

Oct 31, 2016, 10:15 am

**RECEIVED ELECTRONICALLY**

No. 93620-0

IN THE SUPREME COURT  
STATE OF WASHINGTON

STACIA HARTLEBEN,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

ANSWER TO MOTION TO STRIKE  
REPLY TO ANSWER TO PETITION  
FOR REVIEW

**A. Relief Sought by Appellant Stacia Hartleben.**

Appellant Stacia Hartleben respectfully requests the Court deny Respondent University of Washington's Motion to Strike Reply to Answer to Petition for Review.

**B. Grounds for Relief and Argument.**

There is no dispute the Answer filed by Respondent University of Washington (the University) raised an issue not addressed by the Court of Appeals. Answer at 17-20; Pet. For Rev., App. A. The Court of Appeals did not rely on the University's argument set forth on pp. 17-20 of its

Answer as a basis for its opinion. This argument was not mentioned by the Court of Appeals. Should the Court grant the Petition for Review, the University will certainly pursue this issue as a basis for affirming the Court of Appeals decision. As the University pointed out in its Motion at 2-3, the purpose of the limitation set forth in RAP 13.4(d) on filing a Reply is “to stop ‘abuse by petitioning parties who attempt to cast an answering party’s argument[] in response to a petition for review as ‘new issues’ in order to reargue issues raised in the petition”. Mot. at 2; Drafters’ Comment to 2006 Amendment to RAP 13.4. Ms. Hartleben did not raise this issue at all in the Petition for Review. She is not “cast[ing]” an issue she already raised as a “‘new issue[.]’” in order to reargue” it. She has not replied to any of the issues already raised in her Petition that are mentioned in the Answer. Instead, she has simply replied only to the issue raised by the University in its Answer that was not a basis for the Court of Appeals opinion and was not mentioned in the Petition for Review.

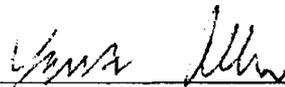
The University’s case, *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 261 n. 17; 178 P.3d 981 (2008) is not to the contrary. In that case the Court declined to consider a reply because the answer raised no new issues. In this case the University raised a new issue not addressed by either the Court of Appeals opinion or the Petition for Review.

**C. Conclusion.**

The Reply offered by Ms. Hartleben does not undermine the purpose of RAP 13.4(d) and instead provides the Court with her position on an issue that was raised in the University's Answer but not addressed by the Court of Appeals or the Petition for Review. She has complied with the spirit of RAP 13.4(d). Should the Court grant review, the University will certainly pursue the issue as a basis for the opinion. In that sense the University is seeking review on the basis of this issue raised at pp. 17-20 of its Answer. The Court should deny the University's Motion to Strike Reply to Answer to Petition for Review.

DATED this 31<sup>st</sup> day of October, 2016.

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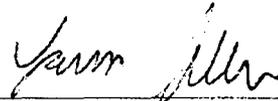
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CERTIFICATE OF SERVICE

I, Laura Allen, attorney for Appellant, certify under penalty of perjury that a copy of the foregoing Answer was sent this 31<sup>st</sup> day

of October, 2016 by email to Skylar A. Sherwood  
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N., Seattle, WA 98109-3007, attorneys for Respondent.

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