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NO. 89995-9  
[Court of Appeals No. 313930]

SUPREME COURT OF THE STATE OF WASHINGTON

RAYMOND ROBINSON,

Petitioner,

v.

U.S. BANCORP,

Respondent.

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ANSWER FOR PETITION FOR REVIEW

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## I. IDENTITY OF RESPONDING PARTIES

Respondent U.S. Bancorp (“U.S. Bank”) asks the Court to deny Raymond Robinson’s petition for review.

## II. COURT OF APPEALS DECISION

By unpublished decision filed January 23<sup>rd</sup>, 2014, the Court of Appeals affirmed an order of the Grant County Superior Court granting summary judgment dismissal of Raymond Robinson’s negligence claim against defendant U.S. Bank.

## III. COUNTERSTATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether Mr. Robinson failed to meet the RAP 13.4(b) criteria for granting review.

## IV. COUNTERSTATEMENT OF THE CASE

Mr. Robinson alleges that, on December 16, 2010, he was injured on U.S. Bank property in Moses Lake, Washington. CP 4. On that day, Mr. Robinson went to the Moses Lake branch to withdraw money for his wife, and after doing so, he returned to his vehicle which was parked in the U.S. Bank parking lot. CP 29, 30. Once inside his vehicle, Mr. Robinson decided to exit the vehicle again and return to the bank to withdraw money for himself. *Id.* Embarrassed to return to the teller a second time, Mr. Robinson chose to utilize the outdoor ATM machine, which was located on the opposite end of the building from where he was parked. CP 34. Rather than walk from the parking lot to the sidewalk nearby (CP 36), Mr. Robinson, 5’8” tall, chose to take a shortcut under a staircase that was adjacent to the building with a clearance of only 4’11.” *See* CP 37, 38; CP 33; and CP 31:

- Q. Here’s Exhibit 2, which is another photograph you took.
- A. Yes.
- Q. Now, does that show the place that you were going to walk under and through?
- A. Right down this way.

Q. Okay.  
A. Yes.  
Q. Now, there's some lattice work up there now.  
A. Yes.  
Q. That wasn't there at the time; right?  
A. No.  
Q. Okay. And so it was your intention to walk under that stairway?  
A. Yes.  
Q. All right. Now, where were you looking when you were walking under the stairway?  
A. Straight ahead.  
Q. Okay.  
A. Straight ahead.  
Q. All right. And did you see that the -- there was a kind of a metal landing there at the bottom of the stairs?  
A. I didn't think about it.  
Q. Okay.  
A. I just didn't think about it.  
Q. All right.  
A. I just assumed that you could -- it was there. The walkway was there, and I just assumed you could walk on around it.  
Q. Where did the metal actually hit your --  
A. Right here.  
Q. On the forehead?  
A. Right here.  
Q. All right. So you didn't duck at all?  
A. It just happened like that.  
Q. All right. You shook your head "no." I just -- I'm looking for a verbal answer. Did you duck or not?  
A. No.

CP 11, 12. Labeling it as a "freak accident," Mr. Robinson agreed that there is no way a person could walk under that staircase without hitting his head. CP 32.

The trial court dismissed Mr. Robinson's case on summary judgment. CP 66-68. The Court of Appeals affirmed.

## V. ARGUMENT WHY REVIEW SHOULD BE DENIED

Mr. Robinson's Petition does not cite RAP 13.4(b) or any other Rule of Appellate Procedure, nor does its wording allude to any of the RAP 13.4(b) criteria. If the Petition is taken as arguing that the Court of Appeals decision should be reviewed because it conflicts with the one decision cited on its third page<sup>1</sup>, and thus a request for review pursuant to RAP 13.4(b)(1) and/or (2), it fails to explain how the facts of that case are such that there is an actual conflict.

Taken in context, *Bodin* held that while negligence is generally a question of fact for the jury, it should be decided as a matter of law "in the clearest of cases and when reasonable minds could not have differed in their interpretation" of the facts. *Id.*, at p. 741. This was such a case, and the Court of Appeals was correct when it stated that "[w]hile it is foreseeable that an invitee would walk around the bank on a concrete 'walkway' in order to take a shortcut, it is not reasonably foreseeable that a 5'8" person would walk directly into a staircase with a 4' 11" clearance without ducking." *See Robinson v. U.S. Bancorp*, 2014 Wash. App. LEXIS 151, at p. 8. The Court of Appeals' decision in this case was correct and in furtherance of applicable law.

Even if a set of facts similar to the fairly unique facts of this case were to become the grist of some future lawsuit, the Court of Appeals decision will not be citable, because it is unpublished. GR 14.1(a). In addition, it would be an exaggeration to argue that this case involves an issue of substantial public interest within the meaning of RAP 13.4(b)(4).


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<sup>1</sup> *Bodin v. City of Stanwood*, 130 Wn.2d 726 (1996).

VI. CONCLUSION

Because the Petition fails to make a cogent case for granting review under any of the RAP 13.4(b) criteria, it should be denied.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of May, 2014.

By:   
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Anne M. Loucks, WSBA #32739

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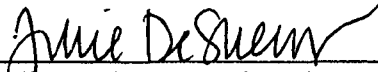
Attorneys for US Bancorp

CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on the date indicated below, I caused service of true and correct copies of the forgoing pleading via e-mail and U. S. Mail, postage prepaid to:

**Attorney for Petitioner**  
David A. Williams  
9 Lake Bellevue Drive, Suite 104  
Bellevue, WA 98005

DATED this 12<sup>th</sup> day of May, 2014.

  
\_\_\_\_\_  
Julie DeShaw, Legal Assistant



## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
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**To:** 'DeShaw, Julie'  
**Cc:** daw@bellevue-law.com; Loucks, Anne; Umberger, Rod  
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Dear Clerk of Court,

Attached for filing in .pdf format is Respondent's Answer for Petition for Review in Robinson v. U.S. Bancorp, Supreme Court Cause No. 89995-9. The attorney filing this brief is Anne M. Loucks, WSBA No. 32739, (206) 628-6770, e-mail: [Aloucks@williamskastner.com](mailto:Aloucks@williamskastner.com).

Respectfully submitted,

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