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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SEATTLE TUNNEL
PARTNERS, WASHINGTON
STATE DEPARTMENT OF
TRANSPORTATION, and
HITACHI Zosen U.S.A.,
Ltd.,

Appellants

vs.

GREAT LAKES
REINSURANCE (UK) PLC, a
foreign insurance company, et
al.;

Respondents.

No. 100168-1

SEATTLE TUNNEL
PARTNERS AND
WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION'S
JOINT OPPOSITION TO
MOTION TO STRIKE
STP/WSDOT'S JOINT
REPLY

RAP 13.4(d), which Insurers quote but seriously misapply in their motion to strike, states that if the party answering a petition for review “wants to seek review of any issue that is not raised in the petition for review ... the party must raise those new issues in an answer.” Here, Insurers want this Court to review a handful of issues – identified in footnote

1 of their answer – if and only if the Court grants review of one or more of the issues identified by STP and/or WSDOT.

Conditional or not, those are the “new issues” that Insurers want the Court to review.

Relevant here, RAP 13.4(d) then continues: “A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.” STP and WSDOT filed their joint reply because, as established above, Insurers raised new issues that they want the Court to review if it grants review of one or more of the issues identified by STP and/or WSDOT. STP and WSDOT properly responded as RAP 13.4(d) allows, and they properly limited the reply “to addressing only the new issues raised in the answer” as RAP 13.4(d) requires. Contrary to Insurers’ argument, there is no basis in the Court’s rules or otherwise to strike STP and WSDOT’s joint reply.

The Court’s rules also make clear that review by the Court is generally discretionary: here, it is governed by the conflict and public importance considerations listed in RAP 13.4(b). As the Court’s decision in *Lake Hills Invs. LLC v. Rushforth Constr. Co.*, 196 Wn.2d 1042, 481 P.3d 546 (2021), illustrates, sometimes the Court grants a petition for review yet “[r]eview of the issues conditionally raised in the answer to the petition for review is denied.” Insurers have not explained – nor can they explain – how a decision to grant review of new issues not raised in the petition for review can be made where, as here, a respondent seeking review provides no substantive argument regarding the relevant considerations for granting review of those new issues. STP and WSDOT appropriately pointed out that omission.

Insurers, not STP or WSDOT, have overlooked or misapplied this Court’s rules. Their motion to strike should be denied.

This brief contains 391 words, in compliance with RAP
18.17.

DATED: 11/17/2021 PETERSON | WAMPOLD |
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CERTIFICATE OF SERVICE

I certify that on the date shown below this document was
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which electronically serves all counsel of record.

SIGNED at Seattle, Washington this 22nd day of
November, 2021.



Mary Monschein, Paralegal

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