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STATE OF WASHINGTON
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No. 103649-3

SUPREME COURT
OF THE STATE OF WASHINGTON

SHELLEY S. HAWKINS, individually and
as assignee of Edwin G. Miguel,

Respondent,

v.

ACE AMERICAN INSURANCE
COMPANY, a foreign insurer,

Petitioner,

and

EDWIN G. MIGUEL; FATEMAH S. ALSUWAIDAN; and
DOES AND DOE INSURANCE COMPANIES 1-5,

Defendants.

REPLY IN SUPPORT OF PETITION FOR REVIEW

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A. INTRODUCTION

ACE American Insurance Company ("ACE") sought review of the Court of Appeals' published October 28, 2024 opinion. Respondent Hawkins filed an answer in which she sought review of issues not raised in ACE's petition, necessitating this reply. RAP 13.4(d). As the Court can readily discern from Hawkins' restatement of the case, ans. at 9-12, she effectively concedes this Court should grant review, advancing a hash of arguments for relief independent of how Division I ruled.

B. STATEMENT OF THE CASE

Hawkins' discussion of the facts and procedure below is severely flawed on many levels. First, the answer contains a section described as "Respondent and Relief Requested," ans. at 1-9, that bears no relationship to the normal headings in a petition for review described in RAP 13.4(c) or the "concise introduction" envisioned by RAP 10.3(a)(3). Instead, Hawkins provides a freewheeling stream-of-consciousness argument untethered to the record. When, for example, Hawkins claims

that ACE "completely failed" to defend Miguel, ans. at 2-12, that is false. Pet. at 2-14.[1]

Moreover, as with her argumentative[2] statement of the case, ans. at 12-20, the "facts" Hawkins articulates contain glaring misstatements and omissions. Indeed, Hawkins repeats misstatements of fact that ACE previously pointed out to Division I in its reply brief at 3-10. While she posits that the conduct of her counsel in securing a covenant judgment settlement was no "set up" or "sinister plot," ans. at 3, Hawkins omits any discussion of why her counsel repeatedly violated the bankruptcy stay, threatened the unrepresented Miguel in violation of the stay, failed to disclose the bankruptcy stay to Miguel, or how three settlements were "negotiated" between her

[1] Hawkins repeatedly asserts that ACE did "nothing" to defend Miguel, but ignores the obvious fact that there was nothing to defend for at least the period of the bankruptcy stay as to Miguel – January 8, 2019 to April 5, 2021.

[2] A statement of the case must be a fair recitation of facts and procedure, without argument. RAP 13.4(e); RAP 10.3(a)(5).

counsel and the attorney her lawyer recommended to Miguel. Hawkins has no answer as to why those three settlement numbers ratcheted up without any consideration.

Even more troubling is Hawkins' claim that ACE "engaged in discovery." Ans. at 6. That is untrue, as Hawkins well knows. ACE *sought* discovery as to collusion or fraud but was frustrated first by obstruction from Hawkins' counsel, and later by the trial court's refusal to order that Hawkins comply with her discovery obligations.[3]

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[3] ACE noted the depositions of Hawkins, Malcolm, and Miguel, CP 3437-45. Hawkins sought a protective order, CP 3687-3706, and ACE moved to compel. CP 3437-45. The trial court ordered Malcolm's deposition. CP 2483-84. When Malcolm walked out of his deposition, ACE filed another motion to compel, CP 228-30, that the trial court refused to consider.

Before the summary judgment hearing, ACE attempted to depose Malcolm in accordance with the court's earlier order, Traverso objected to preliminary questions regarding the deposition protocol and Malcolm refused to answer any substantive questions; together, they left the deposition within fifteen minutes of its beginning.

ACE moved to compel Hawkins and Miguel to provide documents and for Malcolm's deposition, detailing the

It is undisputed that the Sears bankruptcy stay order went into effect on October 15, 2018 and was extended to Miguel on January 8, 2019. CP 1808. As detailed in ACE's petition, Sears sent the Miguel complaint to ACE's former third-party claims administrator. CP 484. Hawkins' November 11, 2018 motion for default was filed, and the November 20 default order was entered, after the stay was in effect. CP 4252.

Although the Williams Kastner law firm ("WK") was appointed to defend Miguel on December 11, 2018, CP 1103-04, the firm mistakenly advised that no complaint had been filed, CP 1808, and it did not file an answer for Miguel. It specifically informed Traverso of the stay on January 24, 2019. CP 1105-07, 1112.

Again violating the stay, Traverso obtained a April 25, 2019 default judgment against Sears and Miguel, CP 4194-4251,

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obstructionist deposition behavior. CP 228-30. The court refused to consider it. RP 52-58.

and misled the court in the hearing when specifically asked about the existence of insurance. CP 1207, 1214. He failed to inform the court that he had been in contact with ACE's claims administrator, or that he had received the notice of WK's representation of Sears/Miguel. *Id*.

Hawkins has no explanation for Traverso's unethical interactions with Miguel.[4] On August 26, 2020, while the bankruptcy stay was still in effect, Traverso wrote to the unrepresented Miguel, threatening to enforce the judgment and to drive Miguel into bankruptcy, CP 1228-29, without mentioned the bankruptcy stay. Traverso specifically told Miguel not to contact ACE: "… *I cannot help you, and our offer to free you from paying this judgment is withdrawn, if you contact your insurance company*." *Id.* (emphasis added).

[4] Hawkins complains in her answer at 22 that ACE did not produce any evidence of unethical conduct or fraud, but that complaint rings hollow in light of Traverso's interactions with Miguel, and Traverso/Malcom's foot dragging in discovery designed to hide their misconduct, noted *supra*.

Traverso told Miguel he needed a lawyer and referred him to Sean Malcolm. CP 1812. There is no evidence that Malcolm investigated the bankruptcy stay or advised Miguel of it.

Hawkins' answer is devoid of any explanation how the first $443,323 settlement, CP 1279-89, 4181-86, was "negotiated" by Traverso and Malcolm.

Hawkins negotiated with Sears to lift the stay as to Miguel, but never told ACE or Miguel. CP 148, 169-91. In moving to set aside the default judgment against Sears, but not Miguel, Traverso never informed the court about the bankruptcy at all, let alone that he was seeking to vacate a stay that had applied to Miguel. CP 4167-77.

In mid-March 2021, with the bankruptcy stay in full force, Traverso sent another agreement for $1,500,000 to Malcolm, that increased interest from 7.5% to 12%. CP 2744-60. There is no evidence how this second $1.5 million settlement, essentially triple the original amount and unsupported by any additional consideration, was negotiated. Neither of the parties

"negotiating" this agreement ever explained why Miguel would agree to take on an additional $1,000,000 in liability, with a higher judgment interest rate, when the existing settlement already protected Miguel..

Hawkins and Sears stipulated in the bankruptcy court in April 2021 to end the bankruptcy stay as to Hawkins' claims, releasing Sears (but not Miguel) from further liability. CP 750. The bankruptcy court was not pleased with Hawkins' conduct in the bankruptcy court. Far from benignly approving the actions of Traverso and Malcolm, as Hawkins would have this Court believe, ans. at 12-17, the bankruptcy court found multiple violations of the stay: (1) the May 2019 default judgment against Miguel; (2) Traverso's August 6, 2020 demand letter to Miguel and (3) the first settlement agreement between Miguel and Hawkins. CP 818-27. The court admonished Traverso for his conduct in violating the stay, CP 453-54, 461-62, 792-829; and expressly found Hawkins/Traverso's conduct showed "an alarming lack of candor to the Court," and was "exceedingly

troubling," but declined to reach the enforcement of the default judgments and resultant settlement agreements outside of its jurisdiction, leaving that determination to the state courts. CP 818.

Hawkins' motion on the second settlement's reasonableness, CP 4146-57, was granted *ex parte* by the trial court. CP 4012-15. Hawkins ignores that the trial court applied the findings from that *ex parte* reasonableness order to later decisions in the case on the theory that the reasonable order constituted "*res judicata*" or "the law of the case," RP 52; it found, accordingly, as a matter of law, that ACE breached its contract with Miguel, committed common law bad faith, and violated IFCA, RP 53-57, in granting summary judgment to Hawkins. CP 221-27.

Division I correctly vacated the trial court's reasonableness hearing order as to ACE because ACE was

deprived of due process. Op. 11-26.[5]

C. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

(1) Division I Correctly Determined That ACE's Due Process Rights Were Violated

Hawkins asks this Court to review the due process issue, ans. at 9, even though Division I correctly addressed her blatant violation of ACE's due process rights in the trial court's conduct of the reasonableness hearing. Op. 11-26.

Numerous Washington cases hold that insurers cannot be bound by the outcome of a reasonableness hearing, unless they have notice of the settlement and such hearing, and a legitimate opportunity to participate in it. This notice and opportunity to be heard relates *specifically* to the reasonableness hearing, contrary to Hawkins' contention that a refusal to defend (and no such

[5] After the reasonableness hearing, Traverso and Malcolm revised their agreement yet again in August 2021; this third settlement agreement purported to transfer, without consideration, Miguel's claim for his alleged emotional distress against ACE to Hawkins. CP 3993-4008.

refusal by ACE occurred here) obviates the need for the insurer's participation in the reasonableness hearing. Ans. at 10.

In the covenant judgment settlement context specifically, this Court has said that the liability insurer is not bound unless it has notice of the settlement and the attendant reasonableness hearing and then declines to participate in it. For example, in *Mut. of Enumclaw Ins. Co. v. T&G Constr., Inc.*, 165 Wn.2d 255, 258, 199 P.3d 376 (2008), MOE, the insurer, vigorously defended its insured, a construction corporation almost to the end. However, MOE declined to participate in the final round of the settlement talks. It later *participated* in the reasonableness hearing. MOE was bound by the rulings in the underlying case involving the liability of its insured and the reasonableness hearing. *See also, Wood v. Milionis Constr., Inc.*, 198 Wn.2d 105, 492 P.3d 813 (2021); *Bird v. Best Plumbing Group, LLC*, 175 Wn.2d 756, 287 P.3d 551 (2012); *Garza v. Perry*, 25 Wn. App. 2d 433, 447-48 n.1, 523 P.3d 822 (2023) (RCW 4.22.060(1) required settling insured to provide copy of settlement agreement

to insurer who intervened after receiving notice of settlement); *Wright v. 3M Co.*, 20 Wn. App. 2d 1028, 2021 WL 5879009 (2021) (unpublished) at *10-11, *aff'd*, 533 P.3d 113 (2023) (reversible error for Court to issue a reasonableness order without viewing the full settlement between the parties).

The nature of covenant judgment settlements, as explained in these cases, is that if the settlements are determined to be reasonable by a court, they become the presumptive measure of damages for the plaintiff's claims of contractual and extracontractual liability against the insurer assigned to the plaintiff by the insured. ACE has an abiding constitutional right to have a jury set damages. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711 (1989). The constitutional right is satisfied only if the insurer has notice of, and participates in, the reasonableness hearing.

Bird, decided in 2012, expressly held that an insurer was a "party" to a reasonableness hearing entitled to the rights under RCW 4.22.060(1). 175 Wn.2d at 767. Hawkins misstates the

holding in *Bird,* claiming that an insurer is foreclosed from receiving notice of the reasonableness hearing unless it is actively defending its insured. But Hawkins misses the whole point of this Court's *Bird* decision. The insurer there argued that, after the insured received notice and an opportunity to intervene, due process required that a reasonableness hearing must take the form of a *jury trial* in order to satisfy the insurer's constitutional right to have a jury assess damages in any action against that insurer for bad faith and other extracontractual damages. When this Court said at 774 that due process was satisfied by notice and an opportunity to intervene in the underlying action, it was referring to notice of, and an opportunity to be heard at, *the reasonableness hearing*.

A reasonableness hearing protects insurers' right to due process in the covenant judgment setting because, and only to the extent that, the hearing affords insurers the right to contest the reasonableness of the settlement between the plaintiff and the insured – the floor amount of damages in the

contractual/extracontractual litigation. To pass constitutional muster, the insurer must be afforded the right to notice and an opportunity to be heard on the settlement's reasonableness – the presumptive measure of damages.

Hawkins' citation of *Sharbono v. Universal Underwriters*, 139 Wn. App. 383, 161 P.3d 406 (2007), *review denied*, 163 Wn.2d 1055 (2008), ans. at 27 n.1, a case predating the authorities referenced above is unavailing to her. After *Bird*, the *Sharbono* court's conclusion and Hawkins' argument based on it, that an insurer is not a party entitled to statutory rights is now *flatly wrong*.

Sharbono was an appeal of insureds' action *against their insurer.* There, the insured entered a covenant judgment settlement agreement without notice to their insurer, *then* sued their insurer, *then* moved for judgment to establish coverage, *then* moved the trial court "for an order declaring their settlement with the Tomyns [the underlying claimants] reasonable under RCW 4.22.060." The insurer received notice of the

reasonableness hearing motion in the action in which it was a named defendant, but objected to having that motion, and thus its damages liability, decided without a jury trial.

Instead of acknowledging RCW 4.22.060(1) due process-based rule,[6] Hawkins asserts that insurers can be bound by a reasonableness hearing result even if they have no opportunity to participate in proceedings that affect their interests. In each of the cases Hawkins cites, the insurer had notice of the reasonableness hearing and the opportunity to participate, and then deliberately *chose* not to participate. *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 961 P.2d 350 (1998); *Lenzi v. Redland Ins. Co.*, 140 Wn.2d 267, 996 P.2d 603 (2000). Thus, it is only when, as in *Fisher* and *Lenzi*, that the insurer has notice of the lawsuit

[6] RCW 4.22.060(1) was adopted by this Court in *Bird*, 175 Wn.2d at 767, to govern covenant judgment reasonableness hearings. *See also*, *Wood*, 198 Wn.2d at 120; *Besel v. Viking Ins. Co. of Wisc.*, 146 Wn.2d 730, 738-39, 49 P.3d 887 (2002). By statute, ACE was entitled to 5 days' notice of a reasonableness hearing and a copy of any proposed settlement; it was entitled to present evidence.

between the UIM insured and the tortfeasor and an opportunity to intervene, that it is bound by any proceedings between its insured and the tortfeasor. *See Mathioudakis v. Fleming*, 140 Wn. App. 247, 161 P.3d 451 (2007), *review denied*, 163 Wn.2d 1041 (2008) (UIM insurer/tortfeasor are not bound in any action brought by the UIM insured).

ACE was *never* given notice by Hawkins or Miguel of the *ex parte* reasonableness proceeding.[7] Hawkins' counsel *deliberately* failed to provide ACE a copy of her multiple settlement agreements or notice of the *ex parte* reasonableness determination, as RCW 4.22.060(1) and the case law command. *See* Appendix.

[7] Hawkins' decision to keep ACE in the dark was consistent with her counsel's practice in the case. Traverso was less than candid about ACE's interest in the case in pursuing default in the trial court. When the court asked why no insurers were present, Hawkins' counsel was deceptive rather than candid. CP 1214-15. When the court specifically and asked whether Miguel had insurance, counsel misleadingly told the court the insurers had no right to know what damages Hawkins was seeking. *Id.*

Not only did ACE have no notice of the Hawkins/Miguel settlements, or copies of any settlements, or notice of a reasonableness hearing date, it had no opportunity to conduct discovery;[8] it had no opportunity to participate in any meaningful way in the *ex parte* reasonableness proceeding that occurred. It did not have the information necessary to intervene and file pleadings in opposition to the reasonableness motion. The trial court issued a ruling without giving the parties an opportunity to present oral comments either in person or virtually. Indeed, relying on Hawkins' representations, the trial court considered whether Miguel's settlement was fair to Miguel's tort co-defendant Alsuwaidan, not whether the settlement was fair *to ACE*. CP 4154. In other words, the trial court was conducting a *Glover* hearing, intended to protect Alsuwaidan, rather than a

[8] As noted *supra*, Hawkins was not candid about the discovery that occurred in this case. An insurer has a right to conduct discovery before a reasonableness hearing is well recognized in the recent covenant judgment case law. *See Wood*, 198 Wn.2d at 133-34 (unlike here, insurer had enough information on the settlement to evaluate its reasonableness).

Chaussee hearing, intended to protect ACE. *See Wood*, 198 Wn. 2d at 121 (discussing relationship between *Glover* hearings to protect interests of settling defendants' codefendants and *Chaussee* hearings to protect interests of settling defendants' insurers). The trial court's *ex parte* order on reasonableness offended due process principles that govern reasonableness proceedings in the covenant judgment context, as Division I properly concluded.

This opportunity to participate in a reasonableness hearing is particularly critical as "the settlement" was a moving target. After obtaining an initial judgment, Hawkins negotiated an series of agreements that "ratcheted up" the damages to which Miguel would stipulate.[9]

[9] Division I's decision appears to be the first one addressing the standard for a "ratcheting" covenant judgment agreement, in which the claimant negotiated an initial covenant judgment and assignment of rights in exchange for a sum certain, then used that initial agreement as leverage to procure a subsequent agreement that would multiply its recovery without additional consideration. It is not and will not be the last. *See Andrews v. Freeway Motors, Inc.*, __ Wn. App. 2d ___, 2025 WL

Ultimately, Division I was correct on Hawkins' deliberate deprivation of ACE's due process rights. Review is not merited on the due process issue Hawkins raises. RAP 13.4(b).

(2) The Trial Court Should Not Have Resolved the Issue of Fraud or Collusion as a Matter of Law

ACE has argued in its petition that Division I erred in affirming the trial court's decisions on contractual and extracontractual liability as a matter of law, particularly where the trial court admitted that its rulings were predicated upon the *ex parte* reasonableness hearing order. Pet. at 19-29. ACE does not address those issues in this reply because Hawkins does not

304572 (2025) (unpublished) at *2 (claimant negotiated initial covenant judgment agreement for $600,000 with assignment of rights and covenant not to executed, then replaced that agreement with another calling for judgment of $2,800,000) (unpublished). This Court's previous decisions have not envisioned a scenario where a claimant *first* provides an insured with a covenant not to execute in exchange for one judgment, then substitutes a larger judgment without providing any additional consideration to the insured. If permitted at all, this process raises a host of procedural issues and due process concerns that an ordinary covenant judgment does not. Review is merited under RAP 13.4(b)(4) as to the issues ACE raised in its petition.

seek affirmative relief in connection with them.

Hawkins does affirmatively seek to have this Court effectively exonerate her counsel's fraud/collusion as a matter of law. Division I correctly remanded the issue of fraud or collusion to the trial court for resolution on remand. Op. at 26 n.21. That decision stands at odds with Division I's decision on the CR 60 motion, and with Division I's decision about whether ACE may advance fraud and collusion as a defense to common law bad faith claim against it, as ACE has argued. Pet. at 26-28. The trial court denied ACE's CR 60 motion to vacate (CP 1029-47) without a written order. RP 52. Division I agreed with the CR 60 decision in a cursory footnote. Op. 26 n.21. It also ruled in Hawkins' favor on bad faith as a matter of law, ignoring that collusion or bad faith is a defense to common law bad faith. Op. at 27-33. Each decision was wrong, and Hawkins' assertion that there was no collusion or bad faith here, as a matter of law is

equally wrong. Review is merited. RAP 13.4(b).[10]

First, Hawkins repeatedly argues that ACE allegedly did not preserve this issue for this Court's consideration. Ans. at 10. She is wrong, as Division I expressly ruled. Op. at 11 n.10. ACE also has a standing to raise the issue of the settlements' validity. The reasonableness hearing process itself is designed to set the presumptive floor on damages against an insurer like ACE in subsequent contractual/extracontractual litigation. An outrageously high settlement *aggrieves* ACE, the party that will face the prospect of such damages in further litigation against it, as here.

ACE produced ample evidence that Hawkins' counsel knowingly and intentionally violated binding court orders in pursuit of her claim while the bankruptcy stay was in place, and

[10] Hawkins argues there is "no substantial public interest" in vacating a judgment and Court order obtained by fraud. Washington courts *always* have an interest in preventing fraud Washington, and an even sharper interest in not becoming the instrument of fraud. That is particularly true when one fraudulent judgment or order is used to obtain others.

evidence that the same counsel then proceeded to violate ACE's due process rights in pursuit of the claims Miguel first assigned due to that fraud. Hawkins asserts, without support, that the earlier fraud was "unintentional," and somehow "cured" when she (1) vacated the prior default judgment *without notifying Miguel that that had happened*, and then (2) had Miguel sign a second covenant judgment agreement that was identical to the first one, except for three times larger. This is appropriately a fact issue where ACE was deprived of due process.

The trial court's initial judgment in Hawkins' favor for $443,000 against Miguel based on the parties' first settlement was void,[11] as it violated the bankruptcy court's stay order, as the bankruptcy court ruled. CP 820-27. As noted *supra*, WK apprised Traverso of the intent to litigate Miguel's case, and the

[11] There is no doubt here that the bankruptcy court stayed Hawkins' case against Miguel, 11 U.S.C. § 362(a), that acts violating a bankruptcy court stay order are *void*, not merely voidable, and that settlement agreements entered in violation of the bankruptcy stay are void as well. Pet. at 16-17.

bankruptcy stay.

The initial void default judgment against Miguel was the basis for the subsequent settlements/judgments validated by Division I. Those settlements, and the judgment enforcing them, were the product of fraud and should have been set aside under CR 60. *In Marriage of Kosunen*, 13 Wn. App. 2d 1132, 2020 WL 4196220 (2020) (unpublished) at *6 (settlement agreement procured through fraud or overreaching or was void at inception could be challenged under CR 60(b)(5)).

The first Hawkins/Miguel settlement was void not only because of the bankruptcy stay, but because of Traverso's improper conduct. The second/third settlements and resulting judgments were based on the prior void settlement/judgments and were also void.

The second Hawkins/Miguel settlement with its $1.5 million judgment was void under CR 60(b)(4)-(6). Traverso obtained the judgment under false pretenses, preventing Miguel from understanding his rights, as noted *supra*. Moreover,

Malcolm apparently never advised Miguel the first settlement was void, nor did he investigate or advance Miguel's legitimate defenses to Hawkins' claims, acts that competent representation of a client demanded.

Traverso had ethical obligations in his interactions with Miguel. Traverso's *ex parte* approach to Miguel was inappropriate both because he knew Miguel was protected by the stay extension order and because he knew of WK's intent to resist the claim. RPC 4.2. Because Miguel was unrepresented, RPC 4.3 required him to correct any misunderstandings that Miguel may have had about Traverso's loyalties. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 45 P.3d 1068 (2002) (claims adjuster violated RPC 4.3 by leading insureds to believe that he had their best interests at heart). Traverso hid the bankruptcy stay, ACE's assignment of WK, and Miguel's potential defenses or claims against other parties from Miguel. Division I never addressed these key points.

In sum, the trial court erred in deciding the CR 60 motion.

Just as ACE was entitled to present evidence on fraud and collusion in the reasonableness hearing, as Division I ruled, op. 26 n.21, and in its CR 60 argument, ACE was also entitled to assert fraud and collusion as a defense to bad faith. This Court has said so on multiple occasions. *Bird*, 175 Wn.2d at 764; *T&G Constr. Co. Inc.*, 165 Wn.2d at 259; *Wood*, 198 Wn.2d at 121. The trial court deprived ACE of any opportunity to present that defense to its alleged common law bad faith, and Division I went along, despite holding that the underlying reasonableness determination had violated ACE's due process rights.

Division I's affirmance of the trial court's bad faith ruling was particularly unfair because the trial court refused to allow discovery on the Hawkins/Miguel misconduct that was relevant to ACE's defense. Moreover, Division I's decision was internally contradictory. In its footnote rejecting ACE's CR 60 argument, op. 26 n.21, it specifically noted that on remand for a proper reasonableness hearing, discovery will need to be revisited, and to the extent that the trial court denied discovery,

it erred. The same discovery principles apply to the trial court's summary judgment ruling on bad faith, and its decision should have been vacated for the same reason.

In light of the foregoing, this Court should reject Hawkins' request that she be exonerated as a matter of law for the consequences of the fraud and collusion by her counsel as a matter of law. Rather, Division I erred in its treatment of collusion and fraud both in the context of the CR 60 and bad faith issues. Review is merited. RAP 13.4(b)(1), (2).

D. CONCLUSION

This Court should deny review of the due process issue raised by Hawkins in her answer or her request that she be exonerated from fraud or collusion allegations, well-supported in this record, as a matter of law. This Court should review Division I's published opinion, RAP 13.4(b)(1), (2), and (4), and void the second and third Hawkins/Miguel settlements, and the $1.5 Hawkins/Miguel million judgment. The trial court's summary judgment order and $5.443 million judgment against

ACE on contractual/extracontractual liability in Hawkins' favor should be reversed.

This document contains 4,336 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4th day of March, 2025.

Respectfully submitted,

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APPENDIX

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.22. Contributory Fault--Effect--Imputation--Contribution--Settlement Agreements (Refs & Annos)

West's RCWA 4.22.060

4.22.060. Effect of settlement agreement

Currentness

(1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

(2) A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

(3) A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement.

Credits
[1987 c 212 § 1901; 1981 c 27 § 14.]

Notes of Decisions (134)

West's RCWA 4.22.060, WA ST 4.22.060
Current with all legislation from the 2024 Regular Session of the Washington Legislature. Some sections may be more current, see credits for details.

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Reply in Support of Petition for Review*** in Supreme Court Cause No. 103649-3 to the following parties:

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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: March 4, 2025 at Seattle, Washington.

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