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SUPREME COURT NO. 89820-1
COURT OF APPEALS No. 68345-I-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

SCOTT AKRIE, an individual and VOLCAN GROUP, INC., d/b/a
NETLOGIX, a California corporation
Petitioners,

v.

JAMES GRANT and Jane Doe Grant; KASSANDRA KENNAN and John
Doe Kennan; DAVIS WRIGHT TREMAINE, LLP, a Washington
Company; SEATTLE DEPOSITION REPORTERS, LLC., a Washington
company; and T-MOBILE USA, INC., a Delaware corporation,
Respondents.

PETITIONER NETLOGIX'S SUPPLEMENTAL BRIEF

William A. Keller, WSBA #29361
Moran & Keller PLLC
600 108th Ave NE, Suite 650
Bellevue, WA 98004
Telephone: (206) 877-4410
Facsimile: (206) 877-4439
dmoran@fishermensfinest.com
billkellerlaw@gmail.com

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I. INTRODUCTION

Petitioner Volcan Group Inc, d/b/a Netlogix is asking this Court to make an important ruling on the reasonableness of penalties imposed by the Anti-SLAPP Statute, RCW 4.24.525. Seeking to hold members of the legal profession accountable for criminal acts, should not result in a \$70,000 penalty merely because of a lack of standing. Raising the punitive fine owed to Respondents from \$10,000 to \$50,000 exceeds the deterrent effect Congress sought to introduce with the Anti- SLAPP statute and rises to the level of an unconstitutional fine in violation of the Eighth and Fourteenth Amendments. Rewarding a criminal act, with cumulative statutory penalties forecloses the Court system to litigants, which is exactly the case here, where the original penalties imposed by the trial court were such that the Petitioner was unable to risk appealing the trial court's decision, letting criminal conduct go unchecked.

A. A Single \$10,000 Punitive Damage Assessment Is Sufficient To Meet the Ends of the Anti-SLAPP Laws

The facts and record are clear. Secret recordings and lying to witnesses, are not legally protected activity. In this case, however, such blatant disregard for the Rules of Professional Conduct and The Washington Privacy Act, was awardable conduct, because the penalties imposed by the Anti-SLAPP statute made appealing bad trial court

decisions financially untenable. The \$10,000 penalty is a lesson learned and a sizeable deterrent. Now over \$70,000 is awarded because a trial court erroneously determined that illegally recording a telephone conversation and filing the fruits of that recording to the Court is protected activity. The Anti-SLAPP statute should not bankrupt a litigant, particularly when the conduct complained of was such a minor imposition, without any evidence of bad faith or spurious motives.

Based upon the decision of the Court of Appeals in *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wash. App. 41 (2014), none of the activity which took place in this case was actually protected activity. However, Mr. Akrie and Netlogix were not able to have the Davis Wright Tremaine lawyers conduct scrutinized on appeal because of the monumental risk of being assessed attorney's fees on appeal, in addition to the large fee award at the trial court.

The cumulative penalty of \$10,000 per defendant chills a party's ability to try and redress his own rights, and is grossly disproportionate to the gravity of the Petitioner offense of trying to impose ethical rules on the legal profession. The Anti-SLAPP statute has noble purpose, but if this decision is allowed to stand, Petitioner will suffer a \$70,000 judgment, entered without discovery, without a jury, without a fact finding, without credibility determinations, and a higher than normal burden of proof. At

this point, the anti-SLAPP statute becomes an unconstitutional impediment to a litigant's right to petition the courts for redress, and shocks the conscience with a monumental award for conduct that violates the criminal laws.

The Washington anti-SLAPP Act is to protect litigants from those seeking to abuse the legal system, not reward them. Who in this case was actually abusing the legal system? As stated in the Petition, the test for whether a penalty imposed is excessive if it is grossly disproportional to the gravity of the offense being punished. Petitioner's offense in this case was bringing a claim under the Privacy Act, the strictest privacy statute in the United States, against those persons who were responsible for lying to a witness, deceiving a witness and recording a witness conversation without permission. Since Petitioner did not have standing, in addition to making the defendants whole by paying their attorney's fees, Petitioner is also now charged a \$50,000 penalty, even though not all defendants actually engaged in the activity the Court found to be protected – filing the fruits of the illegal recording into the Court record.. A litigant should not be required to have unlimited resources in order to try and regulate legal conduct. As this Court is likely aware, lawyers are using the Anti-SLAPP statute with regularity to avoid any attempts to regulate their conduct during the course of litigation. The statute is to protect a person's right to

public participation, not foreclose the justice system to a poor litigant seeking to redress wrongs. A \$50,000 award not only shocks the conscience considering the conduct, it will forever foreclose any potential plaintiff from seeking to regulate lawyer conduct in the court system again, unless they have unlimited financial resources, thereby eliminating the very right to petition, the anti-SLAPP statute is supposed to protect. It defies reason to suggest that the defendants in this case are deserving of such an award considering the conduct alleged. The defendants were not harmed at all in any way, and in fact they were the party committing the harm.

CONCLUSION

Bringing a claim where standing is an issue, should not be a crime, and certainly should not result in \$50,000 in penalty award in addition to attorney's fees.

Dated this 29th day of July, 2014 at Bellevue, Washington.

MORAN & KELLER, PLLC

/s/ William A. Keller
William A. Keller, WSBA 29361
Dennis M. Moran, WSBA 19999
Attorneys for Petitioner

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From: OFFICE RECEPTIONIST, CLERK
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Attached is the Petitioner's supplemental brief and a certificate of service.

Case Name:

Scott Akrie, et al. v. James Grant, et ux., et al.

Case Number:
89820-1

Person filing document:

William A. Keller
Bill Keller
Moran & Keller PLLC
600 108th Ave NE, Ste 650
Bellevue, WA 98004
P 206.877.4412
C 206.696.1558
F 206.877.4439
Billkellerlaw@gmail.com