No. 91371-4

IN THE SUPREME COURT
STATE OF WASHINGTON

(Court of Appeals, Division I, Case No. 69625-4-I)

JACK M. GARRISON; the GARRISON FAMILY LLC, a Washington limited liability company; LESA B. NEUGENT, individually and as Trustee of the JACK M. GARRISON AND CHARLOTTE L. GARRISON REVOCABLE TRUST, the JACK M. GARRISON SURVIVOR'S TRUST, the CHARLOTTE L. GARRISON MARITAL TRUST, the CHARLOTTE L. GARRISON EXEMPT MARITAL TRUST; the CHARLOTTE L. GARRISON EXEMPT FAMILY TRUST FBO MARK GARRISON, and the CHARLOTTE L. GARRISON EXEMPT FAMILY TRUST FBO LESA NEUGENT,

Plaintiffs/Respondents

v.

MARK M. GARRISON and MICHELLE GARRISON, his wife, and their marital community, and SAGEPOINT FINANCIAL, INC., a Delaware corporation licensed to do business in Washington, f/k/a AIG FINANCIAL ADVISORS, INC.,

Defendants/Respondents.

RESPONDENTS' ANSWER TO SAGEPOINT FINANCIAL, INC.'S PETITION FOR REVIEW

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I. INTRODUCTION

Respondent Sagepoint Financial, Inc. (formerly known as AIG Financial Advisors, Inc.) and referred to herein as "AIG") does not appear to be aware that it needs to address the criteria set forth in RAP 13.4, as it never mentions the grounds on which this court takes review of appellate cases. AIG's Petition for Review just argues that the Court of Appeals made errors, as if this were a second appeal as a matter of right. Further, AIG's Petition for Review grossly misrepresents the Court of Appeals' holdings and misrepresents the facts.

II. RESPONSE TO AIG'S STATEMENT OF FACTS

The facts are set forth in the parties' appellate briefs and the Court of Appeals' Opinion, and Appellants will not restate them here but will identify facts that are relevant to specific issues as they are discussed below. Preliminarily it must be noted that AIG's Statement of Facts is not a fair statement of the facts and cannot be relied on.

AIG distracts by emphasizing irrelevant facts that create misleading implications. AIG repeatedly (eight times in a 20-page brief) emphasizes the fact that Mark Garrison was an "independent contractor" stockbroker. This is irrelevant to AIG's duty to supervise. The only

conceivable purpose for devoting so much ink to an irrelevant fact is to mislead the court by implying that—like in almost all *other* employment contexts—Mark's independent contractor status affected AIG's duty to supervise him. But there is no distinction in a broker-dealer's[1] duty to supervise its registered representatives based on their status as employees or independent contractors. Appellants' Brief on Appeal, at 71-72.

AIG similarly refers over and over to a FINRA arbitration panel's denial of claims Appellants brought against Wells Fargo, implying that AIG and Wells Fargo had similar supervisory duties, and asking "Why should AIG face liability when Wells Fargo doesn't?" Petition for Review (hereafter cited as "PFR") at 18. AIG knows that this is a bogus comparison. Broker-dealers are responsible to supervise their *own* registered representatives. Mark was an AIG stockbroker. He was not a Wells Fargo stockbroker, but a Wells Fargo customer. And, Appellants' claims against Wells Fargo were based on entirely different grounds. Appellants' arbitration claim has no implications for AIG's duty here.

[1] "Broker-dealer" is the technical term for stock brokerage firms like AIG.

AIG outright misrepresents facts. Limited space precludes even noting all of the misrepresentations, but by way of example: AIG claims the Court of Appeals held that

> broker-dealers [have] a new duty to monitor the suitability of transactions in a non-customer's brokerage account held at another brokerage firm—even if *(as was the case here) the broker-dealer had no practical ability to so monitor those transactions*. (PFR at 1; emphasis added.)

This is false. AIG had the practical ability to monitor them. Wells Fargo sent AIG copies of the monthly brokerage statements and confirmation slips for Appellants' accounts showing all transactions in the accounts. Opinion, at 31-32. AIG supervisor Leslie Ayers testified that AIG reviewed and monitored those statements and confirmation slips.[2]

AIG says, "AIG . . . *had no reason* to think that Mark posed a threat to the Garrison Trusts or to himself." PFR at 18. That is incorrect. The duplicate copies of Appellants' monthly Wells Fargo brokerage statements and Mark's and his wife's monthly personal brokerage statements showed Mark wiring a total of more than $9,600,000 in large lump sum transfers out of Appellants' accounts directly into Mark and his wife's personal brokerage account, at the same time as he was frenetically

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[2] Decl. of Leslie N. Ayers (CP 245-247), ¶¶ 4- 6, in Appellants' Appeal Brief at 22-23.

day-trading million dollar positions, concentrated in a small number of heavily-leveraged, speculative stocks. Appellants' Brief on Appeal at 21-22. One might argue the inferences to be drawn from these facts, but it is flat out false for AIG to represent that there was "*no* reason to think" Mark might have posed a threat to the Garrison trusts.

AIG says, "AIG also explained that, *given Mark's status as an independent contractor/registered representative* for AIG, he could not serve as the registered representative for the Trusts' Wells Fargo accounts." *Id.* at 6-7. PFR at 5. This is untrue, and the citation does not support it. Neither the Opinion nor the letter to which this refers mentions Mark's independent contractor status, which was irrelevant to anything.

AIG claims it "asked (in keeping with NASD Rule 3050 and internal policy) that Wells Fargo send it duplicate copies of account statements and trade confirmation slips *so that it could ensure that Mark's activities posed no threat to AIG or its customers.*" (Emphasis added.) PFR at 6-7. This is incorrect and again the citation does not support it. AIG's letter (quoted in the Court of Appeals' Opinion, at 6-7) didn't say, "so that it could ensure that Mark's activities posed no threat to AIG and its customers." AIG just made that part up. AIG's letter said it needed the statements so it could monitor the accounts and supervise him.

III. THE COURT'S HOLDING ON THE ISSUE OF DUTY TO SUPERVISE IS NOT IN CONFLICT WITH ANY OTHER WASHINGTON APPELLATE COURT DECISION

The trial court ruled that AIG had no duty to supervise Mark Garrison's investment adviser activities in Appellants' brokerage accounts at Wells Fargo Advisors. The Court of Appeals reversed, finding that disputed issues of fact precluded summary judgment on that issue. The court held that *if* AIG knew, or reasonably should have known, that Mark was acting as an investment adviser for Appellants' accounts and was not just giving investment advice, but was actually participating in securities transactions for which he was being paid, then AIG had a duty to supervise those activities. Opinion at 22-30.

No one disputes that brokerage firms are required to generally supervise their stockbrokers. Opinion, at 18-19. Nor does anyone dispute that broker-dealers have a more extensive duty to supervise their stockbrokers than an ordinary employer's duty to supervise employees. *See* Opinion at 18-22. Finally, it is undisputed that the plain text of NASD Rule 3040 requires broker-dealers to supervise some of their stockbrokers' securities transactions in brokerage accounts at another firm. The issue is whether that duty includes Mark Garrison's activities in Appellants' brokerage accounts in the specific circumstances of this case.

NASD Rule 3050 applies to a registered representative's *own* accounts, and accounts over which he has "discretion" (meaning, the authority to make the investment decisions), opened at another firm. Opinion at 20-21. It requires a relatively low level of supervision beyond that. Opinion at 21-22. Everyone agrees that Rule 3050 would apply before AIG knew, or reasonably should have known, that Mark was receiving compensation for engaging in securities transactions in Appellants' Wells Fargo brokerage accounts. Opinion at 21-22.

NASD Rule 3040 applies to "private securities transactions," defined broadly—with certain exceptions that are at issue here—as "any securities transaction outside the regular course or scope of an associated person's employment with a member." Opinion at 23. Broker-dealers must supervise "private securities transactions" closely. Opinion at 19.

There is an obvious potential overlap between NASD Rules 3040 and 3050, which is addressed excluding certain categories of transactions from the definition of "private securities transactions" in Rule 3040:

> "Private securities transaction" shall mean any securities transaction outside the regular course or scope of an associated person's employment with a member . . . *provided however that transactions subject to the notification requirements of Rule 3050, transactions among*

> *immediate family members* (as defined in Rule 2790),[3] *for which no associated person receives selling compensation,* and personal transactions in investment company and variable annuity securities, shall be excluded.

Opinion, at 23. So the extent of a broker-dealer's duty to supervise its stockbrokers' transactions at a different firm depends on whether Rule 3040 exempts *all* transactions "subject to the notification requirements of rule 3050," or only those transactions for which the registered representative receives no compensation?

AIG misrepresented a rule of construction, the "last antecedent rule," to the Court of Appeals by omitting part the rule that applies when a comma precedes the modifier, urging the Court to follow the (misstated) rule. Brief of Respondent SagePoint Financial, at 27-28. The Court of Appeals adopted AIG's misstatement of the last antecedent rule and, concluded in an Opinion issued July 14, 2014, that, under the last antecedent rule, Rule 3040 would not apply to Mark's conduct. But the Court went on to review and analyze securities industry rules and regulations at length to hold that, despite the construction suggested by the last antecedent rule, Rule 3040 exempted only those Rule 3050

[3] Rule 2790 does not define grandparents as a broker's immediate family. Quoted in Opinion, at 23, fn. 18.

transactions for which the stockbroker received no compensation. Opinion, at 15-27, 30-32.

AIG moved for reconsideration, arguing that the Court erred by not simply following the result dictated by the last antecedent rule. Respondent's Motion for Reconsideration, at 9.[4] Appellants' response pointed out that the Court had misstated the last antecedent rule. Appellants' Opp. to Respondent's Motion for Reconsideration, at 4-7. The Court of Appeals did so issued the amended Opinion, at issue here on January 20, 2015, correctly stating and applying the last antecedent rule (Opinion, at 24), but otherwise leaving the rest of its analysis and conclusions unchanged.. So now AIG argues the exact opposite of what it argued before: the last antecedent rule doesn't matter after all, and disparaged the Court of Appeals' amended Opinion as giving "talismanic power to a single comma." PFR at 11-12.

In any event, the last antecedent rule wasn't the primary basis for the Court of Appeals holdings. The Court analyzed an relied heavily on

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[4] Respondent's Motion for Reconsideration, at 9: "The Court, in its Opinion, then properly applied the rules for interpreting statutes and regulations to conclude that the Garrison Wells Fargo Accounts were Rule 3050 accounts whether or not any associated person received "selling compensation." Op. at 23-24. But the Opinion then wholly disregards this interpretation."

the National Association of Securities Dealers' (NASD)[5] interpretations of its own rules (Opinion, at 24-27) to hold that: broker-dealers do have a duty to supervise their registered representatives who engage in securities transactions "outside" of their own firm, in a specific set of circumstances:

> (1) When one of a broker-dealer's stockbrokers is simultaneously licensed as investment adviser employed by a different investment advisory firm,
>
> (2) acting in his capacity as an investment adviser and not a stockbroker,
>
> (3) actively participates in securities transactions (as opposed to giving investment advice) for a an investor whose account is at different brokerage firm, and
>
> (4) receives compensation in connection with those transactions.

Opinion at 18, 22-30. But the Court of Appeals further held that the duty to supervise arises in these circumstances only if the broker-dealer knew, or reasonably should have known, all of these facts. Opinion at 27.

No one disputes that Mark was dually registered. The Court of Appeals found (and AIG does not deny) that the facts established most of the other circumstances: "Mark [1] acted as an investment advisor [2]

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[5] At the time of the events at issue here securities broker-dealers were regulated by both the NASD and the New York Stock Exchange, each of which had its own set of rules. The enforcement arms of the NASD and NYSE merged to form the Financial Industry Regulatory Authority (FINRA).The prior two sets of rules have since been combined into a new set of FINRA rules, which are substantively very similar to the prior rules. The NASD's rules as they were at the time of the events here apply to this action.

receiving selling compensation and [3] directed private securities transactions [4] in the Wells Fargo brokerage accounts." Opinion at 27. (Bracketed numbers added.) The Court found issues of fact on the last element—"whether AIG knew or should have known" those facts. Opinion at 30. (Bracketing added.)

A. AIG misrepresents what the Court of Appeals held on the issue of duty to supervise.

AIG distorts and confuses the discussion of duty by repeatedly misstating what the Court of Appeals held. *E.g,* AIG says the Court of Appeals held that

> broker-dealers [have] a new duty to monitor the suitability of transactions in a non-customer's brokerage account held at another brokerage firm—*even if* (as was the case here) the broker-dealer had no practical ability to so monitor those transactions. PFR at 1. (Emphasis added.)

The Court did not hold a broker-dealer had a duty to supervise such transactions "even if they have no ability to monitor" them. And in fact an AIG supervisor actually *did* monitor and review Mark's transactions (*supra,* at p.3) so obviously AIG had the "practical duty to do so."

AIG says the Court

> held that once Mark and Acumen began taking investment fees from the Garrison Wells Fargo accounts, NASD Rule 3040 . . . imposed on AIG a duty to supervise Mark's transactions in the accounts . . . *even though Rule 3040*

> *excludes from its coverage "transactions subject to the notification requirements of Rule 3050."* PFR at 8.

The Court did not hold AIG could have a duty to supervise "*even though* Rule 3040 excludes transactions covered by Rule 3050." Instead the Court held Rule 3040 does not exclude transactions covered by Rule 3050 for which a stockbroker receives compensation. And the Court did not decide that AIG had a duty to supervise; it found that disputed issues of fact existed on that issue. Opinion at 30. AIG says the Court of Appeals held that broker-dealers have

> a *general duty* to supervise *an independent contractor's* trading activities in a noncustomer's account held at another broker-dealer. Yet [under the Court's opinion] that is now the law in Washington. PFR at 9. (Emphasis added.)

This is nonsense. The Court of Appeals nowhere held anything like "broker dealers have a general duty" to supervise "independent contractors'" trading activities in accounts at a different firm. AIG says the Court of Appeals held that

> NASD Rule 3040 imposed on AIG a duty to supervise Mark's transactions in the Garrison Wells Fargo accounts once he . . . began taking investment advisory fees from the accounts, *even if Rule 3040 did not apply*. PFR at 10.

The Court did not hold that Rule 3040 imposed a duty to supervise "even if Rule 3040 did not apply." This doesn't exhaust AIG's misstatements of the Court of Appeals' holdings.

B. AIG Just Argues the Court of Appeals Got the Facts Wrong on the Issue of Duty

AIG doesn't argue that the Court of Appeals' Opinion conflicts with any other Washington appellate decisions, but just disagrees with the Court's factual and legal conclusions.[6]

AIG simply ignores the industry authority on which the Court of Appeals relied in ruling on the duty issue—a series of NASD Notices to Members (NTMs) discussed in its Opinion at pp. 24-27. Never does AIG in any of its briefing—at any stage of the proceeding—address *any* of the NTM's on which the Court of Appeals based its ruling, or cite any authority indicating that Rule 3040 does *not* apply on our facts: when a broker-dealer (1) knows (2) that one of its dually-registered stockbrokers (3) is acting as an investment advisor (4) for investors at a different brokerage firm, where (5) he is participating in securities transactions (6)

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[6] "Rule 3040's language . . . makes clear that the Rule does not apply to Rule 3050 transactions or accounts" (PFR at 11); the Court's conclusion was based on a "wrong reading of the Rule" (*Id.* at 12); the Court's reading of Rule 3040 "was a mistake (*Id.* at 12-13); "Rule 3040's grammatical structure leaves no doubt that the qualifying phrase modifies only 'transactions among immediate family members'" (*Id.* at 13).

for compensation. Instead, AIG picks snippets out of context from two NASD Notices to Members—NTM 85-84 and NTM 91-27— that have nothing to do with stockbrokers acting in as investment advisers (PFR at 14). The NTMs relied on by the Court of Appeals were issued specifically to address that circumstance.

C. The Court of Appeals' Opinion on the Issue of Duty Does Not Conflict with any Washington Appellate Court Decision.

AIG never expressly argues that the Court of Appeals' Opinion on the issue of duty to supervise "is in conflict" with any decision of this Court or another Court of Appeals. AIG just says —with no explanation— that under the Court's Opinion "a plaintiff *arguably* doesn't need to make" the showing to prove a negligent supervision claim required by *Niece v. Elmview Group Home,* 131 Wn.2d 39, 51-52, 929 P.2d 420 (1997) and *Smith v. Sacred Heart Med. Ctr.,* 144 Wn. App. 537, 544, 184 P.3d 646 (2008). PFR at 17-18. (Emphasis added). That does not identify a direct conflict in case law requiring Supreme Court clarification.

In any event, the Court of Appeals Opinion doesn't conflict with *Niece* or *Sacred Heart*. The facts in those cases are so dissimilar with the present case that the law discussed in them can't even be compared. *Niece* and *Sacred Heart* involved claims against a hospital, and an assisted living

facility, respectively, for sexual assaults committed by their employees. The present case involves the duties not of an employer, but of a securities broker-dealer, to prevent not physical injury, but investment losses, caused not by an employee's dangerous tendencies, but by a stockbroker's violations of securities industry laws, rules, and regulations. Secondly, the Courts in *Niece* and *Sacred Heart* applied common law principles that have evolved to delineate the scope of an employer's duty to supervise employees whose criminal or other intentional conduct outside the scope of employment causes physical injuries to third parties. Here, the Court of Appeals analyzed and applied securities industry laws, rules and regulations—not common law—to determine what duty the standard of care in the securities industry imposes on securities broker-dealers. The source, purpose, and policy of the law applied in *Niece* and *Sacred Heart* is unrelated to the source, purpose, and policy of the law applied here.

Finally, AIG claims that *Niece* and *Sacred Heart* hold that, under Washington law, no party can be liable for negligent supervision unless two elements are proved:

> [A] plaintiff asserting negligent supervision must prove that (among other things) the defendant knew or should have known that the supervised person posed a risk of harm to others, *and* (2) the plaintiff was a foreseeable victim of the defendant's negligence." PFR at. 17-18. (Emphasis by AIG.)

This overstates the holdings of those two cases, which were based on the special relationship between an employer and employee. *Niece, supra,* at 48; *Sacred Heart, supra*, at 544.

Mark Garrison was not an AIG employee. AIG's duty to supervise him is based on AIG's special relationship as the brokerage firm with which he was registered. Appellants Brief on Appeal, at 23-28. The Court's holding that the industry standard of care may have imposed on AIG a duty to supervise Mark's conduct (Opinion at 15-27) applies only to broker-dealers, not all employers. It does not conflict with any Washington appellate court decisions.

IV. COURT OF APPEALS' HOLDING ON THE "RED FLAGS" ISSUE DOES NOT CONFLICT WITH ANY WASHINGTON APPELLATE COURT CASE.

The Court applied the general rule on a broker-dealer's duty to take action when it has notice of red flags suggesting improper conduct by one of its brokers, summarized in *McGraw v. Wachovia Sec. LLC.* ,756 F. Supp. 2d 1053, 1075 (N.D. Iowa 2010):

> Although brokerage firms generally are not responsible for supervising any outside business activities or private securities transactions engaged in by their representatives, unless they have received notice of or have approved those activities, they do have a duty to monitor and investigate activities for which they have had no proper notice, if there

> is evidence of "red flags" that would alert the brokerage firm to the possibility of undisclosed outside activities.

Opinion, at 30-31. This is not controversial. AIG does not dispute the Court's statement of the law. As far back as 1992 the SEC declared this to be the rule:

> The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing. . . . Even where the knowledge of supervisors is limited to "red flags" or "suggestions" of irregularity . . . , as the Commission has repeatedly emphasized, "[t]here must be adequate follow-up and review when a firm's own procedures detect irregularities or unusual trading activity. . . ." (Footnotes omitted.)

In the Matter of John H. Gutfreund, 1992 SEC LEXIS 2939, 51 S.E.C. 93, Admin. Proc. File No. 3-7930 (1992), Securities Exchange Act of 1934, Release No. 34-31554, quoted in Appellants' Brief on Appeal, at 49.

AIG misstates that the Court of Appeals held that "'suspicious activity'... raised 'red flags' sufficient to trigger a duty on AIG's part to investigate." PFR at 10. This is incorrect. The Court held that disputed issues of fact required a trial on that issue. Opinion at 32. Even though the Court made no ruling on whether AIG actually had notice of red flags sufficient to trigger any duty, AIG argues for three pages that various facts "could not have been " or "were not" red flags. PFR at 15-17. This Court ought not take review to reevaluate these facts.

Then AIG misstates that the Court of Appeals "impos[ed] on a broker-dealer a duty to supervise Rule 3050 accounts for suspicious activity *simply because* an independent contractor took fees from the accounts," creating "a new duty out of thin air." PFR at 16. (Emphasis added.) The Court of Appeals made no rulings "simply because an independent contractor [sic] took fees from an account at another firm." Neither is the duty of a broker-dealer to act in the face of red flags new. See Opinion at 30-31; Appellants' Brief on Appeal, at 48-50.

The Court cited *McGraw, supra,* for the rule that if a broker-dealer becomes aware of suspicious circumstances or red flags suggesting wrongdoing, then it has a duty to investigate and monitor. Opinion at 30-31. AIG does not argue that *McGraw* or the Court of Appeals incorrectly stated the law. AIG just attempts to distinguish *McGraw* on the facts: according to AIG, in *McGraw* there were facts that "arguably were red flags" (PFR at 16-17) while according to AIG, in the present case there are not. Period. (PFR at 15-16.)

AIG cites no Washington case dealing with red flags that it contends the Court's Opinion conflicts with, and cites no authority of any kind from any jurisdiction holding that broker-dealers do *not* have a duty to monitor and investigate evidence of red flags. *See* PFR at 15-17.

V. COURT OF APPEALS' HOLDING ON CONTROL PERSON LIABILITY DOES NOT CONFLICT WITH ANY WASHINGTON APPELLATE COURT DECISION.

The Court of Appeals Opinion quoted verbatim the two-prong test for control person liability stated in *Hines v. Data Line Systems, Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990). Opinion, at 33. The Court then held "there are also genuine issues of material fact as to the extent to which AIG could exercise control over the transactions in the Wells Fargo accounts" (Opinion, at 33-34), and remanded the issue for trial. AIG misrepresents that

> the Court of Appeals . . . [held] that a broker-dealer may also face control-person liability under the WSSA *even if* the broker-dealer had no control over the challenged transactions. PFR at 1-2. (Emphasis added.)

The Court did not rule on that issue, and did not make the holding AIG claims. AIG further says that the Court held "that AIG must also face control-person liability under the WSSA *for purportedly failing to monitor Mark's trades* in the Wells Fargo accounts." PFR at 3. This is incorrect. Control person liability is vicarious liability. If AIG is a control person then it is vicariously liable for what Mark Garrison did. Not for a failure to supervise.

AIG says "The Court of Appeals paid lip service to *Hines* [v. *Data Line Systems, Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990)] —i.e., correctly stated the law. But then, AIG argues (apparently) that the Court should not have found the facts to be disputed, because according to AIG, it "had no control over Mark's trading activities in the Trusts." PFR at 19. The AIG insists the Court of Appeals got the facts wrong again: "AIG could not possibly have been a control person under the Act (a prerequisite to liability) because AIG had no control—none—over Mark's trades in the Wells Fargo accounts." PFR at 3. The Supreme Court should not take review of this case to review the facts on that issue.

AIG continues to argue the facts claiming the Court was wrong to find that it was possible for AIG to be a control person under RCW 21.20.430, because "Mark was not AIG's employee. He was an independent contractor." PFR at 19. AIG cites no authority suggesting that a broker-dealer cannot control an independent contractor registered representative.

AIG does not argue that the Court of Appeals' Opinion actually conflicts with any other Washington appellate decision. PFR at 19-20.

VI. THE COURT OF APPEALS' DECISION RAISES NO ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE.

AIG never identifies any substantial public interest in its Petition on which the state's Supreme Court should speak. It just makes wild predictions that if the Court of Appeals' Opinion is not reversed a flood of meritless litigation will follow.[7] Preliminarily it must be noted that virtually all claims by customers against stockbrokers and broker-dealers are required to be resolved in FINRA arbitration, and never get into the state courts. See *Ives v. Ramsden,* 142 Wash. App. 369, 394 fn. 10, 174 P.3d 1231, 1243 (2008). Further, AIG's predictions of doom for the state's courts are based on two incorrect assumptions: (1) that AIG has accurately stated the holdings it predicts will unleash a flood of litigation, and (2) that the Court of Appeals has made new law, and created new duties.

The Court of Appeals never made the holdings that AIG claims will fill the air with meritless claims and strike suits. Neither are the rules the Court of Appeals applies new. They have long been in effect around

[7] "[N]egligence claims against broker-dealers may now fill the Washington air" (PFR at 1); "The Court erred on both counts, and those errors threaten to transform Washington into a breeding ground for opportunistic (but meritless) broker-dealer litigation" (PFR at 10); "If left to stand, the decision will reverberate in the State's courts, encouraging strike suits against brokerdealers any time a broker-dealer purportedly ignores 'red flags' in a noncustomer's account held at another broker-dealer." PFR at 17-18.

the country, without any noticeable explosion of meritless strike suits. The Court of Appeals' Opinion on duty deals with a very narrow issue within an area of law that applies only to the securities industry; it does not affect any other part of the economy. Finally, the Court of Appeals' Opinion on the issue of duty is based on federally-regulated rules and regulations. It is not based on, and does not contradict, Washington state law. This case does not involve any substantial public interest warranting Supreme Court intervention.

DATED this 23 day of March, 2015.

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CERTIFICATE OF SERVICE

I, Melissa Andrzejewski, hereby certify that on the 23rd day of March, 2015, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

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Defendant/Respondent

I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 23rd day of March, 2015, at Seattle, Washington.

Melissa Andrzejewski

OFFICE RECEPTIONIST, CLERK

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Case Number: 91371-4

(Court of Appeals, Division I Case No. 69625-4-I)

Filer: Carl Carlson, Respondents' Attorney
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Document: Respondents' Answer to Sagepoint Financial, Inc.'s Petition for Review

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