

NO. 94118-1

SUPREME COURT OF THE STATE OF WASHINGTON

INLAND EMPIRE DRYWALL)	
SUPPLY, CO.,)	
)	
Respondent,)	PETITIONER'S RESPONSE
)	TO RESPONDENT'S MOTION
v.)	TO STRIKE REPLY TO
)	ANSWER TO PETITION FOR
WESTERN SURETY CO.,)	REVIEW
)	
Petitioner.)	
)	

Petitioner Western Surety Company ("Western") respectfully submits this response to respondent Inland Empire Dry Wall Supply, Co.'s ("Inland") Motion to Strike Petitioner's Reply to Answer to Petition for Review ("Motion to Strike").

RAP 13.4(d) essentially provides and allows a petitioner to file a reply to a respondent's answer to a petition for discretionary review if and when the answer raises and addresses issues before this Court that were not raised or addressed in the petition, including any issues that were raised in the Court of Appeals but not decided in the Court of Appeals. See RAP 13.4(d).

Respondent Inland filed an Answer to Western's Petition for review that unquestionably attempted to raise and interject two specific issues before this Court for its consideration (and for potential determination if/when this Court accepts review) that were not addressed or decided by the split panel majority in *Inland Empire Dry Wall Supply, Co. v. Western Surety Co.*, No. 34022-8-III, --- Wn. App. ---, 389 P.3d 717, 2017 WL 89138 (January 10, 2017) ("*Inland Empire*") and/or that were not specifically raised or addressed in Western's Petition.¹ *See generally* Western's Reply at pp. 1-2 and 6-7.

Accordingly, Western was authorized and entitled under RAP 13.4(d) to file a Reply limited to addressing and responding to those two specific issues raised and addressed in Inland's Answer. If Inland did not want to assume the risk that Western would elect to exercise its right under RAP 13.4(d) to reply and respond to those two new issues, Inland should have refrained from raising and addressing those two issues in its Answer.

Inland has no right to raise, address, and essentially interject new issues before this Court without Western having and exercising the

¹ The two specific issues raised and addressed in Inland's Answer to which Western properly limited its Reply to relate to the relevance and potential application of CR 19 "indispensable party" analysis and general suretyship law principles. The CR 19-related issue was raised to, but not addressed or decided by, the Court of Appeals in *Inland Empire*, and that issue was not raised or addressed in Western's Petition. The general suretyship law-related issue was addressed and decided by the split panel majority in *Inland Empire*, but the issue was not specifically raised or addressed in Western's Petition.

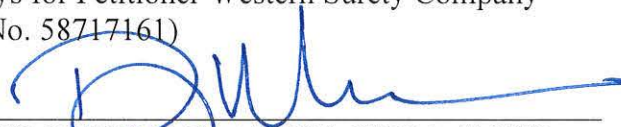
corresponding right and opportunity under RAP 13.4(d) to reply and respond to those new issues as part of this Court's Petition review process.

Inland's baseless Motion to Strike should therefore be **denied**.

RESPECTFULLY SUBMITTED this 6th day of April, 2017.

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Attorneys for Petitioner Western Surety Company
(Bond No. 58717161)

By:


TIMOTHY G. KLASHKE; WSBA #19953

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of April, 2017, I caused a true and correct copy of the foregoing document to be served on the following attorneys for respondent Inland Empire Dry Wall Supply, Co., VIA:

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT DELIVERY
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