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SUPREME COURT  
STATE OF WASHINGTON

No. 80420-6

2008 APR 30 P 3:10

BY RONALD R. CARPENTER

THE SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

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MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent,

v.

T & G CONSTRUCTION, INC., and VILLAS AT HARBOUR  
POINTE OWNERS ASSOCIATION,

Appellants.

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ANSWER TO APPELLANTS' MOTION  
REGARDING RECORD ON REVIEW

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James M. Beecher, WSBA #468  
Brent W. Beecher, WSBA #31095  
Attorneys for Appellant Mutual of Enumclaw

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1601 Fifth Avenue, Suite 2200  
Seattle, WA 98101-1651  
206-624-2200

**FILED AS ATTACHMENT  
TO E-MAIL**

### **I. IDENTITY OF RESPONDING PARTY**

Mutual of Enumclaw Insurance Company is the responding party.

### **II. STATEMENT OF RELIEF SOUGHT**

The Request to Supplement the Appeal Record with extrinsic evidence selected by Appellants from a related case should be denied.

### **III. FACTS AND ARGUMENT RELEVANT TO MOTION**

Appellants belated request to rely on its own selection of evidence from a related case is a departure from fairness and the Rules of Evidence.

This Court will be reviewing Summary Judgment Orders entered by the King County Trial Court. The Record on Appeal contains all materials presented to that Court. To allow one of the parties to supplement the record in this case with its own selection of documents found in a related case from another county would be irregular to say the least.

This Court denied Mutual of Enumclaw's Petition for Review of the Appeals Court decision in that related Snohomish County case. There is no appellate rule or other legitimate basis for this Court to now review Appellants' selection of certain records from that Snohomish County case. Neither party should be entitled to pick and choose the documents from a

related case to supplement a Record on Review. Had such documents been material to this case, they were required to have been presented at the time of the Summary Judgment Motions at issue.

Respectfully Submitted this 30th day of April, 2008.

HACKETT, BEECHER & HART

/s/\*

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James M. Beecher, WSBA #468  
Attorneys for Mutual of Enumclaw  
\* Original Signature on file

CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury that on Wednesday, April 30, 2008, she caused a copy of Respondent Mutual of Enumclaw's Answer To Appellants' Motion Regarding Record On Review to be served on the following:

Daniel Zimmeroff  
BARKER - MARTIN  
719 2nd Avenue, Suite 1200  
Seattle, WA 98104

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/s/\*

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Linda Voss  
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**To:** Linda Voss  
**Cc:** danzimmeroff@barkermartin.com; Jim Beecher  
**Subject:** RE: Case No. 80420-6 Answer to Appellants' Motion Regarding Record on Review

Rec. 4-30-08

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Linda Voss [mailto:lvoss@hackettbeecher.com]  
**Sent:** Wednesday, April 30, 2008 3:13 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** danzimmeroff@barkermartin.com; Jim Beecher  
**Subject:** Case No. 80420-6 Answer to Appellants' Motion Regarding Record on Review

Dear Supreme Court Clerk:

Attached is Respondent Mutual of Enumclaw's --- Answer To Appellants' Motion Regarding Record On Review & Certificate of Service re:

Mutual of Enumclaw Insurance Company, Respondent

v.

T & G Construction, Inc., et al., Appellants

Case No. 80420-6

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