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STATE OF WASHINGTON  
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NO. 80590-3

SUPREME COURT  
OF THE STATE OF WASHINGTON

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MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent,

v.

MacPHERSON CONSTRUCTION & DESIGN, LLC,

Petitioner.

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ANSWER TO PETITION FOR REVIEW

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## TABLE OF CONTENTS

	PAGE
I. IDENTITY OF RESPONDENT _____	1
II. STATEMENT OF THE CASE _____	1
A. Factual Background _____	1
B. Relevant Procedural History _____	2
III. AUTHORITY & ARGUMENT _____	3
1. The Work Exclusion in the Endorsement is Not Ambiguous, and Excludes the Work of Subcontractors _____	3
2. Alleged Unilateral Intent Cannot Alter the Meaning of an Unambiguous Policy Exclusion _____	8
a. Intent is irrelevant where an exclusion is unambiguous; this exclusion is unambiguous _____	9
b. The Difference Between the Umbrella's Basic Work Exclusion and the Endorsement's Work Exclusion is Irrelevant to the Coverage Issue in this Case _____	11
c. An ISO Circular does Not Establish Enumclaw's "Intent" _____	13
3. The Merger Rule is alive and well in Washington and in Minnesota _____	17
4. In Seeking to Override Unambiguous Policy Terms with "Intent" Evidence, it is MacPherson's Burden to Prove that Intent _____	19
IV. CONCLUSION _____	20

## TABLE OF AUTHORITIES

<u>CITATIONS</u>	<u>PAGE</u>
<i>Blaylock &amp; Brown Constr., Inc. v. AIU Ins. Co.</i> , 796 S.W.2d 146, 154 (1990) _____	7
<i>D.J. Painting Inc. v. Baraw Enters.</i> , 172 Vt. 239, 245 (2001) _____	5
<i>Dwellely v. Chesterfield</i> , 88 Wn.2d 331 (1977) _____	20
<i>Honeywell, Inc. v. Babcock</i> , 68 Wn.2d 239, 243 (1966) _____	6
<i>Knutson Constr. Co. v. St. Paul Fire &amp; Marine Ins. Co.</i> , 396 N.W.2d 229, 236 (1986) _____	8, 18, 19
<i>Mendez v. Palm Harbor Homes, Inc.</i> , 111 Wn. App. 446 472, 45 P.3d 594 (2002) _____	19
<i>Mutual of Enumclaw v. Patrick Archer Constr., Inc.</i> , 123 Wn. App. 728 (2004) _____	6, 18
<i>Quadrant Corp. v. Am. States Ins. Co.</i> , 154 Wn.2d 165, 186, 110 P.3d 733 (2005) _____	11
<i>Ryan Homes v. Home Indem. Co.</i> , 436 Pa. Super. 342, 353 (1994) _____	7
<i>Schwindt v. Underwriters at Lloyds</i> , 81 Wn. App. 293 (1996) _____	4, 5, 6, 8, 9, 12, 13, 17
<i>Stute v. P.B.M.C., Inc.</i> , 114 Wn.2d 454, 464 (1990) _____	5
 <u>FEDERAL CITATIONS</u>	
<i>Fireguard v. Scottsdale Ins.</i> , 864 F.2d 648 (9 <sup>th</sup> Cir. 1988) _____	9, 10, 13, 16, 17

*Westfield Ins. Co. v. Weis Builders, Inc.*,  
2004 U.S. Dist. LEXIS 13658 (2004) \_\_\_\_\_ 19

**FOREIGN CITATIONS**

*Acl Techs. v. Northbrook Property & Casualty Ins. Co.*,  
17 Cal. App. 4th 1773, 1792 (1993) \_\_\_\_\_ 13

*Baywood Corp. v. Maine Bonding & Casualty Co.*,  
628 A.2d 1029 (Me. 1993) \_\_\_\_\_ 8

*Staiger v. Burkhardt*, 299 Ore. 49, 54 (1985) \_\_\_\_\_ 17

*Tucker Constr. Co. v. Michigan Mut. Ins. Co.*,  
423 So. 2d 525, 528 (Fla. App. 1982) \_\_\_\_\_ 8

*Vari Builders, Inc. v. United States Fidelity & Guaranty Co.*,  
523 A.2d 549 (Del. Super. Ct. 1986) \_\_\_\_\_ 8

*Wanzek Const., Inc. v. Wausau*,  
679 N.W.2d 322 (Minn. 2004) \_\_\_\_\_ 18, 19

**OTHER AUTHORITIES**

*Insurance Coverage of Construction Disputes*,  
*Vol. 1* § 33.3 (2nd Ed. 2007) \_\_\_\_\_ 16

WAC 296-155-110 \_\_\_\_\_ 5

## **I. IDENTITY OF RESPONDENT**

The Respondent is Mutual of Enumclaw Insurance Company (“Enumclaw”). Enumclaw does not seek Cross Review.

## **II. STATEMENT OF THE CASE**

### **A. Factual Background**

MacPherson Construction & Design, Inc. (“MacPherson”) was a builder in the business of developing and constructing homes. CP 228. MacPherson purchased insurance from Enumclaw consisting of a Commercial General Liability policy (CGL) and an Umbrella policy. CP 1138.

MacPherson acted as general contractor in the construction of a home for the Hedges. CP 279 *et seq.* MacPherson, and subcontractors acting under MacPherson’s direction and control, obtained the materials and component parts of the construction and built the entire project. *Id.*

Later, the Hedges notified MacPherson that their home had been defectively constructed and that resulting leaks were causing continuing damage. *Id.* This damage was alleged to be the result of incorrectly applied EIFS siding installed by a subcontractor. *Id.* and CP 229. The Hedges then sued MacPherson in arbitration for the construction defects. MacPherson tendered its defense in the Hedges’ action to Enumclaw which accepted subject to a reservation of its rights. CP 548.

The arbitrator held that MacPherson was liable to the Hedges in the amount of \$399,088.32. CP 419, 423. Enumclaw filed this action for a declaration of the rights, duties and obligations under its insurance contract.

**B. Relevant Procedural History**

This case was resolved below after a series of summary judgments. The first of these was the result of cross motions on the issue of coverage. CP 315, 343, 360. Enumclaw argued that there was no coverage under either the CGL policy or the Umbrella based on policy exclusions. CP 360. The CGL policy contains a “products” exclusion, that excludes liability for property damage to the insured’s “product.” MacPherson conceded that the Hedges’ house was MacPherson’s product, and that there was no coverage under the CGL. CP 321. The Umbrella policy contains an exclusion for the insured’s “work.” CP 531. Enumclaw argued that the Hedges’ house was also MacPherson’s “work”, and therefore the arbitration award was excluded from coverage. MacPherson agreed that the Umbrella policy excluded liability arising from MacPherson’s work, but argued that the Umbrella’s work exclusion did not exclude liability arising from the work of MacPherson’s subcontractors. CP 334-335.

The trial court resolved each of these issues in favor of Enumclaw. The court found that: 1) there was no coverage under the CGL because of the products exclusion; 2) the subcontractors' work was part of MacPherson's work, which was all excluded by the Umbrella's work exclusion. CP 851-854. The Court of Appeals affirmed on these issues.

### **III. AUTHORITY & ARGUMENT**

#### **1. The Work Exclusion in the Endorsement is Not Ambiguous, and Excludes the Work of Subcontractors.**

Enumclaw based its position that there was no coverage for MacPherson's liability to the Hedges under the Umbrella policy upon the work exclusion that was added to the Umbrella by the UMB 3011 endorsement (the "Endorsement"). That exclusion states that there is no coverage:

With respect to the **COMPLETED OPERATIONS HAZARD** to Property Damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of any materials, parts or equipment furnished in connection therewith.

CP 532 (emphasis in original).

The Court of Appeals correctly ruled that work performed by MacPherson's subcontractors was included as a portion of the work for which MacPherson was responsible, and was thus excluded.

MacPherson's first argument is that this exclusion unambiguously, does not apply to work performed by subcontractors. MacPherson's only citation, to the dictionary, is both misleading and unhelpful. MacPherson claims that "by" is defined by the American Heritage Dictionary to mean "Without company; alone; went by herself" and "Without help: wrote the book by myself." *Pet. for Rev. at 9*. But MacPherson is not providing the definition of "by" - its definition is of the idiom "by oneself," as is made explicit in that Dictionary. The relevant question for purposes of the exclusion is not whether MacPherson built the Hedges' house "by itself." The question is whether the house is MacPherson's "work," in light of the fact that MacPherson was the general contractor ultimately responsible for all aspects of its quality. As the Court of Appeals correctly ruled, the Hedges' house was MacPherson's "work" unambiguously as a matter of law.

The work exclusion contained in the Endorsement is not ambiguous, and it excludes coverage for *all* portions of the insured's work, without exception for the work of subcontractors. Importantly, not even MacPherson argues that the Endorsement exclusion is, on its face, is ambiguous. Where the insured is a general contractor, the entire building it constructs is its "work" regardless of whether it chose to complete that work using its own employees or subcontractors. *Schwindt v.*

*Underwriters at Lloyds*, 81 Wn. App. 293 (1996). MacPherson has never disputed that *Schwindt* is correct on this point. In *Schwindt*, the court reasoned that upon completion, the entire building must be seen as the “work” of the general contractor, not as a conglomeration of component parts; any other interpretation runs afoul of the “realities of the commercial construction process.” *Id.* at 306.

Those realities are not dependent on an insurance policy. They are numerous, and start at the moment the general contractor is hired, when the owner hands over responsibility for construction. “The point of hiring a general contractor for a construction job is for the general to manage the job and hire the subcontractors. The owner does not deal directly with the subcontractors, and often is unaware of the identity of the subcontractors.” *D.J. Painting Inc. v. Baraw Enters.*, 172 Vt. 239, 245 (2001). While construction is ongoing, the general contractor is in absolute control of the conditions and safety at the site, and is obligated to coordinate subcontractor safety plans. WAC 296-155-110. “A general contractor’s supervisory authority is *per se control over the workplace*, and the duty [to provide a safe workplace] is placed upon the general contractor as a matter of law.” *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 464 (1990) (*emphasis added*). At the time the construction process is completed, this Court noted, “The general contractor [is] responsible to the owner for the

satisfactory and full completion of the subcontractors' work under the contract." *Honeywell, Inc. v. Babcock*, 68 Wn.2d 239, 243 (1966).

When a general contractor is sued, it can be liable for *all* of the work it agreed to complete, regardless of who performed it. *Id.* Thus, when interpreting a liability insurance policy issued to a general contractor that excludes the "insured's work," these realities of the commercial construction process cannot be ignored. These realities led the court in *Schwindt* to "hold that work of subcontractors is necessarily included in exclusions pertaining to faulty work or defective products of the contractor." *Id.* at 306. In *Mutual of Enumclaw v. Patrick Archer Constr., Inc.*, 123 Wn. App. 728 (2004) the court affirmed its ruling in *Schwindt*. In holding that there was no coverage for property damage to condominiums built by the general contractor, the court reiterated that the general contractor's ultimate responsibility for the quality of construction was the controlling "reality of commercial construction." "There can be no question that the quality of the work performed, both by Archer as well as by its subcontractors, was the responsibility of Archer and no one else." (at P. 736).

Not one case cited by MacPherson has held that there is *any* ambiguity in the language of the work exclusion in the Endorsement. On the contrary, every court that has considered the issue of whether that

exclusion, *as written*, unambiguously includes the work of subcontractors has agreed with Washington courts that it *does* as a matter of law<sup>1</sup>. One such example is the Tennessee case of *Blaylock & Brown Constr., Inc. v. AIU Ins. Co.*, 796 S.W.2d 146, 154 (1990):

The contractor can employ subcontractors or use employees to do the work, but in the end, when the work is completed, all the work called for by the contract on the part of the contractor must be deemed to be work performed by the contractor. We hold that the language of the policy excludes liability coverage for the plaintiffs for damage to the property constructed pursuant to the contract.

To similar effect, the Pennsylvania case of *Ryan Homes v. Home Indem. Co.*, 436 Pa. Super. 342, 353 (1994) held:

Appellant undertook to construct homes and furnish the buyers with good quality residential structures. To assist it in doing so, appellant employed subcontractors to do some of the work. When it did so, the subcontractors were required to meet, and appellant was required to enforce, standards of good workmanship. When appellant purchased general liability coverage, language of the policy excluded coverage for a failure of the completed home to comply with the workmanship which the buyers had a right to expect under the terms of their contracts with appellant. For such liability, the trial court properly held, there was no coverage under the terms of appellant's general liability policies of insurance.

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<sup>1</sup> MacPherson's argument that the Court ought to look at drafting history and "industry" interpretation to contradict the unambiguous work exclusion in the endorsement will be addressed below. The authority presented here speaks to the meaning of the actual words used in the Endorsement's work exclusion.

Minnesota agrees. *Knutson Constr. Co. v. St. Paul Fire & Marine Ins. Co.*, 396 N.W.2d 229, 236 (1986):

When the completed project is turned over to the owner by the general contractor, all of the work performed and materials furnished by subcontractors merges into the general contractor's product -- a product it has contracted to complete in a good workmanlike manner. . . . The completed product is to be viewed as a whole, not as a "grouping" of component parts.

Additionally, courts in Maine<sup>2</sup>, Florida<sup>3</sup> and Delaware<sup>4</sup> are all in accord with the Washington position, articulated in *Schwindt*, that the work of subcontractors merges into the work of the general contractor for purposes of the work exclusion as a matter of law. For ease of reference, Enumclaw will refer to the rule in this line of cases as the Minnesota Rule, after the seminal case of *Knutson. Id.* The Court of Appeals correctly determined that the Endorsement's work exclusion was unambiguous on its face, and excluded coverage for MacPherson in this case; that decision should not be disturbed.

**2. Alleged Unilateral Intent Cannot Alter the Meaning of an Unambiguous Policy Exclusion.**

MacPherson argues that this Court should accept review because

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<sup>2</sup> *Baywood Corp. v. Maine Bonding & Casualty Co.*, 628 A.2d 1029 (Me. 1993).

<sup>3</sup> *Tucker Constr. Co. v. Michigan Mut. Ins. Co.*, 423 So. 2d 525, 528 (Fla. App. 1982).

<sup>4</sup> *Vari Builders, Inc. v. United States Fidelity & Guaranty Co.*, 523 A.2d 549 (Del. Super. Ct. 1986).

the Court of Appeals “violated” a “bedrock” principle of insurance law: that ambiguities must be resolved in favor of the insured. The error in MacPherson’s logic is that the Court of Appeals did not resolve an ambiguity in Mutual of Enumclaw’s favor; it correctly ruled that there was no ambiguity and no coverage for MacPherson’s work. MacPherson continues to argue that the Court should look past the plain meaning of the actual, operative exclusion, to find ambiguity springing from Mutual of Enumclaw’s “intent.”

To that end, MacPherson urges this Court to abandon the Minnesota rule, adopted by Washington in *Schwindt*, in favor of a competing line of cases exemplified by *Fireguard v. Scottsdale Ins.*, 864 F.2d 648 (9<sup>th</sup> Cir. 1988). Under the *Fireguard* approach, applying the law of Oregon, the unambiguous meaning of the work exclusion is discarded in favor of what that court perceived to be the insurer’s intent. Enumclaw will refer to the rule in these cases as the Oregon rule. *Fireguard* considered the policy’s drafting history, and “insurance industry” commentary, and concluded that the insurer “intended” to provide coverage for the work of subcontractors. The Oregon rule and the Minnesota rule represent the two lines of cases in this split of authority. Following *Fireguard*, MacPherson points to claimed alleged indicia of

intent, but fails to show any proof that Enumclaw intended to provide such coverage.

*a. Intent is irrelevant where an exclusion is unambiguous; this exclusion is unambiguous.*

The signature logic of the Oregon rule is the proposition that the perceived intent of the insurer can override the plain language of an unambiguous exclusion; this proposition is in direct conflict with Washington law<sup>5</sup>.

The *Fireguard* court relied on the fact that an endorsement contained a different version of the work exclusion from that in the main policy form. One of the differences was that the primary form excluded coverage for work performed *by or on behalf of* the insured, while the endorsement's version excluded coverage, *in the context of completed operations*, for work performed *by* the insured. This change in language does not provide subcontractor coverage under Washington law. But in any event, the operative exclusion contained in the endorsement unambiguously prevents coverage for MacPherson's claim; all evidence of "intent" that MacPherson relies upon is irrelevant because the exclusion is

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<sup>5</sup> MacPherson itself notes that it is a "seminal rule in Washington" that "[I]f the policy language is clear and unambiguous, [the court] must enforce it as written." *Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 110 P.3d 733 (2005). *Pet. for Rev. at 8*. MacPherson is *exactly right*. The Court should remain acutely aware that it is *MacPherson*, not Enumclaw, that seeks to change the unambiguous meaning of the work exclusion with "evidence" of what it perceives to be Enumclaw's intent.

clear on its face. As the Washington Supreme Court recently held in *Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 186, 110 P.3d 733 (2005) (emphasis added):

Washington law clearly requires this court to look first to the plain language of an insurance policy exclusion. If the exclusionary language is unambiguous, then the court cannot create an ambiguity where none exists. **If the language is plain there is no need to consider extrinsic evidence of the parties' intent.** The language of the absolute pollution exclusion is unambiguous when applied to the facts of this case. . . . **Thus, there is no need to turn to evidence regarding the history and purpose of the standard pollution exclusion . . .** Therefore, we affirm the Court of Appeals and uphold the trial court's dismissal on summary judgment in favor of the insurers.

Because the UMB exclusion is unambiguous as a matter of law, MacPherson's alleged "evidence of intent" cannot alter its meaning.

*b. The Difference Between the Umbrella's Basic Work Exclusion and the Endorsement's Work Exclusion is Irrelevant to the Coverage Issue in this Case.*

Following the Oregon approach, MacPherson puts substantial weight on the fact that the work exclusion in the Umbrella endorsement is phrased differently than the work exclusion in the basic Umbrella policy. The basic policy provides that there is no coverage for property damage to:

work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

The Endorsement replaces *all* of the Umbrella's exclusions

“relating to property damage” with several new ones, including:

With respect to the **Completed Operations Hazard** to Property Damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of any materials, parts or equipment furnished in connection therewith. CP 532

MacPherson argues that the Court of Appeals failed to give meaning to the deletion ‘or on behalf of’ in the Endorsement. The difference in language, however, does not show that Enumclaw intended to cover the work of subcontractors. As a matter of law in Washington, both versions of the work exclusion unambiguously exclude coverage for subcontractor work. *Schwindt*. Thus a Washington insurer using one version of the exclusion in place of the other does not transmit an intention to cover the work of subcontractors. Furthermore, MacPherson entirely ignores the *addition* of the capitalized, boldfaced language that indicates the exclusion applies to property damage in the **Completed Operations Hazard**.

This change in the timeframe in which the exclusion operates explains the omission of the “or on behalf of” language. The work exclusion in the unendorsed Umbrella is not time dependent; it applies with equal force to *ongoing operations* and *completed operations*. In that context, it applies to work done “by or on behalf of” the insured. The

Endorsement's work exclusion, however, applies only with respect to the completed operations hazard. Once the operation is completed, the work of the subcontractors has merged with the work of the general contractor - the "or on behalf of" language becomes superfluous and was omitted.

Whether the work was 'done by' or 'on behalf of' the general contractor is irrelevant to the analysis. *The completed product* is to be viewed as a whole, not as a 'grouping' of component parts.

*Schwindt*, 81 Wn. App. at 306 (emphasis added).

Because the exclusionary language denied coverage for property damage arising out of the insured's work, and *all* of the work was the insured's work upon completion, there was no coverage for damage to that work. *Id.* at 305 – 307.

*c. An ISO Circular does Not Establish Enumclaw's "Intent."*

MacPherson presents an ISO circular that opines that the language in an endorsement similar to the UMB 3011 is intended to cover property damage to subcontractor work. This circular is nothing more than an interpretation of the legal effect of policy terms, which conflicts with Washington Law<sup>6</sup>. Interpretation of an insurance contract is the province of the Court, not a commentator.

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<sup>6</sup> See *Acl Techs. v. Northbrook Property & Casualty Ins. Co.*, 17 Cal. App. 4th 1773, 1792 (1993) (sharply criticizing *Fireguard's* use of extrinsic evidence of intent because doing so is incompatible with the premise that policies should be interpreted as laypersons would interpret them)

**The Endorsement is Not an ISO Form.** Enumclaw's

Endorsement was written on an Enumclaw form, made to fit with the Enumclaw Umbrella policy form, and there is no evidence at all that Enumclaw thereby intended to provide coverage for property damage to subcontractor work. The forms actually drafted by ISO bear the ISO copyright notation, an example of which can be found at CP 1087.

Enumclaw's Endorsement uses some language from the ISO, but it is not an ISO form, and its header indicates that it was specific to Enumclaw. CP 1132. The fact that Enumclaw incorporated some ISO language into the Endorsement is no reason to engraft an ISO commentator's understanding of the legal effect of several of those words onto Enumclaw.

**There is No Evidence that Mutual of Enumclaw Agreed with, Much Less Adopted, ISO's Analysis.** MacPherson attempts to bind Enumclaw to the ISO's legal interpretation of ISO's work exclusion by citing the testimony of Debbi Sellers, a Mutual of Enumclaw claims adjuster. MacPherson tells the Court that Ms. Sellers testified at deposition that Enumclaw "follows ISO intent with respect to the scope of the UMB 3011 endorsement." (Pet. for Rev., p. 13). Ms. Sellers did no such thing. She was asked if she had knowledge of whether Mutual of Enumclaw underwriters intended something other than what ISO intended.

CP 407. She confirmed that she had *no knowledge* of whether the underwriters intended “the endorsement to be interpreted in the same fashion.” *Id.* She was then asked if she had come across any literature which indicated that Mutual of Enumclaw had a different intent than the ISO. She responded that she had not come across any such literature, but that she had not spoken with any underwriter about it. *Id.* Here is how MacPherson analyses Ms. Sellers’ testimony:

1. I do not know if Mutual of Enumclaw intended something other than the ISO.
2. I did not find any literature indicating that Mutual of Enumclaw intended something other than the ISO.

THEREFORE:

3. Mutual of Enumclaw “intended what ISO intended.”

It is not difficult to spot the flaw in MacPherson’s logic. Nevertheless, this is the *only* link MacPherson points to which allegedly connects Enumclaw’s intent to the ISO. The link is defective, and MacPherson’s arguments that rely on Enumclaw “intending what ISO intended” should be evaluated accordingly.

Additionally, there is evidence that Enumclaw intended *not* to cover the work of subcontractors. MacPherson cites Scott C. Turner,

*Insurance Coverage of Construction Disputes, Vol. 1 § 33.3* (2nd Ed. 2007) for the proposition that insurance companies' intent to provide such coverage in the endorsement is reflected in "significant additional premium," and that it would be a windfall to insurers worth hundreds of millions of dollars if subcontractor coverage were not provided<sup>7</sup>. *Id.* If an enhanced premium is the bellwether of insurer's intent, Enumclaw intended not to provide coverage for subcontractor work; *there was no additional charge* for the UMB 3011 endorsement to the Umbrella. This can be seen by examining the declarations page of the Umbrella policy, which lists the premium of the Umbrella, and lists the various endorsements. CP 1117. No additional charge is recorded for the UMB 3011, either in the declarations or on the UMB 3011 itself. CP 1117, CP 1132. Where an endorsement garners additional premium, the additional premium is reflected. *See, eg.* CP 1038 (Broad Form Endorsement attached to the base liability policy, reflecting an additional premium of 30 percent of the basic premium.) MacPherson cannot ascribe to Enumclaw an intent to provide coverage for subcontractor work based on an increased premium.

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<sup>7</sup> The Oregon line cases, including *Fireguard*, *McKellar* and *Fejes* all rely on the fact that the insured was charged an "additional premium" for the endorsement. This is just one more reason why their reasoning is inapplicable to the case at bar.

**MacPherson's Umbrella premium was set with *Schwindt* as controlling law.** As the court noted in *Staiger v. Burkhart*, 299 Ore. 49, 54 (1985), "The insurer was charged with knowledge of the relevant law when it set its premium and sold the policy to the [insured]." If MacPherson were given the benefit of the law of other jurisdictions, that had been expressly rejected by Washington before its premium was set, MacPherson would receive a windfall.

In short, MacPherson has offered nothing to show that Enumclaw intended to provide coverage for subcontractor work.

**3. The Merger Rule is alive and well in Washington and in Minnesota.**

It is not surprising that MacPherson attempts to devalue the *Schwindt* Merger rationale, as it badly undermines MacPherson's interpretation of the work exclusion. But MacPherson should be forthright about what it seeks; MacPherson wants the Court to overrule *Schwindt*. The *Schwindt* Court was clear: "We . . . hold that work of subcontractors is necessarily included in exclusions pertaining to faulty work or defective products of the contractor." *Schwindt* at 306. The *Fireguard* court considered this Merger Rule, and made its position similarly clear: "Again, we reject this idea." *Fireguard* at 654. MacPherson urges the Court to follow *Fireguard*, and "reject" the holding of *Schwindt* (which

was most recently reaffirmed in *Enumclaw v. Patrick Archer Constr. Co.*, 123 Wn. App. 728, (2004)). This rejection of Washington law is justified, MacPherson claims, because the Minnesota cases which the Court found persuasive in *Schwindt* allegedly have been “dispensed with” by the Minnesota court. *Pet. for Rev 16*. But, MacPherson has misconstrued the current state of Minnesota law; the *Knutson* case would be decided in Minnesota today exactly as it was originally. Arguing otherwise, MacPherson cites the case of *Wanzek Const., Inc. v. Wausau*, 679 N.W.2d 322 (Minn. 2004). In *Wanzek*, the insured’s policy, unlike MacPherson’s, was written on the Simplified general liability form, which contained the following Work exclusion:

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard.”

*This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.*

The insurer in *Wanzek* argued that Business Risk and Merger doctrines described in *Knutson* should apply, and that the insured was therefore not entitled to coverage for damage to subcontractor work. Not surprisingly, in light of the explicit subcontractor exception to the work exclusion in the Simplified policy, the court held that the *Knutson* Business Risk and Merger principles could not override the plain meaning

of the policy. *Id.* In truth, *Wanzek* does not overrule *Knutson*, it confirms it. Both *Wanzek* and *Knutson* stand for the proposition that courts should enforce the unambiguous meaning of policy exclusions.

In an attempt to bolster its claim that *Wanzek* overruled *Knutson*, MacPherson cites *Westfield Ins. Co. v. Weis Builders, Inc.* 2004 U.S. Dist. LEXIS 13658 (2004), an unpublished opinion from a federal district court in Minnesota<sup>8</sup>. In construing a Simplified policy, with the explicit subcontractor work coverage, the court in *Westfield* claimed that *Wanzek* had “dispensed with” the *Knutson* interpretation of the work exclusion. *Id.* This hasty characterization is only true to the extent that *Wanzek* addressed itself to entirely different policy language than *Knutson*. A careful reading of *Wanzek* itself demonstrates that the federal district court overstated the significance of that case. In the present case, the Court of Appeals correctly noted that *Wanzek* did not overrule *Knutson*, and *Knutson* would be decided today exactly as it was originally.

#### **4. In Seeking to Override Unambiguous Policy Terms with “Intent”**

##### **Evidence, it is MacPherson’s Burden to Prove that Intent.**

MacPherson suggests that the Court of Appeals erred by holding

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<sup>8</sup> Although this citation is legally innocuous, Mutual of Enumclaw renews its objection on the basis that it is unpublished. “[C]itation to unpublished opinions of other jurisdictions is also inappropriate.” *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446 472, 45 P.3d 594 (2002). This case should not be considered by the Court.

that MacPherson was “required to prove the insurer’s subjective intent in issuing its policy.” *Pet. for Rev. at 19*. Of course, the Court of Appeals ruled no such thing. But where the insured attempts to alter the plain meaning of a policy provision with alleged “intent” evidence, it is the insured’s obligation to *prove* that intent. As this Court held in *Dwelley v. Chesterfield*, 88 Wn.2d 331 (1977), the party asserting a mutual intention that a policy mean something other than what it says has the burden of proving that intention. MacPherson did not meet that burden.

#### IV. CONCLUSION

The Court should deny MacPherson’s Petition for Review.

Respectfully submitted this 14th day of September, 2007.

HACKETT, BEECHER & HART

FILED AS ATTACHMENT  
TO E-MAIL

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THE SUPREME COURT  
OF THE STATE OF WASHINGTON

MUTUAL OF ENUMCLAW  
INSURANCE COMPANY,

NO. 80590-3

Respondent.

CERTIFICATE OF  
SERVICE

v.

MACPHERSON CONSTRUCTION  
& DESIGN, LLC,

Petitioner.

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I, Linda Voss, declare that on the date noted below I caused to be delivered via ABC Legal Messengers, Inc., a copy of Answer To Petition For Review to:

GREGORY L. HARPER  
HARPER HAYES  
600 University Street, Suite 2420  
Seattle, WA 98101

I Certify Under Penalty Of Perjury Under The Laws Of The State Of Washington That The Foregoing Is True And Correct.

Signed in Seattle, WA this 14th day of September, 2007.

FILED AS ATTACHMENT  
TO E-MAIL

\_\_\_\_\_  
Linda Voss

Hackett, Beecher & Hart  
1601 5th Ave. #2200  
Seattle, WA 98101