

No. S254018

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

BANN-SHIANG LIZA YU

Plaintiff, Appellant, and Petitioner

v.

LIBERTY SURPLUS INSURANCE  
CORPORATION et al.

Defendants and Respondents.

---

After a decision by the California Court of Appeal,  
Fourth District, Division Three, 4th Civil No. G054522

-----  
Appeal from Orange County Superior Court,  
Case No. 30-2014-00737800, Honorable William Claster

---

**JOINT ANSWER TO BANN-SHIANG LIZA YU'S  
PETITION FOR REVIEW**

---

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**  
Gregory D. Hagen, SBN 127599  
655 West Broadway, Suite 900  
San Diego, California 92101-8484  
(619) 321-6200 / Fax: (619) 321-6201  
Email: gregory.hagen@wilsonelser.com

**GREINES, MARTIN, STEIN &  
RICHLAND LLP**  
\*Robert A. Olson, SBN 109374  
Gary Wax, SBN 265490  
5900 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90036  
T: 310-859-7811  
F: 310-276-5261  
E: rolson@gmsr.com  
E: gwax@gmsr.com

Attorneys for Defendant and Respondent  
TIG INSURANCE COMPANY  
as successor by merger to American Safety Indemnity Company

**[Additional counsel on next page]**

David Henry Waters, SBN 78512  
BURNHAM BROWN  
P.O. Box 119  
Oakland, CA 94604  
T: 510-444-6800  
F: 510-835-6666  
E: [dwaters@burnhambrown.com](mailto:dwaters@burnhambrown.com)

Attorneys for Defendant and Respondent  
LIBERTY SURPLUS INSURANCE CORPORATION

-----  
Todd Richard Haas, SBN 190868  
SELMAN BREITMAN LLP  
101 West Broadway, Suite 1330  
San Diego, CA 92101  
T: 619-564-3600  
F: 619-564-3636  
E: [thaas@selmanbreitman.com](mailto:thaas@selmanbreitman.com)

Attorneys for Defendant and Respondent  
SCOTTSDALE INDEMNITY COMPANY

-----  
Abel Eric Aguilera, SBN 192390  
Raymond E. Brown, SBN 164819  
The Aguilera Law Group, APLC  
650 Town Center Drive, Suite 100  
Costa Mesa, CA 92626-DPTA  
T: 714-384-6600  
F: 714-384-6601  
E: [eaguilera@aguileragroup.com](mailto:eaguilera@aguileragroup.com)  
E: [rbrown@aguileragroup.com](mailto:rbrown@aguileragroup.com)

Attorneys for Defendant and Respondent  
NORTHLAND INSURANCE COMPANY

## TABLE OF CONTENTS

	<b>PAGE</b>
ANSWER TO PETITION FOR REVIEW	5
CERTIFICATION	9
PROOF OF SERVICE	10

## TABLE OF AUTHORITIES

	<b>PAGE</b>
<b>Cases</b>	
<i>Becker v. S.P.V. Construction Co.</i> (1980) 27 Cal.3d 489	5
<i>Falahati v. Kondo</i> (2005) 127 Cal.App.4th 823	5
<i>Greenup v. Rodman</i> (1986) 42 Cal.3d 822	5
<i>Petty v. Manpower, Inc.</i> (1979) 94 Cal.App.3d 794	5
<i>Pine Terrace Apartments, L.P. v. Windscape, LLC</i> (2009) 170 Cal.App.4th 1	6
<i>Plotitsa v. Superior Court</i> (1983) 140 Cal.App.3d 755	5
<b>Statutes</b>	
Code Civ. Proc., § 580	6
Code Civ. Proc., § 585	6
<b>Other Authorities</b>	
Cal. Rules of Court, rule 8.500(b)(1)	5

## ANSWER TO PETITION FOR REVIEW

The petition does not meet the fundamental standard for review. It neither raises an issue of statewide importance nor evidences a conflict in the law. (Cal. Rules of Court, rule 8.500(b)(1).) Rather, the Court of Appeal unanimously came to an unsurprising conclusion, dictated by this Court's long-established jurisprudence and its progeny: To obtain a jurisdictionally valid default judgment, the damages amount must be stated directly in the complaint or cross-complaint. (See Opinion, pp. 2, 6-7, citing, e.g., *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826.) The Opinion breaks no new ground that would require this Court's intervention.

The Court of Appeal made clear that it was applying established law. (Opinion, pp. 6-7.) And so it was. (See *ibid.*) This Court has a long history of requiring strict compliance with the default judgment statutes. (*Greenup, supra*, 42 Cal.3d at p. 826; *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 494.) The Courts of Appeal have uniformly followed suit. (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 830; *Plotitsa v. Superior Court* (1983) 140 Cal.App.3d 755, 760; *Petty v. Manpower, Inc.* (1979) 94 Cal.App.3d 794, 798.)

The Petition challenges the Court of Appeal's application of that established law. (Petition, pp. 5-10, 19-23.) But that is not a ground for review. There is no unresolved issue of law when it comes to what is required for a default judgment.

The Petition seeks to manufacture confusion and discontinuity in the law that does not presently exist. It claims that somehow the law regarding incorporation by reference in other contexts is at odds with the law regarding default judgments. (Petition, pp. 5-10, 19-23.) But the normal rules for incorporation by reference do not apply to the specific context of the default statutes that expressly require amounts to be recovered on default to be pleaded in the complaint. (See Code Civ. Proc., §§ 580, 585.) In non-default judgment contexts, it may be permissible to incorporate by reference into a complaint—e.g., accounting ledgers or discovery responses—but that doesn't mean incorporation by reference is jurisdictionally valid for default judgment purposes. It's not. It never has been. To the contrary, the case law *consistently* holds that matters outside the face of a complaint (or cross-complaint) cannot save it from a fatal dollar-amount omission for default judgment purposes.

That is why the Petition's reliance on *Pine Terrace Apartments, L.P. v. Windscape, LLC* (2009) 170 Cal.App.4th 1, is misplaced. *Pine Terrace* has nothing to do with default judgments. (Petition, pp. 20-22.) *Pine Terrace* nowhere purports to address the statutory and due-process requirements for a default judgment.

The Petition should be denied.

Date: March 4, 2019

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP  
Gregory D. Hagen

GREINES, MARTIN, STEIN &  
RICHLAND LLP  
Robert A. Olson  
Gary J. Wax

By /s/ Gary J. Wax  
Gary J. Wax

Attorneys for Defendant and Respondent  
TIG Insurance Company as successor by  
merger to American Safety Indemnity  
Company

Date: March 4, 2019

BURNHAM BROWN  
David H. Waters

By /s/ David H. Waters  
David H. Waters

Attorneys for Defendant and Respondent  
Liberty Surplus Insurance Corporation

Date: March 4, 2019

SELMAN BREITMAN LLP  
Todd R. Haas

By /s/ Todd R. Haas  
Todd R. Haas

Attorneys for Defendant and Respondent  
Scottsdale Indemnity Company

**[Additional signature on next page]**

Date: March 4, 2019

THE AGUILERA LAW GROUP, APC  
Abel E. Aguilera  
Raymond E. Brown

By /s/ Abel E. Aguilera  
Abel E. Aguilera

Attorneys for Defendant and Respondent  
Northland Insurance Company

**CERTIFICATION**

Pursuant to California Rules of Court, rules 8.204(c)(1) and 8.504(a), I certify that this **ANSWER TO PETITION FOR REVIEW** contains **437** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: March 4, 2019

/s/ Gary J. Wax

---

Gary J. Wax

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On March 4, 2019, I served the foregoing document described as: **DOCUMENT TITLE** on the parties in this action by serving:

***SEE ATTACHED SERVICE LIST***

(X) By Envelope: by placing a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(X) By Mail: I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed on March 4, 2019, at Los Angeles, California.

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

/s/ Leslie Y. Barela

---

Leslie Y. Barela

**SERVICE LIST**

**Via Truefiling:**

Mohammed K. Ghods  
Lex Opus  
2100 North Broadway, Suite 210  
Santa Ana, CA 92706

*Attorneys for Plaintiff and Appellant, Bann-Shiang Liza Yu*

CALIFORNIA COURT OF APPEAL  
[Electronic Service under Rule 8.212(c)(2)]

**Via U. S. Mail:**

Clerk to  
Honorable William Claster  
Orange County Superior Court  
Civil Complex Center  
751 West Santa Ana Boulevard  
Santa Ana, California 92701