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NO. 96536-6

SUPREME COURT OF THE STATE OF WASHINGTON

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ZURICH AMERICAN INSURANCE COMPANY,

Appellant/Intervenor,

V.

JOGINDER SINGH D/B/A AP TRANSPORT,

Respondents.

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**RESPONDENT JOGINDER SINGH'S ANSWER TO AMERICAN  
PROPERTY CASUALTY INSURANCE ASSOCIATION OF  
AMERICA'S MEMORANDUM OF AMICUS CURIAE**

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**TABLE OF AUTHORITIES**

**Cases**

*Olympic Steamship Co., Inc., v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).....4

*Pac. Cascade Corp. v. Nimmer*, 25 Wn. App. 552, 556, 608 P.2d 266, 268 (1980).....2

**Court Rules**

RAP 13.4..... 1

RAP 18.1..... 4

## I. INTRODUCTION

Respondent Singh submits<sup>1</sup> the following Answer to American Property Casualty Insurance Association (APCI)'s Amicus Brief Supporting Appellant's Petition for Review. Mr. Singh also incorporates the arguments set forth in his Answer to Appellant's Petition for Review.

## II. ANSWER

### A. Division I's Opinion Does Not Conflict With Any Washington Cases

APCI argues this Court should accept review under RAP 13.4(b)(1) and (2) because Division I's decision, "conflicts with precedent requiring an insurer to consider whether negotiating against a policy-limits demand may squander an opportunity to settle a substantial claim within the policy limits." *Amicus Brief*, p. 2. Much of its brief is dedicated to outlining insurer duties when confronted with a policy limits demand. *See e.g. Amicus Brief*, p. 6 ("The Court of Appeals' decision ignores that attempting to negotiate against an offer to settle within policy limits is playing with fire); *Id.* at p. 8 (Division I, "...did not even mention that the Beckwith claimants offered to accept policy limits...").

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<sup>1</sup> On January 23, 2019, Commissioner Johnston directed the parties to file their Answers by February 12, 2019. However, this Court was closed on February 12, 2019 due to inclement weather so Respondent submits this Answer pursuant to GR 3.

Two facts undermine this argument: (1) Zurich never received a limits demand; and (2) the Beckwith Plaintiffs did not “offer to accept policy limits.”

APCI, like Zurich unsuccessfully did at trial, argues an email from plaintiff’s counsel expressing reluctance to mediate qualifies as a “limits demand.” Ex. 249 (*see* 1/11/13 email from Beckwith counsel Max Meyers to Singh counsel Ken Roessler: “plaintiffs believe this case is a policy limits case for all defendants. Plaintiffs are not willing to compromise from their position, therefore mediation would not be productive.”)

“An offer consists of a promise to render a stated performance in exchange for a return promise being given.” *Pac. Cascade Corp. v. Nimmer*, 25 Wn. App. 552, 556, 608 P.2d 266, 268 (1980) (citing Restatement of Contracts § 24 (1932)). Mr. Myers’ email declining mediation was not a settlement offer and, therefore, could not be a “limits demand.” Thus, there was no limits demand, contrary to APCI’s claim.

What actually happened is: “Zurich declined Roessler’s proposal and instructed Roessler to offer to settle the Beckwith claim for the full \$1 million policy limit in March 2013.” *Singh v. Zurich Am. Ins. Co. Slip Op.* at ¶7. Prior to doing so, however, Zurich told Singh it “would like his input” on a settlement offer. CP 216. When Singh provided his input, Zurich denied his request for cooperation. CP 1091-1092, CP 299. Zurich’s offer

was made with the knowledge Singh would be left without a defense from other claimants involved in the July 20, 2011 accident. RP 242 (12-20-2016); RP 445-447 (12-13-2016); CP 3033.

Plenty of evidence supported the finding that “Zurich placed its own interest above [Singh’s] when it settled the Beckwith claim.” *Singh Slip Op.* at ¶24. This included testimony from Zurich employees, experts, and Zurich’s assigned defense counsel. *Id.* at ¶22-26.

**B. Division I’s Opinion Does Not Require Insurers to Consider a “Holdback” Agreement**

Division I’s opinion does not require insurers to consider a holdback agreement in excess exposure cases; there is not even a suggestion of a requirement in its dicta.

While Alaska National Insurance Company agreed to a holdback agreement with “[no] real pushback” from the Beckwiths’ attorneys, Zurich did not explore a similar arrangement despite being aware of these agreements. RP 202-203 (12-12-16); CP 539-541, 1016-1024; CP 821. When asked why it did not explore this type of deal, Zurich testified “it may have opened a whole other can of worms.” CP 3061-3062. However, the Zurich supervisor testified a holdback deal was better for Mr. Singh because there would be money left to deal with other claimants and an attorney to defend him who was paid by Zurich. CP 843-844.

### **C. There Should Be No “Bright-Line Rule” in These Cases**

Division I correctly declined to adopt a “bright-line rule” in cases with multiple claimants involving exposure above an insured’s policy limits. As Zurich’s own Petition for Review states, “[t]here is no one right way for the insurer to handle such a case.” *See Zurich’s Petition for Review Appendix B*, p. 17. Rather, “[a]n insurer’s investigation must always be guided by reason.” *Id.* at p. 18. Accordingly, APCI’s attempt to impose a bright-line rule, that would relieve insurers from their obligation to act reasonably, should be categorically rejected.

### **D. Singh is Entitled to Fees and Expenses Under RAP 18.1**

RAP 18.1 and *Olympic Steamship* allow a prevailing party their attorney fees and expenses associated with an appeal. Pursuant to RAP 18.1(j), Singh requests his attorney fees and expenses and will file supporting affidavits pursuant to RAP 18.1(d).

## **III. CONCLUSION**

Based on the foregoing, Singh requests this Court to reject Zurich’s Petition for Review and award all reasonable attorney fees and costs pursuant to RAP 18.1.

RESPECTFULLY SUBMITTED this 13th day of February, 2019

MIX SANDERS THOMPSON, PLLC

s/George A. Mix

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*Attorney for Respondent Singh*

## PROOF OF SERVICE

I hereby certify that on February 13, 2019, Respondent Singh's Answer to APCI's Memorandum for Amicus Curiae was served on counsel via Appellate Portal email to the below named individuals:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of February, 2019, at Seattle, Washington.

s/Sherry Toves  
Sherry Toves  
*Legal Assistant for Respondent Singh*

**MIX SANDERS THOMPSON, PLLC**

**February 13, 2019 - 3:05 PM**

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**Comments:**

SINGH'S ANSWER TO AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION OF AMERICA'S  
MEMORANDUM OF AMICUS CURIAE

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