No. 90284-4

SUPREME COURT
OF THE STATE OF WASHINGTON

ALASKA STRUCTURES, INC.,

Plaintiff/Appellant,

v.

CHARLES J. HEDLUND,

Defendant/Respondent.

ALASKA STRUCTURES, INC.'S ANSWER TO HEDLUND'S PETITION FOR REVIEW

O. Yale Lewis, Jr.
WSBA No. 1367
Stacia N. Lay
WSBA No. 30594
Attorneys for Alaska Structures, Inc.

Hendricks & Lewis PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164
(206) 624-1933

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. INTRODUCTION.

Petitioner Charles J. Hedlund fails to establish a basis for this Court to grant review of Division One's decision reversing the grant of Hedlund's motion to strike the complaint of Plaintiff Alaska Structures, Inc. ("AKS") under Washington's anti-SLAPP statute, RCW 4.24.525.

That the amended statute is relatively new does not alone justify Supreme Court review, particularly as Hedlund fails to substantiate any error in the standards and principles for deciding anti-SLAPP motions articulated by Division One. Rather, Hedlund simply disagrees with the result reached by the court based on the facts of this case. But, while that fact-specific application is important to the parties in this case, it does not demonstrate a conflict among Division One's anti-SLAPP decisions, a "significant question of [constitutional] law," or "an issue of substantial public interest" requiring this Court's review. RAP 13.4(b)(2)-(4). The Court should therefore deny review and let stand Division One's decision reversing the trial court's grant of Hedlund's motion to strike AKS's complaint under RCW 4.24.525.

II. STATEMENT OF THE CASE.

A. Hedlund's Confidentiality Agreement.

AKS employed Hedlund from February 2007 to January 2010.

(CP 267, 599; Opinion at 1.[1]) Consistent with AKS's policy requiring employees to sign confidentiality agreements to protect the company's proprietary information and that of its customers, Hedlund signed a Confidentiality Agreement at the start of his employment under which he agreed to limit his disclosure of certain information about AKS during and after his employment: "Employee shall not, during the term of Employee's relation with Employer, or at any time thereafter, either directly or indirectly, disclose or permit the disclosure of, reproduce, or in any other way publicly or privately disseminate, any Confidential Information . . . belonging to Employer to any Third Party[.]" (CP 598-99, 609.) "Confidential Information" was defined broadly and included, but was not limited to, "trade secrets and confidential technical or business information." (CP 609.)

B. Hedlund's Internet Post About AKS's Security System.

During Hedlund's employment, AKS's CIO installed in the company's Kirkland office consumer-grade, off-the-shelf software and cameras that could be purchased by consumers ("2008-2009 Security Measures").[2] (CP 599; Opinion at 2.) Hedlund was in the office during times when the CIO was installing these security measures. (CP 599.)

---

[1] Division One's published opinion filed April 21, 2014, is attached to Hedlund's Petition for Review as Appendix A.

[2] The CIO did not have experience installing such systems. (CP 599; Opinion at 2.)

The Kirkland office was burglarized twice in March 2010. (CP 600.) At the time of the first burglary, the 2008-2009 Security Measures failed to capture good images of the perpetrators. (CP 600.) Immediately after the first burglary, a private security firm installed a monitored alarm system to supplement the 2008-2009 Security Measures but, due to improper installation, the monitored system was not functioning when the second burglary occurred. (CP 343, 600.)

On August 12, 2011, an anonymous user—later identified as Hedlund (CP 277, 331)—posted a message on the "Alaska Structures Jobs Form" on Indeed.com in a thread entitled "Alaska Structures Interview Questions" that stated in part:

> "Proper security is a must"
> I doubt if the military gives a rat's behind if any of our enemies get their hands on any top secret tent designs. "Oh No! Terrorists might have as good billeting accommodations as our troops!"
> Furthermore, the security measures at AKS are all consumer-grade off the shelf fare installed by the former CIO, who had no prior security experience. AKS was broken into in 2010 and much of the server and several workstations were stolen, containing vast amounts of company information. They didn't have email for a few weeks. The cheap cameras provided no clues as to the identity of the thieves. That is why they now have the high-tech security precaution of human guards.

(CP 600, 615; Opinion at 2.)[3]

[3] Hedlund suggests that Division One found that the information he disclosed about AKS's security system was public information available from police reports and

Because the 2008-2009 Security Measures installed during Hedlund's employment were still in use at the time of the post and the post disclosed the security system's weaknesses in the context of prior burglaries, AKS was concerned that the thieves would be encouraged to again burglarize the Kirkland office. (CP 600-01.) Also, at the time, many of the company's employees were traveling, leaving one or two young female employees alone at the office. (CP 601-02.) Therefore, AKS increased the number of security shifts at its office in August and September 2011, at a cost of $3,821. (CP 602, 617-18.)

C. Proceedings in the Trial Court.

AKS's April 2012 amended complaint alleged that Hedlund had breached his confidentiality agreement by disclosing weaknesses in AKS's security system in his online post. (CP 269-70.)

---

newspapers. (Hedlund's Petition for Review ("Petition") at 7.) But not only did AKS vigorously dispute that allegation (*see, e.g.*, Brief of Appellant ("Appellant's Br.") at 41-45; Reply Brief of Appellant Alaska Structures, Inc. ("Reply Br.") at 20-21), Division One made no such factual finding nor could it properly do so. Division One has likened the procedure on an anti-SLAPP motion to the procedure on summary judgment, under which the "trial court may not find facts or make determinations of credibility." *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wn. App. 41, 88-90, 316 P.3d 1119, *review granted*, 180 Wn.2d 1009 (2014). And with respect to the second step of the anti-SLAPP analysis—under which the plaintiff must show by clear and convincing evidence a probability of prevailing on the merits—the trial court "must view the facts and all reasonable inferences therefrom in the light most favorable to the plaintiff." *Dillon*, 179 Wn. App. at 90. That procedure is necessary "in order to preserve the plaintiff's right to a trial by jury" which "is inviolate under the state constitution." *Dillon*, 179 Wn. App. at 89. Since a de novo standard of review applies to the trial court's decision on an anti-SLAPP motion, *Dillon*, 179 Wn. App. at 70, these same standards applied to Division One's review and it therefore could not have made the factual finding Hedlund suggests or any other binding determination of the merits of AKS's breach of confidentiality agreement claim.

In June 2012, Hedlund filed a special motion to strike AKS's complaint under Washington's anti-SLAPP statute, RCW 4.24.525, which the trial court granted. (CP 439-56, 888-91.) Under the statute, the trial court awarded Hedlund $10,000 and his attorneys' fees and costs. (CP 890.) The parties stipulated to a $38,860.30 award of fees and costs to Hedlund, subject to AKS's right to appeal the award, as distinguished from its amount. (CP 906-08.) AKS appealed the trial court's grant of Hedlund's motion to strike on September 21, 2012. (CP 892-98.)

D. The Court of Appeals' Decision.

In its April 21, 2014 decision reversing the grant of Hedlund's motion to strike AKS's complaint under RCW 4.24.525, Division One first identified the de novo standard of review and the two-step process for deciding an anti-SLAPP motion articulated in its earlier decisions. (Opinion at 4-5.) The court then stated that the first step:

> requires a court to review the parties' pleadings, declarations, and other supporting documents to determine whether the gravamen of the underlying claim is based on protected activity. [The moving party] must make an initial prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's right of petition or free speech. If the substance or gravamen of the complaint does not challenge the defendant's acts in furtherance of the right of free speech or petition, the court does not consider whether the complaint alleges a cognizable wrong or whether the plaintiff can prove damages. In other words, Hedlund is required to make a threshold showing that each of AKS's claims is based on protected activity.

(Opinion at 4-5 (footnotes omitted).) Division One also recognized decisions from California courts as persuasive authority[4] in determining whether an "issue of public concern"[5] is involved. (Opinion at 5-6, 9.)

The court acknowledged Hedlund's contention that his post was akin to "'consumer information' of public concern" and his reliance on several California cases addressing such information in the anti-SLAPP context, including *Wilbanks v. Wolk*,[6] which Hedlund also cites in his Petition. (Opinion at 7-8.) But the court ultimately found this case to be more like *World Financial Group, Inc. v. HBW Insurance & Financial Services, Inc.*[7] than the consumer information cases Hedlund cited:

> There, the plaintiff sued a competing business and its agents for misappropriating trade secrets and using confidential information to solicit customers and employees. HBW and the former World Financial Group employees filed a special motion to strike under California's statute, claiming their conduct was of public interest because it involved workforce mobility, free competition, and the pursuit of employment. In affirming the trial court's finding that the complaint was not subject to the anti-SLAPP statute, the court rejected the argument that the communications were meant to aid consumers in "the pursuit of lawful employment" and to aid "workforce

---

[4] Because Washington's anti-SLAPP statute was modeled on California's statute, courts have looked to California cases as persuasive authority. *See, e.g., Dillon*, 179 Wn. App. at 69 n.21; *Longview v. Wallin*, 174 Wn. App. 763, 776 n.11, 301 P.3d 45, *review denied*, 178 Wn.2d 1020 (2013).

[5] California's statute uses the term "public interest," *see* CAL. CIV. PROC. CODE § 425.16(e)(3), (4), instead of Washington's term "public concern," *see* RCW 4.24.525(2)(d), (e), but Division One saw "no discernible difference in the two terms" (Opinion at 6).

[6] 121 Cal. App. 4th 883, 17 Cal. Rptr. 3d 497 (2004).

[7] 172 Cal. App. 4th 1561, 92 Cal. Rptr. 3d 227 (2009).

> mobility and free competition." The court rejected the arguments because the communications themselves were not about any broad social topics, or made to inform the public, but "were merely solicitations of a competitor's employees and customers undertaken for the sole purpose of furthering a business interest. World Financial Group is more closely aligned to the case here.

(Opinion at 8-9 (footnotes omitted).)

The court recognized that it "must adhere to the legislature's policy that the purpose of the anti-SLAPP statute is to strike a balance between the right of the person to file a lawsuit and that person's right to a jury trial and the rights of people to participate in 'matters of public concern.'" (Opinion at 10.) Here, those balancing of rights led "to the conclusion that the postings cannot be deemed protected activity." (Opinion at 10.) Thus, the court concluded that the gravamen of AKS's complaint was "a simple contractual issue—whether or not Hedlund violated a contract he signed with his former employer" under which he voluntarily limited his right to speak freely on certain matters. (Opinion at 1, 10.) Therefore, Hedlund failed to make the threshold showing that his post about AKS's security system involved an issue of public concern. (Opinion at 1, 10.)

III. ARGUMENT.

A. Different Results Based on Different Facts Do Not Demonstrate a "Conflict" Among Division One's Anti-SLAPP Decisions.

Hedlund suggests that Division One's decision in this case conflicts with its other recent anti-SLAPP decisions because it allegedly

ignored the "broader context approach" purportedly followed in those other cases when determining whether an "issue of public concern" exists. (Hedlund's Petition for Review ("Petition") at 13.) He cites four recent Division One decisions in purported support of his claim: *Dillon v. Seattle Deposition Reporters, LLC*,[8] *Seattle v. Egan*,[9] *Davis v. Cox*,[10] and *Spratt v. Toft*.[11] (*See* Petition at 13-14, 17.) But he fails to substantiate any such conflict between the decisions in those cases and the decision here. That the court reached different conclusions based on the unique facts and considerations of those other cases does not demonstrate a "conflict" justifying Supreme Court review in *this* case.

In each of the cases, Division One described the two-step process for deciding an anti-SLAPP motion. With respect to the first step,[12] the moving party "has the initial burden of showing by a preponderance of the evidence that the claim targets activity 'involving public participation and petition.'" *Dillon*, 179 Wn. App. at 67; *see also Egan*, 179 Wn. App. at 337; *Davis*, 2014 Wash. App. LEXIS 779 at *9; *Spratt*, 2014 Wash. App. LEXIS 936 at *8. In making that assessment, "'it is the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the

---

[8] 179 Wn. App. 41, 316 P.3d 1119, *review granted*, 180 Wn.2d 1009 (2014).
[9] 179 Wn. App. 333, 317 P.3d 568 (2014).
[10] Appeal No. 71360-4-I, 2014 Wash. App. LEXIS 779 (Apr. 7, 2014).
[11] Appeal No. 70505-9-I, 2014 Wash. App. LEXIS 936 (Apr. 21, 2014).
[12] Because Division One concluded that Hedlund failed to meet his initial burden and thus did not reach the second step of the analysis, this answer focuses on the first step.

anti-SLAPP statute applies[.]'" *Dillon*, 179 Wn. App. at 72 (quoting *Martinez v. Metabolife Int'l, Inc.*, 113 Cal. App. 4th 181, 188, 6 Cal. Rptr. 3d 494 (2003)); *see also Egan*, 179 Wn. App. at 338, 341-42; *Davis*, 2014 Wash. App. LEXIS 779 at *12.[13]

Division One's decision in this case is entirely consistent with these standards. The court recognized that Hedlund had the initial burden of making a "prima facie showing that [AKS's] suit arises from an act in furtherance of [his] right of petition or free speech." (Opinion at 4.) And the court stated that "[i]f the substance or gravamen of the complaint does not challenge the defendant's acts in furtherance of the right of free speech or petition [i.e., the first step of the analysis], the court does not consider whether the complaint alleges a cognizable wrong or whether the plaintiff can prove damages [i.e., the second step of the analysis]." (Opinion at 4-5.) Because the court concluded that the gravamen of AKS's claim was "a simple contractual issue"—whether Hedlund breached his confidentiality agreement with his former employer by disclosing non-public details about weaknesses in AKS's security system—Hedlund did not satisfy his initial burden to support his anti-SLAPP motion. (*See* Opinion at 10.)

Hedlund points to nothing to support his allegation that Division

[13] The court did not use this precise language in *Spratt* but nothing the court said in that case conflicts with or contradicts this standard. *See generally Spratt*, 2014 Wash. App. LEXIS 936 at *8-15.

One followed a purported "broader context approach" in its other anti-SLAPP cases that it ignored in reaching these conclusions here. That the court sometimes reached a different conclusion in the other cases (i.e., that the moving party had satisfied the required threshold showing) does not demonstrate a "conflict" because each of the cases involved unique facts and considerations that differ from those here.

In *Dillon*, plaintiff alleged violations of the privacy act for the defendants' recording of his conversations without his knowledge, transcripts of which were later used in a pending federal court action. 179 Wn. App. at 51-53, 55. Defendants alleged that their conduct involved "public participation and petition" because the recordings were done in a "judicial proceeding," RCW 4.24.525(2)(a), and were "in furtherance of the exercise of the constitutional right of petition," RCW 4.24.525(2)(e). *Dillon*, 179 Wn. App. at 70. After a lengthy discussion primarily on the nature and scope of the constitutional "right to petition," Division One disagreed, finding that their conduct did not fall within either category of "public participation and petition." *Dillon*, 179 Wn. App. at 71-86. Thus, *Dillon* bears little, if any, resemblance to this dispute involving the alleged breach of a former employee's confidentiality agreement.

But although *Dillon* does not support Hedlund's "conflict" claim, it does identify relevant guiding principles that the court applied here. For

instance, Division One noted that a "'defendant in an ordinary private dispute cannot take advantage of the anti-SLAPP statute simply because the complaint contains some references to speech or petitioning activity by the defendant.'" *Dillon*, 179 Wn. App. at 71 (quoting *Martinez*, 113 Cal. App. 4th at 188). Rather, the court must look to the "principal thrust or gravamen" of the plaintiff's cause of action, as it did here. *Dillon*, 179 Wn. App. at 72 (emphasis and internal quotation marks omitted).

The court in *Dillon* also specifically recognized the importance of the legislature's intent to achieve a balancing of rights in the anti-SLAPP statute: "'A solution [to SLAPP suits] cannot strengthen the constitutional rights of one group of citizens by infringing upon the rights of another group.'" *Dillon*, 179 Wn. App. at 85 n.32 (quoting *Opinion of the Justices (SLAPP Suit Procedure)*, 138 N.H. 445, 451, 641 A.2d 1012 (1994)). Here, consistent with *Dillon*, Division One found that this balancing of rights supported its conclusion that Hedlund's post about AKS's security system in violation of his confidentiality agreement was not protected activity but rather "a simple contractual issue." (Opinion at 10.)

Egan, which addressed the interplay between the Public Records Act ("PRA") and the anti-SLAPP statute, also provides no support for Hedlund's conflict claim. The City of Seattle filed suit for a declaratory judgment and injunctive relief after Egan threatened to sue over the City's

reliance on an exemption to the disclosure of records he had requested. *Egan*, 179 Wn. App. at 336. The City's suit was based on a provision of the PRA authorizing a court to enjoin the production of a public record that is subject to an exemption. *Egan*, 179 Wn. App. at 336, 338.

On the appeal from the denial of Egan's anti-SLAPP motion, Division One concluded that the "gravamen" of the City's claims "was whether a PRA exemption applied to Egan's original request, not to suppress Egan's right to bring an action." *Egan*, 179 Wn. App. at 338. And although Egan claimed the anti-SLAPP statute applied because the City filed suit "because of [his] 'threat' to sue," the court stated that the "fact that one party's protected activity may have triggered the other party's cause of action does not necessarily mean the cause of action arose from the protected activity." *Egan*, 179 Wn. App. at 338, 341. Thus, *Egan*, like *Dillon*, is consistent with Division One's decision in this case in that the court properly looked to the "gravamen" of the plaintiff's claim to determine whether it targeted protected activity. (*See* Opinion at 4-5.) Beyond that, *Egan*—with its unique facts and considerations—is of little to no use in assessing the fact-specific result here.

Davis and *Spratt* also do not support Hedlund's "conflict" claim.

For instance, consistent with its decisions in *Egan*, *Dillon*, and this case, in *Davis*, Division One again stated the "guiding principle" it had

adopted "for determining whether a lawsuit targets constitutionally protected speech," namely, that it is "the principal thrust or gravamen of the plaintiff's cause of action that determines" whether the statute applies. *Davis*, 2014 Wash. App. LEXIS 779 at *12 (internal quotation marks and emphasis omitted). Additionally, there was little dispute in *Davis* that the activity at issue—a boycott of Israeli goods and investments by a food co-op—involved an issue of public concern implicating "[f]our decades of conflict in the Middle East." 2014 Wash. App. LEXIS 779 at *4, 14-15. Thus, because the plaintiffs sought to permanently enjoin the boycott and nonviolent boycotts are protected by the First Amendment, the court concluded that the "principal thrust of [plaintiffs'] suit [was] to make [defendants] cease engaging in activity protected by the First Amendment." *Davis*, 2014 Wash. App. LEXIS 779 at *13. Again, given these facts, *Davis* does not support Hedlund's claim that the court reached the wrong result in this employment confidentiality agreement dispute involving a post about a private company's security system.

Spratt was a defamation action brought against a candidate for state office in connection with statements he made allegedly in response to challenges to his qualifications for office. 2014 Wash. App. LEXIS 936 at *2-8, 14. In reversing the denial of the candidate's anti-SLAPP motion, Division One noted that "the new law was enacted to protect statements on

matters of public concern, which is the sine qua non of democracy," and recognized that "[e]qually, at the heart of our democracy is the election of candidates to office." *Spratt*, 2014 Wash. App. LEXIS 936 at *11 (internal quotation marks omitted). "Speech involves matters of public concern," the court stated, "when it can be fairly considered as relating to any matter of political, social, or other concern to the community." *Spratt*, 2014 Wash. App. LEXIS 936 at *14 (internal quotation marks omitted). Because the candidate had "a protected right to speak in furtherance of his candidacy," his action in "combat[ing] accusations against him while he was campaigning for office clearly falls within those protected rights." *Spratt*, 2014 Wash. App. LEXIS 936 at *11. Thus, *Spratt* demonstrates the unremarkable proposition that political speech lies at the core of First Amendment protections, a proposition that has no applicability to Hedlund's post about AKS's security system in violation of a confidentiality agreement he signed when employed by AKS.

B. Hedlund Fails to Establish That Division One's Decision Was Based on the Label of AKS's Cause of Action.

Hedlund also repeatedly argues that, in purportedly ignoring his "broader context approach," Division One "focused on the label Plaintiff assigned to the claim" and thereby "let the label of the claim control, not the subject matter and context of the speech." (Petition at 11, 13, 16-17.)

He then asserts that he cited "numerous cases" allegedly "finding speech similar to [his] to be on a matter of public concern under a variety of labels by Plaintiffs," suggesting the court ignored these cases.[14] (Petition at 15.) But Hedlund is wrong on both counts.

Division One explicitly acknowledged Hedlund's assertion that, based on the cases he cited, his activity was "protected because his postings were meant to alert prospective employees to his opinions and experience with AKS and to alert them to potentially fraudulent postings by employees of AKS posing as new applicants." (Opinion at 6-7.) The court also recognized that Hedlund "analogize[d] his postings to 'consumer information' of public concern" and that he "relie[d] on several California cases."[15] (Opinion at 7-8.) But ultimately, in light of the facts of this case—including the fact that Hedlund signed a confidentiality agreement with his former employer limiting his right to speak on certain issues—the court rejected Hedlund's assertions, finding this case to be unlike the consumer cases he relied upon. (*See* Opinion at 7-9.) Instead, consistent with its other decisions, Division One looked to the "gravamen" of AKS's claim, which sought to hold Hedlund responsible for violating

[14] In his "Issues Presented for Review," Hedlund also claims that Division One "appl[ied] outdated and atypical California cases" (Petition at 1), but fails to offer any meaningful explanation of this allegation.

[15] The court specifically cited two such cases that Hedlund references again in his Petition: *Makaeff v. Trump Univ., LLC*, 715 F.3d 254 (9th Cir. 2013); *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 53 Cal. Rptr. 3d 752 (2007). (Opinion at 6-7.)

his confidentiality agreement, not to silence any protected activity.

But the fact that Division One considered, but disagreed with, Hedlund's argument and found the cases he cited inapplicable to the facts of this case does not establish that the court ignored the content or context of his statements or that it relied solely on "the label of [AKS's] claim."[16] (Petition at 13.) Indeed, as AKS discussed at length in its briefing, Hedlund's extraordinarily broad context argument—in which he essentially asked the court to ignore what he actually wrote and instead focus on statements made by other people, on other topics, and often at other times far removed from the date of his posting to arrive at an amorphous "issue of public concern" that he never clearly defined—was contrary to the weight of authority.[17] (*See, e.g.*, Appellant's Br. at 21-32; Reply Br. at 10-16.)

Thus, Hedlund has failed to establish that the "label" of AKS's cause of action controlled Division One's decision to the exclusion of the content or context of his post about AKS's security system.

---

[16] Hedlund also suggests that Division One held that the anti-SLAPP statute does not apply to breach of contract claims as a matter of law. (*See, e.g.*, Petition at 1, 9, 12.) But Division One stated no such holding and Hedlund fails to establish that it did.

[17] In his Petition, Hedlund appears to again erroneously equate the existence of a public forum (which was not disputed) with the existence of an issue of public concern (which was very much disputed). (*See, e.g.*, Petition at 1, 11, 12, 14.) But as AKS demonstrated (*see* Reply Br. at 3-4), those are separate requirements. Therefore, the fact that a public forum exists does not mean that everything stated in that forum addresses an issue of public concern for purpose of the anti-SLAPP statute.

C. Hedlund Fails to Establish That Division One Misinterpreted the Anti-SLAPP Statute in Any Way Relevant to its Decision.

Hedlund also claims that Division One misinterpreted the anti-SLAPP statute in at least two ways. First, by stating that it "provide[s] 'immunity from suit'" rather than its purported "actual relief, which is merely an early procedural intervention so a court can examine the merits of a claim." (Petition at 10.) And second, by allegedly "erroneously [holding] that the Act applies only to a claim 'based on an oral statement.'" (Petition at 11 (emphasis omitted).) But Hedlund fails to establish any error with respect to these two issues or that, even if he had, the purported errors had any bearing on the court's conclusion that he failed to satisfy his initial burden of showing that his post about AKS's security system involved an "issue of public concern."

With respect to the first issue, Hedlund fails to explain any meaningful (or relevant) difference between the court's description of the nature of the anti-SLAPP statute and his description. Division One's description is consistent with other courts' descriptions of both California's and Washington's statutes. *See, e.g.*, *Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003) (stating that "defendant's rights under [California's] anti-SLAPP statute are in the nature of immunity: They protect the defendant from the burdens of trial, not merely from ultimate

judgments of liability"); *Fielder v. Sterling Park Homeowners Ass'n*, 914 F. Supp. 2d 1222, 1230 (W.D. Wash. 2012) (noting that Washington's anti-SLAPP statute "provides relief to a defendant which is in the nature of immunity from suit"). In any event, even assuming Hedlund had established that the court's description was incorrect (which he has not), he does not demonstrate that the description had any impact on the court's decision which would justify Supreme Court review.

As to Division One's statement that the anti-SLAPP statute permits a party to bring a motion to strike a claim "based on an oral statement" in connection with an issue of public concern (Opinion at 4), the court's statement is ambiguous at best as to whether it intended to state that the statute *only* applies to "oral" statements. The parties never disputed that the statute defines "public participation and petition" to include "[a]ny oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern[.]" RCW 4.24.525(2)(d). The parties also never disputed the fact that Hedlund's post was a "written statement" under the statute nor did Division One find that Hedlund failed to satisfy his initial burden because his post was written rather than oral. In short, even assuming for argument purposes that Hedlund's suggestion is correct and Division One intended to hold that the statute only applies to oral statements, that

theoretical holding played no role in the court's decision and therefore does not provide a basis for Supreme Court review.

D. Hedlund Identifies No Significant Question of Constitutional Law or Issue of Substantial Public Interest Warranting Supreme Court Review.

Hedlund also generically claims that Division One's decision "addresses a significant question of law under the Constitution of the State of Washington or of the United States," and involves "an issue of substantial public [interest] that should be determined by the Supreme Court." (Petition at 9-10.) But he never articulates the specific "significant question of law" or the "issue of substantial public interest" allegedly implicated by this case, other than referring to the anti-SLAPP statute as a "new and important law." (Petition at 10-11, 20.)

While AKS does not discount the importance of the anti-SLAPP statute or its goal of "[s]trik[ing] a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern," Laws of 2010, ch. 118, § 1(2)(a), that says nothing about why the Court should grant review in *this* case. Hedlund asserts that this Court must accept review because the "other Anti-SLAPP cases which this Court will review or has been asked to review do not and cannot address the precise wrong and harm at issue in this case," (Petition at 10), but fails to identify the alleged "precise wrong and harm."

Thus, Hedlund fails to demonstrate that this Court should grant review of Division One's decision under RAP 13.4(b)(3) and (4).

IV. CONCLUSION.

In essence, Hedlund asks this Court to accept review of this case because Division One reached different results in different cases involving different facts and considerations. But that fact does not establish a "conflict" among Division One's decisions, a "significant question of law" under the Washington or United States Constitutions, or "an issue of substantial public interest," RAP 13.4(b)(2)-(4), and therefore Hedlund's petition for review should be denied.

DATED this 13th day of June, 2014.

Respectfully Submitted,

HENDRICKS & LEWIS PLLC

By: 

O. Yale Lewis, Jr., WSBA No. 1367
Stacia N. Lay, WSBA No. 30594
Attorneys for Alaska Structures, Inc.

CERTIFICATE OF SERVICE

I, Lisa Schaefer, declare that I am a legal assistant employed by the law firm of Hendricks & Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164, and I duly made service of Alaska Structures, Inc.'s Answer to Hedlund's Petition for Review by email and U.S. First Class Mail to the following:

Michele Earl-Hubbard, Esq.
Allied Law Group LLC
P.O. Box 33744
Seattle, Washington 98133
Michele@alliedlawgroup.com

Katherine George, Esq.
Harrison-Benis LLP
2101 Fourth Avenue, Suite 1900
Seattle, Washington 98121
kgeorge@hbslegal.com

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

Executed at Seattle, Washington, this 13th day of June, 2014.

Lisa Schaefer

LISA SCHAEFER

OFFICE RECEPTIONIST, CLERK

To: Stacia Lay
Subject: RE: Alaska Structures, Inc. v. Hedlund, Supreme Court No. 90284-4 -- Alaska Structures, Inc.'s Answer to Hedlund's Petition for Review for filing

Received 6-13-14

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.

From: Stacia Lay [mailto:SL@hllaw.com]
Sent: Friday, June 13, 2014 2:42 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: michele@alliedlawgroup.com; Kathy George (kgeorge@hbslegal.com); O. Yale Lewis, Jr.
Subject: Alaska Structures, Inc. v. Hedlund, Supreme Court No. 90284-4 -- Alaska Structures, Inc.'s Answer to Hedlund's Petition for Review for filing

Case Name: *Alaska Structures, Inc. v. Hedlund*, Supreme Court No. 90284-4 (COA No. 69349-2-I)

Filer: Plaintiff Alaska Structures, Inc.
Stacia N. Lay, WSBA No. 30594
Hendricks & Lewis PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164
Telephone: (206) 624-1933
Attorneys for Alaska Structures, Inc.

Attached for filing in the above-referenced matter, please find Alaska Structures, Inc.'s Answer to Hedlund's Petition for Review.

As stated in the certificate of service attached to the Answer, Alaska Structures, Inc.'s Answer to Hedlund's Petition for Review has been served on all parties via this email and U.S. Mail.

Thank you,

Stacia N. Lay
Associate Attorney
Hendricks & Lewis PLLC
Tel: (206) 624-1933
Fax: (206) 583-2716
Email: sl@hllaw.com
Web: http://www.hllaw.com

HENDRICKS & LEWIS PLLC