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SUPREME COURT
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NO. 89303-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FUTURESELECT PORTFOLIO MANAGEMENT, INC.,
FUTURESELECT PRIME ADVISOR II LLC, THE MERRIWELL
FUND, L.P., AND TELESIS IIW, LLC,

Appellant,

v.

TREMONT GROUP HOLDING, INC., TREMONT PARTNERS, INC.,
OPPENHEIMER ACQUISITION CORPORATION,
MASSACHUSETTS MUTUAL LIFE INSURANCE CO., and ERNST &
YOUNG LLP,

Respondent.

ERNST & YOUNG LLP'S ANSWER TO TREMONT GROUP
HOLDINGS, INC., TREMONT PARTNERS, INC., AND
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY'S
PETITION FOR REVIEW

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Attorneys for Petitioner Ernst & Young LLP

Petitioner Ernst & Young LLP joins in the arguments made by Defendants Tremont Group Holdings, Inc., Tremont Partners, Inc., and Massachusetts Mutual Life Insurance Company (collectively, “Tremont”) in petitioning for review of the Court of Appeals’ ruling that Washington law, rather than New York law, governs plaintiffs’ claims for alleged violation of state securities law. Like Tremont, Ernst & Young seeks review of the Court of Appeals’ securities choice of law ruling, which conflicts with this Court’s holding in *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 134, 744 P.2d 1032 (1987). See E&Y Pet. at 4, 19-20. To avoid duplicative briefing in this Court, Ernst & Young defers to Tremont’s detailed discussion of this issue.

In addition to seeking review of the choice of Washington law to govern plaintiffs’ securities claims, Ernst & Young also petitioned for review of the Court of Appeals’ choice of law ruling regarding the negligent misrepresentation claim against Ernst & Young. *Id.* at 4. As Division 1 acknowledged, New York and Washington law actually conflict with respect to plaintiffs’ negligent misrepresentation claim against Ernst & Young. Opinion at ¶ 43 n.52.¹ Accordingly, the choice of law ruling on the negligent misrepresentation claim against Ernst & Young will be outcome determinative.

¹ The Court of Appeals did not find an actual conflict between Washington and New York law with respect to negligent misrepresentation claims against other defendants.

The same “most significant relationship” tort choice of law standard described in Tremont’s Petition applies to both plaintiffs’ securities and misrepresentation claims. *See Haberman*, 109 Wn.2d at 134, 160. Thus, the reasoning set forth in Tremont’s Petition shows why the Court of Appeals erred in refusing to apply New York law to plaintiffs’ common law tort claims against Ernst & Young, just as it erred in refusing to apply New York law to plaintiffs’ state law securities claims.

For the reasons set forth in Ernst & Young’s and Tremont’s Petitions, this Court should accept review pursuant to RAP 13.4(b)(1), (2), and (4).

RESPECTFULLY SUBMITTED this 11th day of October, 2013.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Petitioner Ernst & Young LLP

By 

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CERTIFICATE OF SERVICE

I, Crystal Moore, the undersigned, hereby certify and declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct. I am over the age of 18 years and not a party to the within cause. I am employed by the law firm of Davis Wright Tremaine LLP and my business and mailing addresses are both 1201 Third Avenue, Suite 2200, Seattle, Washington 98101-3045.

On October 11, 2013, I caused to be served the attached document entitled Ernst & Young LLP's Answer to Tremont Group Holdings, Inc., Tremont Partners, Inc., and Massachusetts Mutual Life Insurance Company's Petition for Review to the following individuals:

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Attorneys for Massachusetts Mutual Life Insurance Co.

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

Executed this 11th day of October, 2013, at Seattle, Washington.


Crystal Moore

OFFICE RECEPTIONIST, CLERK

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Subject: RE: 89303-9 - Futureselect Portfolio Mgmt., Inc., et al. v. Tremont Group Holdings, Inc., et al

Rec'd 10-11-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Subject: 89303-9 - Futureselect Portfolio Mgmt., Inc., et al. v. Tremont Group Holdings, Inc., et al

*Re: Futureselect Portfolio Mgmt., Inc., et al. v. Tremont Group Holdings, Inc., et al
Supreme Court Case No. 89303-9*

Dear Clerk:

Attached please find Ernst & Young LLP's Answer to Tremont Group Holdings, Inc., Tremont Partners, Inc., and Massachusetts Mutual Life Insurance Company's Petition for Review.

Thank you.

*Sent on behalf of:
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