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Supreme Court No. 89845-6
Court of Appeals No. 68029-3-I

IN THE SUPREME COURT
OF THE
STATE OF WASHINGTON

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JOEL JOHNSON

Appellant/Petitioner

v.

SAFECO INSURANCE COMPANY OF AMERICA AND
MOUNT VERNON FIRE INSURANCE COMPANY

Respondents.

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# *SAFECO'S ANSWER TO PETITION FOR REVIEW*

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ORIGINAL

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## 1. *Identity of Responding Party*

This Answer is submitted on behalf of Safeco Insurance Company of America ("Safeco"), the defendant below and Respondent on appeal.

## 2. *Court of Appeals Decision*

Safeco asks the Court to deny review of the decision of Division I of the Court of Appeals in No. 68029-3-I, originally issued as an unpublished decision affirming the trial court's dismissal of all claims against Safeco, on September 16, 2013. The plaintiff below and appellant here, Joel Johnson, moved for reconsideration. The Panel issued its Order Denying Motion for Reconsideration and Amending Opinion on December 30, 2013; and on January 15, 2014, ordered that the final opinion, as amended, should be published.

## 3. *Respondent's Statement of the Issues Presented for Review*

Safeco does not seek Supreme Court review of any issues not addressed in Mr. Johnson's petition, as this matter does not present any questions that warrant Supreme Court review under the criteria set forth in RAP 13.4.

However, Johnson's Petition states there are two issues he would like this Court to review. Only the second of those two issues is directly relevant to Johnson's appeal as to Safeco; and this Answer will address only the

second issue.[1] Johnson's statement of the issue assumes numerous facts that are not established in the record and may be more accurately restated as follows:

> When Safeco provided clear and timely written notice to its insured Joel Johnson that payment of an additional premium was required to renew his homeowner's insurance policy; and,
>
> When the insurer subsequently provided clear and timely written notice to the insured Joel Johnson that the premium had not been paid and that coverage had lapsed, but could be reinstated by payment of the delinquent premium by a date certain; and,
>
> When the insured Joel Johnson failed to pay the premium himself, or to confirm that his mortgage company would make the payment on his behalf, or to take any other action in response to Safeco's notices, to protect his own interest in the insurance policy; then,
>
> Did the trial court and the Court of Appeals correctly hold that Joel Johnson received proper notice of non-renewal, in compliance with the relevant wording of the policy, Washington insurance statutes and controlling Washington case law?

Safeco submits that on this record, the trial court and Division I's carefully written and unusually detailed opinion drew the only possible conclusion under Washington law: Mr. Johnson did receive proper notice of the impending non-renewal of his Safeco homeowner's insurance policy; he

[1] Safeco concurs with and joins in Mount Vernon Insurance Company's Answer to the Petition with respect to the issues Johnson has presented under the *Mutual of Enumclaw v. Cox* line of authorities. However, those authorities are not relevant to the disposition of the claims Johnson asserted against Safeco in the trial court and the Court of Appeals.

did receive more than adequate notice and opportunity to reinstate his coverage after the renewal date had passed, by paying the delinquent premium or ensuring that his mortgage company would make the payment for him; and, as a result, the Safeco homeowner's insurance policy was no longer in force as to Mr. Johnson on the date of the fire that gives rise to this action.

### *4. Respondents' Statement of the Case*

Rather than candidly present the facts as they appear in the record, Mr. Johnson's Statement of the Case heavily relies on his own argumentative characterization of documents and events that, in truth, speak loudly and clearly for themselves.

What the record shows is as follows:

#### *a. Johnson received two notices that he must pay a premium to renew his Safeco homeowners insurance – and he ignored both of them.*

Safeco gave Mr. Johnson *two* clear, written and timely notices that his homeowner's insurance policy would expire unless he or his mortgage servicing company paid a premium to extend coverage beyond the expiration date. In fact, Safeco gave Johnson *two* opportunities to make the required premium payment over the course of *three months* – spanning an extended period of time *before and after* the renewal date of his policy.

Mr. Johnson purchased a Safeco homeowner's insurance policy for the policy period from November 17, 2007 to November 17, 2008.[2]

***Notice #1:*** *Before* the expiration of the policy period, on *September 28, 2008,* Safeco sent a renewal notice to Mr. Johnson and advised that it would bill his mortgage servicing company to obtain the premium payment.[3]

***Notice #2:*** *Shortly after* the expiration of the policy period, on *December 2, 2008,* Safeco sent a notice to Mr. Johnson to advise that his homeowner's insurance policy already had *expired* because the premium was not paid when due on November 17, 2008. This second notice told Mr. Johnson that he, himself, should take steps to protect his interest in the policy; and told him what the appropriate steps might be.

The notice was plainly titled:

**HOMEOWNERS**
**EXPIRATION NOTICE**
**(for non-payment of premium)[4]**

The notice went on to explain in detail the current status of Mr. Johnson's homeowner's insurance coverage and the steps he could and should take to ensure that his home and personal property would be protected, without any lapse in coverage:

> We have not yet received your renewal premium of $630.00 from your mortgage company. This payment was due on November 17, 2008.

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[2] CP 48.

[3] CP 46-47.

[4] CP 54.

> Fortunately, we can continue your policy, with no lapse in coverage, if you send your payment to us postmarked no later than January 5, 2009. We urge you to contact your mortgage company to ensure that payment is sent in time to keep your policy in effect.
>
> You now have the option of paying your premium by credit card with VISA, MASTERCARD or DISCOVER! Call toll-free 1-800-332-3226 and follow the simple instructions.
>
> For assistance or additional insurance, please contact your agent at (425) 462-7443.[5]

In response to this notice, and with little effort, Mr. Johnson could have contacted his mortgage company to inquire why his premium had not been paid – but he did not do so. He did not contact Safeco or his local agent, as the notice encouraged him to do. Nor did he pick up a telephone to pay the premium himself by cash, check or credit card, as the notice advised he could do to ensure his homeowner's insurance protection would remain in force.

To the contrary, *Mr. Johnson did absolutely nothing* in response to this very clear notice – which told him everything he needed to know and to do to ensure that one of the most important financial protections available to him -- his homeowner's insurance policy -- would have remained in force when a fire occurred at his home on January 25, 2009.

Mr. Johnson's response to these uncontroverted facts is two-fold. *First,* and not surprisingly under the circumstances, he claims he did not see it. This

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[5] *Id.*

has no legal significance under Washington law – a point that Mr. Johnson appears to concede.[6]

*Second,* Mr. Johnson asserts that "[e]ven if he had seen that letter, it would have been reasonable for him to expect that Taylor Bean [his mortgage company] would correct its payment error as soon as it was notified by Safeco."[7]

The simple answer to this second argument is that it unquestionably *was not* "reasonable" for Mr. Johnson, or any insured who received such a notice, to do nothing in response but "expect" and "assume" that another party was

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[6] There being no dispute that Safeco mailed the notice to the address Johnson provided to Safeco, Mr. Johnson is deemed to have received, read and understood what the notice said. Slip opinion at 14; *Trinity Universal Ins. Co. v. Willrich,* 13 Wn.2d 263, 124 P.2d 250 (1942) (insurance policy provided that mailing of notices to insured would be sufficient proof that notice was given, such provisions are valid and enforceable), *compare* CP 52 (Safeco policy states "proof of mailing shall be sufficient proof of notice"); *Wisniewski v. State Farm General Insurance Company,* 25 Wn. App. 766, 609 P.2d 456 (1980) ("the long-established rule in this State is that proof of mailing is all that is necessary" to validly effect cancellation); *Sowa v. National Indemnity Company,* 102 Wn.2d 571, 580, 688 P.2d 865 (1984) (insureds bound by endorsements they denied receiving, because "the insurer need only prove that the endorsements were sent, not that they were received," citing *Wisniewski*); *Kaiser Aluminum & Chemical Corp. v. Dept. of Labor & Industries,* 57 Wn. App. 886, 889-890, 790 P.2d 1254 (1990) ("it is presumed the mail proceeds in due course and the letter is received by the person... to whom it is addressed," citing numerous authorities holding that proof of mailing establishes notice was properly effected). Although Johnson does cite *Cornhusker v. Kachman,* 165 Wn.2d 404, 411, 198 P.3d 505 (2008), Petition at 20, *Kachman* merely held that notices must be sent by regular mail, not certified mail, before proof of mailing itself will constitute poof of notice. There is no dispute that Safeco's notices complied with the *Kachman* requirement.

[7] Johnson presents this argument in his "Statement of the Case," as though it were a fact established in the record. Petition at 3; *compare* RAP 10.3(a)(5) (the Statement of the Case" should contain a "fair statement of the facts and procedure relevant to the issues presented for review"). It is not.

watching his back – particularly when, as here, the notice advised that the other party already had failed to take the necessary action of paying the renewal premium, and specifically urged Mr. Johnson to contact that party to ensure the premium payment would be made.

*"Not my problem"* is not a legally sufficient response to a notice that specifically advises an insured that *he* needs to take affirmative action to reinstate an insurance policy that has lapsed for non-payment of premium. The reasonable homeowner knows it is important to maintain adequate insurance on her home and the possessions contained in the home to protect *herself* against a disaster. No reasonable person, upon being told that his homeowner's insurance was no longer in force because the premium had not been paid, would "expect" or "assume" anything – other than to expect and assume he must do something purposeful and without delay. He would, instead, do as the notice itself counseled: pay the premium immediately – which could even be done by credit card by calling a toll-free telephone number; or contact his insurance agent; or "*contact your mortgage company to ensure that payment is sent in time to keep your policy in effect.*"

No reasonable person would "expect" or "assume" that someone else would protect *his* interests, as Johnson claims he "would have" done -- if he had even bothered to read the notice that was sent to his mailing address.

b. ***Safeco gave Mr. Johnson's mortgage company notice that the policy had lapsed and that its rights as lienholder under the policy would be cancelled; and the mortgage company procured a new insurance policy that protected the lienholder and Mr. Johnson in response to that notice.***

Even though Mr. Johnson did nothing to protect himself, someone else did, in fact, look out for him and as a result, Mr. Johnson's fire loss was insured. Unfortunately, as this lawsuit demonstrates, the old saw is often true: no good deed goes unpunished.

Mr. Johnson's homeowner's insurance policy was up for renewal on *November 17, 2008*. He was notified of the upcoming renewal on *September 28, 2008* – some six weeks before the renewal date.

When neither Mr. Johnson nor his mortgage servicing company paid the renewal premium, Mr. Johnson was provided a notice on *December 2, 2008*, just days after the policy had expired, that told him to take steps to get the premium paid – whether by contacting his mortgage company or insurance agent, or by paying the premium himself. Mr. Johnson was told he had until *January 5, 2009* to pay the premium, or make sure the premium was paid for him, or the policy would be fully and finally terminated on or immediately after that date and could no longer be reinstated.

However, by the terms of the insurance policy, non-renewal or cancellation of the policy because of Mr. Johnson's default did not terminate the interest of his lienholder – that required a separate notice to the lienholder, so

the lienholder would have an opportunity to maintain insurance to protect the collateral for its loan.

So, when the January 5, 2009 deadline came and went without the payment called for in the December 2, 2008 second notice letter, Safeco separately notified the mortgage company that its separate interest in the policy would be cancelled in 20 days. This was precisely the notice the policy itself recited would be provided to a lienholder before Safeco would terminate the lienholder's separate and independent interest in the insurance coverage to protect the collateral for Mr. Johnson's home loan. It also complied with the notice requirement for cancellation of policies under RCW 48.18.290 – although as to Mr. Johnson, this remained a non-renewal, and not a "cancellation" as our case law defines those terms.[8]

Unlike Mr. Johnson, the mortgage company did not "expect" or "assume" anything. Taylor Bean quickly responded to Safeco's notice and made sure insurance coverage was in place with Safeco's co-defendant in this action, Mount Vernon Fire Insurance Company. The Mount Vernon policy covered not only Taylor Bean's interest in the real property as lienholder -- it also extended to Mr. Johnson's equity in the home, personal property contained

[8] CP 58-60; slip opinion at 15. In fact, as Johnson concedes, Petition at 4, RCW 48.18.290(1)(c) requires only ten days' notice of cancellation for failure to pay the required premium. Slip opinion at 13-14. Safeco mailed notice of cancellation to Taylor Bean on January 11, 2009. The fire occurred on January 25, 2009 – more than ten days later – but the notice gave Taylor Bean until February 5, 2009 before cancellation would take place. Slip opinion at 2. Safeco honored the date stated in the notice, treated coverage in force as to Taylor Bean and shared the loss with Mount Vernon. Slip opinion at 4.

in the home and supplemental coverages like "loss of use" of the home as a result of fire or other property damage.[9]

Thus, in the end – and despite his own negligent inaction in response to repeated and unequivocal notices about the expiration of his Safeco insurance policy -- Mr. Johnson's loss was insured under the coverage that the lienholder procured after receiving notice that its own interest in Safeco's policy would be terminated.

In fact, because the fire occurred before the stated effective date of the notice of cancellation Safeco sent to the lienholder Taylor Bean, Safeco and Mount Vernon *concurrently insured* much of the fire loss to Mr. Johnson's home.[10]

In short, while Mr. Johnson rails at the system, *the system worked* -- and it worked to his benefit, despite Mr. Johnson's failure to take reasonable steps, in response to clear and timely notices, to ensure that insurance coverage for his home and personal property would remain in place at all times.[11]

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[9] CP 197-98; slip opinion at 3-4.

[10] Slip opinion at 4.

[11] Rather than express relief, and perhaps a bit of gratitude, that he has been spared the consequences of his own negligence, Mr. Johnson brought this lawsuit instead, alleging that both Safeco and Mount Vernon acted in "bad faith." Mr. Johnson also admittedly lied to Mount Vernon in an effort to maximize his insurance recovery – and argues on appeal he should be relieved of the legal consequences of his misconduct because Mount Vernon somehow forced him to commit fraud to obtain the insurance payments Johnson believes are rightfully his. Similarly, Johnson is not pursuing insurance from Safeco because he was left

## 5. *Argument and Authority*

### a. *Mr. Johnson received two timely and unequivocal notices of non-renewal of his insurance policy, and no "public interest" would be served by further appellate review of his claims against Safeco.*

Mr. Johnson claims that his Petition raises "an issue of substantial public interest," because insureds "should have a remedy if their policy is cancelled as a result of their insurance company's failure to notify their mortgage company of a payment error." His claim misses the mark entirely – because that is not what this case is about at all

As a threshold matter, Safeco did not "cancel" Mr. Johnson's policy pursuant to RCW 48.18.290. Our courts long have recognized a fundamental difference between *non-renewal* of an insurance policy because an insured has failed to pay the premium required to obtain coverage for a subsequent policy term; and *cancellation* of an insurance policy during the policy term, which may occur for a number of different reasons – including the insured's own direction to the insurer to cancel the policy and return a portion of the premiums already paid.[12] Johnson's policy was not cancelled – it was not

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unprotected by the non-renewal of his Safeco policy – but because his alleged status as a Safeco policyholder is the essential prerequisite to his "bad faith" claims against Safeco, for which he hopes to obtain punitive damages and an award of attorney's fees. The trial court rejected Mr. Johnson's specious arguments; Division I declined to bend the law to accommodate Mr. Johnson's demands; and this Court should do the same.

[12] As Division I's decision explains, Safeco "non-renewed" Johnson's policy – it did not "cancel" he policy. Notice of non-renewal is not subject to the standards applicable to cancellations under the statute. Slip opinion at 12, quoting *Safeco*

*renewed* after expiration of the policy term, because no one paid the premium required to buy Safeco homeowner's insurance coverage for a new policy term.[13] *Before* Johnson's policy was to expire, Safeco gave Johnson six weeks' notice prior to the expiration date, so he would know a premium had to be paid to obtain coverage for a new policy term.

*After* the policy expired, Safeco gave Johnson a second notice and a second chance – advising that his policy had not been renewed and providing explicit directions about what he could do to make sure his coverage would be renewed and reinstated retroactive to the original expiration date. Safeco gave Johnson just short of a full month thereafter to do something to ensure coverage would be reinstated. By his own admission, Johnson did nothing because he "expected" the problem would take care of itself.

In fact, Mr. Johnson's problem *did* take care of itself. Once it was clear Mr. Johnson would do nothing to reinstate and *renew* the policy, Safeco notified his mortgage company, Taylor Bean, that it would *cancel* the coverage the Safeco policy still extended to the lienholder, despite the insured's failure to renew; and Safeco did so in full compliance with the

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*Insurance Co. v. Irish*, 37 Wn. App. 554, 557-58, 681 P.2d 1294 (1984). Nevertheless, Safeco gave Mr. Johnson more than the minimum notice required to *cancel* his policy under the cancellation statute – he was notified six weeks before the renewal date; and then provided four weeks to reinstate the policy before the expiration of the policy became final.

[13] *Id.*

cancellation statute and the policy provisions in which Safeco stated the procedure it would follow to terminate a lienholder's interest.

After Taylor Bean learned the Safeco policy had been non-renewed, it placed coverage on behalf of Mr. Johnson that extended not only to Taylor Bean's own interest as a lienholder. Taylor Bean obtained coverage to protect Mr. Johnson's equity in the home, as well as his personal property, and even his additional living expenses.

There is no "substantial public interest" in Mr. Johnson's claims against Safeco, or in any aspect of his lawsuit. Between them, Safeco and Mount Vernon saved Mr. Johnson's bacon, pure and simple. In return, Mr. Johnson admittedly fabricated documents and defrauded Mount Vernon because he believed Mount Vernon should pay him more money – and then he sued Mount Vernon and Safeco for alleged "bad faith."

Not only is there no "substantial public interest" in the issues Mr. Johnson has asked this Court to review, there is also no other justification for Supreme Court review of the issues in this case. Johnson's Petition asserts, with virtually no explanation, that Safeco violated RCW 48.18.290; and that Safeco did not comply with the provisions of the insurance policy and unspecified "Washington law." In fact, as Division I's opinion explains in exquisite detail, Safeco did comply with the provisions of the policy; its non-

renewal of the policy was not subject to RCW 48.18.290; and even if RCW 48.18.290 *did* apply, Safeco complied with the statute anyway.[14]

Division I's decision does not create a conflict among the Divisions of the Court of Appeals; it does not conflict with authorities from this Court; it does not raise any issues under the state or federal constitutions; and it raises no issues of "substantial public interest."

Johnson's Petition fails to establish – or even to directly address in a meaningful way -- any of the criteria for Supreme Court review under RAP 13.4. The Petition should be denied.

### *b. Notice to the lienholder was not required to accomplish effective notice of non-renewal to Mr. Johnson.*

Johnson argues that when an insurer is aware that a policyholder has made arrangements to have a mortgagee pay his homeowner's insurance premium, the insurer should be required to provide prior notice of non-renewal to the *mortgagee* as a condition precedent to effective notice to the *policyholder/homeowner*.[15] He cites no authority for this novel proposition – and there is none. In fact, the reported Washington decisions are directly to the contrary.[16]

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[14] Slip opinion at 9-15; Order Denying Motion for Reconsideration and Amending Opinion at 1-2.

[15] Petition at 17-20.

[16] Slip opinion at 15; *Wisniewski v. State Farm General insurance Co.*, 25 Wn. App. 766, 609 P.2d 456 (1980) (insurer sent notice of cancellation to policyholders, but not to lienholder; notice effectively cancelled coverage as to policyholders while lienholder's interest remained unaffected).

Johnson's Petition does not even acknowledge the contrary authorities exist, much less attempt to distinguish them, or to argue they are ill-founded and should be modified. Indeed, these authorities have stood the test of time, and the facts of this case certainly do not demonstrate a need to modify them.

Nor is there support for Johnson's Petition in the wording of the Safeco policy, which protects the separate interest of the *lienholder*, even when coverage is not available to the *policyholder*, whether because the policyholder has failed to renew,[17] or because an alleged agent of the policyholder has directed the insurer to cancel the policy[18] – or because the policyholder has forfeited coverage by committing fraud.[19]

The policy provisions for notice to a lienholder are separate from the notice provisions that apply to the policyholder and are contained in the policy's "Mortgage Clause," which addresses not only notice of cancellation, but other rights that are extended to a lienholder, even when the policyholder has forfeited coverage for himself. Johnson's argument that the "Mortgage

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[17] *See, Safeco Insurance Co. v. Irish*, 37 Wn. App. at 557-58.

[18] *See, Olivine Corporation v. United Capitol Insurance Company*, 147 Wn.2d 148, 162, 52 P.3d 494 (2002) (separate notice required as to each party with an interest in the policy; putative agent of the insured directed the insurer to cancel the policy – agency not shown and thus cancellation not effective as to policyholder unless policyholder was given statutory notice of cancellation and opportunity to keep policy in force).

[19] *See, Mutual of Enumclaw v. Cox,* 110 Wn.2d 643, 757 P.2d 499 (1988) (insured's misrepresentation in presentation of claim forfeited coverage and extracontractual claims; and also could require insured to return insurance benefits previously paid for the claim).

Clause" is intended to protect *the policyholder* flies in the face of the plain meaning of the policy wording, which ensures that *the lienholder* will be protected -- even if the policyholder himself is not entitled to coverage under the policy:

> **12. Mortgage Clause.**
>
> The word "mortgagee" includes trustee. If a mortgagee is named in this policy, any loss payable under Coverage A or B shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.
>
> If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee: ...
>
> **b.** pays any premium due under this policy on demand if you have neglected to pay the premium; ...
>
> Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee. If the policy is canceled or not renewed by us, the mortgagee shall be notified at least 20 days before the date of cancellation or nonrenewal takes effect.[20]

Johnson's Petition misleadingly quotes a single sentence from this "Mortgage Clause" – and boldly asserts that "failure to notify Taylor Bean breached the terms of the insurance policy with Safeco."[21] The full text of the Mortgage Clause makes it plain the policy expressly provides that the policy extends coverage to lienholders that is independent from the coverage extended to the policyholder; and that the policyholder's coverage may be non-renewed, cancelled, or denied without affecting the protection afforded

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[20] CP 50.

[21] Petition at 3-4.

to the lienholder. The policy, the cases and the cancellation statute all have been read to permit termination of the insured's interest without affecting the lienholder's interest – and the other way around.

Furthermore, the facts in our case do not support Johnson's theory that concurrent notice to the lienholder and the policyholder is necessary to "provide a remedy" to a policyholder who relies on his mortgagee to pay homeowner's insurance premiums. [22] When Mr. Johnson's mortgagee failed to pay the renewal premium when it fell due on November 17, 2008, Safeco sent Mr. Johnson a very clear notice, days later, that told him that his mortgagee had *not* paid the premium; and Safeco urged Johnson to contact the mortgagee to make sure the premium was paid – or simply pay the premium himself and sort it out with the mortgagee later.

From that moment on, Johnson had ample notice and opportunity to ensure his home was covered under the Safeco homeowner's policy. The notice gave Mr. Johnson a full month to reinstate and backdate coverage -- as though the policy had never expired. It gave Mr. Johnson telephone numbers to call to inquire into the status of his policy. It counseled Mr. Johnson to call his insurance agent to make sure his coverage would be reinstated and told Mr. Johnson that he could pay the premium by mail or by telephone – even using a credit card if he wished. *Most importantly, the*

[22] Petition at 17.

*notice urged Mr. Johnson to promptly contact his mortgagee if he had been relying on the mortgagee to make periodic premium payments.*

Mr. Johnson did none of these things – and now argues that he did not receive "adequate notice." In fact, he received notice that served all of the essential functions of a notice of non-renewal or cancellation. The purpose of the notice requirement is to enable an insured to take appropriate action in the face of an impending or actual lapse in coverage. This allows the insured to make the premium payments in default, obtain other insurance, or prepare to proceed without insurance.[23]

But notice to the policyholder can only serve its essential purpose if the policyholder takes the trouble to *read and respond* to the notice that he receives. The notices that Safeco gave to Mr. Johnson failed because Mr. Johnson ignored those notices – not because the notices were untimely, unclear or insufficient in any way.

The notice procedure that Safeco used complied with the plain terms of the policy; the cancellation statute, RCW 48.18.290; and common sense. The policy separately grants contract rights to the policyholder and to the lienholder, who have different interests in the insurance policy. The lienholder has no interest in the homeowner's equity in the home, nor any interest in insuring the homeowner's personal property, or his living expenses in the event of a loss. The lienholder is interested in preservation

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[23] *Olivine Corporation v. United Capitol Insurance Company*, 147 Wn.2d 148, 162, 52 P.3d 494 (2002).

of the collateral for the mortgage. The homeowner, on the other hand, has a limited interest in the lienholder's rights, particularly under a non-recourse mortgage. Under the policy and the cancellation statute, each is given notice so each will have the ability – *and the responsibility* -- to protect his own interest in the insurance coverage. Notice to the policyholder is effective without notice to the lienholder.[24]

In our own case, the notice that Safeco sent to Mr. Johnson gave him ample opportunity to protect his own interest in the insurance policy – including the insurance for the contents of his house and for the cost of alternate housing in the event of a major loss – coverage that was of no importance to the lienholder whatsoever. In the end, the lienholder procured all of that coverage for Mr. Johnson in any event.

Mr. Johnson simply did not avail himself of the notice and opportunity that he received. That is why Mr. Johnson was no longer a Safeco insured at the time of the fire on January 25, 2009 – not because of any defect in the timely and unequivocal notices that Safeco provided to Mr. Johnson.

6. ***Conclusion***

The trial court and the Court of Appeals, both in its Opinion and its Order Denying Reconsideration, correctly concluded that Safeco properly

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[24] *Wisniewski v. State Farm General Insurance Company*, 25 Wn. App. 766, 609 P.2d 456 (1980). Although Johnson attempted to distinguish *Wisniewski* on reconsideration in Division I, his Petition does not even cite the decision, much less argue this Court should overrule or modify the *Wisniewski* holding.

notified Mr. Johnson of the impending expiration of his homeowners insurance policy and gave him adequate notice and opportunity to reinstate that policy when the premium was not paid on time. Through his own neglect, and failure to take steps to ensure that his Safeco coverage would remain in place, he was no longer a Safeco insured when a fire damaged his house on January 25, 2009.

Luckily for Mr. Johnson, his mortgagee did take steps to protect his interests as well as its own security interest in the property. As a result, Mr. Johnson had coverage in place for his equity in the real property, for his personal property and for his additional living expenses. Unfortunately, Mr. Johnson may have forfeited that coverage because he chose to lie in an effort to bulk up his claim. That, however, does not change the simple fact Safeco did not insure Mr. Johnson on the date of loss, as a matter of law.

The Court should deny Johnson's Petition for Review.

DATED and respectfully submitted this 24th day of February, 2014.

*s/ David M. Jacobi*

*Appellate Counsel for Respondent*
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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the below date I electronically filed and caused to be served the attached document as follows:

***VIA E-MAIL AND U.S. MAIL TO ALL PARTIES:***

***Plaintiff, appellant and petitioner Joel Johnson:***

JOEL B. HANSON, ATTORNEY AT LAW, PLLC
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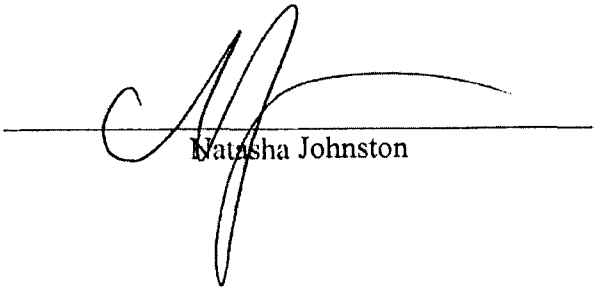
DATED at Seattle, Washington this 24th day of February, 2014.



Natasha Johnston

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**Attachments:** Safeco Answer to Petition for Review.PDF

Case Name: Johnson v. Safeco

Cause No.: 89845-6

Attorney Filing: David Jacobi
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Document: Safeco's Answer to Petition for Review

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