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SUPREME COURT OF THE
STATE OF WASHINGTON

Case No. 91777-9

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(Washington Court of Appeals No. 72835-1-I)

KUT SUEN LUI and MAY FAR LUI,

Plaintiffs/Petitioners,

v.

ESSEX INSURANCE COMPANY

Defendant/Respondent.

MOTION TO STRIKE
PETITIONERS' SECOND
STATEMENT OF
ADDITIONAL AUTHORITIES

Submitted by:

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I. INTRODUCTION

Essex Insurance Company (Essex) moves to strike Petitioners' Second Statement of Additional Authorities because the case submitted as authority (1) was decided before Petitioner submitted their Petition for Review to the Court and (2) is not factually relevant and, therefore, is not an authority.

II. FACTS

On August 5, 2014, Petitioners filed their Second Statement of Additional Authorities in which they provide a copy of the decision *Gray v. Allstate Indem. Co.*, 2015 U.S. Dist. LEXIS 21109, Civil Action No. 3:13-cv-1232 (M.D. Pa. Feb. 23, 2015). Petitioners argue that this decision is an authority "on the issue of ambiguity of the undefined term "vacancy" in an insurance policy. Petitioners filed their Petition for Review on June 4, 2015, more than three months after the *Gray* decision.

III. MOTION

A. **Petitioner's Second Statement of Additional Authorities should be stricken because they had prior opportunity to brief the attached case.**

RAP 10.8 allows a party to file a statement of additional authorities as follows:

A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. . . .

But, Washington courts have found that RAP 10.8 is not “intended to permit parties to submit to the court cases that they failed to timely identify when preparing their briefs.” *O'Neill v. City of Shoreline*, 183 Wn. App. 15, 23, 332 P.3d 1099, 1104 (2014).

Petitioners had ample time to cite to and argue this case in their initial briefing. Petitioners may not remedy their failure to do so by invoking RAP 10.8. Encompass respectfully requests the Court strike Petitioner's Second Statement of Additional Authorities.

B. Gray is not authority on the issues before the Court.

Gray involves an insurance policy in which the term “vacancy” is undefined. *Gray*, 2015 U.S. Dist. LEXIS 21109 at *5-6. In the case before the Court, the policy specifically defines a building as “vacant” unless “at least 31% of its total square footage is” rented and used to conduct customary operations. (CP 290). Vacancy of the insured building was conceded at the trial court hearing. *Gray* is not authority on, and it not relevant to, the issues before the Court. Essex respectfully requests the Court strike Petitioner’s Second Statement of Additional Authorities.

IV. CONCLUSION

For the above mentioned reasons, Petitioner’s Second Statement of Additional Authorities should be stricken.

DATED: August 12, 2015

BULLIVANT HOUSER BAILEY PC

By 

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Attorney for Defendant-Appellant
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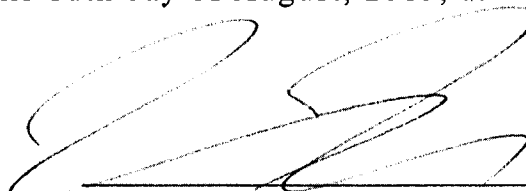
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I declare under penalty of perjury under the laws of the state of Washington this 12th day of August, 2015, at Seattle, Washington.



Michael McCormack

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Attached is Respondent's Motion to Strike Petitioners' Second Statement of Additional Authorities.

Case name: Lui v. Essex Insurance Company

Case number: 91777-9

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