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NO. 99273-8

SUPREME COURT OF THE STATE OF WASHINGTON

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CHRISTOPHER W. SARTIN and ROSE M. RYKER,  
individually and as a marital community,

Petitioners,

v.

THE ESTATE OF ALONZO MCKPIKE; PIERCE COUNTY PUBLIC  
TRANSPORTATION BENEFIT AREA CORPORATION, a/k/a PIERCE  
TRANSIT, MULTICARE HEALTH SYSTEM, a Washington  
corporation d/b/a TACOMA GENERAL HOSPITAL; MULTICARE  
OCCUPATIONAL MEDICINE; and RICHARD GILBERT, M.D.,  
individually,

Respondents.

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RESPONDENTS RICHARD GILBERT, M.D.,  
AND MULTICARE HEALTH SYSTEM'S  
ANSWER TO PETITION FOR REVIEW BY SUPREME COURT

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## I. IDENTITY OF RESPONDENTS

Respondents MultiCare Health System and Richard Gilbert, M.D. (collectively “Dr. Gilbert”) submit this Answer to Petition for Review by Supreme Court.

## II. COURT OF APPEALS DECISION

This case arises out of a multiple vehicle collision that took place on May 26, 2015, when Respondent Alonzo McPike suffered a sudden loss of consciousness while driving a Pierce Transit bus. Petitioners Christopher W. Sartin and Rose M. Ryker (collectively “Mr. Sartin”) filed a negligence lawsuit against Respondents Pierce Transit and the Estate of Alonzo McPike (collectively “Pierce Transit”) based on personal injuries allegedly suffered as a result of the collision. CP 1-6. Mr. Sartin filed a separate lawsuit against Dr. Gilbert, a physician and licensed CDL examiner, alleging that Dr. Gilbert committed negligence or medical negligence when he certified that Mr. McPike was medically qualified to operate commercial motor vehicles within the State of Washington. CP 976. The cases were subsequently consolidated. CP 974-982, 983-985.

On November 30, 2018, Pierce Transit moved for summary judgment. CP 1009-24. The trial court granted Pierce Transit’s motion, finding that Mr. McPike’s sudden loss of consciousness was unforeseeable as matter of law. CP 1292-94, 1432-33; RP 23-24. The trial court also

found that the opinions of Mr. Sartin's expert, Dr. Fletcher, amounted to no more than speculation. CP 1432-1433; RP 23-24.

On January 22, 2019, Dr. Gilbert filed a separate motion for summary judgment. CP 1379-1405. In opposition to Dr. Gilbert's motion, Mr. Sartin relied solely on the testimony of his expert, Dr. Fletcher, to establish proximate cause. CP 1647-71. Dr. Gilbert moved to strike Dr. Fletcher's testimony as to cardiac issues and causation. CP 1791-93. The trial court granted Dr. Gilbert's Motion for Summary Judgment, including his Motion to Strike Dr. Fletcher's testimony as to cardiac issues and causation. CP 1837-39.

On November 3, 2020, Division II filed its published opinion (copy attached to Petition as Appendix A) affirming the summary judgment rulings in favor of Pierce Transit and Dr. Gilbert, as well as the ruling striking Dr. Fletcher's declaration regarding cardiac issues and causation. With respect to Dr. Gilbert's motion, Division II did not reach the issues of whether Dr. Gilbert owed a duty to Mr. Sartin or whether that duty was breached. Opinion at 20. Rather, Division II held that Dr. Fletcher's testimony was insufficient to submit the issue of causation to the jury because Dr. Fletcher was not qualified to testify on cardiac issues, his opinions were contrary to the objective evidence, and he could not establish, without resorting to speculation and conjecture, that additional workup

would have made a difference. *Id.* at pp. 19-23. Division II concluded that because the trial court did not err in striking Dr. Fletcher’s declaration regarding cardiac issues and causation, there was no genuine issue of fact as to whether any alleged negligence on the part of Dr. Gilbert was the proximate cause of Mr. Sartin’s injury. *Id.*

Mr. Sartin now seeks this Court’s review of “all portions” of Division II’s decision, including the ruling in favor of Dr. Gilbert. Petition at 1. However, the only issues Mr. Sartin presented for review concern Division II’s application of Washington law concerning foreseeability and the statutory duties purportedly owed under FMCSA. Neither of these issues formed the basis of Division II’s ruling affirming summary judgment in Dr. Gilbert’s favor.

### III. COUNTERSTATEMENT OF ISSUES

1. Did the Court of Appeals’ ruling striking Dr. Fletcher’s declaration regarding cardiac issues and causation and finding no genuine issues of fact as to whether any alleged negligence of Dr. Gilbert was the proximate cause of Mr. Sartin’s injury conflict with a decision of the Supreme Court or a published decision of the Court of Appeals?
2. Does the Court of Appeals’ ruling that Mr. Sartin’s expert declaration was insufficient to create a genuine issue of material fact on the issue of proximate cause involve an issue of substantial public interest?

#### IV. COUNTERSTATEMENT OF THE CASE

##### A. Bus Drivers Must Submit to Periodic Regulatory Examinations.

Mr. McPike was employed as a Pierce Transit bus driver for approximately 18 years. CP 74. To operate Pierce Transit buses, Mr. McPike was required to maintain a Commercial Driver's License ("CDL") issued by the Washington State Department of Licensing. CP 75. Renewal of his CDL license required Mr. McPike to submit to periodic regulatory examinations performed by licensed CDL examiners. CP 1571. Licensed CDL examiners are authorized to evaluate and screen truck and bus drivers for potentially disqualifying medical conditions and to certify drivers who meet the health criteria indicating the drivers' ability to safely operate a bus or truck. CP 1571. CDL examiners are not treating physicians; they perform isolated regulatory exams. CP 1439. The care and treatment of a patient is left to their primary care physician. CP 1439.

##### B. Dr. Larson's November 2012 Cardiac Workup Revealed No Evidence of CAD.

In November 2012, Mr. McPike underwent a cardiac workup performed by Dr. Tim Larson, a cardiologist. CP 1482, 1507-08, 1514-16, 1534-35. Dr. Larson recommended Mr. McPike undergo testing with a Holter monitor. CP 1514-16. Dr. Larson reported that the results of the Holter monitoring were "fairly benign." CP 1515. Dr. Larson also



performed a transthoracic echocardiogram (“ECHO”), a non-invasive test similar to an ultrasound that is used to evaluate cardiac function and blood flow. CP 1507-08, 1515, 1535. The ECHO showed normal heart function. CP 1507-08, 1515, 1535. Dr. Larson did not diagnose any cardiac abnormalities or CAD and had no specific recommended follow up. CP 1482, 1507-08, 1515, 1534-35.

C. Dr. Harmon Issues 90-Day Card in November 2014.

On November 7, 2014, Mr. McPike presented to the MultiCare Occupational Medicine Clinic for a CDL exam. CP 1443-44. Patients like Mr. McPike who present to MultiCare for CDL exams are advised of the limited scope of the exam:

This is a LIMITED SCOPE exam for employment purposes only. There is no health screening or primary health care objectives which is the examinees responsibility. Any non work related findings will be communicated if discovered and is the examinees responsibility to follow up on.

CP 1444. Dr. Harmon performed Mr. McPike’s CDL exam and cleared him to operate a commercial vehicle for 90 days. CP 1443-44. He found Mr. McPike’s blood pressure was well controlled but wanted him to undergo a screening sleep study for sleep apnea. CP 1441, 1443-44. He also asked him to obtain blood pressure readings from his primary care physician, Dr. Brooks, to demonstrate his blood pressure was under control. CP 1441. Dr. Harmon issued Mr. McPike a 90-day card so that he could complete these

tasks and come back for recertification. CP 1441. Dr. Harmon did not find any evidence of heart disease or cardiac issues. CP 1440. He did not refer Mr. McPike for a cardiac workup. CP 1443-44.

D. Sleep Apnea Treated and Under Control

In December 2014, Mr. McPike underwent a sleep study which disclosed that he had severe sleep apnea. CP 1539. His sleep apnea was controlled with CPAP therapy. CP 1539. Mr. McPike was 100% compliant, and the treatment was effective in controlling his sleep apnea. CP 1449; 1539.

E. Dr. Gilbert Issues One-Year CDL Card in January 2015.

Mr. McPike re-presented to MultiCare Occupational Medicine on January 30, 2015 and was seen by Dr. Gilbert, a licensed CDL examiner. CP 1571. Dr. Gilbert noted that Mr. McPike's diabetes was well controlled. CP 1571. This was confirmed by an Intrastate Waiver Application signed by Dr. Wang, Mr. McPike's endocrinologist treating his diabetes. CP 1571. Dr. Wang certified that "Mr. McPike's diabetes was not likely to interfere with the ability to safely drive." CP 1492.

In addition, Dr. Gilbert concluded that Mr. McPike's hypertension was well controlled. CP 1447. Mr. McPike had obtained a signed compliance letter from his primary care physician, Dr. Brooks, with three normal readings. CP 1447, 1486. Dr. Brooks certified that Mr. McPike's

blood pressure was under adequate control and that he was safe to drive a commercial motor vehicle. CP 1483, 1486, 1579. Dr. Gilbert also reviewed the sleep study results. CP 1447, 1449, 1571. He noted excellent compliance and that the sleep apnea was appropriately treated and under control. CP 1447, 1449, 1571.

During the exam, Dr. Gilbert identified an irregular cardiac rhythm he thought might be a PAC (Premature Atrial Contraction). CP 1572. Mr. McPike informed Dr. Gilbert that he had a cardiac workup earlier and that everything was okay from a cardiac standpoint. CP 1448. Dr. Gilbert did not see a need for additional cardiac workup given the fact that Mr. McPike had no signs or symptoms of cardiac problems. CP 1448, 1450, 1572. Mr. McPike's 2012 cardiac workup with Dr. Larson confirmed Dr. Gilbert's judgment. CP 1451. The cardiac workup had been normal, and Mr. McPike had no signs or symptoms of CAD. CP 1451. Another cardiac workup was not indicated. CP 1451. Finding that Mr. McPike had satisfied Dr. Harmon's conditions for recertification and met the DOT standards, Dr. Gilbert issued Mr. McPike a one-year CDL card. CP 1486, 1571-72.

F. Mr. McPike Had No Subsequent Signs of CAD or Indication for a Cardiac Workup.

Mr. McPike had subsequent appointments with Dr. Brooks, his primary care physician, and Dr. Wang, his endocrinologist, in March 2015. CP 1453-54, 1483. Neither physician noted any concerns that Mr. McPike

might suffer a loss of consciousness. CP 1453-54, 1483. Both doctors performed cardiac exams which were normal. CP 1453-54, 1483. Mr. McPike never complained of any signs or symptoms that could be related to CAD. CP 1453-54, 1483.

Neither Dr. Brooks nor Dr. Wang saw a need for cardiac referral.

CP 1484, 1491. Dr. Brooks testified:

Although Mr. McPike had medical conditions that can increase the risk for developing cardiac disease, he never presented with signs or symptoms such as syncope, dizziness, chest pain, shortness of breath, weakness, palpitations and the like. Nor on examination did he exhibit any ventricular vulnerability. Mr. McPike did not have a history of coronary artery disease, and he had been given a good bill of health from the cardiologist, Dr. Tim Larson. From 2012 to the last visit I had with Mr. McPike in March 2015, I saw no evidence of coronary artery disease or a need for a cardiac referral.

CP 1484.

G. Mr. McPike Suffers Sudden Loss of Consciousness.

On the morning of May 26, 2015, Mr. McPike was driving a Pierce Transit bus northbound on Portland Avenue East when he suddenly lost consciousness. CP 43, 74, 121. He lost control of the bus and collided with several vehicles. CP 43, 74, 121. Appellant Christopher Sartin was injured in the collision. CP 1-6. Medics from Tacoma Fire Department initiated

CPR and other treatments, and Mr. McPike was transported to Tacoma General Hospital with a suspected massive heart attack. CP 1552.

H. Post-Accident Care Indicates Cardiac Arrest of Unknown Cause.

When he arrived at Tacoma General Hospital, a cardiac workup was performed by Dr. Momah. CP 1468, 1509, 1535, 1548-50. Dr. Momah reviewed EKGs and an ECHO. CP 1468. The EKGs did not show any acute changes, and the ECHO showed preserved left ventricle function with no wall abnormalities. CP 1468, 1509, 1535, 1548-50. The ejection fraction was within normal range, identical to what Dr. Larson found in 2012. CP 1468, 1509, 1514-16, 1535, 1548-50. Myocardial infarction, or heart attack, was ruled out and it was concluded that Mr. McPike likely had a cardiac arrest. CP 1468, 1509, 1535, 1548-50. However, the cause of the arrest remained unclear. CP 1456. Dr. Momah made no finding of CAD. CP 1468-72, 1509, 1535, 1548-50. In fact, no physician at Tacoma General mentioned CAD. CP 1536.

Mr. McPike remained in the hospital for a little over a month but unfortunately passed away on June 30, 2015. CP 1458. The hospital discharge summary noted the cause of death to be “severe anoxic brain injury as a consequence of cardiac arrest.” CP 1458. Neither the discharge summary nor the death certificate mentioned CAD. CP 1458-59, 1474.

I. Dr. Fletcher Admits No Evidence of CAD and Does Not Know what a Cardiac Workup Would Have Shown.

On summary judgment, Mr. Sartin's expert, Dr. Fletcher, based his entire opinion on the presence of cardiac problems. CP 1466. Dr. Fletcher opined that Mr. McPike suffered from severe CAD which ultimately led to his cardiac arrest and the crash of the bus. CP 1466. When asked if anything else could have triggered the arrhythmia, Dr. Fletcher's answer was a resounding "No." CP 1466. In fact, Dr. Fletcher testified not only that he was "very comfortable with that opinion," but also that he was "100% convinced" that had Dr. Gilbert referred Mr. McPike for a cardiac workup, it would have revealed CAD. CP 1771.

However, Dr. Fletcher admitted he was not a cardiac expert and that he would defer to a cardiologist on the interpretation and importance of EKGs and ECHOs. CP 1462-64. He also conceded that Mr. McPike did not have any signs or symptoms of CAD before or after the collision. CP 1463-65. Indeed, Dr. Fletcher testified that the first manifestation of CAD is often sudden death due to cardiac arrhythmia and believed that to be what happened to Mr. McPike on the day of the accident. CP 1465. He further acknowledged that even if an EKG was done, it could have come out clean because CAD can be sudden and without symptoms. CP 1465-66. Moreover, Dr. Fletcher admitted that he did not know what further cardiac workup would have shown or that it even would have made any difference:

Q. When we broke we were talking a little bit about cardiac stuff. And you said he should have had a work-up, cardiac work-up at some point here. Let's assume he got a work-up. Either Gilbert ordered one or shortly afterwards Brooks orders one. What difference, what would it have shown and what difference would it have made?

A. Well, if he had had a cardiac evaluation that was thorough and included doing stress testing and nuclear imaging, it would be my belief that it would show that he had coronary artery disease, and that he next would have had a cardiac catheterization to determine the nature and extent of his coronary artery disease, did he need stenting? Did he need bypass surgery? What kind of medical management needed to be done to confirm a diagnosis that was obvious based on his risk factors? And how does that play in the realm of him and commercial driving? It would all depend on what was found and what treatment was recommended.

\* \* \*

Q. Okay. And in this case you have no idea what the coronary artery disease -- what the extent or grade or anything else is of the coronary artery disease, is that right?

A. I don't.

Q. Except it's your belief it was significant?

A. My belief it was significant because that's what caused the sudden cardiac death.

CP 1050, 1211, 1402-03.

J. Cardiac Experts Opine CAD Could Not Have Caused Mr. McPike's Sudden Loss of Consciousness.

Defense expert Dr. Kudenchuk, a physician board-certified in internal medicine, cardiology, and clinical cardiac electrophysiology (a specialty in heart rhythm disturbances), reviewed the ECHO imaging from

2012 and 2015. CP 1534. He also studied over 200 pages of EKG recordings from the continuous heart rhythm monitoring performed on Mr. McPike at Tacoma General Hospital following the collision. CP 1535-36. Dr. Kudenchuk found no evidence of severe CAD before or after the accident. CP 1535-36.

Dr. Kudenchuk also reviewed video footage of the bus accident which included footage of the EMT arrival and subsequent efforts to resuscitate Mr. McPike. CP 1536-37. When the medics arrived, they found Mr. McPike to be in asystole, a condition where the heart stops beating and there is no discernable electrical activity; in other words, a flat line. CP 1537. CAD is not a cause of asystole. CP 1537-38. This is more likely attributable to a hypoxic event, where a lack of oxygen leads to cardiac arrest. CP 1537-38. Consequently, Dr. Kudenchuk concluded that CAD could not have led to the cardiac arrest. CP 1538. There is simply no evidence to support such a conclusion, and, in fact, there is significant evidence to the contrary. CP 1538-39.

Defense expert Dr. Epstein, a physician also board-certified in internal medicine, cardiology, and clinical cardiac electrophysiology, also criticized the lack of objective evidence to support Dr. Fletcher's opinions. CP 1509. Dr. Epstein emphasized that Mr. McPike was asymptomatic from a cardiac perspective from 2012 up until the time of his accident, and



subsequent cardiac workup performed at Tacoma General found no evidence of heart attack or significant CAD. CP 1508-09. According to Dr. Epstein, it is impossible to say that had Dr. Gilbert ordered further workup, it would have made a difference. CP 1508-09.

K. Procedural Background

On August 26, 2016, Mr. Sartin filed a negligence lawsuit against Respondents Pierce Transit and the Estate of Alonzo McPike (collectively “Pierce Transit”) based on personal injuries allegedly suffered as a result of the May 26, 2015, collision. CP 1-6. Pierce Transit subsequently moved for summary judgment, and the motion was denied. CP 16-38, 972-73.

Thereafter, Mr. Sartin filed a separate lawsuit against Dr. Gilbert alleging that Dr. Gilbert committed negligence or medical negligence when he certified that Mr. McPike was medically qualified to operate commercial motor vehicles within the State of Washington. CP 976. The trial court granted the parties’ joint motion to consolidate the cases. CP 974-982, 983-985.

On November 30, 2018, Pierce Transit filed a Renewed Motion for Summary Judgment. CP 1009-24. This time, the trial court had the benefit of Dr. Fletcher’s deposition testimony. CP 1431; RP 22. The trial court granted Pierce Transit’s Renewed Motion on January 4, 2019, finding that Mr. McPike’s sudden loss of consciousness was unforeseeable. CP 1292-

94, 1432-33; RP 23-24. The trial court also found that Dr. Fletcher's opinions amounted to no more than speculation:

...there's speculation that further evaluations were needed, what they might reveal, whether they would reveal a disqualifying medical condition. We have the evidence of the EKG in the hospital after this incident happened.

CP 1432-1433; RP 23-24 (emphasis added).

On January 22, 2019, Dr. Gilbert filed a Motion for Summary Judgment. CP 1379-1405. As part of his motion, Dr. Gilbert moved to strike Dr. Fletcher's testimony as to cardiac issues and causation. CP 1791-93. By Order dated March 1, 2019, the trial court granted Dr. Gilbert's Motion for Summary Judgment, including his Motion to Strike Dr. Fletcher's testimony as to cardiac issues and causation. CP 1837-39.

Division II affirmed the summary judgment rulings in favor of Pierce Transit and Dr. Gilbert, as well as the ruling striking Dr. Fletcher's declaration regarding cardiac issues and causation. Opinion at p. 2. With respect to Dr. Gilbert, Division II did not reach the issues of whether he owed a duty to Mr. Sartin or whether that duty was breached. *Id.* at p. 20. Rather, Division II held that because the trial court did not err in striking Dr. Fletcher's declaration regarding cardiac issues and causation, there were no genuine issues of acts as to whether any alleged negligence on the part of Dr. Gilbert was the proximate cause of Mr. Sartin's injury. *Id.* at pp.

19-23. Mr. Sartin now seeks this Court's review of "all portions" of Division II's opinion. Petition at p. 1.

V. REASONS WHY REVIEW SHOULD BE DENIED

A. Standard of Review

Under Washington Rule of Appellate Procedure 13.4(b), a petition for review to the Washington Supreme Court is accepted only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Mr. Sartin's Petition for Review fails to satisfy any of these criteria.

B. Division II's Ruling Affirming Summary Judgment in Dr. Gilbert's Favor Is Not in Conflict with a Decision of the Supreme Court or Court of Appeals.

The entirety of Mr. Sartin's Petition for Review is based on his contention that Division II misapplied Washington law on foreseeability and failed to hold Dr. Gilbert and the other Respondents to their statutory duties under FMCSA. However, with respect to Dr. Gilbert's summary judgment motion, Division II did not base its ruling on foreseeability or on whether Dr. Gilbert owed or breached any duty to Mr. Sartin. Rather, Division II expressly held:

[T]he trial court did not err in striking Dr. Fletcher's declaration regarding cardiac issues and causation, and as a result there are no genuine issues of fact as to whether any alleged negligence was the proximate cause of Sartin's injury. Therefore, we need not decide whether Dr. Gilbert owed a duty to Sartin and whether Dr. Gilbert breached that duty.

Opinion at pp. 19-20.

In reaching its decision with respect to Dr. Gilbert's motion, Division II applied well settled Washington law concerning (1) the requirement to provide expert medical testimony to establish causation in a medical negligence case, (2) the admissibility of expert testimony in conjunction with a summary judgment motion, and (3) the nonmoving party's obligation to come forward with affirmative evidence creating a question of fact regarding causation. *Reyes v. Yakima Health Dist.*, 191 Wn.2d 79, 86, 419 P.3d 819 (2018); *Frausto v. Yakima HMA, LLC*, 188 Wn.2d 227, 232, 393 P.3d 776 (2017); *Keck v. Collins*, 184 Wn.2d 358, 371, 357 P.3d 1080 (2015); *Volk v. DeMeerleer*, 187 Wn.2d 241, 277, 386 P.3d 254 (2016); *Gilmore v. Jefferson County Pub. Transp. Benefit Area*, 190 Wn.2d 483, 495, 415 P.3d 212 (2018); *Mackey v. Home Depot USA, Inc.*, 12 Wn. App.2d 557, 569, 459 P.3d 371, *review denied*, 195 Wn.2d 1031 (2020). Mr. Sartin does not challenge Division II's application of these cases, nor could he. Instead, he contends that Dr. Fletcher's opinions were not speculative "[w]hen considered in the proper context of whether

Mr. McPike presented a general risk of foreseeable harm due to his co-morbid conditions, rather than whether CAD was specifically foreseeable.” Petition at p. 14. Such a contention is not only insufficient to form a basis for accepting review under RAP 13.4(b), it also ignores that Division II’s ruling as to Dr. Gilbert’s liability had nothing to do with the issues of duty or foreseeability.

Indeed, Division II plainly set forth its reasoning with respect to Dr. Gilbert’s liability in Subsection D of the Opinion. *Id.* at pp. 19-23. The only evidence Mr. Sartin offered on the issue of causation was the testimony of Dr. Fletcher. *Id.* at 20. All of Dr. Fletcher’s opinions relevant to Dr. Gilbert’s liability involved cardiac issues. *Id.* at 21. He testified he was certain that Mr. McPike had significant CAD that caused the arrhythmia that resulted in his cardiac arrest. *Id.* He also testified that a cardiovascular workup would have revealed CAD and precluded Dr. Gilbert from issuing a certification. *Id.* at p. 20. However, Dr. Fletcher admitted he was not a cardiac expert and conceded he would defer to cardiac specialists regarding cardiac issues. *Id.* at 21. Dr. Gilbert presented the testimony of such cardiac specialists who saw no clinical basis for Dr. Fletcher’s opinions and found them to be contrary to the objective evidence. *Id.* at 22.

In addition, Dr. Fletcher stated that whether CAD would be a disqualifying factor depended on the severity of the condition and the

treatment, but admitted he had no idea of the extent of CAD Mr. McPike purportedly had. *Id.* Division II therefore concluded that Dr. Fletcher's opinion that a cardiovascular workup would have precluded Mr. McPike from driving was impermissibly based on speculation. *Id.* Based on his lack of cardiac expertise, the lack of objective evidence supporting his opinions, and the speculative nature of his opinions, Division II upheld the trial court's decision striking Dr. Fletcher's testimony on cardiac issues and causation. *Id.* at pp. 20-22.

Division II further reasoned that "[w]ithout Dr. Fletcher's testimony, [Mr.] Sartin ha[d] no evidence that a more thorough workup would have discovered coronary artery disease or made any difference." *Id.* at p. 22. Dr. Gilbert, on the other hand, presented contrary evidence. *Id.* Dr. Epstein, a cardiac specialist, testified that "even if further workup had been performed, it is impossible to say what would have been found or that it would have changed his outcome." *Id.*; CP 1509. Division II concluded that "there is no genuine issue of fact as to whether Dr. Gilbert's alleged negligence was the proximate cause of [Mr.] McPike's accident," and therefore held "that the trial court did not err in granting summary judgment in favor of Dr. Gilbert." *Opinion* at p. 23. Because Division II's decision as to Dr. Gilbert's liability was based on the insufficient evidence of a causal link between Dr. Gilbert's purported negligence and Mr. Sartin's injury, and

because Mr. Sartin's Petition for Review does not raise any issue relevant to that decision, review of Division II's decision affirming summary judgment in Dr. Gilbert's favor should be denied.

C. Division II's Ruling Affirming Summary Judgment in Dr. Gilbert's Favor Does Not Involve an Issue of Substantial Public Interest.

Similarly, Division II's decision affirming summary judgment in Dr. Gilbert's favor does not involve any issues of substantial public interest. On the contrary, Division II's finding that an expert declaration was insufficient to create a genuine issue of fact on the issue of causation affects only the parties to this proceeding and has no potential to affect the public. Accordingly, review should be denied.

VI. CONCLUSION

For the foregoing reasons, review of Division II's ruling affirming summary judgment in favor of Dr. Gilbert should be denied.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of December, 2020.

MULLIN, ALLEN & STEINER, PLLC

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically served a true and correct copy of the foregoing in the Supreme Court of the State of Washington Cause No. 99273-8 upon the following parties:

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

DATED this 31<sup>st</sup> day of December, 2020.

MULLIN, ALLEN & STEINER PLLC

s/ Emily Boehmer  
Emily Boehmer  
Paralegal



**MULLIN ALLEN AND STEINER PLLC**

**December 31, 2020 - 3:54 PM**

**Transmittal Information**

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