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SUPREME COURT  
STATE OF WASHINGTON  
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No. 93816-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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PEACEHEALTH,

*Petitioner,*

v.

LORI ANN HULL,

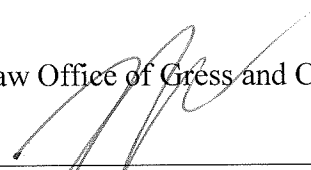
*Respondent.*

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PEACEHEALTH'S RESPONSE TO DEPARTMENT'S  
MOTION TO STRIKE

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The Law Office of Gress and Clark

  
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## **I. INTRODUCTION:**

PeaceHealth, the petitioner, responds to the Motion to Strike Reply submitted by the Department of Labor and Industries (“Department”).

## **II. RESPONSE TO MOTION:**

PeaceHealth respectfully requests that the Court deny the Department’s Motion to Strike on the basis that PeaceHealth’s Response to the Department’s Answer directly addressed the new issues raised by the Department in their Answer.

## **III. SUPPORTING FACTS:**

In PeaceHealth’s Petition for Review, it argued that the Supreme Court should grant review of this case, pursuant to RAP 13.4, because the Court of Appeals based its decision on work exposure that occurred after October 23, 2006, thus creating a false legal framework for its decision. (Petition for Review, 2). It further argued that this case gives the Supreme Court an opportunity to substantiate and clarify the law for lower courts and the Board of Industrial Insurance Appeals. *Id.* It also argued that the Court of Appeals abused its discretion in denying a Motion for Reconsideration. *Id.* It was stated that these reasons were sufficient to meet the threshold requirement of RAP 13.4, but it was implied that it was still subject to the Supreme Court’s discretion on whether review would be granted.

In the Department's Answer, it argued that PeaceHealth did not raise a bare-minimum meritorious reason under RAP 13.4 sufficient review. (Answer 1, 7). It went on to reply to PeaceHealth's argument and also raised two additional issues questioning the Court of Appeal's handling of the substantial evidence standard and the Compensable Consequences Doctrine.

Subsequently, PeaceHealth filed a reply to the Department's Answer. The reply addressed the three new issues raised by the Department's Answer. (Reply 2, 3). First, PeaceHealth responded to the Department's claim that it did not raise a meritorious reason for review pursuant to RAP 13.4. Second, PeaceHealth indicated that it agreed with the Department insofar as "substantial evidence" supported the Trial Court's decision in favor of PeaceHealth. Third, it argued that the Compensable Consequences Doctrine does not apply. *Id.*

Finally, the Department filed a Motion to Strike PeaceHealth's reply because "its arguments reiterate or expand upon PeaceHealth's Petition." (Motion 2). It asked the Court to strike the PeaceHealth's brief or strike all but IV.3.

#### **IV. REBUTTAL ARGUMENT:**

RAP 13.4(d) states in pertinent part that "a reply to an answer should be limited to addressing only the new issues raised in the answer." The Department's Answer raised three new issues, two of which were new points of law (substantial evidence; Compensable Consequences

Doctrine), one was a threshold jurisdictional issue (whether a meritorious reason for review was raised), and all of which were outside the scope of PeaceHealth's Petition for Review. By filing this motion, the Department seeks to prevent PeaceHealth from addressing the Department's arguments regarding whether PeaceHealth met the threshold requirements of RAP 13.4, whether the Court of Appeals misapplied substantial evidence principles; and whether the Court of Appeals properly affirmed the Trial Court regarding the Compensable Consequences Doctrine. These were all questions of law that were not addressed within PeaceHealth's original Petition for Review. It is unusual that the Department seeks to raise new legal issues seeking to have review denied while also seeking to bar any substantive response from PeaceHealth.

For example, PeaceHealth named four specific subparts of RAP 13.4(d) in its response because the Department argued that the procedural threshold for Supreme Court review was not met. PeaceHealth insists that it was, but was willing to address the Department's allegation by providing further statutory context.

Regarding PeaceHealth's response to the Department's issue involving substantial evidence; PeaceHealth simply wished to point out that PeaceHealth agreed with the Department insofar as substantial evidence supports the Trial Court's decision. In no way was this "re-arguing" a portion of its Petition for Review as the Department claims.

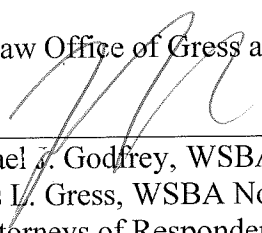
Rather, PeaceHealth wished to address the substantial evidence question as raised and framed by the Department in its Answer.

Finally, PeaceHealth's response to the Department's issue regarding the Compensable Consequences Doctrine speaks for itself. In no plausible way was this portion of PeaceHealth's response even tangentially similar to any portion of its Petition for Review. To strike this portion would be unconscionable discrimination against PeaceHealth's interest.

#### V. CONCLUSION:

Based on the reasons stated above, PeaceHealth's response to the Department's Answer should not be struck from the record. The Department's Motion to Strike should be denied.

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**CERTIFICATE OF MAILING**

I hereby certify that I caused to be served the foregoing **PETITIONER'S RESPONSE TO DEPARTMENT'S ANSWER** on the following individuals on January 24, 2017, by mailing to said individuals true copies thereof, certified by me as such, contained in sealed envelopes, with postage prepaid, addressed to said individuals at their last known addresses to wit:

**VIA EMAIL FILING:**

Susan L. Carlson  
Supreme Court Clerk  
Supreme Court  
supreme@courts.wa.gov

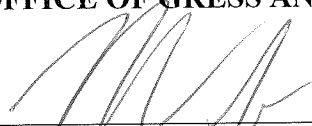
**VIA FIRST CLASS UNITED STATES MAIL, POSTAGE PREPAID TO:**

LoriAnn Hull  
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800 Fifth Ave, Suite 2000  
Seattle, WA 98104-3188

And deposited in the post office at Portland, Oregon, on February 7, 2017.

**LAW OFFICE OF GRESS AND CLARK, LLC**



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