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72106-2

No. 72106-2-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS,

Appellant,

v.

THE OHIO CASUALTY INSURANCE COMPANY,

Respondent.

BRIEF OF RESPONDENT

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A. INTRODUCTION

Trinity Universal Insurance Company of Kansas ("Trinity") hopes to obtain a rate of judgment interest on remand of this case that it did not select in securing a default judgment against respondent Ohio Casualty Insurance Company ("Ohio"). That rate was also not commanded by this Court's opinion in *Trinity Universal Insurance Co. of Kansas v. The Ohio Casualty Insurance Co.*, 176 Wn. App. 185, 312 P.3d 976 (2013), *review denied*, 179 Wn.2d 1010 (2014) ("*Trinity I*"). To advance its position, Trinity misstates this Court's direction in *Trinity I* and the applicable law on judgment interest.

The trial court here correctly followed this Court's direction in *Trinity I* to "correct the judgment" in accordance with the Court's opinion. It properly rejected Trinity's second effort to overreach¹ by denying Trinity's demand that the trial court amend the default judgment to provide Trinity a more favorable rate of judgment interest.

This Court should affirm the trial court and not revisit its clear direction in *Trinity I* that, on remand, the trial court was simply to correct the default judgment to remove the statutory damage enhancements

¹ The upshot of this Court's decision in *Trinity I* was that Trinity overreached in obtaining its default judgment, demanding damages under the CPA and IFCA to which it was not entitled, and the judgment was reversed on appeal by this Court. Now, on remand, it is overreaching as to the interest due on the portion of the default judgment that survived the appeal.

awarded under the Consumer Protection Act, RCW 19.86 ("CPA") and the Insurance Fair Conduct Act, RCW 48.30.015 ("IFCA"), which this Court held that Trinity was not entitled to receive, and no more. This Court should deny Trinity's request for entry of a materially different default judgment from the one Trinity obtained in July 2010 and affirm the trial court's order. It is long overdue for this litigation to end.

B. ASSIGNMENTS OF ERROR

Ohio acknowledges Trinity's assignment of error, but believes that the issue is more appropriately formulated as follows:

Where the Court of Appeals directed on remand only that the trial court "correct" its default judgment to reflect its opinion overturning the IFCA and CPA enhancements, and the remaining judgment is predicated upon an equitable doctrine for apportioning insurer responsibilities for a judgment against the insurers' insured, did the trial court err by not increasing the tort rate of judgment interest chosen by the insurer that sought the default judgment and the rate entered by the trial court in its original default judgment?

C. STATEMENT OF THE CASE

The facts in this case are well known to the Court from *Trinity I.*²

But certain factual points bear emphasis.

The default judgment. In January 2010, Trinity settled a claim brought against Millennium Building Company, Inc. ("Millennium"), a

² Indeed, Trinity's statement of the case is largely a block quote from *Trinity I.* Br. of Appellant at 3-7.

contractor insured under one of its policies. *Trinity I* at 191-92. Trinity contended that Ohio was a co-insurer of Millennium and owed some or all of the costs of defense and settlement. *Id.*³ Ohio took the position that it was an excess insurer, and that because the claim settled within Trinity's policy limits, Ohio owed Trinity no duty to contribute to defense or settlement costs. *Id* at 192.

Trinity sued Ohio for subrogation, equitable contribution, and insurer bad faith under the CPA and IFCA. *Trinity I* at 190, 193; CP 1-7. On July 14, 2010, the trial court entered an order of default and default judgment ("default judgment") in which Trinity recovered a \$245,432.69 judgment against Ohio for the reasons reflected in *Trinity I*, based on the defense and settlement costs it alleged it had paid on behalf of Millennium. CP 8-11, 46-47. At Trinity's request, the alleged damages were trebled under IFCA and the judgment included a \$25,000 enhancement under the CPA. CP 11, 46-47. In the default judgment, drafted and presented *by Trinity* and entered by the trial court unchanged, Trinity selected the post-judgment interest rate—2.23%. CP 47 ("This judgment shall bear interest at the tort rate of 2.23% per annum until

³ In its brief, Trinity neglects to point out that Ohio never denied that Millennium was its insured, but Ohio's consistent position was that its coverage of Millennium was secondary to that of Trinity. Millennium received a defense and indemnification. The only dispute between Ohio and Trinity was with respect to their financial obligations.

satisfied."). Trinity did not request, CP 8-11, and the trial court did not award, prejudgment interest. CP 46-47.

Trinity I. This Court in *Trinity I* set aside the CPA and IFCA enhancements to Trinity's damage claims because Trinity, an insurer, had no standing to assert IFCA or CPA claims against Ohio, another insurer. The Court also set aside a later award of attorney fees to Trinity derived from its CPA and IFCA claims. The Court remanded the case for the *limited* purpose of correcting the July 2010 judgment to reflect its ruling deleting the CPA and IFCA enhancements. 176 Wn. App. at 209 ("We affirm in part, reverse in part, and remand to the trial court to correct the judgment.").

Undeterred by this Court's rejection of its overreach on CPA and IFCA enhancements, Trinity again overreached by demanding that the trial court increase the interest rate that Trinity itself selected in its default judgment from 2.23% to 12%, *and* to add an award of prejudgment interest, which it had not previously sought or been awarded. (as noted *supra*, a claim now abandoned on appeal). CP 53-59⁴. The difference between the interest Trinity has already received through its default and

⁴ On appeal, Trinity has abandoned this tardy claim for prejudgment interest. Br. of Appellant at 2 (per assignment of error and issues pertaining thereto).

what it demanded the trial court award was more than \$100,000. CP 85, 86.

This Court, however, never "set aside" the default judgment, as Trinity claims. In *Trinity I*, this Court only eliminated Trinity's improper CPA and IFCA claims from the judgment amount and remanded the case to the trial court for entry of a corrected judgment reflecting that decision. That decision did not give the trial court the latitude to change the interest rate as part of correcting the judgment. This Court did not direct the trial court to change the interest rate in *Trinity I* because interest was never placed at issue in that appeal by Trinity, as it concedes. Br. of Appellant at 1-2 (confining issue to post-trial judgment in summary of argument).

Proceedings on remand. In January 2014, shortly after our Supreme Court denied Trinity's petition for review of *Trinity I*, Ohio calculated the amount owing on the default judgment based on the Court's ruling, and paid that full amount to Trinity. That amount, \$264,626.19, was comprised of the principal judgment amount of \$245,432.69 and interest of \$19,695.02; the interest was calculated at 2.23%—the precise rate stated in Trinity's default judgment. CP 86, 96-101.

Nevertheless, for 3 1/2 months thereafter, Trinity refused to acknowledge that Ohio had satisfied the judgment in full. CP 86. Trinity then finally filed the motion to correct the judgment on remand, referenced

supra, seeking an actual increase in the judgment rate of interest to the 12% contractual rate. CP 53-82. Ohio filed a motion seeking an order that Trinity confirm full satisfaction of the judgment.⁵ The trial court granted Ohio's motion and corrected the judgment in accordance with this Court's direction. CP 110-112. The court specifically directed the clerk to make an entry in the judgment rolls reflecting that the judgment was satisfied. CP 112. Trinity appealed. CP 113-17.

D. SUMMARY OF ARGUMENT

When Trinity sought the default judgment at issue here, it sought and the trial court awarded interest at 2.23%. Now, even though interest was not at issue on appeal and was not mentioned in this Court's remand direction to simply "correct the judgment" in accordance with its ruling, Trinity says the trial court erred in failing to amend the default judgment to increase the interest rate nearly six-fold, from 2.23% to 12%, effectively awarding Trinity an additional \$100,000.

Trinity's position is baseless. First, the trial court correctly adhered to this Court's specific and very limited instructions on remand. That alone should be enough. Second, if the Court addresses the merits, the sole ground supporting the default judgment sounds in equity, not contract: the fair allocation of responsibilities for payment of a tort

⁵ This pleading is, unfortunately, not in the case docket.

settlement and expenses between insurers. No contractual issues were at stake. The trial court here correctly employed the judgment interest rate for tort claims in RCW 4.56.110(3)(b).

This litigation has gone on long enough. This Court should put an end to it by affirming the trial court's decision on statutory interest.

E. ARGUMENT⁶

(1) The Trial Court's Authority on Remand

Washington appellate courts have been precise about the responsibility of trial courts on remand. RAP 12.2 describes the appellate courts' disposition of cases on review. It is well-settled law in Washington that appellate courts can remand a case to the trial court for proceedings short of a full new trial. *See, e.g., Simons v. Stokely Foods*, 35 Wn.2d 920, 936-37, 216 P.2d 215 (1950) (remand to trial court to correct jury award that exceeded the amount pleaded in complaint); *Hadley v. Maxwell*, 144 Wn.2d 306, 315, 27 P.3d 600 (2001) (trial on remand limited to liability); *State v. Hibdon*, 140 Wn. App. 534, 538-39, 166 P.3d 826 (2007) (sentence did not conform to statutory mandate as to period for community placement; remand for resentencing).

⁶ Trinity claims the standard of review here is de novo. Br. of Appellant at 9.

It is also well-settled law in Washington that the trial court is obliged to scrupulously adhere to the appellate court's direction on remand. As this Court stated in *Bank of America NA v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594 (2013), *review denied*, 179 Wn.2d 1027 (2014):

An appellate court's mandate is binding on the lower court and must be strictly followed. While a remand "for further proceedings" signals this court's expectation that the trial court will exercise its discretion to decide any issue necessary to resolve the case, *the trial court cannot ignore the appellate court's specific holdings and directions on remand.*

(emphasis added).

As Ohio requested, the trial court simply did what this Court directed: it corrected the default judgment to reflect the reduction in damages awarded to Trinity; it was to make no revisions to that judgment that were not directed by this Court. Trinity seeks a wholesale revision of the judgment and the award of *additional relief*.

This Court did not instruct the trial court to "enter judgment." Rather, the Court instructed the trial court to "correct" the judgment to reflect its ruling: to remove the impermissible CPA and IFCA damage enhancements. What Trinity actually wants from this Court is retroactive

permission to have an entirely new judgment entered. This Court should reject Trinity's effort to ignore *Trinity I.*⁷

On July 14, 2010, when Trinity appeared *ex parte* and submitted a default judgment, in that default judgment, it asked for, and received, the 2.23% interest rate. CP 46-47. Had Trinity wanted a higher rate, it had the obligation to seek that higher rate when it obtained its default judgment. Trinity instead selected 2.23% as the proper interest rate for its claims. *Kitsap County Bank v. Lewis*, 24 Wn. App. 757, 760, 603 P.2d 855, 857 (1979), *review denied*, 93 Wn.2d 1017 (1980) ("If the intent of the drafter of the judgment was to obtain 10 percent interest for his client, the document should have specifically so stated.").

Trinity cites *Yarno v. Hedlund Box & Lumber Co.*, 135 Wash. 406, 237 Pac. 1002 (1925) and *White Pass Co. v. St. John*, 78 Wn.2d 188, 190, 470 P.2d 548 (1970) for the proposition that following remand to "correct" a judgment amount, the plaintiff can simply change the interest rate. Br. of

⁷ In fact, if Trinity is deemed to be seeking to have a new judgment entered against Ohio, including a new interest rate—then this appeal is entirely moot. Interest on a new judgment runs from the date of entry of that judgment. *Fulle v. Blvd. Excavating*, 25 Wn. App. 520, 522, 610 P.2d 387, *review denied*, 93 Wn.2d 1030 (1980) ("Where the appellate court merely modifies the trial court award and the only action necessary in the trial court is compliance with the mandate, interest runs from the date of the original judgment. On the other hand, where an appellate court has reversed the trial court judgment and directed that a new money judgment be entered, interest runs from the entry of such new judgment."). Therefore, a new judgment entered against Ohio would already be fully satisfied, regardless of the post-judgment interest rate, by Ohio's January 2014 payment to Trinity of the full judgment principal and substantial post-judgment interest.

Appellant at 9-12. But those cases do not support Trinity's position. In *Yarno*, the appellate opinion had the effect of reducing the overall recovery on a contract claim. The Supreme Court remanded the case to the trial court for entry of a reduced judgment consistent with the opinion. 135 Wash. at 407. The Court's *Yarno* decision stands only for the unremarkable proposition that the plaintiff was entitled to judgment interest from the date of the original judgment, on that amount of judgment being liquidated. *Id.* at 408-09. The rate of interest was never at issue.

White Pass, like *Yarno*, did not concern the selection of an interest rate. *Id.* ("The rate of interest is not in dispute, being fixed by statute at "six percent per annum." RCW 4.56.110."). *White Pass* instead addressed a very different question—when does damage become liquidated for purposes of prejudgment interest. The Supreme Court remanded the case with the instruction to apply the undisputed interest rate to the prejudgment amount. *Id.* at 193.

In this case, the default judgment remains in effect. The only change this Court authorized to be made in the judgment was a "correction" to remove the CPA and IFCA enhancements that this Court determined Trinity was not entitled to receive. Trinity itself had already identified what the amount of an unenhanced judgment would be:

\$245,432.69.⁸ The only task for the trial court was to correct the principal amount of the judgment from \$761,298.07 to \$245,432.69. It did so.

(1) Trinity's Claim Was Not Contractual in Nature and Was Not Governed by the Statutory Contract Rate

As noted *supra*, Trinity neglects to inform this Court in its brief that the 2.23% interest rate it now wants changed is precisely the interest rate it selected in its default judgment; it also fails to inform the Court that it never raised the issue of the interest rate in *Trinity I*. This Court's opinion did not discuss interest, and its mandate says nothing about altering the default judgment to *increase* the interest rate or award prejudgment interest. Rather, Trinity simply forges ahead as if the question of the correct interest rate were properly before the trial court on remand. It was not. But even if it were, Trinity's argument that it is entitled to the 12% contract rate is baseless.

This Court's decision in *Woo v. Firemen's Fund Ins. Co.*, 150 Wn. App 158, 208 P.3d 557, *review denied*, 167 Wn.2d 1008 (2009) is instructive on a number of points regarding post-judgment interest here. First, where multiple theories of recovery are present in a judgment, only one post-judgment interest rate applies. *Id.* at 167. Further, a judgment

⁸ CP 11 ("Trinity paid \$20,432.69 in attorney fees providing a defense to Millennium... Trinity then paid \$225,000.00 in indemnity on Millennium's behalf to settle the claims against it. *Id.* This is an out-of-pocket expense of \$245,432.69.").

“founded on tortious conduct” within the meaning of RCW 4.56.110(3) means a judgment having tortious conduct as its basis. *Id.* at 168.⁹ This Court concluded in *Woo* that even where the parties initial relationship was based on a contract (something that is not true here), that was not dispositive. Instead, the core of the judgment was predicated on the insurer’s tortious conduct. *Id.* at 170-75. The analysis is no different here.

Trinity argues that the default judgment is not based on tortious conduct, but it fails to inform the Court what “tortious conduct” or “tort-like conduct” is, arguing instead that its surviving claim against Ohio is based in contract. In a rhetorical flourish, Trinity asserts that this Court “stripped the judgment of all tortious elements,” br. of appellant at 13, and that, by its nature, equitable subrogation is a contractual remedy. *Id.* at 14. This bald claim ignores this Court's opinion in *Trinity I*. Trinity improperly attaches the phrase “contractual rights” to the term “equitably subrogated”—presumably in an attempt to confuse the Court and to turn an equitable claim based on tort into a contractual claims for purposes of obtaining an additional \$100,000 in interest. Trinity is incorrect on two levels.

⁹ A tort is, at its most basic, a legal wrong. *Christensen v. Swedish Hospital*, 59 Wn.2d 545, 548, 368 P.2d 897 (1962).

First, this Court specifically held that Trinity’s claims against Ohio were not “based in contract.” The Court was clear that Trinity did *not* obtain any contractual rights against Ohio under its policy issued to its insured, Millennium, but rather that Trinity had a right to recover from Ohio because Trinity paid the entire claim against Millennium. This Court stated:

[B]y virtue of completely defending and indemnifying Millennium, Trinity was equitably subrogated to Millennium with respect to losses it actually paid. Accordingly, we affirm the trial court's award for costs Trinity paid in defending and indemnifying Millennium.

Trinity I, 176 Wn. App. at 205. The Court said *nothing* about Trinity having “equitably subrogated contract rights.” In fact, the Court could not have been clearer that Trinity’s only claims were *not* based on any contractual rights in rejecting an award of attorney fees to Trinity based on the equitable rule for awarding fees when an insurer denies coverage under the insurance contract:¹⁰

Here, Trinity's claims against Ohio were not based on an assignment or contractual subrogation of rights by Millennium. Having failed to produce evidence of assignment or contractual right, Trinity lacked standing to assert those claims of the insured. Rather, Trinity's claim arose from its own equitable subrogation rights as the

¹⁰ *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 52, 811 P.2d 673 (1991).

paying insurer, not the rights of the insured. Trinity is not entitled to attorney fees under *Olympic Steamship*.

Id. at 209 (citations omitted). Trinity was not standing in the shoes of Millennium, its insured, seeking to assert Millennium's contract-based rights. Trinity was pursuing its own recovery, and that theory was not based in contract. *Trinity had no contract with Ohio*.

Second, Trinity's claims were based in tort. A tort is, of course, "[a] civil wrong, other than a breach of contract...." *Black's Law Dictionary* 1527 (8th ed. 2004). *See also, Eastwood v. Horse Harbor Found., Inc.*, 170 Wn.2d 380, 389, 241 P.3d 1256 (2010) (examining the economic loss rule and the interplay between contract and tort and explaining that "ordinary tort principles have always resolved this question. An injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract.").

The *Trinity I* court held that Trinity was not assigned any contract rights from its insured, Millennium. Even if Ohio was, in fact, a co-primary insurer of Millennium, as Trinity claimed, Millennium suffered no damages from Ohio's refusal to contribute to the defense and settlement: Millennium was fully defended and indemnified by Trinity. Trinity's claim against Ohio for *equitable* (not contractual) subrogation was exactly that—a non-contractual right to recover from another party based on its alleged overpayment of defense and settlement costs.

This Court's refusal to find that Trinity had standing to assert Millennium's contractual claims is consistent with Washington decisions interpreting RCW 4.56.110(3). Those decisions have concluded that when the conduct of an insurer is at issue, such as the refusal to defend, the claim sounds in tort and is subject to the tort interest rate in the statute. In *Unigard Ins. Co. v. Mutual of Enumclaw Ins. Co.*, 160 Wn. App. 912, 927, 250 P.3d 121 (2011), for example, the basis for the claims was Mutual of Enumclaw's refusal to defend an insured; the insured assigned its claims to Unigard:

Like in *Woo*, Mutual of Enumclaw was sued for breach of duty to defend, bad faith, and Consumer Protection Act claims. Also like in *Woo*, Mutual of Enumclaw was estopped from asserting coverage defenses once bad faith was established. But according to Unigard, this case is unlike *Woo* because there was no award of general damages and the damage verdict is undifferentiated as between bad faith and breach of contract. Unigard made a deliberate decision not to seek general damages for emotional distress.

Nevertheless, the judgment against Mutual of Enumclaw was based primarily on tortious bad faith conduct.

The *Unigard* court applied the tort judgment interest rate. *Id.* at 926-28. As with *Unigard*, the conduct about which Trinity complains is Ohio's refusal to contribute to a mutual insured's defense. Trinity attempts to distinguish the result in *Woo* (it does not cite *Unigard* in its brief) by focusing on the causes of action that *Woo* pursued against his insurer. Br.

of Appellant at 13-14. But the original act forming the basis for Woo's claims was the insurer failing to defend its insured—just as Trinity alleged Ohio failed to do.

Ultimately, Ohio's alleged wrongful conduct is tort-like and not contract-like. As Trinity alleged in its complaint, it was seeking money from Ohio because Ohio had wrongfully failed to honor its obligations to it. Any obligation for Ohio to pay Trinity was not based on a contractual duty, but rather an equitable, or tort-like duty. “Equitable subrogation is a legal fiction whereby a person who pays a debt for which another is primarily responsible is subrogated to the rights and remedies of the other.” *Truck Ins. Exch. v. Century Indem.*, 76 Wn. App. 527, 530-31, 887 P.2d 455, review denied, 127 Wn.2d 1002 (1995); see generally *Trinity I* at 200. Equitable subrogation is an equitable tool for allocating financial obligations in a fair manner between co-insurers, obligations that in this case just so happen to have arisen out of Millennium's tort-based liability.

Moreover, this Court dismissed Trinity's improper CPA and IFCA claims, leaving the equitable subrogation award as the sole basis for Trinity's default judgment. The basis for that award—Ohio's refusal to contribute to Millennium's defense and indemnification and Trinity's consequent overpayment of those expenses—is no different now than when Trinity obtained its default judgment. Trinity complained in its suit that

Ohio had wrongfully refused to pay money on behalf of its insured and that Trinity had done so in Ohio's stead. These claims do not sound in contract (because there was none) and instead sound in tort. Accordingly, the 2.23% interest rate in the default judgment applies.

Finally, Trinity mistakenly contends that Ohio analogizes the present case to one of unjust enrichment, br. of appellant at 15-16, but that is untrue. Unjust enrichment is not at issue here. Unlike equitable subrogation, unjust enrichment *is* a contractual cause of action because it is based on a *quasi-contract*. *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008) (quoting *Bill v. Gattavara*, 34 Wn.2d 645, 650, 209 P.2d 457 (1949) for the proposition that “the terms ‘restitution’ and ‘unjust enrichment’ are the modern designations for the older doctrine of ‘quasi contracts’”). In its brief at 15, Trinity also cites to *Stevens v. Brink's Home Sec., Inc.*, 162 Wn.2d 42, 51, 169 P.3d 473 (2007), a claim involving violations of the minimum wage act. But the Supreme Court there applied the contractual interest rate because minimum wage act claims are based on implied contracts between employers and employees. *Id.* at 51-52.

Ohio did not have a contract with Trinity. Trinity sought to compel Ohio to contribute defense and indemnity expenses it had wrongfully failed to contribute so that Trinity overpaid those expenses. Ohio refused, because it concluded that Trinity had that obligation, not Ohio. As this

Court explained in *Trinity I*, it was Ohio's presumptively wrongful refusal to contribute money *to Trinity* that led to the lawsuit, not any contractual obligation Ohio owed directly to Trinity nor any contractual obligation Ohio owed to Millennium that Trinity could assert in Millennium's stead. Trinity's recovery had, as its basis, tortious conduct under RCW 4.56.110(3).

The trial court's order was correct.

(3) The Relief Trinity Seeks Exceeds the Relief Sought in Its Complaint

A further basis for affirmance here¹¹ is that even if the trial court had been free on remand to entertain Trinity's belated request and increase the interest rate to 12%, to do so would violate due process because no such request was made by Trinity in its complaint or when the default judgment was entered. As our Supreme Court has explained, "[a] defendant has a due process right to assume that a default judgment will not exceed or substantially differ from the demand stated in the complaint. *Conner v. Universal Utils.*, 105 Wn.2d 168, 173, 712 P.2d 849 (1986); *In re Marriage of Leslie*, 112 Wn.2d 612, 617-18, 772 P.2d 1013 (1989). A court lacks jurisdiction to award relief beyond that requested in the

¹¹ It is a long-standing rule in Washington that an appellate court may affirm the trial court on any basis supported in the record. *See, e.g., MHM & F LLC v. Pryor*, 168 Wn. App. 451, 461, 277 P.3d 62 (2012).

complaint and a default judgment awarding such relief is void to the extent such relief is granted. *Leslie*, 112 Wn.2d at 617-18.

Trinity's complaint did not seek judgment interest at 12%, nor did its motion for default judgment or proposed judgment. CP 47. Because the complaint and default judgment did not seek or award interest at 12%, and because this Court only remanded the case to “correct” the default judgment, Trinity cannot now add new damages to that judgment.

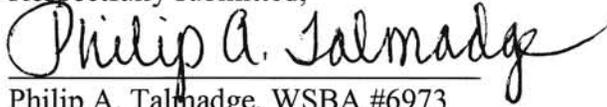
F. CONCLUSION

This Court remanded the case to the trial court in *Trinity I* for a single, narrow task: to “correct” the principal amount of the judgment to remove the improper IFCA and CPA enhancements, and nothing more. Only one pre-determined correction to the default judgment needed to be made: change the judgment from \$761,298.07 to \$245,432.69. Even if the trial court had the power to change the interest rate in the judgment—and it correctly determined that it did not—the rate would not change because Trinity’s sole surviving claim sounds in tort and not contract. This Court should reject Trinity’s appeal that prolongs this case needlessly.

Ohio asks the Court to affirm the trial court's order. Costs on appeal should be awarded to Ohio.

DATED this 15th day of October, 2014.

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APPENDIX

RCW 4.56.110:

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3)(a) Judgments founded on the tortious conduct of a "public agency" as defined in RCW 42.30.020 shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in

any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited into the U.S. Postal Service for service a true and accurate copy of the Brief of Respondent in Court of Appeals Cause No. 72106-2-I to the following:

Brent W. Beecher
Hackett Beecher & Hart
1601 5th Avenue, Suite 2200
Seattle, WA 98101

Alfred Donohue
Wilson, Smith, Cochran & Dickerson
901 5th Avenue, Suite 1700
Seattle, WA 98165

Original and one copy delivered by ABC messenger to:

Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176

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

DATED: October 16, 2014, at Seattle, Washington.



Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick