored sheets of paper, or binding and should not be stapled.

(2) The text of all documents filed with the appellate court should be double spaced, except footnotes and block quotations, which may be single spaced. In a document produced using word processing software, all text, including footnotes and block quotations, should appear in 14 point serif font equivalent to Times New Roman or sans serif font equivalent to Arial. A document produced using a typewriter should appear in 12 point font or larger.

(b) Certificate of Compliance. All documents filed with the appellate court and produced using word processing software should contain a short statement above the signature line certifying the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).The signor may rely on the word count calculation of the word processing software used to prepare the brief.

(c) Length Limitations. All documents filed with the appellate court should conform to the following length limitations unless the appellate court has granted permission to file an overlength document. The following length limitations are expressed as word limitations for documents produced using word processing software and as page limitations for documents produced by typewriter or written by hand. The word limitations exclude words in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).

(1) Statements of grounds for direct review and answers to statements of grounds for direct review (RAP 4.2 or RAP 4.3): 4,000 words (word processing software) or 15 pages (typewriter or handwritten).

(2) Briefs of appellants, petitioners, and respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(3) Reply briefs of appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

(4) In cross appeals, briefs of appellants, briefs of respondents/cross appellants, and reply briefs of appellants/cross respondents (RAP 10.4): 12,000 words (word processing software) or 50 pages (typewriter or handwritten).

(5) In cross-appeals, reply briefs of the cross appellants (RAP 10.4): 6,000 words (word processing software) or 25 pages (typewriter or handwritten).

electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [**AMENDMENT 8**, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided,* That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [**AMENDMENT 8**, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. [**AMENDMENT 84**, 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people re-

serve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state.

Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted: *Provided,* That the legislature may not order a referendum on any initiative measure enacted by the legislature under the foregoing subsection (a).

The number of valid signatures of registered voters required on a petition for referendum of an act of the legislature or any part thereof, shall be equal to or exceeding four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the text of the referendum measure with the secretary of state.

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided,* That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

(d) The filing of a referendum petition against one or more items, sections, or parts of any act, law, or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the next succeeding regular general election following the filing of the measure with the secretary of state, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: *Provided,* That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

(e) The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. [**AMENDMENT 72**, 1981 Substitute Senate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

Referendum procedures regarding salaries: Art. 28 Section 1.

Referendum Measure 67
Passed by the Legislature and Ordered Referred by Petition

AN ACT Relating to creating the insurance fair conduct act; amending RCW 48.30.010; adding a new section to chapter 48.30 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act may be known and cited as the insurance fair conduct act.

Sec. 2. RCW 48.30.010 and 1997 c 409 s 107 are each amended to read as follows:

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in section 3 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 48.30 RCW to read as follows:

(1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions'';

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection.

ESSB 5726 - H AMD TO H IFSCP COMM AMD (H-3265.2/07) **545**
By Representative Ericks

ADOPTED 4/5/2007

On page 3, after line 31 of the amendment, insert the following:

"(7)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in subsection (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty day period of time in (a) of this subsection."

EFFECT: A first party claimant must give written notice to the insurer and the Office of the Insurance Commissioner twenty days before filing suit. Notice is deemed to be received three business days after it is mailed. The statute of limitation is tolled for the twenty day period.

WILLIAMS KASTNER & GIBBS PLLC

November 29, 2023 - 12:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84448-2
Appellate Court Case Title:	Jason Gates and Amanda Gates, Appellants v. Homesite Insurance Company, Respondent

The following documents have been uploaded:

- 844482_Other_20231129123339D1047864_1800.pdf
  This File Contains:
  Other - Appendix A
  The Original File Name was Gates Appendix A to Homesites Petition for Review to WA Supreme Court.PDF
- 844482_Petition_for_Review_20231129123339D1047864_2988.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Gates Respondent Homesites Petition for Review to WA Supreme Court.PDF

A copy of the uploaded files will be sent to:

- camille@truthandjustice.legal
- dan@truthandjustice.legal
- mstewart@williamskastner.com

Comments:

Sender Name: Eliot Harris - Email: eharris@williamskastner.com
Address:
601 UNION ST STE 4100
2 UNION SQ
SEATTLE, WA, 98101-1368
Phone: 206-628-6600 - Extension 2977

Note: The Filing Id is 20231129123339D1047864