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Supreme Court No. 100168-1

SUPREME COURT OF THE STATE OF WASHINGTON

SEATTLE TUNNEL PARTNERS,

Petitioner,

vs.

GREAT LAKES REINSURANCE (UK) PLC, et al.,

Respondents.

**SEATTLE TUNNEL PARTNERS AND WASHINGTON
STATE DEPARTMENT OF TRANSPORTATION'S
JOINT REPLY TO RESPONDENTS' OPPOSITION TO
PETITIONS FOR REVIEW**

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REPLY

In footnote 1 of Respondents’ Opposition to Petitions for Review, respondents purportedly “reserve the right to seek review of all issues decided by Division I, including Division I’s rulings on the meaning of ‘item’ in the MBE, the number of occurrences, how WSDOT’s claimed damages relate to TBM repairs, and the dismissal of WSDOT’s claim for declaratory relief.” Opp. at 3 n.1.¹ As permitted by RAP 13.4(d), Seattle Tunnel Partners respectfully submits this reply limited to these new issues raised in respondents’ answer.

By seeking cross-review, albeit deficiently (as discussed below), respondents effectively concede that this matter raises issues of substantial public interest. But beyond listing a handful of issues addressed by the Court of Appeals, respondents fail to present any argument or authority as to how or why the Court of Appeals erred in deciding these issues and how or why any of

¹ This reply uses the same abbreviations as Respondents’ Opposition to Petitions for Review (“Opp.”).

these issues warrant this Court’s review. That is insufficient to properly raise an issue for review. *See, e.g., Sprague v. Spokane Valley Fire Dep’t*, 189 Wn.2d 858, 876, 409 P.3d 160 (2018) (“We will not consider arguments that a party fails to brief.”). Because respondents have failed to establish conflict with Washington precedent or substantial importance as required to grant review under RAP 13.4(b), the Court should grant review solely as to the issues presented by petitioners.²

The cases cited by respondents do not excuse this deficiency nor do they support an alternative rule. In *Gerlach v. Cove Apartments, LLC*, 196 Wn.2d 111, 119 n.4, 471 P.3d 181 (2020) (Opp. at 3 n.1), the Court merely recognized that it may properly address issues that the respondent “conditionally raised in its answer to the petition for review.” The question presented

² *Cf. Lake Hills Invs. LLC v. Rushforth Constr. Co.*, 196 Wn.2d 1042, 481 P.3d 546 (2021) (“IT IS ORDERED: That the petition for review is granted. Review of the issues conditionally raised in the answer to the petition for review is denied.”). Respondents present no argument or authority suggesting a different result here.

here is whether briefing and argument is necessary to raise an issue for cross-review. *Gerlach* does not address that point.

The other case cited by respondents – *Lewis River Golf, Inc. v. O.M. Scott & Sons*, 120 Wn.2d 712, 845 P.2d 987 (1993) (Opp. at 3 n.1) – also does not support respondents’ argument. The Court in *Lewis* recognized that it may address issues that are properly raised on conditional cross-review, but here again respondents have not properly raised any such issues. In similar circumstances, the Court in *Lewis* responded: “We do not consider error when presented with such ... incomplete briefing.” *Id.* at 725. Because the same reasoning and result apply here as well, review of the additional issues referenced in respondents’ answer to the petitions for review should be denied.

This brief contains 481 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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SIGNED in Seattle, Washington this 17th day of
September, 2021.



Mary Monschein, Paralegal

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