

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Feb 22, 2016, 3:29 pm  
BY RONALD R. CARPENTER  
E CLERK W#

No. 92353-1

SUPREME COURT OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

---

OLIVER L. WUTH, a minor, through his Guardian Ad Litem Keith L. Kessler; and BROCK M. WUTH and RHEA K. WUTH, husband and wife,

Respondents,

v.

LABORATORY CORPORATION OF AMERICA, et al.,

Petitioner.

---


**ANSWER TO MOTION TO STRIKE  
STATEMENT OF ADDITIONAL AUTHORITIES**

---

Melissa O. White, WSBA #27668  
Megan K. Kirk, WSBA #32893  
Kevin A. Michael, WSBA #36976  
COZEN O'CONNOR  
999 Third Avenue, Suite 1900  
Seattle, WA 98104  
Telephone: (206) 340-1000

Anthony A. Todaro, WSBA #30391  
DLA PIPER LLP (US)  
701 Fifth Avenue, Suite 7000  
Seattle, WA 98104  
Telephone: (206) 839-4800

*Attorneys for Petitioner LabCorp*

 ORIGINAL

I. **ANSWER TO MOTION TO STRIKE**

A. **Identity of Answering Party and Statement of Relief Sought**

The answering party is Petitioner LabCorp, which seeks denial of the Wuths' Motion to Strike because LabCorp's Statement of Additional Authorities is authorized by RAP 10.8.

B. **Grounds for Relief Sought & Supporting Argument**

This Court issued its decision in *Keck v. Collins*, 184 Wn.2d 358, 357 P.3d 1080 (2015), after LabCorp filed its Petition for Review. It was not possible for LabCorp's Petition to offer *Keck* as an authority on the points that were later addressed and decided by this Court. Likewise, it was not possible for LabCorp to identify the issues in its Petition that related to the rulings thereafter announced by this Court. LabCorp's statement of additional authorities was respectfully submitted to assist this Court in accordance with the letter and spirit of the court rules, including RAP 10.8, which states:

**Additional Authorities**

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. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.

RAP 10.8 filings not only bring an authority to the Court's attention, but also describe for the Court the filing party's views of the nexus between

that authority and the issues previously raised. By considering the authority with the identified issue as proscribed by the rule, this Court is better able to consider the authority in context as it is being offered by the moving party<sup>1</sup> to assess the issues with the benefit of the most up-to-date authority as that party believes relates to the issues it is raising.

Encouraging parties to identify their own issues with authorities as set forth in RAP 10.8 promotes justice and facilitates the just, speedy, and inexpensive determination of cases on the merits consistent with RAP 1.2(a)<sup>2</sup> and CR 1.<sup>3</sup>

Despite this, the Wuths are asking this Court to deprive LabCorp of its right under RAP 10.8 to explain how *Keck* relates to issues set forth

---

<sup>1</sup> See generally FRAP 28(j): “Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.”

<sup>2</sup> RAP 1.2(a): “These rules [of appellate procedure] will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).”

<sup>3</sup> CR 1: “[The civil rules] shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”

in its previously-filed Petition because the Wuths themselves provided this Court with their own arguments about *Keck*.<sup>4</sup>

Put another way, the Wuths are asking this Court to impose new restrictions on RAP 10.8 filings that would provide an advantage to them and other parties opposing a Petition when new authority is issued shortly after a Petition is filed. It is telling that the only citation offered by the Wuths' counsel is informal advice set forth in a bar association practice guide that they authored themselves. *See* Motion to Strike, at 2 (citing WSBA Appellate Practice Deskbook (Catherine Wright Smith & Howard M. Goodfriend, Editors-in-Chief)). As this proposal contravenes the court rules and reduces the usefulness and efficiencies of RAP 10.8 filings, this Court should decline to adopt it.

LabCorp asks this Court to adhere to the language of the rules and, on this basis, deny the motion to strike.<sup>5</sup>


---

<sup>4</sup> The Wuths devoted nearly a page of their Answer to characterizing—without citation to or support from the record—the trial court's decision to strike untimely evidence that mirrored the circumstances in *Keck* as if it had “nothing to do with the issues raised by LabCorp.” Answer, at 18.

<sup>5</sup> As LabCorp's RAP 10.8 Statement of Additional Authorities is not and does not resemble a brief on the merits, the Wuths' request that it be stricken as if it were an impermissible RAP 13.4(d) reply must be denied.

RESPECTFULLY SUBMITTED this 22nd day of February, 2016.

COZEN O'CONNOR

By:   
\_\_\_\_\_  
Melissa O. White, WSBA #27668  
mwhite@cozen.com  
Megan K. Kirk, WSBA #32893  
mkirk@cozen.com  
Kevin A. Michael, WSBA #36976  
kmichael@cozen.com

DLA PIPER LLP (US)  
Anthony A. Todaro, WSBA #30391  
anthony.todaro@dlapiper.com

Attorneys for Petitioner LabCorp

**DECLARATION OF SERVICE**

The undersigned states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 18 years, I am not a party to this action, and I am competent to be a witness herein.

On this 22nd day of February, 2016, I caused to be filed the foregoing Statement of Additional Authorities with the Supreme Court of the State of Washington. I also served a copy of said document on the following parties as indicated below:

<p><b><i>Counsel for Plaintiffs-Respondents:</i></b> Todd W. Gardner Peter E. Meyers Swanson Gardner PLLC 4512 Talbot Road South Renton, WA 98055 todd@swansongardner.com peter@swansongardner.com denise@swansongardner.com</p> <p>and</p> <p>Howard M. Goodfriend Catherine W. Smith Smith Goodfriend, P.S. 1619 8th Avenue North Seattle, WA 98109 howard@washingtonappeals.com cate@washingtonappeals.com taraf@washingtonappeals.com</p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Legal Messenger</p> <p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Legal Messenger</p>
---	---



## OFFICE RECEPTIONIST, CLERK

---

**To:** Bowzer, Dava Z.  
**Cc:** White, Melissa; Kirk, Megan; Michael, Kevin A.; anthony.todaro@dlapiper.com  
**Subject:** RE: Case No. 92353-1; Wuth v. LabCorp - LabCorp's Answer to Motion to Strike Statement of Additional Authorities

Received on 02-22-2016

Supreme Court Clerk's Office

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:** Bowzer, Dava Z. [mailto:dbowzer@cozen.com]  
**Sent:** Monday, February 22, 2016 3:28 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** White, Melissa <MWhite@cozen.com>; Kirk, Megan <MKirk@cozen.com>; Michael, Kevin A. <KMichael@cozen.com>; anthony.todaro@dlapiper.com; Bowzer, Dava Z. <dbowzer@cozen.com>  
**Subject:** Case No. 92353-1; Wuth v. LabCorp - LabCorp's Answer to Motion to Strike Statement of Additional Authorities

With regard to Supreme Court Case No. 92353-1, *Wuth v. LabCorp*, attached for filing please find LabCorp's Answer to Motion to Strike Statement of Additional Authorities. This document is being filed by Melissa O'Loughlin White, WSBA No. 27668, 206-373-7240, [mwhite@cozen.com](mailto:mwhite@cozen.com).

Thank you.



Dava Z. Bowzer  
Legal Assistant | Cozen O'Connor  
999 Third Avenue, Suite 1900 | Seattle, WA 98104  
P: 206-373-7262 | [dbowzer@cozen.com](mailto:dbowzer@cozen.com)  
Email | Map | [cozen.com](http://cozen.com)

***Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.***