NO. 1034962

SUPREME COURT
OF THE STATE OF WASHINGTON

SHANGRI-LA LLC, a Washington limited liability company,

Respondent,

v.

EAGLE WEST INSURANCE COMPANY, a foreign insurance company,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals ruled that Petitioner Eagle West did not "substantially comply with the appearance requirement," as required by *Morin v. Burris*, 160 Wn.2d 745, 161 P.3d 956 (2007), because the letter from its claim representative "did not show an intent to defend against a lawsuit in court" and "made no acknowledgement of the jurisdiction of the court or the existence of the matter in court." *Slip op.* at 12 (attached as APPENDIX A). The decision is entirely consistent with *Morin*—it quotes *Morin* and then applies *Morin's* holdings. The Court of Appeals decision is also consistent with other Court of Appeals decisions because insufficiency of evidence is not an "irregularity" that could be remedied by a motion to vacate—and even if it could be, the evidence supports the amount of the judgment. The Court of Appeals decision does not involve a significant question of law under the Constitution because it does not even mention the Constitution (presumably because no one briefed any constitutional issues in the Court of Appeals).

Finally, Eagle West's petition does not involve an issue of public interest—much less a "substantial" one—because it concerns a routine private dispute between two private parties. For these reasons, Respondent respectfully requests that the Court deny Eagle West's petition for review.

II. FACTS

Respondent Shangri-La LLC owns an apartment building in Snohomish County. CP 318. Eagle West is Shangri-La's property insurer. CP 321; 342.

In May 2021, Shangri-La submitted an insurance claim to Eagle West regarding damage to the roof of Shangri-La's apartment building. CP 507. Eagle West retained an expert to investigate, who concluded that "condensation" was the "primary source" of the damage-causing moisture in the roof. CP 509-14. Although Eagle West's "all-risk" policy does not

exclude "condensation," Eagle West nevertheless denied the claim. CP 516-20.[1]

On March 17, 2022, Shangri-La filed this lawsuit. CP 534-36. The same day, counsel for Shangri-La sent a letter to Eagle West giving it notice of Shangri-La's intent to assert a claim against Eagle West under Washington's Insurance Fair Conduct Act ("IFCA").[2] CP 547-49. On April 14, 2022, Shangri-La filed an amended complaint that added an IFCA cause of action to its existing lawsuit. CP 538-45.

On April 18, 2022, Shangri-La served the amended complaint on Eagle West by delivering it to the Office of the Insurance Commissioner ("OIC"). *See* CP 553; *see also* RCW 48.05.200(1) ("Service upon the commissioner as attorney

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[1] "All-risk" insurance "covers all risks that are not specifically excluded in the terms of the contract." *Frank Coluccio Constr. Co., Inc. v. King Cnty.*, 136 Wn. App. 751, 757 n.1, 150 P.3d 1147 (2007).

[2] *See* RCW 48.30.015(8)(a) (requiring notice to insurer 20 days before filing IFCA claim).

constitutes service upon the insurer."). The OIC then mailed the lawsuit to Eagle West at the address that Eagle West had placed on file with the OIC. CP 547; 553. According to USPS tracking information, the lawsuit was picked up from the post office on April 22, 2022. *See* CP 555.

On April 21, 2022—the day *before* Shangri-La's lawsuit was retrieved—Eagle West claims representative Ken Gotchall sent a letter to Shangri-La's counsel acknowledging receipt of Shangri-La's *IFCA notice*. CP 551. Mr. Gotchall's letter does not mention Shangri-La's lawsuit, does not say anything about defending a lawsuit, and does not acknowledge the jurisdiction of any court. *Id.* This is presumably because Mr. Gotchall was not aware of Shangri-La's lawsuit until roughly 16 months after he wrote the April 21, 2022 letter. *See* CP 184 ("I was not aware that Plaintiff had filed suit against [Eagle West] until . . . I saw [the] August 11, 2023 letter . . . .").

An Eagle West representative testified that she did not know whether Eagle West actually received Shangri-La's

lawsuit, but if it did, the lawsuit was likely "set aside" because the designee for receiving legal process was no longer with the company. CP 197-98. Eagle West admittedly failed to update either its mailing address or the designee's name with the OIC:

> [Eagle West] had vacated this address prior to April 2022, when the OIC is supposed to have mailed the summons and complaint to [Eagle West]. In addition, the person identified—Seynabou Seck—was no longer employed by [Eagle West] in April of 2022. Unfortunately, we had not updated our mailing address with the OIC, or provided a new contact name, prior to April of 2022.

CP 197-98.[3]

When Eagle West did not respond to the lawsuit, Shangri-La filed a motion for default and then a motion for default judgment. CP 777-80; 563-99. The latter was supported by five declarations totaling 299 pages. CP 264-562. The

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[3] Washington law requires foreign insurers to appoint the Insurance Commissioner as attorney to receive service of all legal process, to "designate by name, email address, and address the person to whom the commissioner must forward legal process," and to "keep the designation, address, and email address filed with the commissioner current." RCW 48.05.200.

motion and supporting documents established that the damage to Shangri-La's apartment building was caused by "condensation," and that Eagle West's policy does not exclude (and therefore covers) damage caused in part by condensation. CP 567-71. The motion requested damages for the cost of repairing the roof, enhanced damages under IFCA, and an award of attorney fees. CP 571-75.

On July 26, 2022, Snohomish County Superior Court Commissioner Susan Harness entered a default judgment against Eagle West. CP 255-63. During the hearing, Commissioner Harness stated that she had reviewed Shangri-La's moving papers and concluded that they supported the motion. CP 165. The judgment includes $1,928,349 in damages; twice that amount in enhanced IFCA damages[4] ($3,856,698); and $2,314,019 in attorney fees (equal to the contingent fee that

[4] *See* RCW 48.30.015 (2) ("The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage . . . , increase the total award of damages to an amount not to exceed three times the actual damages.").

Shangri-La had agreed to pay its counsel). CP 255-63. The findings and conclusions accompanying the judgment state that Commissioner Harness was awarding the enhanced IFCA damages because Eagle West "unreasonably" denied Shangri-La's insurance claim. CP 262. The findings and conclusions also reflect the "lodestar" attorney fees calculation (*i.e.*, the "reasonable" number of hours spent on the case and counsel's "reasonable" hourly rate), and that Commissioner Harness was electing to increase Shangri-La's fee award based on its contingent fee agreement. CP 260 ("The number of hours . . . and the hourly rates . . . are reasonable"); CP 262 ("It is reasonable to adjust Shangri-La's attorney fees award upward . . . .").

Approximately 15 months after the judgment was entered, Eagle West filed a motion to vacate it. CP 214-54. Eagle West argued that the court should vacate the judgment because Mr. Gotchall's April 21, 2022 letter constituted an "informal appearance," and that Eagle West was therefore entitled to notice

of the default proceedings under CR 55. *See* CP 245-47; *see also* CR 55(a)(3) (defendant "who has appeared . . . shall be served with a written notice of motion for default," while defendant "who has not appeared . . . is not entitled to a notice of the motion").

Commissioner Harness was the first to consider the motion to vacate. CP 69-74. During the hearing, she stated that before she entered the default judgment, she reviewed Shangri-La's motion "very, very carefully":

> [T]he Court obviously reviewed this very carefully. And—and I want to be clear about this: When I receive a—a motion for a default judgment where the sum-certain wasn't pled in the original pleadings, and especially in a case like this where the damages that were being requested were significant, this Court very, very carefully reviews that motion to make sure that evidence that is provided supports the relief that's being requested.
>
> I reviewed the hundreds of pages of documentation that were provided with the motion for default judgment to make sure that the relief that was being requested was supported by the evidence and the law.

RP 32. Commissioner Harness then denied Eagle West's motion to vacate. CP 75-76. In her findings and conclusions, she stated that "Eagle West did not actually appear or substantially comply with appearance requirements, and was therefore not entitled to notice of the motions for default or entry of default judgment." CP 72.

Eagle West then filed a motion to revise Commissioner Harness's order, which a Superior Court judge granted. CP 53-68; CP 8-9. Shangri-La appealed, and the Court of Appeals reversed and reinstated the judgment in an unpublished decision. CP 1-7; APPENDIX A. The Court of Appeals held that because Mr. Gotchall's letter "made no acknowledgement of the jurisdiction of the court or the existence of the matter in court," and because the letter "did not show an intent to defend against a lawsuit in court," Eagle West did not "substantially comply with the appearance requirement" under *Morin*. *Slip op.* at 12.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

This Court should deny Eagle West's petition for review because the Court of Appeals' unpublished decision is consistent with *Morin* and with published Court of Appeals decisions. Moreover, the decision does not violate (or even implicate) the Constitution, and it does not concern an issue of substantial public interest.

A. THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH *MORIN*

Review under RAP 13.4(b)(1) is unwarranted because the Court of Appeals decision followed—and is entirely consistent with—this Court's decision in *Morin*. This Court held in *Morin* that to "substantially comply with the appearance requirements," a defendant "must go beyond merely acknowledging that a *dispute* exists and instead acknowledge that a dispute exists ***in court***." *Morin*, 160 Wn.2d at 756 (bold-underline added). The Court further held that "[t]hose who are served with a summons must do more than show intent to defend; they must in some way

appear and ***acknowledge the jurisdiction of the court***." *Id.* at 749 (emphasis added).

The Court of Appeals correctly determined that the letter from Mr. Gotchall—which was written before he even knew about a lawsuit—did not satisfy *Morin* because it did not acknowledge the jurisdiction of a court or acknowledge that a dispute existed *in court*:

> The *Morin* court explicitly rejected the informal appearance doctrine applied by previous case law, such as *Gage v. Boeing Co.*, 55 Wn. App. 157, 160, 776 P.2d 991 (1989). *Morin*, 160 Wn.2d at 756, 760. In applying CR 55 and CR 60 liberally, the Washington Supreme Court has nevertheless required defendants seeking to set aside a default judgment to be prepared to establish that they actually appeared or substantially complied with the appearance requirements and were thus entitled to notice. *Id*. at 755. Thus, the mere intent to defend, whether shown before or after a case is filed is not enough; the defendant must go beyond merely acknowledging that a dispute exists and instead acknowledge that a dispute exists in court. . . .
>
> . . . .
>
> Gotchall's April 21, 2022 letter failed to comply with the requirements of *Morin* . . . . Gotchall's letter acknowledged Shangri-La's March 17, 2022 letter "regarding the above-captioned claim," referring only to Shangri-La's

> insurance claim. Gotchall's letter made no acknowledgement of the jurisdiction of the court or the existence of the matter in court. . . . Gotchall's letter did not show an intent to defend against a lawsuit in court, but acknowledged no more than that Shangri-La's counsel had indicated they represented Shangri-La.

Slip op. at 10-12. The Court of Appeals' holding could not be more consistent with *Morin*—it quotes *Morin*'s holdings and then applies them.

Eagle West nevertheless contends that the Gotchall letter satisfies *Morin* because it acknowledged that the parties had a dispute over Shangri-La's insurance *claim*. *See Petition for Review* at 15 ("Mr. Gotchall acknowledged that a dispute over the *claim* existed, and the evidence shows he intended to defend the *claim* . . . ."") (emphasis added). But that contradicts the whole point of *Morin*—that a defendant must do more than acknowledge a dispute; a defendant must acknowledge that a dispute exists *in court*: "[T]he defendant must go beyond merely acknowledging that a *dispute* exists and instead acknowledge

that a dispute exists *in court*." *Morin*, 160 Wn.2d at 756 (emphasis in original).

One of the cases that *Morin* reversed—*Matia Inv. Fund, Inc. v. City of Tacoma*, 129 Wn. App. 541, 119 P.3d 391 (2005), *rev'd sub nom. Morin*, 160 Wn.2d 745—is particularly instructive. The plaintiff in that case (Matia) submitted a claim to the defendant (the City of Tacoma). The City responded to the claim letter, but not to Matia's subsequent lawsuit. Matia obtained a default judgment, which the City then moved to vacate. The City argued that its letter responding to Matia's *claim* constituted an appearance in the lawsuit. Although the Court of Appeals agreed, this Court reversed on that very issue. *See Matia*, 129 Wn. App. at 545 (holding acknowledgement by City of *claim* constituted "informal appearance" in lawsuit); *Morin*, 160 Wn.2d 758 ("We find no action in either case [*Matia* or *Morin*] acknowledging that the disputes were *in court*.") (emphasis added).

Here, as in *Matia*, the Gotchall letter at most communicated a desire to discuss Shangri-La's *claim*. But because the letter did not communicate an intent to defend Shangri-La's *lawsuit*, it did not satisfy *Morin*. Thus, Eagle West did not "substantially comply with the appearance rules," *Morin*, 160 Wn.2d at 757, and Eagle West was therefore not entitled to notice of the default proceedings. *See* CR 55(a)(3) ("Any party who has not appeared . . . is not entitled to a notice of the motion . . . ."). The Court of Appeals decision is wholly consistent with *Morin*.

B. THE COURT OF APPEALS DECISION DOES NOT CONTRADICT PRIOR COURT OF APPEALS DECISIONS

In sections C and D of its argument, Eagle West complains about the amount of the judgment and how Commissioner Harness entered it, but fails to explain how any part of *the Court of Appeals decision* contradicts any other Court of Appeals decision under RAP 13.4(b)(2). Rather, Eagle West just claims that the evidence was insufficient to support the damages and

attorney fee awards, and that Commissioner Harness merely "rubber-stamped" Shangri-La's findings and conclusions.

First, "sufficiency of the evidence" is not a basis to vacate a judgment—because it is not a matter "extraneous to the action":

> Civil Rule 60(b) does not authorize vacation of judgments except for reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings. Errors of law are not correctable through CR 60(b); rather, direct appeal is the proper means of remedying legal errors. Here, ***insufficiency of the evidence is not an error that is extraneous to the action or affects the regularity of the proceedings***.

Burlingame v. Consol. Mines & Smelting Co., Ltd., 106 Wn.2d 328, 335-36, 722 P.2d 67 (1986) (emphasis added). In other words, even if Commissioner Harness made a mistake—by, for example, awarding too much in damages or too much in attorney fees—then that error could be corrected only by Eagle West appealing from the judgment, not through a motion to vacate:

> The power to vacate judgments, on motion, is confined to cases in which the ground alleged is something extraneous to the action of the court or goes only to the question of the regularity of its proceedings. ***It is not intended to be used as a***

> ***means for the court to review or revise its own final judgments***, or to correct any errors of law into which it may have fallen. ***That a judgment is erroneous*** as a matter of law is ground for an appeal, writ of error, or certiorari, according to the case, but it ***is no ground for setting aside the judgment on motion***.

Kern v. Kern, 28 Wn.2d 617, 619, 183 P.2d 811 (1947) (*quoting* 1 Black on Judgments (2d ed.) § 329) (emphasis added); *see also Port of Port Angeles v. CMC Real Estate Corp.*, 114 Wn.2d 670, 673, 790 P.2d 145 (1990) ("[A]n error of law will not support vacation of a judgment.").

Moreover, even if awarding too much in damages did amount to a failure to comply with CR 55, which it does not, that would be remediable only under CR 60(b)(1). *See* CR 60(b)(1) (affording relief for "irregularity in obtaining a judgment or order"). A motion under CR 60(b)(1) would have been time-barred—which is why Eagle West did not move under CR 60(b)(1). *See* CR 60(b) (motions "for reasons (1), (2) or (3)" must be brought "not more than 1 year after the judgment . . . was entered"). Moreover, because an alleged

failure to comply with CR 55 falls under CR 60(b)(1), it cannot fall under CR 60(b)(11). *See State v. Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005) ("A defendant can only move to vacate judgment under CR 60(b)(11) when his circumstances do not permit moving under another subsection of CR 60(b)."); *see also Friebe v. Supancheck*, 98 Wn. App. 260, 267, 992 P.2d 1014 (1999) ("CR 60(b)(11) cannot be used to circumvent the one-year time limit applicable to CR 60(b)(1).").

Finally, Eagle West's arguments are baseless anyway:

- The record contains no evidence that Commissioner Harness "rubber-stamped" anything. To the contrary, she said she reviewed the default judgment motion "very, very carefully." RP 32.

- The $1,928,349 damages figure is supported by substantial evidence—it is exactly what Shangri-La's construction expert testified the repairs would cost. *See* CP 278 (explaining "roof repair work will cost a total of $1,928,349").

- Commissioner Harness correctly awarded enhanced damages under IFCA because she found that Eagle West "unreasonably" denied Shangri-La's claim. CP 262; *see also* RCW 48.30.015(2) (treble damages awardable "after finding that an insurer has acted unreasonably in denying a claim for coverage").

- The findings establish the "lodestar" calculation, and the conclusions show that Commissioner Harness exercised her discretion to adjust the fee award upward to reflect Shangri-La's contingent fee obligation. *See* CP 260; 262; *see also Progressive Animal Welfare Soc. v. Univ. of Washington*, 54 Wn. App. 180, 183, 773 P.2d 114 (1989) ("[T]rial courts have broad discretion to fix reasonable fee awards."); *Allard v. First Interstate Bank of Washington, N.A.*, 112 Wn.2d 145, 150, 768 P.2d 998 (1989) ("[T]he trial court also acted reasonably when it considered the contingent fee agreement between plaintiffs and their attorney in making its award."); *Bowers*

v. Transamerica Title Ins. Co., 100 Wn.2d 581, 598, 675 P.2d 193 (1983) ("After the lodestar has been calculated, the court may consider the necessity of adjusting it to reflect . . . the contingent nature of success, and the quality of work performed.").[5]

In short, sufficiency of the evidence is not something that Eagle West could challenge through a motion to vacate, and the evidence fully supports the amount of the judgment regardless. More importantly, Eagle West has not identified any way in which the Court of Appeals decision reinstating the judgment conflicts with any Court of Appeals decision.[6]

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[5] Thus, the Court of Appeals' decision to reinstate Commissioner Harness's "discretionary" award does not contradict *Miller v. Kenny*, 180 Wn. App. 772, 825, 325 P.3d 278 (2014), *Baker v. Fireman's Fund Ins. Co.*, 5 Wn. App. 2d 604, 621, 428 P.3d 155 (2018), or *Berryman v. Metcalf*, 177 Wn. App. 644, 657, 312 P.3d 745 (2013).

[6] Eagle West mentions *Evans v. Firl*, 25 Wn. App. 2d 534, 523 P.3d 869, *review denied*, 1 Wn.3d 1018 (2023), but fails to explain how it conflicts with the Court of Appeals decision in this case. The *Evans* court vacated part of a default judgment under CR 60(b)(*1*) because the defendant had a meritorious defense. *See Evans*, 25 Wn. App. 2d at 544. Eagle West did

C. THE COURT OF APPEALS DECISION DOES NOT INVOLVE A SIGNIFICANT QUESTION OF LAW UNDER THE CONSTITUTION

Eagle West argues that this Court should accept review (apparently under RAP 13.4(b)(3)) because Shangri-La's default judgment supposedly "violates the Federal Constitution and federal case law." *Petition* at 15.[7] The Court should first reject this argument because the Court of Appeals decision does not even mention the Constitution. That is presumably because no one briefed in the Court of Appeals the constitutional issue that Eagle West now raises. Although Eagle West *referenced* the Constitution in its Court of Appeals brief, Eagle West did not cite any cases that discuss the Constitution, and it did not analyze any constitutional issues. *See Respondent's Brief* at 13. So the Court

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not move under CR 60 (b)(1) (because such a motion was time-barred), and "meritorious defense" is not an issue under any other subsection of CR 60(b). *See Peoples State Bank v. Hickey*, 55 Wn. App. 367, 370, 777 P.2d 1056 (1989) (citing "CR 60(b)(1), which provides relief *where the defaulting party can show a defense on the merits*") (emphasis added).

[7] Eagle West does not explain how a conflict with "federal case law" would warrant review under RAP 13.4(b).

of Appeals understandably declined to address any constitutional issues. *See Meyer v. Univ. of Washington*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986) ("After the initial mentions of these constitutional provisions, nothing more is discussed or analyzed. No further review will come from us."); *Patterson v. Superintendent of Pub. Instruction*, 76 Wn. App. 666, 675-76, 887 P.2d 411 (1994) ("Constitutional arguments should not be addressed when they have not been adequately briefed.").

Because the Court of Appeals decision does not address any constitutional issues, this Court should not address them either:

> In reviewing a decision of the Court of Appeals, we are generally limited to questions presented before and determined by that court and to claims of error directed to that court's resolution of such issues.
>
> . . . .
>
> Accordingly, we do not review the constitutional issues and theories raised by the [Petitioners] here.

Peoples Nat. Bank of Washington v. Peterson, 82 Wn.2d 822, 830, 514 P.2d 159 (1973); *see also Dahl-Smyth, Inc. v. City of Walla Walla*, 148 Wn.2d 835, 839 n.5, 64 P.3d 15 (2003) ("DSI

argues a constitutional taking claim in its petition to this court. We do not address the issue here because this court is generally limited to issues presented to and decided by the Court of Appeals when reviewing decisions of that court.") (citation omitted); *State v. Clark*, 124 Wn.2d 90, 105, 875 P.2d 613 (1994), *overruled on other grounds by State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997) ("By declining review of issues not raised before a lower appellate court, we . . . encourage parties to raise issues before the Court of Appeals . . . .").

This Court should also deny review because Eagle West's constitutional arguments are baseless. The *Campbell* line of cases applies only to "punitive damages." *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 412, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003) ("We address once again the measure of punishment, by means of *punitive damages*, a State may impose upon a defendant in a civil case.") (emphasis added). Enhanced damages under IFCA are not "punitive"; their purpose is to protect policyholders:

> [T]he fact that the trebling was not mandatory but, rather, at the trial court's discretion . . . suggests that punishment was not the primary purpose of the legislation. And the inclusion of a notice and cure period that offered the insurer an opportunity to correct any unreasonable behavior before being hauled into court also suggests that ***the intent of the legislation was to protect the insured rather than punish the insurer***.

Beasley v. GEICO Gen. Ins. Co., 23 Wn. App. 2d 641, 664-65, 517 P.3d 500 (2022) (citation omitted, emphasis added); *see also Segar v. Allstate Fire & Cas. Ins. Co.*, C21-1526-JLR, 2022 WL 102035, at *4 n.8 (W.D. Wash. Jan. 11, 2022) ("[T]reble damages [under IFCA] are not punitive damages . . . ."). And even if enhanced IFCA damages were "punitive," the statute's "three times"[8] limitation ensures that they satisfy due process. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S. Ct.

[8] *See* RCW 48.30.015(2) ("The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage . . . , increase the total award of damages to an amount not to exceed three times the actual damages."). Note that because the *total* award is increased to three times the actual damages, the "enhanced damages" portion is just twice the actual damages.

1589, 134 L. Ed. 2d 809 (1996) ("Only when an award can fairly be categorized as 'grossly excessive' . . . does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment."); *F.C. Bloxom Co. v. Fireman's Fund Ins. Co.*, C10-1603-RAJ, 2012 WL 5992286, at *8 (W.D. Wash. Nov. 30, 2012) ("IFCA survives constitutional scrutiny by virtue of its treble damages limit."); *Trident Seafoods Corp. v. Commonwealth Ins. Co.*, 850 F. Supp. 2d 1189, 1206 (W.D. Wash. 2012) ("The court is unaware of any cases that have found that the imposition of statutory treble damages for unreasonable conduct is, or even may be, unconstitutional.").

D. THE PETITION DOES NOT INVOLVE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST

This Court should last deny review because Eagle West's petition does not involve "an issue of substantial public interest" under RAP 13.4(b)(4). This case involves a routine application of CR 60(b) to a private lawsuit between two private parties. Although Eagle West contends that the Court of Appeals

decision has "sweeping implications" that create a danger of "unconstitutional consequences for other defendants," *Petition* at 30-31, the judgment, as explained above, is not unconstitutional. Moreover, the (unpublished) decision has no implications—"sweeping" or otherwise—because it simply confirms what *Morin* already states: "those who have been served with a summons 'must do more than show intent to defend; they must in some way appear and acknowledge the jurisdiction of the court.'" *Slip. op.* at 9 (*quoting Morin*, 160 Wn.2d at 749).

Eagle West contends the case involves an issue of public interest because "IFCA claims . . . are governed by public entities." *Petition* at 31. This is apparently a reference to the fact that an IFCA claimant must send a copy of its IFCA notice to the OIC. *See* RCW 48.30.015(8)(a). But that does not mean the OIC "governs" IFCA claims. Nor does it give the OIC (or the public) any interest in this private dispute between a single property owner and its insurance company.

IV. CONCLUSION

The Court of Appeals decision does not conflict with any Supreme Court decision or any published Court of Appeals decision. Nor does it involve a significant question under the Constitution or an issue of substantial public interest. Shangri-La therefore respectfully requests that the Court deny Eagle West's petition for review.

V. REQUEST FOR ATTORNEY FEES AND EXPENSES

Pursuant to RAP 18.1(j), Shangri-La seeks an award of reasonable attorney fees and expenses for the preparation and filing of Shangri-La's answer to Eagle West's petition for review.

This document contains 4,530 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 25th day of October, 2024.

HARPER | HAYES PLLC

By: _____

Todd C. Hayes, WSBA No. 26361
Attorneys for Respondent

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHANGRI-LA LLC, a Washington limited liability company, Appellant, v. EAGLE WEST INSURANCE COMPANY, a foreign insurance company, Respondent.	No. 86117-4-I DIVISION ONE UNPUBLISHED OPINION

BIRK, J. — Shangri-La LLC sent a notice of claim to Eagle West Insurance Company requesting coverage under its policy for damage to the roof of its apartment building. Eagle West denied coverage and Shangri-La filed and served a summons and complaint on Eagle West. Eagle West never filed an answer or appeared in the lawsuit. A superior court commissioner entered an order finding Eagle West in default and a default judgment awarding Shangri-La approximately $8 million in damages and attorney fees. Fifteen months after the default judgment's entry, Eagle West filed a motion to vacate the default judgment, which the commissioner denied. Finding an informal appearance, a superior court judge granted Eagle West's motion for revision and vacated the default order and judgment. We reverse and remand for the default judgment to be reinstated. Eagle West failed to appear in the lawsuit, it was not entitled to notice of the default

motions, and its remaining arguments are time barred because it filed its motion to vacate over a year after its entry.

I

Shangri-La is the owner of the Shangri-La apartment building located in Bothell, Washington. Eagle West is Shangri-La's property insurance company. The coverage agreement is a blanket policy covering multiple structures at 13 locations, including Shangri-La's building.

On February 19, 2021, Wetherholt and Associates Inc. completed and dated a roof condition evaluation report. According to the report, Fields Roof Service maintenance personnel noticed a soft spot on the roof "deck" during repair work on October 7, 2020. The maintenance workers had encountered a "significant amount of deterioration in the oriented strand board (OSB) sheathing and concluded the repair work without addressing a second similar location." After summarizing its general observations of the building, Wetherholt stated, "[T]he roof appears to be suffering from lack of balanced air circulation under the OSB sheathing which has led to condensation." "The lack of ventilation intake, obstructed air movement and exhaust, not having a vapor retarder and the installation of a white reflective, and mechanically attached, roof membrane contributed to the deterioration of the OSB sheathing." Wetherholt recommended the sheathing be removed and replaced due to the existing sheathing's deterioration and organic growth. Wetherholt believed that providing an insulated and unvented " 'compact roof assembly' " would be the best option in mitigating the risk of condensation.

On May 21, 2021, Shangri-La sent a notice of claim under its policy to Eagle West seeking coverage for the damaged roof. The letter attached a copy of Wetherholt's report. Eagle West retained the services of Kip Gatto, PE, of Young & Associates Engineering Services LLC to provide an opinion as to the reported cause(s) of adverse conditions. Gatto's findings are summarized as being (1) the pattern of staining and OSB decay, corrosion, and moisture was consistent with a condensation problem in the roof system, and (2) this condition was a result of the original building design and construction and had likely been developing since the building was first occupied. On August 26, 2021, Eagle West claims representative Ken Gotchall sent a letter to Shangri-La, informing it that Eagle West denied coverage for its claim.

On March 17, 2022, Shangri-La filed a complaint against Eagle West. Shangri-La alleged breach of contract arising out of Eagle West's alleged obligations under the insurance policy. The same day, Shangri-La's attorney dated a letter to Eagle West to provide notice under RCW 48.30.015(8)(a) that Shangri-La intended to assert a cause of action against Eagle West under the Insurance Fair Conduct Act (IFCA), RCW 48.30.015. The letter did not reference any existing lawsuit or the March 17, 2022 complaint. On April 14, 2022, Shangri-La filed an amended complaint, adding an IFCA claim against Eagle West. On April 18, 2022, the Washington Office of the Insurance Commissioner (OIC) accepted service upon Eagle West of the amended complaint and a summons.

In a letter dated April 21, 2022, Gotchall confirmed receipt and acknowledged Shangri-La's March 17, 2022 letter, which he described as a "letter

of representation." Gotchall made no acknowledgement of Shangri-La's intention to pursue an IFCA claim or the existence of a coverage dispute. Gotchall requested a copy of counsel's letter of designation or authorization of representation with a signature from a representative of Shangri-La. Gotchall stated that after receiving that requested documentation, Eagle West would e-mail a certified copy of the applicable policy and endorsements along with any requested documents. Gotchall indicated a wish for a telephone conversation.

According to documents Shangri-La later obtained from the OIC, the day after Gotchall's letter, April 22, 2022, the OIC's forward of service to Eagle West was retrieved at a postal facility in Monterey, California. Eagle West later acknowledged that the OIC's certificate of service indicated that the OIC sent the service papers, but with attention to an employee who was by then "no longer employed" by it and to an address it said it had by that time "vacated." Eagle West never claimed that the OIC sent the service papers to an addressee or address other than the ones it provided. While denying it received the service papers, an Eagle West vice president later explained, "The only explanation I can reach based upon the facts revealed by my investigation to date is that if the envelope containing the summons and complaint were indeed delivered to the [Eagle West] offices, then it was likely mistakenly considered to be personal mail to the former employee . . . and set aside and forwarded to her." Eagle West never filed an answer or other responsive pleading to Shangri-La's lawsuit.

On June 6, 2022, Shangri-La filed a motion for default under CR 55(a) for Eagle West's failure to timely answer or appear in the lawsuit. Shangri-La argued

Eagle West's answer was due no later than May 31, 2022—40 days after the date that the summons and first amended complaint were served on the OIC. And because Eagle West failed to "appear, plead, or otherwise defend within forty days of the date it was served," the court "should therefore enter default against Eagle West under CR 55(1)(a) and RCW 48.02.200(4)." On the same day, a superior court commissioner granted Shangri-La's motion for default.

On July 14, 2022, Shangri-La filed a motion for the entry of default judgment under CR 55(b). Shangri-La noted Eagle West still had not answered or appeared. Shangri-La argued it was entitled to a default judgment for the cost to repair the covered damage, treble damages under IFCA, and attorney fees. Shangri-La requested a judgment of $1,928,349 for actual damages, trebled to $5,785,047 under IFCA, and $2,314,018 for attorney fees based on its contingency fee agreement with its counsel. The commissioner granted the motion and entered a default judgment against Eagle West in the amounts requested.

On August 2, 2023, Shangri-La's counsel sent Eagle West a letter alerting it to the default judgment and proposing settlement discussions.

Nearly 15 months after entry of the default judgment, on October 5, 2023, Eagle West filed a motion to vacate the default judgment. Eagle West argued the commissioner effectively "rubber-stamp[ed]" the damages and attorney fees alleged by the plaintiff and Eagle West was entitled to notice of the motion for

default because it made an informal appearance in the lawsuit through Gotchall's April 21, 2022 letter.[1]

On November 16, 2023, the commissioner denied Eagle West's motion to vacate the default judgment. On November 30, 2023, the commissioner entered a supplemental order and entered a default judgment against Eagle West.

Eagle West filed a motion to revise the commissioner's November 30, 2023 order. On December 19, 2023, a superior court judge signed an order granting Eagle West's motion for revision and vacating the default order and judgment. The judge ruled, "The Court concludes that an informal appearance was made on behalf of the defendant so notice of entry of the default judgment was required." The judge did not reach any other issues. Shangri-La appeals.

II

When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by the civil rules and that fact is made to appear by motion and affidavit, a motion for default may be made. CR 55(a)(1). We review a superior court's decision on a motion for default judgment for abuse of discretion. Old Republic Nat'l Title Ins. Co. v. Law Office of Robert E. Brandt, PLLC, 142 Wn. App. 71, 74, 174 P.3d 133 (2007). "Discretion is abused if it is exercised on untenable grounds or for untenable reasons." Morin v. Burris, 160 Wn.2d 745, 753, 161 P.3d 956 (2007). A decision is based on untenable grounds or made for untenable reasons if it was reached by applying

[1] On October 24, 2023, the commissioner entered an order to show cause why the default order and default judgment should not be vacated, in strict observance of CR 60(e)(2).

the wrong legal standard. Driggs v. Howlett, 193 Wn. App. 875, 897, 371 P.3d 61 (2016). A trial court that misunderstands or misapplies the law bases its decision on untenable grounds. Id.

Our courts will liberally set aside default judgments pursuant to CR 55(c) and CR 60 and for equitable reasons in the interests of fairness and justice. Morin, 160 Wn.2d at 749. At the same time, we "value an organized, responsive, and responsible judicial system where litigants acknowledge the jurisdiction of the court to decide their cases and comply with court rules." Little v. King, 160 Wn.2d 696, 703, 161 P.3d 345 (2007). "[L]itigation is inherently formal. All parties are burdened by formal time limits and procedures." Morin, 160 Wn.2d at 757. This court is less likely to find an abuse of discretion if a trial court has set aside a default judgment rather than if it has refused to do so.[2] Griggs v. Averbeck Realty, Inc., 92 Wn.2d 576, 582, 599 P.2d 1289 (1979).

Commissioners' rulings are "subject to revision by the superior court." RCW 2.24.050. "On revision, the superior court reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner." State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). On appeal, this court reviews the superior court's order, not the

[2] The traditional four-factor test Washington follows when considering whether to vacate a default judgment calls for a party to show (1) that there is substantial evidence supporting a prima facie defense; (2) that the failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) that the defendant acted with due diligence after notice of the default judgment; and (4) that the plaintiff will not suffer a substantial hardship if the default judgment is vacated. Little, 160 Wn.2d at 703-04 (citing White v. Holm, 73 Wn.2d 348, 352, 438 P.2d 581 (1968)). Eagle West does not rely either on CR 60(b)(1) or on these factors.

commissioner's. Faciszewski v. Brown, 187 Wn.2d 308, 313 n.2, 386 P.3d 711 (2016).

A

Eagle West argues Gotchall's April 21, 2022 letter was an informal appearance entitling Eagle West to notice of Shangri-La's motion for default under CR 55. We disagree.

We review questions of law de novo, including whether on undisputed facts an appearance has been established as a matter of law. Meade v. Nelson, 174 Wn. App. 740, 750, 300 P.3d 828 (2013). Any party who has appeared in the action for any purpose shall be served with a written notice of motion for default and the supporting affidavit at least five days before the hearing on the motion. CR 55(a)(3). Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion. Id. Under CR 4(a)(3), a "notice of appearance" shall "be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons." After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him or her. RCW 4.28.210.

"[T]he doctrine of substantial compliance applies to the notice requirement of CR 4 when enforcing or setting aside judgments under CR 55 and CR 60." Morin, 160 Wn.2d at 749. Substantial compliance with the appearance requirement may be satisfied informally. Id. However, to satisfy the appearance

requirement, those who have been served with a summons "must do more than show intent to defend; they must in some way appear and acknowledge the jurisdiction of the court after they are served and litigation commences." Id.

Morin was a consolidation of three cases: Morin, Matia Investment Fund, Inc. v. City of Tacoma, and Gutz v. Johnson. 160 Wn.2d at 748. In all three cases, the defendants failed to file answers or otherwise formally appear. Id. at 749. In the first case, Morin, the parties engaged in settlement discussions resulting from damages arising out of a car collision. Id. at 750. After those failed, the plaintiff served the defendants, who did not respond in any way. Id. The plaintiff obtained a default order and judgment. Id. In another of the cases, Matia, the city of Tacoma failed to answer a lawsuit or formally appear and the plaintiff obtained an order of default and a default judgment. Id. at 72. The plaintiff had caused a summons and complaint to be served on the city clerk's office, which was not forwarded to the city attorney. Id. After the plaintiff attempted to collect the judgment more than a year later, the city filed a motion to vacate the default judgment which was granted. Id. at 753. The Supreme Court held the defendants in Morin and Matia were not entitled to notice of the default judgment hearings because they had not substantially complied with the appearance rules and had taken no action in acknowledging that the disputes were in court. Id. at 757-58.

In the final case, Gutz, the parties, similarly to Morin, engaged in unsuccessful settlement negotiations following a car collision. Id. at 758. After a complaint was filed and served on the defendant, a claims representative from the defendant's insurance company contacted plaintiff's counsel with an offer to settle

and inquired whether the case would be litigated. Id. 758. The plaintiffs moved for and obtained a default order against the defendants and their insurer without notice to either. Id. at 758-59. The claims representative contacted a paralegal at Gutzes' counsel's office who reported the action had been filed but did not mention the default order. Id. The defendant unsuccessfully sought to set aside the default order and appealed. Id. at 751-52.

For Gutz, the Morin court remanded for the trial court to consider whether the defendant met the standards of White v. Holm, 73 Wn.2d 348, 352, 438 P.2d 581 (1968) or CR 60(b)(1) or (4). Morin, 160 Wn.2d at 755, 759. The court did not call the adjuster's contacts an appearance, informal or otherwise, but stated that the plaintiffs' counsel's "failure to disclose the fact that the case had been filed and that a default judgment was pending" in the context of the parties' discussion appeared to be "an inequitable attempt to conceal the existence of the litigation." Id. at 759. The court remanded for analysis of whether the plaintiffs' counsel's efforts to conceal the litigation "induced" the defendant's failure to appear. Id.

The Morin court explicitly rejected the informal appearance doctrine applied by previous case law, such as Gage v. Boeing Co., 55 Wn. App. 157, 160, 776 P.2d 991 (1989).[3] Morin, 160 Wn.2d at 756, 760. In applying CR 55 and CR 60

[3] The informal appearance doctrine as applied in Colacurcio v. Burger, 110 Wn. App. 488, 497, 41 P.3d 506 (2002), which Eagle West relies on, appears to have been first formulated and applied in Batterman v. Red Lion Hotels, Inc., 106 Wn. App. 54, 60, 21 P.3d 1174 (2001). The Colacurcio court summarized that doctrine as follows: "A defendant's acts . . . need not acknowledge the lawsuit in order to amount to an informal appearance." 110 Wn. App. at 496. Morin explicitly rejected this doctrine and abrogated Batterman. Morin, 160 Wn.2d at 749. Eagle West apparently relies on and cites these cases only for the proposition that

liberally, the Washington Supreme Court has nevertheless required defendants seeking to set aside a default judgment to be prepared to establish that they actually appeared or substantially complied with the appearance requirements and were thus entitled to notice. Id. at 755. Thus, the mere intent to defend, whether shown before or after a case is filed is not enough; the defendant must go beyond merely acknowledging that a *dispute* exists and instead acknowledge that a dispute exists *in court*. Id. at 756. A party must appear when served with a summons and complaint, because "[t]here must be some potential cost to encourage parties to acknowledge the court's jurisdiction." Id. at 759.

In Sacotte Construction, Inc. v. National Fire & Marine Insurance. Co., the court held that the trial court abused its discretion when it denied the motion to vacate the default judgment because the defendant made an informal telephonic appearance in the case. 143 Wn. App. 410, 416, 419, 177 P.3d 1147 (2008). The plaintiff tendered the defense of claims against it to its insurers, including the defendant, but they failed to respond, so the plaintiff filed a lawsuit. Id. at 413. The plaintiff caused the summons and complaint to be served on the insurance commissioner, and the defendant forwarded the complaint to its counsel. Id. at 414. Defense counsel called plaintiff's counsel to enter an informal appearance for the defendant, but the plaintiff moved a week later and obtained an order of default without giving notice to the defendant. Id. The Sacotte court held the defense attorney's phone call was sufficient because it was made after the

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contact by non-attorneys may be sufficient to trigger notice requirements under CR 55(a)(3). We need not reach this issue.

complaint was filed specifically to avoid default without notice, which showed the defendant's intent to defend against the lawsuit in court. Id. at 416.

Gotchall's April 21, 2022 letter failed to comply with the requirements of Morin and is distinguishable from the informal appearance in Sacotte. Eagle West was properly served with a summons and copy of the first amended complaint and Eagle West failed to file an answer or formally appear in the case. Gotchall's letter acknowledged Shangri-La's March 17, 2022 letter "regarding the above-captioned claim," referring only to Shangri-La's insurance claim. Gotchall's letter made no acknowledgement of the jurisdiction of the court or the existence of the matter in court. Unlike the communication in Sacotte, Gotchall's letter did not show an intent to defend against a lawsuit in court, but acknowledged no more than that Shangri-La's counsel had indicated they represented Shangri-La. Because Gotchall's letter does not substantially comply with the appearance requirement, Eagle West was not entitled to notice of default. The superior court misapplied the standard for whether a party has informally appeared under Morin and thus abused its discretion in vacating the default judgment based on its finding that "an informal appearance was made on behalf of the defendant."

C

Eagle West contends Gotchall's letter triggered the requirement under CR 55(a)(3) that Shangri-La provide notice of any motion for default, thus making the default judgment "void" under CR 60(b)(5) or subject to being vacated under CR 60(b)(11). We disagree.

Under CR 60(b)(1), a party may move for relief from a final judgment due to mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining the judgment or order. A CR 60(b)(1) motion must be made no more than one year after the judgment or order was entered. CR 60(b). Eagle West did not file a timely motion under CR 60(b)(1), and does not argue that it is entitled to relief under this provision. Instead, it seeks relief under other provisions of the rule not subject to the one year time limit. A motion made under provisions of CR 60(b) not subject to the one year time limit need only be made "within a reasonable time." CR 60(b).

Under CR 60(b)(5), a party may move for relief from a final judgment if the judgment is void. A void judgment is a "judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void." Dike v. Dike, 75 Wn.2d 1, 7, 448 P.2d 490 (1968). Generally, only a jurisdictional defect renders a judgment void. Rabbage v. Lorella, 5 Wn. App. 2d 289, 299, 426 P.3d 768 (2018). Under CR 60(b)(11), a party may move for relief from a final judgment for any reason other than those specified in CR 60(b)(1)-(10) that justifies relief from the operation of the judgment. This rule " 'should be confined to situations involving extraordinary circumstances not covered by any other section of the rule.' " Gustafson v. Gustafson, 54 Wn. App. 66, 75, 772 P.2d 1031 (1989) (quoting In re Marriage of Flannagan, 42 Wn. App. 214, 221, 709 P.2d 1247 (1985)).

The failure to provide notice when required is a serious procedural error that renders the judgment voidable, not void, and justifies vacation only when the

requirements of CR 60 are met. Rabbage, 5 Wn. App. 2d at 298; In re Marriage of Orate, 11 Wn. App. 2d 807, 813, 455 P.3d 1158 (2020). As Rabbage explains, the failure to provide notice of a motion for default does not divest a court of jurisdiction. 5 Wn. App. 2d at 299. A judgment entered without authority may be set aside if a motion to vacate is brought within time constraints of CR 60. Id. at 300; see also Orate, 11 Wn. App. 2d at 808-09 ("If a trial court has jurisdiction when a judgment is entered, judgments entered without proper notice are voidable, not void.").

CR 60(b)(5) and (b)(11) are inapplicable. Eagle West does not point to any jurisdictional defect that exists to void the default judgment. Under Rabbage and Orate, an erroneous entry of a default order and judgment where the defendant was entitled to notice under CR 55(a)(3) does not render the judgment void, but voidable. Even if Eagle West was entitled to notice, CR 60(b)(5) is not a proper basis for relief from the default judgment. Eagle West further claims a court's failure to comply with the requirements of CR 55 when entering default judgment is deemed to be an "irregularity" in the proceedings sufficient to justify vacation under CR 60(b)(11). But challenges to irregularities in default judgments fall under CR 60(b)(1), so CR 60(b)(11) cannot be a basis for relief. CR 60(b)(11) cannot be used to circumvent the time limit of CR 60(b)(1). Gates v. Homesite Ins. Co., 28 Wn. App. 2d 271, 284, 537 P.3d 1081 (2023).

As explained above, Eagle West was not entitled to notice under CR 55(a)(3), so it does not establish a procedural defect in the default judgment. And

even if it had, it also does not establish a procedural defect remediable under either CR 60(b)(5) or CR 60(b)(11), making its motion untimely as well.

D

Eagle West argues that the amounts awarded for damages and treble damages were not supported by findings sufficient under CR 55(a)(2) and that Shangri-La is not entitled to attorney fees as they were awarded in the default judgment. Its arguments are time barred.

In a legal malpractice case, we held "a trial court has discretion to vacate the damages portion of a default judgment even where no meritorious defense is established." Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson, 95 Wn. App. 231, 241, 974 P.2d 1275 (1999). "[T]he standard for vacating awards of damages from default judgments is the same as the standard for setting aside awards of damages from trials." Id. at 242. That standard permits vacatur "if there was not substantial evidence to support the award of damages." Id. However, relief for this reason falls under, and subject to the one year time limit applicable to, CR 60(b)(1). Id. at 242, 243, 244. Thus, in that legal malpractice case, the client exposed to a default judgment could have obtained a trial on the merits as to damages if the client's attorney had submitted a motion to vacate within CR 60(b)(1)'s one year time limit. Id. at 244.

Any reliance on CR 60(b)(1) is time-barred, and Eagle West is precluded from separately challenging whether substantial evidence supports the amounts awarded in the default judgment. Under Shepard Ambulance, Eagle West could have contested the damages portion of the default judgment, including treble

damages and the attorney fee award, but only if Eagle West had filed its motion to vacate within one year of the judgment's entry. Eagle West failed to do so.

III

Both parties request attorney fees on appeal. We grant Shangri-La's request and deny Eagle West's.

"We will award attorney fees to the prevailing party 'only on the basis of a private agreement, a statute, or a recognized ground of equity.' " Buck Mountain Owner's Ass'n v. Prestwich, 174 Wn. App. 702, 731, 308 P.3d 644 (2013) (quoting Equitable Life Leasing Corp. v. Cedarbrook, Inc., 52 Wn. App. 497, 506, 761 P.2d 77 (1988)). "When insureds are forced to file suit to obtain the benefit of their insurance contract, they are entitled to attorneys' fees." Weyerhaeuser Co. v. Com. Union Ins. Co., 142 Wn.2d 654, 687 n.15, 15 P.3d 115 (2000) (citing Olympic S.S. Co. v. Centennial Ins. Co., 117 Wn.2d 37, 52-53, 811 P.2d 673 (1991)). "The entitlement to necessary expenses as part of a reasonable attorney fee award also fulfills the rationale behind this equitable ground." Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co., 144 Wn.2d 130, 143, 26 P.3d 910 (2001). "Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section." RCW 48.30.015(1). Shangri-La is entitled to and is awarded its reasonable attorney fees and necessary expenses

on appeal under both Olympic Steamship and RCW 48.30.015(1) and (3). We remand the determination of these fees and expenses to the superior court.

Because Eagle West does not prevail, we deny Eagle West's request for attorney fees.

We reverse the order vacating the default order and judgment and remand for the superior court to reinstate the default judgment against Eagle West and determine the reasonable attorney fees and necessary expenses awarded to Shangri-La herein.

Birk, J.

WE CONCUR:

Díaz, J.

Hazelrigg, ACJ

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I served this document on the following parties and counsel of record in the manner indicated:

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DATED *October 25, 2024* in Seattle, Washington.

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