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NO. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

CAUSE NO. 57181-8-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

AMERICAN BEST FOOD, INC., a Washington corporation d/b/a CAFÉ
ARIZONA; and MYUNG CHOL SEO and HYUN HEUI SEO-JEONG,

Plaintiffs/Appellants,

v.

ALEA LONDON, LTD., a foreign corporation,

Defendant/Respondent.

CAFÉ ARIZONA'S ANSWER
TO ALEA'S PETITION FOR REVIEW

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I. INTRODUCTION

In its published opinion *American Best Food, Inc. v. Alea London Ltd*, ___ Wn.App. ___, 158 P.3d 119 (2007) (Dwyer, J.) the Court of Appeals, Division I, applied Washington's well established rule regarding the duty to defend and held Alea London Ltd. ("Alea"), breached its duty to defend when (1) the factual allegations of the complaint included a claim for injuries separate and divisible from the injured patron's assault-derived injuries caused by the separate and independent conduct of the insured following an assault on the insured's premises, and (2) the policy's assault and battery exclusion did not clearly exclude coverage for such claim.

The *American Best Food* decision is in accord with well established Washington law, including *Truck Ins. Exch. v. Vanport Homes*, 147 Wn.2d 751, 58 P.3d 276 (2002), and is not inconsistent with any decisions by the Washington Supreme Court or Court of Appeals. The interpretation of an assault and battery exclusion in the context of applying to clearly preclude coverage for a claim of injuries caused by the insureds' separate and distinct conduct toward an injured patron following an assault on the insureds' premises was an issue of first impression in Washington.

Accordingly, the Court of Appeals appropriately considered as persuasive authority other state cases interpreting assault and battery

exclusions in the context of a claim for injuries caused by separate conduct following an assault. In doing so, the Court of Appeals reached the unremarkable conclusion that the combination of: (1) ambiguities in the plain language of the policy exclusion; (2) that this was an issue of first impression in Washington; (3) and that the overwhelming weight of authority from other jurisdictions held such claims involving postassault conduct is not clearly excluded by an assault and battery exclusion, taken together, dictated under *Vanport*, that since the exclusion did not clearly apply to preclude coverage, the insured was entitled to a defense.

The Court of Appeals remanded the issue of whether Alea breached its duty to defend wrongfully or in bad faith because issues of fact remained regarding the reasonableness of Alea's conduct in light of the circumstances surrounding the underlying lawsuit, since it was not concluded until after the trial court below in this declaratory action had already granted Alea's motion for summary judgment dismissing Café Arizona's claims.

Alea's Petition for Review should be denied because it fails to meet any of the criteria for granting discretionary review under RAP 13.4(b). The Court of Appeals' decision is in accordance with established Supreme Court decisions, does not create any conflict between decisions from other divisions

of the Court of Appeals, and fails to raise an issue of substantial public interest that should be determined by the Supreme Court.

II. COUNTER STATEMENT OF FACTS

On January 19, 2003, Michael Dorsey (“Dorsey”) was shot by an individual in a parking lot adjacent to Café Arizona. (CP 75). Both Dorsey and his assailant were patrons at Café Arizona immediately prior to this altercation. (CP 85). Dorsey brought a lawsuit against his assailant and Café Arizona (the “Dorsey Lawsuit”). (CP 74-91).

Dorsey’s original complaint, dated August 27, 2003, alleges, in part:

1.2. Plaintiff brings this complaint against the Defendants for their respective tortious actions and omissions, which proximately caused Plaintiff to suffer great bodily harm and permanent disabling injuries...

(CP 75). The original complaint further alleges that after Dorsey was shot by his assailant:

5.17. Several security guards carried [Dorsey] into the club, however, the club owner/manager order to (sic) guards to carry [Dorsey] back outside where the guards dumped him back on the sidewalk.

...

8.1. As a direct and proximate result of the tortious acts by the Defendants, [Dorsey] has suffered severe physical, cognitive and mental injuries and is entitled to be compensated therefore.

(CP 78, 80).

Café Arizona tendered defense of the claim to Alea on August 30, 2003, and in its response letter of September 19, 2003, Alea denied Café Arizona's request for indemnity and defense explaining that the assault and battery exclusion "excludes acts of assault and/or battery 'regardless of the degree of culpability or intent.'" (CP 107-109).

Café Arizona's attorney, Kenneth Kagen, responded to Alea's denial of coverage in his November 10, 2003 letter, pointing out:

With respect to the allegations of negligence occurring after the shooting, Mr. Dorsey asserted that Café Arizona personnel or ownership failed to render aid to Mr. Dorsey after he had been shot, which he appears to claim caused him further injuries and damages.

(CP 265). Mr. Kagen explained that such claims of post-assault negligence were not clearly excluded by the assault and battery exclusion under Washington law; cited to *Western Heritage Ins. Co. v. Dean*, 55 F.Supp.2d 646 (E.D. Texas 1998) for the proposition that post-assault conduct is not clearly excluded; and explained Alea's broad duty to defend was triggered because:

The Washington Supreme Court has gone so far as to say that the duty to defend is one of the most important benefits of an insurance policy, and an insurer is relieved of its duty to defend only where the claim is "clearly not covered" by the policy.

(CP 265, citing *Vanport*, 147 Wn.2d at 760).

Over the next several months, Café Arizona continually requested Alea to reconsider its denial of coverage, but Alea maintained its position there was no duty to defend or indemnify under *McAllister v. Agora Syndicate, Inc.*, 103 Wn.App. 106, 11 P.3d 859 (2000). (CP 269-79). Alea stated in its November 18, 2003 letter:

Insurers acknowledge the Complaint includes allegations of intentional acts by Michael Dorsey and negligent conduct on the part of the insureds. . . . However, even if the Complaint sounds in negligence, the operative act giving rise to any recover is the January 19, 2003 assault, thus, no cause of action would exist “but for” the assault.

(CP 269). Notably, Alea acknowledged the application of an assault and battery exclusion in *McAllister* was an issue of first impression in Washington. (CP 269)¹. Nevertheless, Alea refused to interpret its own exclusion with inferences in favor of coverage in light of the factual allegations contained in the original complaint and continued to deny a defense. (CP 269).

Dorsey moved to amend his original complaint and served Café Arizona with his amended complaint on July 15, 2005. (CP 83-91). The factual allegations of the amended complaint stated:

¹ Alea’s November 18, 2003 letter states, “As a matter of first impression, Division I of the Washington State Court of Appeals addressed the application of an assault and battery exclusion in *McAllister v. Agora Syndicate, Inc.*, 103 Wn.App. 106, 11 P.3d 859 (2000).

5.12. Several security guards carried the injured [Dorsey] from the lobby of Café Arizona and dumped him on the sidewalk, exacerbating his injuries more, after Mr. Seo negligently ordered the guards to carry [Dorsey] back outside.

(CP 87). Dorsey's amended complaint further stated that based on the above facts:

8.1. As a direct and proximate result of the negligent and tortious acts by the Defendants, Plaintiff has suffered severe physical, cognitive, and mental injuries and is entitled to be compensated therefore.

(CP 90).

Café Arizona forwarded Dorsey's amended complaint to Alea on July 20, 2005 and requested Alea to reassess its position on indemnity and defense based on the allegations in the amended complaint. (CP 214-15, 292-93). On July 25, 2005, Café Arizona's counsel forwarded a copy of a report by Dorsey's expert witness containing additional facts learned through discovery about Café Arizona's post-assault conduct and again renewed the request for Alea to reconsider its coverage position. (CP 47, 93-98). Alea never responded to Café Arizona's July 20, 2005 and July 25, 2005 requests. (CP 17-8, 31-32).

Alea has stated in this litigation that a renewed coverage determination regarding its duty to defend was not required because the

amended complaint was “materially the same” as the original complaint.² (CP 142). Because Alea has admitted in this litigation that, for purposes of its coverage determination, Dorsey’s original complaint and amended complaint were materially the same, Alea is charged with knowledge of all factual allegations, whether alleged in the original or amended complaint, at the time it received the original complaint. The original complaint and amended complaint are hereinafter referred to as “the Dorsey Complaint.”

It is disingenuous for Alea to now suggest a distinction between Dorsey’s original complaint and amended complaint. It further borders on absurd to suggest that the two pleadings, read separately or read together, do not allege bodily injury due to an “occurrence” resulting from post-assault conduct.

Due to Alea’s refusal to offer a defense, even under a reservation of rights, Café Arizona had no alternative but to undertake its own defense in the Dorsey Lawsuit. (CP 4-5, 161). Café Arizona initiated this action against Alea to obtain the benefits of the Policy. (CP 3-8).

² In its motion for summary judgment, Alea stated: “Most importantly, for purposes of Alea’s coverage determination, the Amended Dorsey Complaint is materially the same as the original Dorsey Complaint.” (CP 142). Alea further states in its Brief of Respondent: “[w]ith respect to Café Arizona’s alleged conduct after Dorsey was shot, the Amended Complaint had been changed very slightly.” Brief of Respondent at 9.

During the pendency of this action and up to the time of the trial court's ruling on the cross-motions for summary judgment in this case on September 30, 2005, the Dorsey Lawsuit had not concluded; therefore, Café Arizona's liability to Dorsey for claims of post-assault negligence had not been resolved and evidence of post-assault injuries were not before the trial court (and are therefore not in the record on appeal)³. (CP 4-5).

III. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

RAP 13.4(b) provides in relevant part:

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 ... (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This Court should not accept Alea's Petition for Review because the *American Best Food* decision is not in conflict with a decision of the Supreme Court or another decision of the Court of Appeals. Additionally,

³ The lack of further evidence in this Court's record regarding post-assault injuries is due to the procedural posture of this appeal and not because there is no such evidence as suggested by Alea. Cafe Arizona anticipates presenting evidence of post-assault injuries to the trial court on remand including evidence that Cafe Arizona lost a motion for directed verdict asking that the issue of its liability for exacerbation of Dorsey's injuries following the assault not be presented to the jury. In fact, the trial court was prepared to allow jury instructions proposed by Dorsey, placing the issue of Cafe Arizona's liability for exacerbation of Dorsey's injuries before the jury.

the decision does not involve an issue of substantial public interest that should be determined by the Supreme Court.

A. **The American Best Food Decision Does Not Conflict with Decisions of the Supreme Court or the Court of Appeals Regarding the Duty to Defend and Does Not Involve an Issue of Substantial Public Interest.**

Alea cites this Court's recent decision in *Woo v. Fireman's Fund Ins. Co.*, ---P.3d ---, 2007 WL 2128357 (Wash. No. 77684-9, July 26, 2007), for the rule regarding the duty to defend but incorrectly claims the Court of Appeals failed to properly apply the duty to defend standard. Petition for Review at 9, 11. The Court of Appeals articulated the appropriate rule regarding the duty to defend rule at ¶ 13.⁴

⁴ "The insurer's duty to defend arises when an action is brought against its insured, and is based on the potential for the insured's liability. The duty to defend arises when a complaint against the insured, construed liberally, alleges facts which could, if proven, impose liability upon the insured within the policy's coverage. An insurer's duty to defend arises when any part of the claim is potentially or arguably within the scope of the policy's coverage, even if the allegations of the suit false, fraudulent, or groundless. ... Once the duty to defend is triggered by a claim that potentially falls within the policy's basic coverage provisions, the insurer is relieved of that duty only if the claim is clearly excluded by an applicable exclusionary clause within the policy." *American Best Food* at ¶13 (citations omitted).

Here, the Complaint contained factual allegations of separate post-assault conduct (i.e. that Café Arizona negligently “dumped” an injured patron on the sidewalk after initially carrying him inside the premises) and post-assault injuries separate and distinct from the injuries caused by the assault (i.e. the exacerbation of injuries was caused by the negligent rescue undertaken by Café Arizona and not by the initial assault).

Entirely consistent with *Woo*, the Court of Appeals correctly determined Dorsey’s claim for post-assault negligent conduct, as contained on the face of the complaint, was not clearly excluded from the policy’s coverage provisions by the assault and battery exclusion based not only upon ambiguities in the assault and battery exclusion, but also on the lack of controlling authority in Washington.

Significantly in *Woo*, this Court addressed an insurer’s duty to defend when there is an undetermined rule of law. *Woo*, 2007 WL 2128357 at 17-18. In *Woo*, the insurer obtained a formal written legal opinion from an attorney advising there was no duty under a professional liability policy to defend the claim against the insured dentist for a prank when he inserted boar tusk shaped flippers during a dental procedure. The attorney’s legal opinion was based on two Washington cases regarding coverage for improper sexual conduct toward a patient under a professional liability policy provision. *Id.*

The attorney noted a court on review might conclude that the rule enunciated in the two cases he relied upon was limited to cases involving sexual assault.

This Court concluded the insurer inappropriately relied upon its own interpretation of Washington case law in refusing to offer its insured a defense.

Fireman's is essentially arguing that an insurer may rely on its own interpretation of case law to determine that its policy does not cover the allegations in the complaint and, as a result, it has no duty to defend the insured. However, the duty to defend requires an insurer to give the insured the benefit of the doubt when determining whether the insurance policy covers the allegations in the complaint. Here, Fireman's did the opposite--it relied on an equivocal interpretation of case law to give *itself* the benefit of the doubt rather than its insured.

Id. (citations omitted, emphasis in original).

Here, the Court of Appeals similarly reasoned Alea breached the duty to defend when it incorrectly relied upon an equivocal interpretation of existing Washington cases to give itself the benefit of the doubt when the sole Washington case interpreting the application of an assault and battery exclusion, *McAllister v. Agora Syndicate, Inc.*, in a case of first impression, involved no post assault conduct, but only a claim for negligent failure to prevent the assault which resulted in injury to the patron by the assailant's conduct. Further, the vast majority of reported decisions from other states interpreting assault and battery exclusions held that claims involving

post-assault conduct causing injury distinct from assault-derived injuries are not within such assault and battery exclusions. One of these cases was specifically cited to Alea as part of the tender. No rational insurer could reach the conclusion, following *Vanport*, that coverage was clearly excluded and that there was no duty to defend.

Although Washington courts are not bound to follow decisions from other jurisdictions, Washington courts may appropriately consider out of state cases that it determines are persuasive and adopt the reasoning underlying such out of state cases. This Court's decision was based upon its determination that *McAllister* was not controlling authority for claims of post-assault negligence⁵, thereby requiring consideration of out of state authority for guidance, which was appropriate as set forth in the Amended Brief of Appellants at 10-24 and Reply Brief of Appellants at 8-12 (incorporated herein by this reference, but not repeated here).⁶

The consideration of out of state cases in *American Best Food* does not implicate an issue of substantial public interest. Alea histrionically suggests in its Petition for Review at 12, that the duty to defend will be

⁵ Significantly, Judge Coleman, the author of the original *McAllister* decision, joined with the decision in this case that *McAllister* was not controlling authority.

triggered if any jurisdiction recognizes any argument in favor of coverage, thereby providing insureds with a windfall of coverage. Under the *American Best Food* decision, consistent with established Washington law, an insurer's duty to defend may be triggered when the plain language of the policy does not clearly preclude coverage, there is no dispositive Washington authority that applies to clearly preclude coverage, and there is overwhelming out of state authority in favor of coverage.

Alea further argues that policyholders will be adversely affected because insurers will be required to tender a defense where coverage is not clearly precluded and thereafter withdraw upon a determination there is no coverage under a parallel declaratory action. Alea fails to recognize the real risk that the *American Best Food* decision addresses is the situation where a policyholder is forced not only to pay for its defense against a claim that is not clearly excluded by the policy, but is also forced (as here) to pay counsel to commence a parallel declaratory action against its insurer to obtain the benefits under the insurance policy.

⁶ As discussed in the Reply Brief of Appellants, it is significant that the only out of state case Alea cited in support of its position was an unpublished Pennsylvania case. Brief of Appellants at 11-12.

The *American Best Food* decision is consistent with Washington law and does not negatively impact policyholders thereby creating an issue of substantial public interest warranting review by this Court.

B. The *American Best Food* Decision Does Not Conflict with Decisions of the Supreme Court or by the Court of Appeals Regarding the Phrase “Arising Out Of”.

Alea’s position that the *American Best Food* decision is inconsistent with Washington law regarding the phrase “arising out of” is without merit. As set forth in Café Arizona’s Amended Brief at 19-24 and Café Arizona’s Reply Brief at 12-15 (incorporated herein by this reference, but not repeated here), Washington courts have held the phrase “arising out of” may be ambiguous depending on the facts and circumstances of the claim. Further, as set forth in Café Arizona’s Reply Brief at 16-23 (incorporated by this reference, but not repeated here), *Toll Bridge Authority v. Aetna Ins. Co.*, 54 Wn.App. 400, 773 P.2d 906 (1989) and *Krempf v. Unigard Security Ins.*, 69 Wn.App. 703, 850 P.2d 533 (1993) clearly are distinguishable and are not controlling authority. Accordingly, there is no inconsistency created among Washington decisions warranting acceptance of Alea’s Petition for Review. Under no rational interpretation of such cases could one reach the conclusion either that separate post-assault conduct was “clearly excluded” from the

policy or that on a petition for discretionary review, that this presents an issue of substantial public interest.

C. The American Best Food Decision Does Not Conflict with Decisions of the Supreme Court or by the Court of Appeals Regarding the Issue of Bad Faith Breach of the Duty to Defend.

The Court of Appeals applied the correct rule regarding an insurer's bad faith breach of the duty to defend at ¶31.⁷ The decision by the Court of Appeals to remand the issue of bad faith is not inconsistent with decisions by the Washington Supreme Court or Court of Appeals because summary judgment is inappropriate when genuine issues of fact remain regarding the reasonableness of Alea's breach of its duty to defend.

The Washington Supreme Court confirmed the proper summary judgment standard with respect to a bad faith claim in *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 78 P.3d 1274 (2003):

Whether an insurer acted in bad faith remains a question of fact. A motion for summary judgment is properly granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of

⁷ "An insurer has a duty of good faith to its policyholder. The duty to act in good faith, and liability for acting in bad faith, arise the fiduciary relationship between the insurer and insured. This fiduciary relationship implies a broad obligation to deal fairly, and a responsibility to give equal consideration to the insured's interests. An insurer who unreasonably denies its defense obligation may be found to have acted in bad faith. However, bad faith will not be found where the failure to provide a defense is based upon a reasonable interpretation of the insurance policy. The question of whether an insurer unreasonably denies coverage is an issue of fact." *American Best Food* at ¶ 31 (citations omitted).

law.” CR 56(c). All facts and inferences are viewed in the light most favorable to the nonmoving party. Questions of fact may be determined on summary judgment as a matter of law where reasonable minds could reach but one conclusion. But the court must deny summary judgment when a party raises a material factual dispute.

...

If, however, reasonable minds could differ that the insurer’s conduct was reasonable, or if there are material issues of fact with respect to the reasonableness of the insurer’s actions, then summary judgment is not appropriate.

Id. at 485-6 (citations omitted); *see also Safeco Ins. Co. v. Butler*, 118 Wn.2d 383, 400, 823 P.2d 499 (1992) (Supreme Court affirming trial court’s denial of summary judgment because there were “...material facts at issue as to whether Safeco acted in bad faith”); *Griffin v. Allstate Ins. Co.*, 108 Wn.App. 133, 143, 147, 29 P.3d 777 (2001) (the Court of Appeals reversed the trial court’s dismissal of the bad faith claims because it could not determine the refusal to defend was reasonable when Allstate refused to defend in part on grounds that the suit alleged no property damage, but the court determined the plain language of the complaint alleged property damage and negligence).

Here, Café Arizona continued to present case law and additional facts (as such facts came into Café Arizona’s possession) in the underlying lawsuit, requesting Alea to reconsider its position on its indemnity and defense obligations. A jury may conclude Alea’s refusal to defend was not reasonable when Alea interpreted equivocal Washington cases to give itself

the benefit of the doubt and further construed the allegations of the complaint narrowly in its own favor, at the expense of its insured and contrary to the well established duty to defend rule, especially in light of the progression of the underlying lawsuit, which was not concluded until after the trial court below had already dismissed the declaratory judgment action based on the trial court incorrect determination that *McAllister* unequivocally applied to clearly exclude coverage of the claims in the Dorsey Complaint.

The Court of Appeals' decision that genuine issues of material fact remained regarding the reasonableness of Alea's breach of the duty to defend is not inconsistent with decisions by the Washington Supreme Court or Court of Appeals warranting acceptance of Alea's Petition for Review.

IV. CAFÉ ARIZONA'S CONTINGENT PETITION FOR REVIEW

Café Arizona agrees with the *American Best Food* decision in substantial part and does not independently seek to petition this Court for review. However, if this Court accepts Alea's Petition for Review, Café Arizona respectfully requests this Court to review and reverse the Court of Appeals' decision with respect to the issues regarding Alea's improper investigation (*American Best Food* at ¶¶39-42) and bad faith breach of the duty to defend (*American Best Food* at ¶¶30-34).

Café Arizona contended in its appellate briefs (Amended Brief of Appellants at 34-39; 43-45; Reply Brief of Appellants at 2-5, 24) that the Court of Appeals, as a matter of law, should find that Alea wrongfully refused to provide a defense in bad faith and failed to conduct a reasonable investigation in bad faith (in violation of Washington's insurance claims settlement practices regulations and Consumer Protection Act) because (1) Alea based its decision to deny a defense on a narrow construction of the factual allegations of the complaint and an equivocal interpretation of Washington cases that did not clearly preclude coverage of the post assault claims; (2) refused to offer a defense under a reservation of rights while seeking a determination regarding its defense and indemnity obligations in a declaratory action when coverage was not clearly precluded by the assault and battery exclusion; and (3) failed to respond to Café Arizona's requests for a renewed determination regarding defense and indemnity in light of the progression of the Dorsey Lawsuit.

The Court of Appeals declined to go as far as requested by Café Arizona, finding there were genuine issues of material fact with respect to the extent of Alea's conduct in its investigation, its coverage analysis and whether its decision to deny a defense, although erroneous, was reasonable in light of the circumstances. While Café Arizona accepts that ruling, in the

event this Court does grant Alea's petition for discretionary review, we respectfully request this Court reverse the Court of Appeals and find, as a matter of law, that Alea wrongfully refused to provide a defense to Café Arizona in bad faith and thus is estopped from denying coverage under *Vanport Homes*. To hold otherwise would adversely affect policyholders' right to a defense as insurers will not be held accountable for the extreme prejudice resulting from a wrongful refusal to tender a defense where coverage is not clearly excluded under the circumstances.

V. CAFÉ ARIZONA'S REQUEST FOR ATTORNEYS' FEES

The Court of Appeals awarded Café Arizona their attorneys' fees and expenses in its decision at ¶44. Accordingly, Café Arizona is entitled to an award of attorneys' fees and expenses if this Court denies Alea's Petition for Review pursuant to RAP 18.1(j), which states in relevant part:

If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review.

VI. CONCLUSION

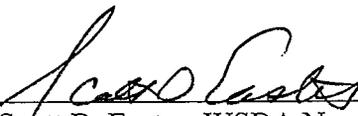
This Court should deny Alea's Petition for Review because Alea, despite its histrionic imaginary parade of horrors, has failed to establish the *American Best Food* decision involves an issue of substantial public interest

which needs to be resolved by this Court or that the decision is inconsistent with a decision by this Court or the Court of Appeals regarding the duty to defend rule, the phrase “arising out of”, and remand of the bad faith breach of the duty to defend. The Court of Appeals correctly applied the standards consistent with Washington law established by this Court in all three instances.

Alea’s Petition for Review primarily focuses upon arguing the Court of Appeals misapprehended the facts contained in the record and was incorrect by not agreeing with Alea’s interpretation of Washington cases. Such reasons are not appropriate concerns warranting acceptance of its Petition for Review under RAP 13.4(b). Accordingly, Café Arizona respectfully requests this Court to deny Alea’s Petition for Review.

RESPECTFULLY SUBMITTED this 12th day of September, 2007.

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APPENDIX 1

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 12th day of September, 2007, I sent a true and correct copy of this document, CAFÉ ARIZONA'S ANSWER TO ALEA'S PETITION FOR REVIEW, to be served on or before the 13th day of September, 2007, on the party and in the manner listed below:

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Suite 5200, Washington Mutual Tower
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Attorneys for Respondent, Alea London, Ltd.

- Via Facsimile
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- Via Legal Messenger

DATED this 12th day of September, 2007, at Seattle, Washington.

Karin L. Baril
Karin L. Baril

CLERK

BY DONALD R. CARPENTER

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STATE OF WASHINGTON