No. 91621-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DOUGLAS DEWAR,

Plaintiff-Respondent,

v.

KENNETH SMITH and JANE DOE SMITH, husband and wife, and their marital community property composed thereof,
TRANER SMITH & CO., PLLC,
a Washington professional limited liability company

Defendants-Petitioners.

ANSWER TO PETITION FOR REVIEW

Robert B. Gould, WSBA #4353
LAW OFFICES OF
ROBERT B. GOULD
4100 194th Street SW, Suite 215
Lynwood, Washington 98036
Telephone: (206) 633-4442

Benjamin Gould, WSBA #44093
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
Telephone: (206) 623-1900

Attorneys for Plaintiff-Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Other Cases

Rules

Regulations

Other Authorities

INTRODUCTION

Defendants Kenneth Smith and Traner Smith & Co., PLLC (collectively, "Smith") petition the Court to review a unanimous decision of the Court of Appeals. The petition should be denied.

Brad Beddall owed Plaintiff Douglas Dewar nearly $7 million. Dewar agreed to partially release his claims against Beddall. In exchange, Beddall agreed to retain Defendant Smith, a CPA, to prepare Beddall's tax return and seek a tax refund—a refund that would go to Dewar, not Beddall. Smith knew that he had been retained to benefit Dewar. Despite this, he allowed Beddall to change the address to which the tax refund would be sent, so that Beddall, rather than Dewar, would receive it. After the address change, Dewar contacted Smith, inquiring about the status of the refund and asking to see a copy of the tax return. In response, Smith sent Dewar a misleading tax return—a return indicating that the address had not been changed. Reassured by that misleading return, Dewar was led to believe that Beddall was still abiding by the settlement agreement. That was not true. Because of the address change, it was Beddall, rather than Dewar, who ended up receiving the tax refund.

Smith now seeks review on two grounds. He first argues that Dewar's state-law claims against him conflict with, and therefore are preempted by, federal law, which required Smith to keep Beddall's tax

information confidential. This argument does not work. Washington tort law prohibited Smith from sending Dewar the misleading tax return. Because federal law did not require Smith to send that tax return, state and federal law do not conflict. Smith also argues that the Court of Appeals broke new ground in recognizing that he owed a duty of care to Dewar, a non-client. This too is incorrect. For decades, Washington courts have recognized that CPAs can owe a duty of care to non-clients. Because the Court of Appeals followed a well-trodden path in holding that Smith owed Dewar a duty of care, no review of that holding is necessary.

IDENTITY OF RESPONDENT

Respondent Douglas Dewar, Plaintiff below, asks the Court to deny the petition for review.

COUNTERSTATEMENT OF THE CASE

I. Factual background

A. Dewar and Brad Beddall entered into a settlement agreement under which Smith would seek a tax refund for Dewar's benefit.

Brad Beddall and Plaintiff Douglas Dewar were joint venturers in real estate.[1] CP 70–71. Through one of these ventures, Beddall racked up nearly $7 million in debt to Dewar. CP 1073. In December 2009, Dewar

[1] Dewar is a retired CPA. He was not a CPA when the events giving rise to this case occurred. CP 264 at 5–7; *cf.* Pet. at 3.

sued Beddall for defaulting on the debt, CP 1062, and later obtained a judgment of about $4 million, CP 997–1004. Dewar knew, however, that it would be difficult to fully collect on a judgment against Beddall, CP 1061–62, and so began settlement negotiations with him, CP 1062–63.

These negotiations produced a written settlement agreement. CP 1069–93. Under this contract, Beddall agreed to retain Smith to file his federal income tax return, which would seek a refund of no less than $1 million. CP 1071 § 4. Beddall gave Dewar the right to review, evaluate, and approve the tax return before it was filed. *Id.* Beddall also irrevocably assigned the tax refund to Dewar, who was designated "the sole beneficiary" of the refund. *Id.* The tax refund would be delivered to Jonathan Hatch, Beddall's attorney, CP 1090, who in turn would deliver it to Dewar. CP 1071 § 4. Beddall also granted attorney Hatch an irrevocable power of attorney to sign the tax return and deliver the tax refund to Dewar. CP 1089; *see also* 26 C.F.R. §§ 601.501–.504 (the IRS may accept and rely on valid powers of attorney).

B. Smith knew that he was retained to seek a tax refund for Dewar's benefit.

After the settlement agreement was executed, attorney Hatch gave Smith a copy of the settlement agreement between Dewar and Beddall, highlighting the provision in the agreement about the tax refund. CP 974. As Smith has admitted, he knew that "the objective" of the agreement was

for Dewar "to receive the entirety of the Beddall tax refund." CP 961; *see also* CP 952, 956, 959, 963, 973. In fact, Smith told Beddall that he would "work closely with" Dewar to prepare the return. CP 1019. Smith did just that. Dewar provided Smith with most of the information needed to complete the return. CP 745 ¶ 6.

Before filing, Smith made the tax return available to Dewar for his review, informing him that the refund would be nearly $1.2 million. CP 824. After reviewing the return, Dewar suggested that Smith make three changes, including a change of the address so that the refund would go to attorney Hatch. CP 823–24. "The only change I insist on," added Dewar, "is the address change." CP 824. In response, Smith assured Dewar that "[w]e changed [the] address to Jon Hatch's address." CP 823.

Smith now claims that shortly after the return was filed, Beddall instructed him by phone "not to discuss his return or tax information with anyone." CP 33 ¶ 14. In earlier testimony, however, Smith admitted that Beddall never actually told him not to talk to Dewar. CP 62 at 33:20–21.

C. After the return was filed, Beddall, with Smith's knowledge, changed the tax-refund address to prevent Dewar from receiving the refund.

In May 2010, after the return had been filed, Beddall and Smith together called the IRS to check the status of the refund. CP 1029, 1033. The IRS said that it was still processing the refund. CP 1029. With Smith

still listening in, Beddall changed the address on the tax return so that the refund would go directly to Smith's office. CP 1033–34. Smith was silent during this phone call, did not object to this change after the phone call, and did not inform either Dewar or attorney Hatch of the change. CP 1034.

D. After the address change, Dewar asked Smith for a copy of the tax return, and Smith then gave Dewar the tax return as originally filed.

In early June 2010, Dewar inquired about the status of the refund and asked Smith to provide him with a copy of the tax return. CP 828, 1065. Five days later, Smith forwarded Dewar a copy of what he claimed was Beddall's 2009 tax return. CP 831, 1065. This copy was the original tax return, filed before Beddall had changed the address; the address listed on the original return was still attorney Hatch's. CP 1065–66. When he sent Dewar this return, Smith knew, of course, that Beddall had changed the address so that the tax refund would go to Smith's office.

E. Smith received the tax refund and delivered it to Beddall's son-in-law—thereby allowing Beddall, now in Thailand, to receive the refund instead of Dewar.

With the address now changed, the tax refund arrived at Smith's office in July 2010. CP 1058. Smith told Beddall that the refund had arrived, but did not tell Dewar or attorney Hatch. CP 1042–43, 1066.

In accordance with Beddall's instructions, Smith gave the refund to Beddall's son-in-law, Ron Rubin. CP 1059.

The next month, Beddall e-mailed Dewar to tell him that the refund was with him in Thailand and that he was breaching the settlement agreement. CP 935. Only then did Smith disengage from representing Beddall. CP 1044–45.

II. Procedural history

Dewar filed an action against Smith, asserting several claims, including claims for negligent misrepresentation and negligence. Dewar moved for partial summary judgment, asking the trial court to rule that Smith owed Dewar a duty of care, and that Smith breached that duty of care by committing negligent misrepresentation. The trial court granted this motion. CP 215–18. Dewar also moved for partial summary judgment on proximate cause and damages. The trial court granted this motion as well, concluding as a matter of law that Smith's negligent misrepresentation had proximately injured Dewar, and fixing principal damages at approximately $1.375 million. CP 15–18. The Court of Appeals granted discretionary review of both of these trial court orders. *Dewar v. Smith*, — Wn. App. —, 342 P.3d 328, 332 (2015).

The Court of Appeals affirmed in part and reversed in part. It rejected Smith's argument that federal law, which requires a tax return

preparer to keep tax return information confidential, preempted state tort law. Smith, the court concluded, could have avoided state-law liability while still keeping the tax return information confidential. *Id.* at 332–33. The Court of Appeals also held that Smith owed Dewar a duty of care. It concluded that a number of statutes, rules, and Washington cases supported such a duty. *Id.* at 333. The court found additional support for this duty in *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994), which listed six factors to consider in determining when an attorney owes a duty to a non-client. *Dewar*, 342 P.3d at 334. The Court of Appeals agreed with the trial court that Smith had breached his duty to Dewar. But it reversed the trial court's ruling on proximate cause and damages, holding that issues of fact remained on both elements. *Id.* at 337.[2]

ARGUMENT WHY REVIEW SHOULD BE DENIED

I. Because Washington law does not conflict with federal law, review of the conflict-preemption issue is not warranted.

Without making clear why review is justified under RAP 13.4(b), Smith asks this Court to review the Court of Appeals' ruling on conflict preemption. That request should be denied for two reasons. First, conflict preemption asks simply whether federal law required the affirmative act of

[2] Dewar moved the Court of Appeals to admit a stipulation and agreed order between Smith and the State Board of Accountancy in which it was stipulated that Smith, in representing Beddall, had been under a conflict of interest. The Court of Appeals denied Dewar's motion. *Dewar*, 342 P.3d at 338.

misrepresentation that Smith committed. Because federal law did not require that act, conflict preemption does not apply. Second, even if conflict preemption required considering whether Smith could have taken affirmative acts other than the misrepresentation, the Court of Appeals correctly concluded that Smith could have taken affirmative acts other than the misrepresentation and still abided by both state and federal law. Smith's argument to the contrary finds no support in federal law itself, in case law, or in the presumption against preemption.

A. Because federal law did not require Smith's act of misrepresentation, conflict preemption does not apply here.

A party claiming preemption bears the burden of showing that federal law preempts state law. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255 (1984). Smith invokes the doctrine of conflict preemption, which occurs (1) when it is impossible to comply with both federal and state law, or (2) when state law "stands as an obstacle" to accomplishing Congress's "full purposes and objectives." *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 800, 225 P.3d 213 (2009) (internal quotation marks and citation omitted). Neither strand of conflict preemption applies here.

It was not impossible for Smith to comply with both federal and state law. Smith committed negligent misrepresentation, and thus violated state law, by sending Beddall's filed tax return to Dewar—and yet Smith does not claim that compliance with federal law *required* him to send that

tax return. Smith therefore could have complied with federal law, and avoided liability for negligent misrepresentation under state law, simply by *not* sending that tax return. *See PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2579 (2011) ("The question for 'impossibility' is whether the private party could independently do under federal law what state law requires of it.").

Smith asks whether federal law allowed him to take an affirmative act other than sending the tax return, *see* Pet. for Review ("Pet.") at 10–15, but that is the wrong question. Smith could have avoided his negligent misrepresentation simply by *not* taking the affirmative act of sending the filed tax return.[3] And, because refraining from sending the tax return would have complied with federal law, "impossibility" preemption does not apply here.

Nor does state law stand as an obstacle to Congress's purpose of preserving the confidentiality of tax return information. Smith could have avoided liability for negligent misrepresentation by not sending Dewar the tax return. It is difficult to see how *refraining* from sending confidential tax return information to Dewar could have undermined Congress's interest in that information's confidentiality.

---

[3] To avoid liability for negligent misrepresentation, Smith was not required to withdraw. *Cf.* Pet. at 14 n.2. He was simply required to refrain from sending Dewar the filed tax return.

Smith's argument for conflict preemption fails, in short, because federal law did not require him to send the tax return to Dewar. But Smith's argument is weaker still. For besides violating Washington's common law of negligent misrepresentation, sending the misleading tax return to Dewar *also* violated federal law. Under IRS regulations, all consents for a tax preparer to disclose tax return information must be in writing, and must satisfy certain formal requirements. 26 C.F.R. § 301.7216-3(a)(1), (a)(3)(i), (a)(3)(ii); Rev. Proc. 2008-35, 2008-29 I.R.B. 132, 133. Smith lacked the required form of consent when he disclosed the return to Dewar, *see* CP 1071, 1089—but he disclosed it nonetheless, fully aware that Dewar would rely on the tax return's misleading address. Smith could have complied with both state and federal law simply by refraining from sending the tax return—a choice that would have set Dewar in motion to protect his rights under the settlement agreement. Instead, Smith chose to violate both state and federal law. Smith's disclosure without the requisite consent shows that he did not care about federal or state law, and was simply trying to falsely reassure Dewar.[4]

[4] While Smith violated the federal law governing tax preparers, nothing in federal law prevented Beddall, in the settlement agreement, from giving Dewar a contractually enforceable right to that information from Beddall himself. Smith was thus negligent in failing to secure Beddall's irrevocable consent to disclosure at the beginning of his engagement. *See infra* p. 13.

B. Even if conflict-preemption doctrine required considering whether Smith could have taken affirmative acts other than the misrepresentation, no conflict would arise.

Because Smith could have avoided liability for negligent misrepresentation by *not sending* the tax return, it is irrelevant whether federal law allowed Smith to take an affirmative act *other* than sending the tax return. But even if such considerations were relevant to the conflict-preemption inquiry, no conflict would arise. In arguing that it would have violated federal law for him to have taken an affirmative act *other* than sending the original tax return to Dewar, Smith strays from the language of the federal regulations, cites no conflicting authorities, and ignores the presumption against preemption. Smith had at least three affirmative options that avoided liability under state law and abided by federal law.

First, Smith could simply have told Dewar that he refused to give him the tax return, without saying why. This flat statement would have disclosed nothing at all about Beddall or the tax return. At the same time, this refusal would not have constituted a negligent misrepresentation.

Second, as the Court of Appeals correctly suggested, Smith could have withdrawn from representing Beddall and informed Dewar of that withdrawal. *Dewar*, 342 P.3d at 333. This communication would not have disclosed "tax return information," as that term is defined by the federal regulation. 26 C.F.R. § 301.7216-1(b)(3). The mere fact that Smith had

withdrawn from representing Beddall is not information "furnished . . . for, or in connection with, the preparation of a tax return," since the information would not be used in preparing a return—the return, after all, had already been prepared and filed. *Id.* Indeed, informing Dewar that he had withdrawn would only have disclosed information about Smith himself (i.e., *Smith's* decision to withdraw). It would have said nothing about Beddall, let alone anything about his tax return.

Smith, citing no cases that support his position, protests that telling Dewar that he had withdrawn would have alerted him "that there had been a change in Beddall's tax return." Pet. at 11. Telling Dewar about the withdrawal would have done no such thing. It may have suggested that Beddall was plotting some way of doing something underhanded, but it would not have disclosed what he was going to do or how he was going to do it—let alone disclosed the specific address change that Beddall had made. Under the federal regulations, disclosure means to "mak[e] . . . information known." 26 C.F.R. § 301.7216-1(b)(5). Learning of Smith's withdrawal would not have enabled Dewar to "know[]" anything more about Beddall's tax return than he had known before. *Id.* But it certainly would have avoided a negligent misrepresentation.

Third, Smith also had the option of telling Dewar that Beddall had revoked his purported consent to disclosure. Smith cites no authority that

has held that mere information about revocation counts as confidential "tax return information" under federal law. The examples of "tax return information" that the regulation gives are concrete information in the tax return itself: "a taxpayer's name, address, or identifying number." *Id.* § 301.7216-1(b)(3)(i). These examples are inconsistent with Smith's astonishingly broad reading of "tax return information."

Smith's broad reading is not only in tension with regulatory text—it is also positively forbidden by the presumption against preemption. In all preemption cases, courts presume "that the historic police powers of the States" are not preempted. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (internal quotation marks and citation omitted). Thus, even when Congress intends for state law to be preempted, the scope of that preemption is narrowly construed. *See id.* Smith's unprecedentedly broad reading of the federal regulations ignores that rule of narrow construction.

One final point. Smith's argument for a conflict between state and federal law overlooks the part that his own negligence played in creating that supposed conflict. Under federal law, Smith could have secured Beddall's irrevocable written consent to disclosure—consent that would have been effective for one year. *See* 26 C.F.R. § 301.7216-3(b)(5). If Smith had secured that written consent at the beginning of the engagement, not even the *possibility* of conflict could have arisen.

II. Because the Court of Appeals created no new liability in holding that Smith owed a duty to Dewar, review of that holding is not warranted.

For decades, Washington courts have recognized that CPAs can owe a duty of care to non-clients. The Court of Appeals broke no new ground merely by holding that statutes, rules, and *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994), provide further support for a duty. Review of that holding is not warranted.

A. Washington courts—including this Court—have already recognized that CPAs can owe a duty of care to non-clients.

For almost 30 years, Washington courts have recognized that CPAs can be liable to non-clients for breaching a duty of care. In *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 744 P.2d 1032 (1987), for example, bondholders sued the accounting firm Ernst & Whinney, among other professionals, for negligent misrepresentations in a public entity's financial statements. *Id.* at 118, 161. This Court, relying on the *Restatement (Second) of Torts* § 552 (1977), recognized that accountants could be liable to the bondholders if they knew that the public entity planned to supply the financial statements to bondholders, who in turn would rely on it. *Haberman*, 109 Wn.2d at 164. More recently, in *FutureSelect Portfolio Management, Inc. v. Tremont Group Holdings, Inc.*, 175 Wn. App. 840, 309 P.3d 555 (2013), *aff'd*, 180 Wn.2d 954, 331 P.3d 29 (2014), an investor alleged that it had

invested in reliance on negligent misrepresentations made by Ernst & Young in its audits. The Court of Appeals allowed the claim to proceed because the investor had properly alleged that Ernst & Young knew that its audits would be used to solicit investors, and that investors would rely on them. *Id.* at 884–85. In both of these cases, Washington courts recognized that CPAs had duties to third parties.

The principle that CPAs have duties to third parties is so well-established, in fact, that in *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 959 P.2d 651 (1998), this Court proceeded to examine whether principles of comparative negligence applied to such a claim. Smith points out that in *ESCA* the Court did not explicitly address the circumstances in which CPAs can owe duties to third parties. Pet. at 16. That fact hurts Smith's argument for review, however, because *ESCA* did not *have* to explicitly address that issue; long before, it had already been established that CPAs can owe duties to third parties.

If anything, this case presents far more compelling facts to support a CPA's duty to third parties than did past cases. In *Haberman* and *FutureSelect*, the courts recognized that CPAs can owe a duty to a potentially sizeable group of bondholders and current investors. *Haberman*, 109 Wn.2d at 164; *FutureSelect*, 175 Wn. App. at 884–85. Here, by contrast, the Court of Appeals recognized a duty to only one

person, Douglas Dewar, the counterparty to a contract with Smith's client, Beddall. This was a contract, moreover, of which Smith was aware—and he knew the contract was meant to benefit Dewar. Because the Court of Appeals' holding falls well within the bounds already explored by *Haberman* and *FutureSelect*, review of that holding is unnecessary.

B. Smith's criticisms of the Court of Appeals provide no basis for review.

Smith criticizes the Court of Appeals' reasoning on a number of grounds. Some of them distort what the Court of Appeals held. Others get the law wrong. None justify review.

Smith says that the Court of Appeals, in recognizing a duty of care, relied on "[d]iffuse notions of acting in the public interest." Pet. at 15. That is not at all what the Court of Appeals did. It certainly acknowledged that CPAs have an obligation to serve the public interest, but it relied on *specific* duties imposed on CPAs. It cited, for example, the duty—established by the CPA code of professional conduct—not to transmit materially false and misleading information. *Dewar*, 342 P.3d at 333. The court also cited the duty—imposed on CPAs by federal law—not to represent a client if "'[t]here is a significant risk that the representation . . . will be materially limited by the practitioner's responsibilities to . . . a third person.'" *Id.* (quoting 31 C.F.R. § 10.29(a)(2)). This duty explicitly recognizes that CPAs can have responsibilities to non-clients—

responsibilities that can create the kind of conflict of interest under which Smith labored here.

Smith also objects to the Court of Appeals' reliance on *Trask v. Butler*, a case on which that court partly based its recognition of a duty. Smith argues that the Court of Appeals misapplied *Trask*'s multifactor balancing test. First of all, even if the court *did* misapply that test, review would be unwarranted. Smith does not argue that *Trask*'s test *does not apply* to this case. He simply argues that the Court of Appeals misapplied that test. This Court, however, is not in the business of mere error correction. If an asserted misapplication of a legal standard warranted review, this Court would be obliged to grant almost every petition.

In any event, the Court of Appeals did not misapply *Trask*. Smith first says that the Court of Appeals misapplied the threshold question under *Trask*: "whether the plaintiff is an intended beneficiary of the transaction to which the advice pertained." *Trask*, 123 Wn.2d at 843. According to Smith, the relevant "transaction[s]" here are the engagement letters between Smith and Beddall, and not the tax return that Smith prepared for Dewar's benefit. Pet. at 17. In making this argument, it is Smith who misapplies *Trask*. When *Trask* spoke of the "transaction to which the advice pertain[s]," it was referring to the transaction involving the client and the third party. This is plain from the language *Trask* used: it

makes little sense to speak of a retainer agreement between a client and an attorney as a "transaction to which" the attorney's advice "pertains." The same thing is plain from *Trask*'s endorsement of an estate beneficiary's right to bring a claim "against an attorney . . . for errors in drafting a will." *Id.* at 843. In endorsing that right, *Trask* looked to the will—the transaction to which the advice pertained—rather than the contract between the attorney and the testator.

Accordingly, cases applying *Trask* have asked whether the third party was an intended beneficiary of the transaction between the client and the third party. They have *not* asked whether the third party was an intended beneficiary of the contract between the attorney and the client. In *Jones v. Allstate Insurance Co.*, 146 Wn.2d 291, 45 P.3d 1068 (2002), an Allstate insurance adjuster advised unrepresented claimants that they should sign a release of all claims arising from an auto crash with an Allstate policyholder. The claimants sued the insurance adjuster for malpractice, and this Court held that, under the circumstances, the adjuster owed a duty of care to the claimants, even though the claimants were third parties. Crucially for present purposes, the Court held that the claimants "were at least one of the intended beneficiaries of the transaction to which [the adjuster's] advice pertained." *Id.* at 307. The Court could not have been referring to the insurance policy between Allstate and its own

insured, since the adjuster gave the claimants no advice about that policy. Instead, the Court was talking about the transaction that involved both the claimants and its own insured: the release of claims. Similarly, in a case in which the would-be beneficiary of an unexecuted will sued the attorney who drafted that will, the Court of Appeals noted that the plaintiff was the intended beneficiary of the will, rather than the intended beneficiary of the retainer agreement between the attorney and the testator. *See Parks v. Fink*, 173 Wn. App. 366, 378, 293 P.3d 1275 (2013) ("Because material issues of fact exist on whether Parks was an intended beneficiary, we assume, without deciding, that Parks was an intended beneficiary *under Balko's will*." (emphasis added)), *review denied*, 177 Wn.2d 1025, 309 P.3d 504 (2013).

Smith also argues that the Court of Appeals, by recognizing a duty to disclose, misapplied the fifth and sixth factors in the *Trask* test: the "policy of preventing future harm" and the "extent to which the profession would be unduly burdened by a finding of liability." *Trask*, 123 Wn.2d at 843. But Smith's argument on this score is based on his assumption that his "duty of client confidentiality" conflicted with his duty to disclose under Washington tort law. Pet. at 18. That assumption, as Dewar has explained, is false. He could have complied with both duties, but chose instead to violate both. *See supra* pp. 8–10.

In addition, Smith's analysis of the sixth *Trask* factor ignores that Washington law has already recognized that CPAs can be liable to non-clients. *See supra* pp. 14–16. Because the Court of Appeals imposed no liability where it did not already exist, the court imposed no additional burden of liability on the profession—which means that the sixth *Trask* factor favors recognizing a duty running from Smith to Dewar.

Finally, Smith insists that the Court of Appeals' decision conflicts with *Stewart Title Guaranty Co. v. Sterling Savings Bank*, 178 Wn.2d 561, 311 P.3d 1 (2013). But *Stewart Title* is easily distinguishable. *Stewart Title* held that an alignment of interests between insurer and insured does not itself make the insurer the intended beneficiary of litigation to which an attorney's advice pertains. *Id.* at 567. Here, in concluding that Smith owed Dewar a duty of care, the Court of Appeals relied not on an alignment of interests, but on the fact that Dewar was an intended beneficiary of Smith's tax-return preparation—and that Smith *knew* Dewar was the intended beneficiary. *Dewar*, 342 P.3d at 336.

CONCLUSION

The petition for review should be denied.

RESPECTFULLY SUBMITTED this 22nd day of May, 2015.

LAW OFFICES OF ROBERT B. GOULD

By _____
Robert B. Gould, WSBA #4353

KELLER ROHRBACK L.L.P.

By _____
Benjamin Gould, WSBA #44093

Attorneys for Plaintiff/Respondent

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on May 22, 2015, I caused a true and correct copy of the foregoing ANSWER TO PETITION FOR REVIEW to be served on the following via email and ABC Legal Messenger to:

Sam B. Franklin
Timothy D. Shea
Lee Smart, P.S., Inc.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
sbf@leesmart.com
tds@leesmart.com

And via email and Overnight Federal Express to:

Richard A. Simpson
Gary P. Seligman
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
rsimpson@wileyrein.com
gseligman@wileyrein.com

DATED May 22, 2015, at Seattle, Washington.

Cathy A. Hopkins, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Cathy Hopkins
Cc: Benjamin Gould; rbgould@nwlegalmal.com; LPhelan@nwlegalmal.com; sbf@leesmart.com; tds@leesmart.com; rsimpson@wileyrein.com; gseligman@wileyrein.com
Subject: RE: No. 91621-7, Dewar v. Smith , et al.

Received 5-22-15

From: Cathy Hopkins [mailto:chopkins@KellerRohrback.com]
Sent: Friday, May 22, 2015 1:35 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Benjamin Gould; rbgould@nwlegalmal.com; LPhelan@nwlegalmal.com; sbf@leesmart.com; tds@leesmart.com; rsimpson@wileyrein.com; gseligman@wileyrein.com
Subject: No. 91621-7, Dewar v. Smith , et al.

Dear Clerk:

Attached for filing, please find Plaintiff-Respondent's Answer to Petition for Review.

The case information is:

Case name: Dewar v. Smith, et al.
Case number: 91621-7

Name, phone number, bar number and email address of persons filing the above document:

Benjamin Gould, WSBA #44093
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
bgould@kellerrohrback.com

Robert B. Gould, WSBA #4353
Law Offices of Robert B. Gould
4100 194th Street SW, Suite 215
Lynwood, Washington 98036
rbgould@nwlegalmal.com
(206) 633-4442

Thank you.

~~~~~~

Cathy A. Hopkins
Complex Litigation Legal Assistant/Paralegal
KELLER♦ROHRBACK L.L.P.
Phone: (206) 623-1900
Direct Line: (206) 224-7433
Fax: (206) 623-3384
E-mail: chopkins@kellerrohrback.com
~~~~~~