**No. 91301-3**

COA No. 31521-5-III

# SUPREME COURT OF THE STATE OF WASHINGTON

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LANDAMERICA TRANSNATION d.b.a. TRANSNATION TITLE INSURANCE COMPANY, a corporation conducting business in Washington,

Respondent,

v.

RICHARD J. MILLIES, as trustee of the Richard J. Millies' Trust, and SUSAN P. MILLIES, as trustee of the Susan P. Millies' Trust,

Petitioners,

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# ANSWER TO PETITION FOR REVIEW

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

PAGE(s)

**CASES**:



**OTHER AUTHORITIES:**



**STATUTES AND COURT RULES**:

## I. IDENTITY OF RESPONDENT

LandAmerica Transnation ("Petitioner" or "LandAmerica"), by and through its counsel of record, files this Answer under RAP 13.4(d) and respectfully requests this Court deny review of the January 15, 2015 unpublished Court of Appeals decision in *Millies, v. LandAmerica Transnation,* No. 31521-5-III, 2015 WL 213681 (Jan. 15, 2015). The Court of Appeals decision affirmed the trial court's post-trial rulings, upholding a unanimous jury verdict in favor of LandAmerica.

## II. COURT OF APPEALS DECISION

The Court of Appeals correcly decided each of Petitioners' post-trial motions in favor of LandAmerica, holding (1) Petitioners failed to object to Jury Instruction Number 7 during trial and therefore waived argument against its inclusion; (2) Petitioners waived making a motion for judgment as a matter of law since they failed to move before submission of the case to the jury; and (3) Petitioners are not entitled to have a new trial for any of the alleged CR 59 deficiencies named on appeal. Finally, the Court of Appeals recognized since Petitioners neither added a cause of action in their Complaint nor made an argument during trial for recovery *pursuant to* their claim of loss under the title insurance policy, the Court is without power now to grant that relief. For these reasons, this Court should deny review of this matter.

## III. STATEMENT OF THE CASE

On or about August 8, 2006, the Millies purchased (the "Sale") the real property commonly known as 4629 East Deer Lake Road, Loon Lake, Washington (the "Property"). **Exh. 133**. LandAmerica issued an owner's title policy to the Millies under Number A52-0110790 on or about the same date (the "Policy"). *Id.*

On March 30, 2007, LandAmerica received a letter from Columbia Title Company in Stevens County indicating the Millies were concerned about a roadway and easement (the "Bisecting Road") on their property they claimed to be unaware of at the time of purchase. **Exh. 202**. No claim was actually filed at that time. **Supplemental Verbatim Transcript of Proceedings ("STP") 190.**

As a courtesy, LandAmerica claims representative Donna LaRocca ("LaRocca") sent an email to the Milles on April 24, 2007, to make sure they knew the process for filing a claim. **Exh. 203**. On July 19, 2007, the Millies formally made a claim on the Policy, alleging an easement of record was missed in the Sale and coverage should be provided under the Policy. **Exh. 204**. The July 19 letter asked for damages of $125,000.00, 50% of the purchase price of the Property. *Id.*

Also on July 19, 2007, LaRocca sent an email to the Millies acknowledging receipt of the claim letter, and providing assurances that a

coverage decision and options for resolution would be sent within the 30 day time limit imposed under the insurance rules. **Exh. 205**. On August 17, 2007, LaRocca sent a follow up letter to the Millies, indicating the claim was covered under the policy. **Exh. 206**. The letter further acknowledged that the Millies were demanding $125,000.00 in damages. *Id.* The letter referenced Section 7(a) in the Policy to establish a method to calculate a potential loss, by comparing the value of the Property as insured to the value of the Property subject to the alleged defect. *Id.* In that regard, LandAmerica agreed in that initial letter to hire an MAI appraiser to conduct a formal dimunition-in-value ("DIV") appraisal. *Id.*

LaRocca initially contacted the MAI appraisal firm Auble, Joliquer and Gentry ("AJG") in Spokane, Washington on or about the beginning of September 2007. **Original Verbatim Transcript of Proceedings ("TP") 196**. A formal letter was mailed to AJG on September 18, 2007, asking for the appraisal, and was followed by the signed formal engagement letter from AJG on the same day. **Exh. 207**. A site visit was conducted on October 12, 2007, by AJG, and a report completed on November 9, 2007 (the "AJG Appraisal"). **Exh. 134**. The AJG Appraisal concluded the DIV after the easement was $25,000.00. *Id.*

On November 13, 2007, LaRocca sent a letter to the Millies extending an offer for the full amount of the DIV as expressed by the AJG

Appraisal, $25,000.00. **Exh. 210**. The letter included the AJG Appraisal and asked for an initial response by the first week of December 2007. *Id.* Petitioners responded to the offer three (3) months later on February 4, 2008. **Exh. 211**. In that letter, the Millies rejected the offer of $25,000.00 and again alleged the DIV was $125,000.00, but make a reduced demand for $100,000.00. *Id.* No appraisal of any kind, formal or informal, was attached to the February 2008 letter suggesting a professional basis for the claimed loss in value. *Id.* The letter referenced an opinion of an appraiser, Skip Sherwood, but no report from Mr. Sherwood was included. *Id.* Mr. Sherwood never completed a professional appraisal report for a potential DIV in this matter. **STP 20; TP 208**.

On March 7, 2008, LaRocca sent the Millies February 2008 letter to AJG so the professional MAI could review the claims made by the Millies in relation to the AJG Appraisal. **Exh. 213**. She asked for a response by March 21, 2008. *Id.* AJG issued a supplemental report on April 2, 2008, to LandAmerica indicating no change in the initial AJG Appraisal was warranted based on the claims made in the Millies' February 2008 letter. **Exh. 215**.

On May 13, 2008, LandAmerica sent the response letter to the Millies by email and hard copy, again offering $25,000.00 on the Policy to settle the claim. **Exh. 216**. Petitioners responded four (4) months later on

September 25, 2008, still demanding $100,000.00 for the alleged DIV loss. **Exh. 217**. A Summons and Complaint was attached for suit against LandAmerica for the present lawsuit. *Id.*

After the September 25, 2008, letter from the Millies communications between the parties halted while LandAmerica waited for service and filing of the summons and lawsuit. **TP 208**. On June 30, 2009, the Millies sent written notice to LandAmerica of their intent to file an action under RCW 48.30.015(8)(a). **Exh. 218**. LandAmerica claims representative Tabitha Campbell ("Campbell") responded less than a week later on July 7, 2009. **Exh. 219**. On July 20, 2009, Campbell sent an email to the Millies following up on the prior letter, and again offering to resolve the matter with a DIV payment. **Exh. 220**.

When it was still unclear whether the lawsuit was going to be filed or not, LandAmerica tendered a check to the Petitioners for $25,000.00 on July 31, 2009. **Exh. 221**. The Millies returned the check to LandAmerica on or about August 4, 2009. Petitioners filed the underlying lawsuit on August 11, 2009. **CP 1**.

LandAmerica filed a motion for partial summary judgment on December 3, 2012, solely on the negligence claim and alleged violations of the Consumer Protection Act ("CPA") and Insurance Fair Conduct Act

("IFCA"). **CP 520**. The trial court denied the motion on January 22, 2013.

A jury trial began on January 28, 2013. At the inception of the trial, LandAmerica moved to bifurcate the trial, so the jury might first be presented with the breach of contract claim, and then presented with the remaining causes of action. **STP 4-5**. Petitioners objected to the bifurcation of the trial, and the trial court denied the motion. *Id.*

The trial lasted four (4) days, and the jury verdict was for LandAmerica, finding that no cause of action was sustained by the admitted evidence. **CP 498-99**. No damages were awarded to the Petitioners. *Id.* Petitioners moved for a New Trial and for a Judgment as a Matter of Law on February 7, 2013, a week after the verdict. **CP 509, 511**. The trial court denied the motions. **CP 532**. The Petitioners filed a Second Amended Notice of Appeal on May 16, 2013. **CP 540**. The Court of Appeals issued a decision (the "Opinion") on January 15, 2015, affirming the verdict in favor of LandAmerica and denying Petitioners' post-trial motions. Petitioners filed a Petition for review to this Court on February 1, 2015 (the "Petition").

## IV. ARGUMENT

Petitioners have asked this Court to reverse the Court of Appeals' decision because they believe the jury incorrectly decided the asserted

cause of action for breach of contract. Although other issues are presented for review to this Court in Petitioners' brief, each has as its fulcrum the breach of contract claim. However, Petitioners' arguments each fail because they have repeatedly misunderstood the difference between the accepted title insurance claim and accompanying tender of $25,000.00 pursuant to the policy, and a breach of contract cause of action in a direct lawsuit against the insurance company. Here, the error was not in the jury's deliberations or verdict, but rather Petitioners' legal theory of the case and unpreserved arguments at trial.

### A. The Petition Should Be Denied For Failing To Meet The Qualifications Of RAP 13.4(b)

Under RAP 13.4(b), 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 another 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.

Petitioners don't even mention RAP 13.4(b) in their Petition, and only 13.4(b)(1) seems to be alluded to as the basis underpinning the appeal to this Court. But, as argued below the Opinion in this case does *not* conflict

with any existing Supreme Court or Court of Appeals decision.

### B. Petitioners Waived Objection To Jury Instruction Number 7 Because They Failed to Object During Trial

Since trial, Petitioners have fashioned numerous arguments to create the possibility their objection was somehow preserved. Nonetheless, the record remains absolutely void of objection by Plaintiffs on what they now claim is the biggest error in the case – the inclusion of Instruction Number 7 with an affirmative defense. Petitioners now argue only three possible moments where claim an objection was made to the disputed instruction at trial: (1) a blanket objection to all instructions not given; (2) the proposal of alternate instruction based on WPI 300.02 instead of WPI 300.03; and (3) the alleged "express request" that the jury be instructed separately on the breach of contract and other claims. None of these moments were sufficient to constitute an "omnipresent" objection (Petitioners' Brief, at 10, footnote), as addressed below.

#### i. Petitioners Failed to Make A General Objection To All Instructions Not Given By The Court

Petitioners now argue (for the first time) they meant to take exception on the record to "all of their proposed instructions" not given to the jury. Petitioners' Brief, at 8-9. This new argument was born from the Court of Appeals' opinion itself, and not from anything that happened in the lower court. In its Opinion, the Court of Appeals drew a mistaken

conclusion that, while the parties made a record of objections and exceptions to proposed instructions on the last day of trial (the day following the evening deliberation off the record), Petitioners objected to "all of their proposed instructions not given by the court". COA Opinion, at 15. However, the exception referred to by the Court of Appeals in the Opinion at page 15 was in fact *not* taken by Petitioners at all. Rather, when read in full context, the trial transcript shows what Petitioners were taking exception to that morning was actually the trial court's decision not to include citations from five (5) cases containing language different from the WPI that Petitioners wanted to send to the jury related to their *bad faith cause of action.* The transcript reads as follows:

> The Court: ... [n]ow, as far as the instructions not given, Mr. Boswell, did you want to say anything more on those? There were – particularly the ones that had *case citations*.
>
> Mr. Boswell: Your Honor, I would, for the record, except to all those that were not given based on the *decision of law* –
>
> The Court: Okay.
>
> Mr. Boswell: *--as cited.*
>
> The Court: And your basic rationale or argument would be *within those cases*, so to speak.
>
> Mr. Boswell: Yeah. My rationale was that I think the articulation of the law in the decisions is more plain on occasion and helpful to the jury than some of the WPI's.
>
> The Court: Okay.
>
> Mr. Boswell: I understand them better; I think the jury would too. And I think they add – gloss and meaning and flesh to the – bare statute, or the bare regulatory scheme. And that's what court decisions are designed to

do. Interpret and construe them.
The Court: All right. Mr. Womac?

**TR 345-347** (emphasis added)

After that, counsel for LandAmerica objected at length to language from the five cases proposed the previous evening by Petitioners' counsel as appropriate for jury instructions. The trial court rejected use of the language from the cases in the final instructions, finding "...the enhanced language, if you will, or enhanced *bad faith language* – again, I couldn't find any authority where that was to be given in a case like this, consistent with the WPI, which didn't do that, either." *Id.* (emphasis added)

Amazingly, counsel for Petitioners has either conveniently forgotten or willfully not disclosed the full context of the above record, and instead uses the Court of Appeals' unknowing interpretation as a sword in their own case to preserve the missing objection to the instruction. Without a blanket objection by Petitioners to "all instructions not given", there is literally no objection (or alleged objection) to Instruction Number 7 on the record other than the Petitioners alternate proposed WPI for breach of contract.

Even if the Court concludes Petitioners made a general objection to all instructions not given, the facts of this case do not demonstrate sufficient notice to the trial judge of what arguments were being made.

The tenet of both cases relied upon by Petitioners, *Washburn* and *Falk*, is that the trial court judge was apprised of the nature of the objection at issue. *See* Petitioners' Brief, *Washburn v. City of Federal Way*, 178 Wash.2d 732, 310 P.3d 1275 (2013), *Falk v. Keene Corp.*, 113 Wash.2d 645, 782 P.2d 974 (1989); *and see infra,* argument at **ii.** for discussion of CR 51(f). These cases do not in any way conflict with the Court of Appeals holding in the present case.

The *Washburn* opinion held the trial court "manifested an understanding of the [objecting party's] position during the conference to discuss jury instructions," and the City *formally objected on the record* to the specific instruction that was not given by the court. *Washburn v. City of Federal Way*, *supra*, at 748. In *Falk*, the record contained a *specific objection* to failure to give a particular instruction concerning strict liability on design defect. This Court found sufficient argument on the record about which standard applied before and after the Tort Reform Act, and the Court made clear its opinion that "...the trial court could not have been aware of the nature of an objection never made." *Id.*, at 659. Such is the case with the present lawsuit. The facts of this case are absent such specific debate or record about Jury Instruction Number 7. There is no conflict with these cases under RAP 13.4(b)(1).

### ii. Petitioners' Proposed Alternate Jury Instruction Did Not Sufficiently Apprise The Trial Court Of Their Objection

As the Court of Appeals held, the mere proposal of an alternate jury instruction is "useless" since when unaccompanied by reference or context it is wholly insufficient to apprise the trial judge of the actual objection. COA Opinion, at 20. CR 51(f) provides when objecting to a particular jury instruction or refusal to give a requested instruction, "[c]ounsel shall state distinctly the matter to which he objects and the grounds of his objection specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made." Wash. Super. Ct. Civ. R. 51.

The primary purpose of CR 51(f) is "to clarify ... the exact points of law and reasons upon which counsel argues the court is committing error about a particular instruction." *Trueax v. Ernst Home Ctr., Inc.*, 124 Wash.2d 334, 339, 878 P.2d 1208, 1210-11 (1994). Although even "[c]larity of argument is not determinative", a court needs some objection on the record to the instruction or it has no starting place from which to understand the nature of the disagreement. *Id.,* at 340. "The pertinent inquiry on review is whether the exception was *sufficient to apprise the trial judge of the nature and substance of the objection.*" *Crossen v Skagit Cty,* 100 Wash.2d 355, 358, 669 P.2d 1244 (1983) (emphasis added).

Really, the trial court in this instance had even *less* information than the *Trueax* court upon which to figure out the nature of Petitioners' objection to Jury Instruction Number 7. None of Petitioners' arguments made on appeal, concerning why the affirmative defense and use of WPI 300.03 prejudiced their case, were made on the record in trial. Having missed the opportunity to make a calculated and clear objection on the record to the instruction that allegedly undermines their entire case, Petitioners cannot now rely on something as abstract as simply proposing an alternate instruction to preserve their objection.

### iii. The Jury Was Instructed Separately On Breach Of Contract And Remaining Causes Of Action

The Court of Appeals rightfully discarded Petitioners' claim that objection to Jury Instruction Number 7 was preserved by its alleged request that the jury be instructed separately on breach of contract and tort claims. COA Opinion, at 22. It was never disputed (nor is it now) that the jury *should* have been instructed separately on the causes of action for breach of contract and bad faith. They were instructed separately.

Petitioners go as far as to argue now (for the first time) that LandAmerica's pre-trial motion to bifurcate trial into breach of contract and remaining claims somehow benefits their own case on appeal! Such a claim is totally illogical, since Petitioners staunchly objected to the

bifurcation of the trial, arguing their ongoing misguided theory that the contract claims are inseparable from the other claims. **STP 4-5**. The motion was denied much to Petitioners content at the time. How the trial court was possibly made aware that Petitioners' extreme *resistance* to bifurcation constitutes *support* of instructing the jury separately on breach of contract claims is very confusing to LandAmerica. This argument cannot reasonably support an objection to Instruction Number 7, and should not upset the underlying decisions.

### C. The Motion For A New Trial Was Properly Denied

Petitioners' motion for a new trial on appeal was based on numerous CR 59 grounds, but are limited in the Petition to CR 59(4),(6) and (7). Although Petitioners try to "reserve argument" on all the CR 59 provisions, no argument is made in the Petition supporting such reservation without briefing. Petition, at 11, Footnote 6.

No facts or law as argued by Petitioners shows the Court of Appeals "failed to undertake an independent review of the record to determine whether the verdict was contrary to the evidence". Petition, at 13. To the contrary, the COA Opinion thoroughly addresses the issue. COA Opinion, 30-33. At first, the Court approached the case from the perspective of the given instructions, including the tender of $25,000.00 to the Millies concluding "[v]iewed in this light, sufficient evidence supports

the jury's verdict." COA Opinion, at 30. Then the Court of Appeals undertakes an appropriate effort to harmonize Petitioners' problems with Jury Instruction Number 7 with the contention that the evidence does not support the verdict. Because Petitioners' entire case hinges on the perceived problems with Instruction 7, both procedural and evidentiary, the Court of Appeals was right to look to other jurisdictions in support of the holding that "jury instructions not objected to become the law of the case. COA Opinion, at 31, *citing State v. Salas*, 127 Wash.2d 173, 182, 897 P.2d 1246 (1995). Once the case goes to the jury for deliberations, the admitted evidence can't be viewed outside the context of the instructions for purposes of whether to grant a CR 59 motion for new trial. The Opinion concludes that based on the given jury instructions "...the jury was free to award no damages." COA Opinion, at 33. It is impossible to see how, given the above analysis and conclusions, the Court of Appeals "failed to undertake" a review of the trial record in its opinion.

### i. The Admitted Evidence Supports The Jury's Verdict

The jury was well-informed in this case of the facts and law concerning each of Petitioners' causes of action, and properly decided the verdict. Here, the jury deliberated the following admitted evidence

relating to the enumerated causes of action against LandAmerica:

> (1) Petitioners tendered a claim to LandAmerica for a non-disclosed easement on their Property on July 19, 2007. **Exh. 204.**
> (2) LandAmerica responded the same day, and then accepted the claim less than one (1) month later on August 17, 2007. **Exh. 205, 206.**
> (3) LandAmerica claims representative Donna LaRocca hired an appraiser, AJG, on September 18, 2007 to conduct an appraisal to determine the DIV to Petitioners' Property because of the Bisecting Road. She advised the Petitioners of this process. **Exh. 207.**
> (4) The AJG Appraisal indicated a DIV of $25,000.00 because of the Bisecting Road. **Exh. 209.**
> (5) Ms. LaRocca offered $25,000.00 to Petitioners on November 13, 2007. **Exh. 210.**
> (6) Petitioners did not obtain their own professional appraisal until after the lawsuit against LandAmerica was already filed. **Exh. 223.** Petitioners' initial demand for $125,000.00 was based on an informal opinion letter by an appraiser who never submitted an appraisal in the case. **Exh. 211.** The opinion letter was never sent to LandAmerica prior to the lawsuit being filed. **STP 20; TP 208.**
> (7) LaRocca would have offered whatever DIV was determined by the AJG Appraisal, and relied on the appraisal for a value of loss pursuant to paragraph 7 of the Policy. **TP 200.** There was no prior relationship between LandAmerica and AJG. **TP 196.**

It is by no means unreasonable under this evidence that the jury here concluded there was no breach of contract.

The Court of Appeals decided correctly that "[s]ince the jury determined Transnation breached no duty, the jury never deliberated on the amount of damages." Opinion, at 29. At trial the jury was not

presented in the instructions or on the verdict form the question of what damages, if any, the Petitioners might be entitled *pursuant to* the Policy (even if they found no breach). **CP 498-99**. Nor did Petitioners offer an instruction or alternate verdict form that included such an inquiry. **TP 365**. Instead, it was always Petitioners' theory of the case that the jury would automatically find a breach of contract (or that it was already admitted), and thus have to award damages for the breach. The rules for properly objecting to special verdict forms are, by analogy, governed by CR 51(f), which governs jury instructions. *Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha,* 126 Wash. 2d 50, 63, 882 P.2d 703 (1994). If a party is dissatisfied with a special verdict form, then that party has a duty to propose an appropriate alternative. *Wickswa v. Safeco Ins. Co.*, 78 Wash. App. 958, 966-67, 904 P.2d 767 (1995).

Petitioners erroneously claim the Opinion in this case conflicts with this Court's decisions in *Palmer v. Jensen* and *Hills v King*, and Division 1's decision in *Krivanek v. Fibreboard Corp.*. Petition, at 12-13, *citing Palmer v. Jensen,* 132 Wash.2d 193, 937 P.2d 597 (1997), *Hills v King,* 66 Wash.2d 738, 404 P.2d 997 (1965), *Krivanek v. Fibreboard Corp.*, 72 Wash.App 632, 865 P.2d 527 (1993). These decisions focus solely on a discussion of general versus special damages in personal injury and product liability actions, and not at all a determination of loss under a

title insurance policy. In *Palmer*, it was undisputed the injured plaintiff suffered pain and suffering from months of treatment and hospitalizations, yet the jury just didn't award general damages for unclear and unstated reasons. In *Krivanek* and *Hills*, the special damages encompassed medical expenses and lost wages, and were actually undisputed at trial. The jury had no apparent obligation under the jury instructions in these cases to evaluate a contract (i.e. insurance policy) to see whether a particular calculation for loss was contemplated by the parties. Since there is no conflict with these decisions, there remains no basis under RAP 13.4(b) for this Petition to survive.

### D. Petitioner's Motion For Judgment As A Matter Of Law Was Untimely and Unfounded

Initially, Petitioners failed to bring their motion for judgment as a matter of law before submission of the case to the jury. The first time the motion was raised was post-trial.[1] Petitioners dismiss the Court of Appeals decision out of hand concerning this argument, claiming "[n]o Supreme Court decision supports this conclusion." Petition, at 14. But, the applicable rule could not be clearer. CR 50(a)(2) states "[a] motion for judgment as a matter of law may be made at any time *before submission of the case to the jury.*" (emphasis added). Wash. Super. Ct. Civ. R. 50,

[1] Although LandAmerica did not raise the argument of untimeliness in its Respondent Brief, the Court of Appeals considered it nonetheless. COA Opinion, at 25.

COA Opinion, at 23. CR 50(b) further enunciates a moving party "*may renew* its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment." *Id.* (emphasis added). The plain language of the rule is not confusing or misleading at all, unequivocally stating that a motion is to be made *before* submission of the case to a jury, and can only be renewed thereafter. Petitioners failed to do this, thus waiving the right to bring the motion.

Lastly, the Opinion dispels the idea that a party can argue the "may" in the rule makes the language non-mandatory. *Id.*, *citing Hanks v. Grace*, 167 Wn.App 542, 273 P.3d 1029 (2012). It is unclear what challenge Petitioners level at the rule's clear language, since they just launch into an argument that despite the sound verdict, their breach of contract cause of action "remained". Petition, at 14-15. This argument again mistakenly confuses the breach of contract cause of action in this litigation with the underlying claim of loss under the title insurance policy. Following the post-trial motions, the trial judge had the parties brief the issue of whether the "value in dimunition claim" survived the jury verdict. **TP 349**. Only Petitioners thought they were addressing the breach of contract cause of action at that point; everybody else understood that the breach of contract was decided by the jury, and the question by the trial judge was whether the insurance claim remained.

Petitioners incorrectly cite the Opinion claiming the Court of Appeals concluded "[t]he questions of whether the contract damages are still available to the Millies 'is not before us, and we deliver no ruling on the question'". Petition, at 15. In this telling instance of twisted language, Petitioners conveniently inserted the two words "contract damages" into the declaration while removing "claim of loss" as originally penned by the Court of Appeals. Opinion, at 34. The only explanation for this butchering of the Opinion is Petitioners repeated blurring of the distinction between claim of loss and cause of action. At a minimum, the argument fails to support any argument in favor of granting a motion for judgment as a matter of law.

## V. CONCLUSION

Petitioners have failed to show review is appropriate under RAP 13.4(b), and the record and applicable law soundly demonstrate the Court of Appeals correctly decided all the issues presented on appeal. Based on the above arguments, LandAmerica respectfully requests the Court deny review in this case.

Respectfully submitted this 3rd day of April, 2015.

Henry Hamilton WSBA #16301 for

Daniel A. Womac, WSBA #36394
Attorney for Respondent

## CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2015, I caused to be served the foregoing document entitled **ANSWER TO PETITION FOR REVIEW** on the following individuals in the manner indicated:

| | |
|---|---|
| David P. Boswell, WSBA #21475<br>BOSWELL LAW FIRM, P.S.<br>505 West Riverside<br>Fernwell Building, Suite 500<br>Spokane, WA 99201<br>(509) 252-5088<br>boslaw@fernwell.net<br>***Attorney for Appellants*** | Legal Messenger<br>Facsimile<br>Hand Delivery<br>**X FedEx**<br>**X E-mail** |

**SIGNED** this 3th day of April, 2015 at Seattle, Washington.

Nancy Newell, Paralegal

## OFFICE RECEPTIONIST, CLERK

**To:** Newell, Nancy
**Cc:** Womac, Daniel; Larkin, Tom
**Subject:** RE: Answer to Petition for Review filed By Daniel Womac, WSBA # 36394, Attorney for Respondents

Received 4-3-2015

Supreme Court Clerk's Office

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**Cc:** Womac, Daniel; Larkin, Tom
**Subject:** Answer to Petition for Review filed By Daniel Womac, WSBA # 36394, Attorney for Respondents

Good morning,

Attached please find Answer to Petition for Review filed in the below case information, filed by Daniel A. Womac, Attorney for Respondents LandAmerica Transnation. Phone number 206-224-6006, email address is Daniel.Womac@fnf.com, WSBA #36394. The attached is filed in Case No. 91301-3.

LANDAMERICA TRANSNATION d.b.a TRANSNATION
TITLE INSURANCE COMPANY, a corporation
conducting business in Washington,

Respondent,

v.

RICHARD J. MILLIES, as trustee of the Richard J. Millies' Trust,
and SUSAN P. MILLIES, as trustee of the Susan P. Millies' Trust,

Petitioners.

Service will be made on other party as subscribed in the Certificate of Service.

Please let me know if you need anything else.

Thank you,

*Nancy Newell*
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*The Law Division of Alamo Title Insurance Co, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co. and Fidelity National Title Insurance Co.*