NO. 101246-2
(Court of Appeals No. 55343-1-II)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FLOYD SCOTT,

Petitioner,

v.

AMERICAN EXPRESS NATIONAL BANK, *et al.*,

Respondents.

RESPONDENTS SUTTELL & HAMMER PS, NICHOLAS R. FILER, ROBERT C. JINDRA, AMERICAN EXPRESS NATIONAL BANK, AND RAQUEL HERNANDEZ'S ANSWER TO PETITION FOR REVIEW

Kevin H. Kono, WSBA #54617
Frederick A. Haist, WSBA #48937
Davis Wright Tremaine LLP
Attorneys for Defendants Suttell &
Hammer PS, Nicholas R. Filer,
Robert C. Jindra, American Express
National Bank, and Raquel Hernandez

920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206-622-3150 Phone
206-757-7700 Fax

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I. IDENTITY OF RESPONDENTS.

Defendants and Respondents Suttell & Hammer PS, Nicholas R. Filer, Robert C. Jindra (Suttell and its Attorneys), American Express National Bank (Amex), and Raquel Hernandez (Amex Witness) answer Petitioner Floyd Scott's Petition for Review. Mr. Scott seeks review of the Court of Appeals' determination only as to the Amex Parties.[1]

II. INTRODUCTION AND ARGUMENT SUMMARY.

Mr. Scott's Petition does not meet any of the considerations required under RAP 13.4(b). Instead, Mr. Scott seeks this Court's review based on a vicarious liability argument he waived by never before advancing. The Court of Appeals reversed a judgment on a Motion to Dismiss as to Suttell and its Attorneys, finding that Mr. Scott alleged

[1] As discussed below, Mr. Scott's issue statement refers to whether the litigation privilege applies to collection agencies, Pet. at 6, which can only apply to Suttell & Hammer PS, but the Court of Appeals ruled in Mr. Scott's favor on that point as to the CPA claim, and his argument focuses on Amex's claimed vicarious liability.

sufficient allegations to defeat a 12(b)(6) motion on the CPA claim against Suttell and its Attorneys, but the Court of Appeals *affirmed* that the witness and litigation privileges protect Amex and the Amex Witness (collectively, Amex Parties) from liability. Mr. Scott seeks review as to the Amex Parties, arguing that this Court should find them vicariously liable for Suttell and its Attorneys' alleged CPA violation. Even if Mr. Scott had not waived it, his vicarious liability theory could not merit review because the Amex Parties are immune from liability for filings in the 2016 Action under the witness and litigation privileges. The Court of Appeals also correctly recognized that the Amex Parties are not WCAA collection agencies. The Amex Parties cannot be vicariously liable under statutes to which they are not subject.

This Court should deny Mr. Scott's Petition for the following reasons:

First, the Court should decline to review the Court of Appeals' decision because Mr. Scott failed to satisfy the RAP 13.4 considerations.

Second, the Court of Appeals' decision to affirm the Superior Court judgment as to the Amex Parties was correct for at least three reasons:

(a) Mr. Scott waived review on his vicarious liability arguments;

(b) The Court of Appeals correctly applied established law in holding that the witness and litigation privileges apply to the Amex Parties' actions because applying the privileges advances the reasons for them; and

(c) the Amex Parties are not vicariously liable for Suttell and its Attorneys' actions because the WCAA does not apply to Amex—the Amex Parties are not collection agencies.

III. COUNTERSTATEMENT OF ISSUES.

Mr. Scott's first stated issue is difficult to decipher and his second issue is one on which he prevailed. Paraphrased, his

stated issues are: (1) did the Superior Court wrongfully dismiss the Amex Parties because they are vicariously liable for Suttell and its Attorneys' actions; and (2) does the litigation privilege apply to a collection agency that violated RCW 19.16.260(1)(a)?

Mr. Scott's arguments address slightly different issues:

(1) Could the Amex Parties be vicariously liable under the WCAA if Suttell and its Attorneys could be liable? (No, because the Amex Parties are not a collection agency.)

(2) Does applying the witness and litigation privileges to the Amex Parties advance the reasons for the privileges? (Yes, because it promotes candor and reassures parties that they can litigate a lawsuit free from fear that a defendant may sue them in a second retaliatory action for litigating the first lawsuit—which is what happened here.)

IV. STATEMENT OF THE CASE.

A. History of the 2016 Action.

On February 16, 2016, Amex, through Suttell and its Attorneys, filed a Complaint seeking to collect a debt from Mr. Scott. CP 15-16. The Superior Court dismissed the 2016 Action in 2017 (although it is not clear that any party received notice of the dismissal). CP 57. In January 2020, Amex, through Suttell, filed a Motion for Summary Judgment on the 2016 Action, which was supported by a declaration from Ms. Hernandez that consisted of facts surrounding Mr. Scott's debt to Amex. CP 18-20, 21-53, 57. The Superior Court in the 2016 Action rejected the summary judgment filing because the case had been dismissed. CP 57.

B. Complaint Allegations.

Mr. Scott filed this action on March 16, 2020, and filed an amended Complaint on April 29, 2020, alleging claims for Intentional Infliction of Emotional Distress (IIED) and under the Consumer Protection Act (CPA) based on the filing of the

complaint and summary judgment motion and declaration in the 2016 Action. Mr. Scott did not allege that the Amex Parties were vicariously liable for Suttell and its Attorneys. CP 162-80. Mr. Scott also did not dispute that he owes Amex the debt it sought to collect, admitting this action is not about the "legitimacy or illegitimacy of [Amex's] debt claim" in the 2016 Action. CP 165 (¶ 3.4).

C. Defendants Move to Dismiss the Complaint.

Defendants moved to dismiss Mr. Scott's First Amended Complaint. CP 1-58; RT 4-13. Of his arguments in response, Mr. Scott did not argue that the Amex Parties were vicariously liable for Suttell and its Attorneys' alleged conduct.

D. The Trial Court Dismisses the Complaint.

The Superior Court granted Defendants' Motion to Dismiss, reasoning that Defendants are immune from liability under the witness and litigation privileges. RT 13-14.

E. The Appellate Court Affirms as to the Amex Parties but Reverses as to Suttell and its Attorneys.

Mr. Scott appealed the Superior Court judgment. Mr. Scott did not argue that the Amex Parties were vicariously liable for Suttell and its Attorneys in either his Opening or Reply briefs.[2]

The Court of Appeals affirmed the Superior Court's judgment dismissing the Amex Parties. *Scott v. Am. Express Nat'l Bank*, 22 Wn. App. 2d 258, 265–67, fn.3 (2022). The Court of Appeals reversed the Superior Court's judgment dismissing Suttell and its Attorneys as to the CPA claim but affirmed it as to the IIED claim. *Scott*, 22 Wn. App. 2d at 267–68. Mr. Scott does not seek review of the IIED claim.

V. ARGUMENT AND AUTHORITY.

The Court should deny Mr. Scott's Petition for Review because he does not and cannot explain why review would be merited under any RAP 13.4(b) criteria. And even if Mr. Scott

[2] Mr. Scott first argued vicarious liability in his Motion for Reconsideration of the Court of Appeals' decision.

had satisfied RAP 13.4 (and he did not), the Court of Appeals' opinion correctly followed established law in holding that the Amex Parties are not liable on Mr. Scott's claims.

A. Mr. Scott Fails to Satisfy RAP 13.4 Review Considerations.

Under RAP 13.4, this Court will accept a Petition only if: (1) the appellate decision conflicts with this Court's decisions; (2) the appellate decision conflicts with another published Court of Appeals decision; (3) if there is a significant constitutional issue; or (4) the petition involves an issue of substantial public interest that this Court should determine. Mr. Scott fails to satisfy any of those criteria.

1. The Court of Appeals Decision Does Not Conflict with Any Other Appellate Decision and Involves No Constitutional Issue.

Mr. Scott does not explain how the Court of Appeals' decision conflicts with another published Washington decision (because it does not). Nor does he identify any constitutional issue, let alone a significant question (because the case presents

none). Thus, Mr. Scott fails to satisfy the first three requirements for review.

2. Mr. Scott Does Not Show an Issue of Substantial Public Interest.

Mr. Scott cursorily argues that his petition raises an issue of substantial interest (Pet. at 10), but it does not. He claims that because Northwest Consumer Law Center (NCLC), Northwest Justice Project (NJP), and Mr. Lukashin requested publication, the issues he raises in this petition are public issues. But those requestors sought publication based on issues Mr. Scott does not ask this Court to review (because the outcome was favorable to him). NCLC, NJP, and Mr. Lukashin sought publication claiming the Court of Appeals Opinion: (1) determines a new principle and clarifies existing law on the litigation privilege as it is applied to *attorneys*; (2) clarifies "the test" for determining whether a *law firm* is a collection agency under the WCAA; (3) clarifies concepts of personal injury and causation under the CPA; and (4) in the case of Mr. Lukashin's motion, conflicts with his federal case decisions and promotes

pro se litigants. Those arguments do not apply to the Amex Parties because the Amex Parties are not attorneys, any injury or causation findings pertain individually to Mr. Scott and do not affect any public interest, and Mr. Lukashin's arguments pertain solely to him.

Mr. Scott also does not identify any public interest in his waived vicarious liability arguments. Mr. Scott does not raise any novel issue regarding the law of vicarious liability generally or explain how this Court's review could impact vicarious liability law broadly. He only argues that the Court of Appeals erred in not finding that the Amex Parties were vicariously liable. *See, e.g.*, Pet. at 12-13. Further, he provides no basis for his conclusions and ignores that, as discussed below, the WCAA does not apply to the Amex Parties and, thus, they cannot be liable even if Suttell and its Attorneys could be.

Likewise, the Court of Appeals applied established litigation and witness immunity law, and Mr. Scott does not

explain how this Court's review would change that established law. Pet. at 15-18. Following *Mason v. Mason*, 19 Wn. App. 2d 803, 830 (2021), rev. den., 199 Wn.2d 1005 (2022), the Court of Appeals held that the litigation privilege does not apply if applying it would defeat the policy reasons for the privilege. *Scott*, 22 Wn. App. 2d at 267-68. The Court of Appeals held that the witness privilege is absolute and the Amex Witness was absolved of all liability. *Id*. at 265-266. Mr. Scott does not provide any policy reasons that would defeat either privilege or explain how applying the two privileges to the Amex Parties will abrogate the reasons for them. Pet. at 15-16.

The Court should deny review because its decision on the two issues (one of which is unpreserved) Mr. Scott argues would not give any new guidance to the public. The Court of Appeals correctly applied established law, and Mr. Scott does not show that the Court of Appeals' privilege decision would affect other cases in any way.

B. Review is Unwarranted Because the Court of Appeals Correctly Affirmed the Amex Parties' Dismissal.

Mr. Scott's failure to show that any RAP 13.4 consideration supports review is dispositive and the Court should deny review. But even if Mr. Scott had satisfied RAP 13.4, this case does not merit review because he waived review of his vicarious liability argument, and the Court of Appeals correctly applied the witness and litigation privileges to affirm the Amex Parties' judgment on their Motion to Dismiss.

1. Mr. Scott Waived His Vicarious Liability Arguments.

"Generally, this court will not review any claim of error that was not raised in the trial court." *State v. Strine*, 176 Wn.2d 742, 749 (2013); *Wilcox v. Basehore*, 187 Wn.2d 772, 788 (2017) ("Failure to raise an issue before the trial court generally precludes a party from raising it on appeal"); RAP 2.5. Mr. Scott did not raise any vicarious liability issue or argument in any previous forum. He did not allege in his First Amended Complaint that the Amex Parties were vicariously

liable for Suttell and its Attorneys. CP 162-180. He did not raise the issue in his Superior Court opposition to Respondents' Motion to Dismiss. CP 102-106. He did not raise the issue in his Superior Court Motions for Reconsideration. CP 108-112, 199-206. He further waived review because he did not cite it as an issue for review in his appellate briefs. "Only issues raised in the assignments of error, or related issues, and argued to the appellate court are considered on appeal." *US W. Commc'ns, Inc. v. Wash. Util. & Transp. Comm'n*, 134 Wn.2d 74, 112 (1997), as corrected (Mar. 3, 1998). Because Mr. Scott failed to raise his vicarious liability theory in *any* forum before the Court of Appeals issued its opinion, he waived review on it before this Court.

2. Amex and the Amex Witness Are Not Liable under the Witness and Litigation Privileges.

The Court of Appeals correctly affirmed the dismissal of the Amex Parties because applying the litigation and witness privileges to the Amex Parties advances the policies behind

those privileges, and thus the Amex Parties are immune from liability.

a. Applying the Privilege to the Amex Witness Fosters Candor and Truth-Finding.

Mr. Scott's claims against the Amex Witness arise from her declaration supporting the motion in the 2016 Action. CP 164 (¶¶ 1.15); 168-69 (¶¶ 4.24, 4.26, 4.28). The Court of Appeals properly affirmed the judgment for Ms. Hernandez because she is absolutely immune from liability for her statements as a witness. *Wynn v. Earin*, 163 Wn.2d 361, 380 (2008); *Scott*, 22 Wn. App. 2d at 266. "As a general rule, witnesses in judicial proceedings are absolutely immune from suit based on their testimony." *Bruce v. Byrne-Stevens & Assocs. Eng'rs, Inc.*, 113 Wn.2d 123, 125 (1989); *Childs v. Allen*, 125 Wn. App. 50, 54 (2004) (applying absolute witness immunity). "Where an individual is entitled to the shield of 'absolute privilege' or 'immunity,' the individual is absolved of all liability." *Mason*, 19 Wn. App. 2d at 830. Preserving the

immunity will "ensure frank and honest testimony before the trial court." *Childs*, 125 Wn. App. at 54. Immunizing the Amex Witness from liability serves public policy because it promotes the policy that keeps witnesses from tailoring their testimony to avoid future prosecution, or worse, hindering the Court's truth-finding role (and Amex's ability to recover Mr. Scott's debt) by not testifying at all. *Wynn*, 163 Wn.2d at 376-78; *Kearney v. Kearney*, 95 Wn. App. 405, 415 (1999).

b. Applying the Privilege to the Amex Parties Ensures the Right to Assert Claims in Litigation.

Mr. Scott seeks to hold the Amex Parties liable for allegedly "initiating and maintaining a collection action [in] a way that is strictly prohibited by RCW 19.16.260(1)(a)." Pet. at 18. He ignores the longstanding common law rule "that allegations in pleadings are absolutely privileged and cannot form the basis for a damage action." *McNeal v. Allen*, 95 Wn.2d 265, 267 (1980). This immunity applies not only to the allegations in a lawsuit, but it extends to "acts related to and . . .

pertinent to the lawsuits." *Jeckle v. Crotty*, 120 Wn. App. 374, 386 (2004); *McNeal*, 95 Wn.2d at 267. The Amex Parties' alleged pleading failure is a pertinent act related to its 2016 Action. Thus, the privilege applies to the Amex Parties and immunizes them from Mr. Scott's claims.

Mr. Scott's primary argument against application of litigation privilege is the assertion that failing to plead the RCW 19.16.260 requirements meant that the 2016 Action was not a judicial proceeding. The Court of Appeals was correct to summarily dispatch that argument. *Scott*, 22 Wn. App. 2d at 267 n.3. A judicial proceeding still exists even if the complaint does not make a mandatory allegation. *See, e.g.*, *In re Recall of Washam*, 171 Wn.2d 503, 511 (2011) (allowing minor, technical amendments to meet a recall petition pleading requirement). Mr. Scott's argument would abrogate any ability to amend a pleading, even though CR 15 allows amendment as of right before a response is served, and leave to amend should be "freely given." CR 15(a); *Watson v. Emard*, 165 Wn. App.

691 (2011). "The purpose of pleadings is to 'facilitate a proper decision on the merits' [citation] and not to erect formal and burdensome impediments to the litigation process." *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am*., 100 Wn.2d 343, 349 (1983). Mr. Scott's theory would not advance the policies behind the litigation theory—encouraging court access—but instead would hinder them by allowing a party to be sued later for a correctable pleading defect.

Mr. Scott also seems to argue that, under *Mason*, 19 Wn. App. 2d at 833, applying the litigation privilege to the Amex Parties would defeat the public policies behind it. Pet. at 15-18. First, Mr. Scott ignores that *Mason* only applied to attorneys, not parties, and to actions to achieve a goal unrelated to the lawsuit. *Id*. at 830-35, 842-43.

Second, Mr. Scott fails to explain how applying the privilege would defeat any public policy. The goal of Amex Parties' 2016 Action complaint was to collect what Mr. Scott

owed. Immunizing the Amex Parties for filing and litigating a lawsuit advances the public policy behind the privilege—it gives parties reassurance that they can litigate a lawsuit free from a retaliatory action because the defendant cannot sue them in a second action for litigating the first lawsuit. This harmonizes with *Mason* because the "litigation privilege is predicated on the public policy interest in providing 'the utmost freedom of access to the courts of justice for the settlement of their private disputes.'" *Mason*, 19 Wn. App. 2d at 831–32.

The Court of Appeals correctly applied *Mason* and correctly held that the Amex Parties were immune from liability and affirmed their judgment.[3]

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[3] Thus, Mr. Scott's argument that he has not found a case applying the litigation privilege to a WCAA claim is irrelevant. Pet. at 17. As discussed below, the Amex Parties did not have to plead that they were licensed or bonded because they were not a WCAA collection agency. As Mr. Scott admitted, the Amex Parties were collecting on Amex's own debt and Amex was a financial service bank, which exempts them from RCW 19.16.260's pleading requirement. CP 163 (¶ 1.2), 164 (¶ 1.15), 165 (¶ 3.4), 172 (¶ 4.43), 176 (¶ 5.15).

3. The Amex Parties Are Not Liable under the WCAA.

In Mr. Scott's waived vicarious liability theory, he asserts that because (he alleges) Suttell and its Attorneys failed to plead a license and bond under RCW 19.16.260(1)(a), the Amex Parties are also liable for the omission on a per se CPA claim using RCW 19.16.440.[4] Pet. at 11-14. But a party cannot be vicariously liable under the WCAA, and the CPA does not impose vicarious liability on a party that did not actually commit any wrongful actions. *Plumb v. Barclays Bank Del.*, CV-11-3090-RMP, 2012 WL 2046506, at *4 (E.D. Wash. June 5, 2012) (unpublished); *Schmidt v. Cornerstone Invs., Inc.*, 115

[4] That statute provides that "[t]he operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 or 19.16.260 are declared to be unfair acts or practices or unfair methods of competition" under the Washington Consumer Protection Act. When the conduct alleged in this case occurred, RCW 19.16.260 was not included among the per se violations of the statute. RCW 19.16.440 first included RCW 19.16.260 after a June 2020 amendment became effective.

Wn.2d 148, 165 (1990) (CPA claim correctly dismissed against party who was not involved in wrongful action). Further, RCW 19.16.260 and RCW 19.16.440 do not apply to the Amex Parties because they are not a collection agency, and they cannot be vicariously liable under statutes that do not apply to them.

a. The Amex Parties Are Not a Collection Agency.

Under the relevant parts of RCW 19.16.100(4), a collection agency is "(a) Any person . . . collecting or attempting to collect claims owed or due or asserted to be owed or due **another** person," "(c) Any person who in attempting to collect or in collecting his or her own claim uses a **fictitious name** or any name **other than his or her own**," or "(d) A debt buyer as defined in this section."[5] (Emphasis added.) A debt buyer is a person or entity that purchases "delinquent or

[5] RCW 19.16.100(4)(b) applies to entities that sell collection forms and (e) applies to persons attempting to enforce a lien under RCW 60.44, and they do not apply here.

charged off claims for collection purposes."

RCW 19.16.100(7).

The Amex Parties do not satisfy any of these definitions. As Mr. Scott admitted, Amex was not a debt buyer or collection agency because it was collecting on ***its own debt in its own name***. CP 165 (¶ 3.4); *see also*, CP 16, 18, 23-24 (¶¶ 7-9). His judicial admission is conclusive: "[a] statement of fact made by a party in this pleading is an admission the fact exists as such and is admissible against him in favor of his adversary." *Neilson v. Vashon Island Sch. Dist. No. 402*, 87 Wn.2d 955, 958 (1976). The Court of Appeals recognized that Amex was collecting on its own debt and that the WCAA does not apply to it. "Because Amex initiated this action in an attempt to collect its own debt in its true name, RCW 19.16.250(1)(a) does not apply to Amex." *Scott*, 22 Wn. App. 2d at 267 fn.3. And this Court noted that an entity that "merely collects on its own claims would not qualify as a 'collection agency' under

RCW 19.16.100." *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 345 fn. 10 (2014).

RCW 19.16.100(5)(c) also excludes an entity when its "collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: . . . loan or finance companies; . . . and banks." Mr. Scott admitted Amex is a "multinational financial services corporation." CP 163 (¶ 1.2); *see also* CP 22 (¶ 1 Amex is "a national bank"). Because Amex is a financial service bank, the Amex Parties are exempt from being a WCAA collection agency, and the WCAA does not apply to them. *Cf. Tr. Fund Servs. v. Aro Glass Co*., 89 Wn.2d 758, 761 (1978) (lawyers exempt from WCAA licensing requirements under the exclusion).

Finally, RCW 19.16.100(5) excludes from the WCAA certain entities and people that would otherwise be a collection agency. Under RCW 19.16.100(5)(b), an employee collecting

claims for one employer in that employer's name is not a collection agency. Thus, Ms. Hernandez is not subject to the WCAA because, as Mr. Scott admitted, she acted as an Amex employee. CP 164 (¶ 1.15), 172 (¶ 4.43), 176 (¶ 5.15); *see also* CP 22 (¶ 1).

b. RCW 19.16.260 and RCW 19.16.440 Only Apply to a Collection Agency.

The Court of Appeals' holding that Mr. Scott stated a CPA claim against Suttell and its Attorneys does not mean Mr. Scott can state a CPA claim against the Amex Parties because RCW 19.16.260 and RCW 19.16.440 only apply to collection agencies. To state a CPA claim, Mr. Scott must allege facts showing: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public interest; (4) that causes injury to a plaintiff's business or property; and (5) that injury is causally linked to the unfair or deceptive act. *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 917 (2001). If Mr. Scott cannot satisfy even one element,

his claim fails. *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 119 (2012).

Mr. Scott used RCW 19.16.440 to per se satisfy the first two CPA prongs against Suttell and its Attorneys. But he cannot use RCW 19.16.440 in such a way against the Amex Parties. RCW 19.16.440 only makes an act "by a licensee or an employee of a licensee" a CPA unfair act in trade or commerce. Only a WCAA collection agency must have a license. RCW 19.16.110; RCW 19.16.190; *Diaz v. N. Star Tr., LLC*, 16 Wn. App. 2d 341, 363, rev. den., 198 Wn.2d 1002 (2021). The Amex Parties do not have to have a license because, as Mr. Scott judicially admitted, they are not a collection agency. CP 16, 18, 22 (¶ 1), 23-24 (¶¶ 7-9), 163 (¶ 1.2), 164 (¶ 1.15), 165 (¶ 3.4), 172 (¶ 4.43), 176 (¶ 5.15). Mr. Scott cannot plead a CPA claim against the Amex Parties through RCW 19.16.440 because RCW 19.16.440 does not apply.

Even if RCW 19.16.440 applied to the Amex Parties (and it does not), Mr. Scott cannot establish an RCW 19.16.260(1)(a)

claim. The pleading requirements in RCW 19.16.260(1)(a) only apply to a statutorily defined collection agency: "**No collection agency** . . . may bring or maintain an action . . . without alleging and proving that he, she, or it is duly licensed . . . and has satisfied the bonding requirements." RCW 19.16.260(1)(a) [emphasis added]. The Amex Parties had no duty to plead that they satisfied license and bond requirements under RCW 19.16.260(1)(a) because they are not a collection agency (and thus did not need a license or have to be bonded). RCW 19.16.110; RCW 19.16.190; *Diaz v. N. Star Tr., LLC*, 16 Wn. App. 2d 341, 363, rev. den., 198 Wn.2d 1002 (2021).

As the Court of Appeals properly found, Mr. Scott's claims failed as to the Amex Parties because the Amex Parties cannot be liable for a WCAA-based claim. *Scott*, 22 Wn. App. 2d at 267 fn.3. The Court of Appeals properly affirmed the dismissal of the Amex Parties.

VI. CONCLUSION.

The Court should deny Mr. Scott's Petition because he fails to satisfy RAP 13.4 considerations and because the Court of Appeals correctly affirmed the dismissal of the Amex Parties.

RESPECTFULLY SUBMITTED this 5th day of October, 2022.

This document contains 4,257 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Davis Wright Tremaine LLP
Attorneys for Respondents Suttell & Hammer PS, Nicholas R. Filer, Robert C. Jindra, American Express National Bank, and Raquel Hernandez

By */s/Frederick A. Haist*
Kevin H. Kono, WSBA #54617
Email: kevinkono@dwt.com

Frederick A. Haist, WSBA #48937
Email: fredhaist@dwt.com

Proof of Service

The undersigned hereby declares under the laws of the State of Washington, that on this day, he filed the foregoing document using the Court's e-filing system, which will send notice of such filing to the following parties of record:

Samuel R. Leonard	sam@seattledebtdefense.com
Scott Kinkley	scottk@nwjustice.org
	David.loeser@nwjustice.org
Floyd Scott	scottytwo@comcast.net

DATED this 5th day of October 2022, at Marysville, Washington.

/s/Frederick A. Haist
Frederick A. Haist, WSBA #48937

DAVIS WRIGHT TREMAINE LLP

October 05, 2022 - 8:55 AM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	Floyd Scott v. American Express National Bank, et al.
Superior Court Case Number:	20-2-00808-1

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