

NO. 83715-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MAUREEN BLAIR, and
KENNETH E. BLAIR,

Petitioners,

v.

TA-SEATTLE EAST #176
dba TRAVELCENTERS OF AMERICA,

Respondents.

SUPPLEMENTAL BRIEF OF PETITIONERS BLAIR,

CLERK

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SUPREME COURT
STATE OF WASHINGTON

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INTRODUCTION

The trial court imposed the harshest sanctions on the Blairs, depriving them of their right to seek justice in our courts, not because they willfully defied the court's orders, but because their lawyer failed in his duty to comply with the trial court's scheduling orders on their behalf due to "turmoil" and "chaos" in his office. The clients were powerless to prevent this. They have received no reasonable explanation for why the trial court did this to them. They can find no justice in the decisions rendered below.

Lesser sanctions than striking witnesses and dismissing the action plainly would be adequate in this case. The Blairs' counsel asked for a continuance due to his office troubles, but defense counsel objected, saying there was still plenty of time to conduct discovery and try the case – which was true. Only a few months later, however, defense counsel was claiming prejudicial delay.

While this Court recognizes that clients may be sanctioned for their lawyer's defalcations, the Court also approves only the least severe sanctions sufficient to deter, punish and educate the wrongdoer, and others who might be tempted to emulate him. The principle is aimed at the wrongdoer. But here, the trial court missed that target completely. Only justice was deterred.

ISSUES PRESENTED FOR REVIEW

1. Under *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997) and its progeny, does the trial court abuse its discretion in inflicting the severest sanctions (witness exclusion and case dismissal) where it makes only conclusory findings on willfulness and prejudice, and makes no record that it explicitly considered lesser sanctions?
2. Did the trial court abuse its discretion in imposing the severest sanctions, where plaintiffs' counsel has plainly stated on the record that any missed deadlines were solely due to "turmoil" and "transition" in his office, rather than client action or inaction?
3. May plaintiffs reserve the right to call witnesses disclosed by the defense, including all of the plaintiffs' treating physicians?

If yes, must the plaintiffs provide additional expert testimony, where plaintiffs' treating physicians will testify as fact witnesses that to a reasonable medical probability the defendant's negligence caused the plaintiff's injuries?

If no, do the treating physicians' (or IME doctors') written reports stating that to a reasonable medical probability the defendant's negligence caused the plaintiff's injuries provide sufficient evidence of causation to avoid summary judgment?

STATEMENT OF THE CASE

The facts are fully set forth, with citations to the record, in the Petition for Review. The truck stop's Answer ignores the facts, instead presenting a highly argumentative procedural history. Unfortunately, even that is misleading.

For instance, the truck stop falsely claims that the Blairs'

post-discovery-cutoff motion for "clarification" of the August 14 Order limiting them to seven witnesses sought the right to call **any one of the 35 providers as witnesses at trial**, but did not specify which, if any of them, they wanted to call to offer expert testimony as to any particular medical issue

Answer 3-4 (emphasis added; footnote citation to CP 256-57 omitted). The truck stop cites only to the cryptic order denying clarification, ignoring the Blairs' actual Motion for Clarification, which is at CP 226-34. Directly contrary to the truck stop's assertions, the Blairs unequivocally specified the four witnesses on the truck stop's disclosure whom they wished to call (CP 226):

Plaintiffs . . . hereby move[] the Court for clarification of the Order of August 14, 2007, specifically to allow Plaintiffs pursuant to KCLR 16 to call witnesses listed by defendants, to wit: 1) Dr. Owen Higgs; 2) Dr. Robert Colburn; 3) Chris Puckett; and 4) Keith Duruy, PT.

Without belaboring the point further, the truck stop's briefing is not reliable. The Court should take all facts and inferences in the light most favorable to the Blairs, reverse, and remand for trial.

ARGUMENT

- A. This Court's latest – and perhaps most important – decision on discovery sanctions again expressly requires trial courts to clearly state on the record why they are imposing the harshest sanctions.

This Court's latest sanctions decision is *Magaña v. Hyundai Motor Am.*, 167 Wn.2d 570, 220 P.3d 191 (2009). Like many of the cases discussed in the Blairs' Petition for Review,¹ *Magaña* again requires that the "trial court's reasons for imposing discovery sanctions should 'be clearly stated on the record so that meaningful review can be had on appeal.'" 167 Wn.2d at 583 (quoting *Burnet*, 131 Wn.2d at 494). The failure to make adequate findings – or even to explain – simply precludes meaningful appellate review.

¹ *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 132 P.3d 115 (2006); *Rivers v. Wash. State Conf. of Mason Contrs.*, 145 Wn.2d 674, 696, 41 P.3d 1175 (2002); *Burnet*, 131 Wn.2d 484; *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993); *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 706-07, 732 P.2d 974 (1987); *Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 638-39, 201 P.3d 346 (2009); *Petters v. Williamson & Assocs., Inc.*, 151 Wn. App. 154, 171, 210 P.3d 1048 (2009), *rev. denied*, 168 Wn.2d 1007 (2010); *Magaña v. Hyundai Motor Am.*, 141 Wn. App. 495, 510, 170 P.3d 1165 (2007), *rev'd*, 167 Wn.2d 570 (2009); *Peluso v. Barton Auto Dealerships, Inc.*, 138 Wn. App. 65, 69, 155 P.3d 978 (2007); *Casper v. Esteb Enters.*, 119 Wn. App. 759, 768-69, 82 P.3d 1223 (2004); *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 324-25, 54 P.3d 665 (2002); *Snedigar v. Hodderson*, 53 Wn. App. 476, 487, 768 P.2d 1 (1989), *rev'd in part*, 114 Wn.2d 153, 786 P.2d 781 (1990); *Associated Mortg. Investors v. G.P. Kent Constr. Co.*, 15 Wn. App. 223, 228-29, 548 P.2d 558, *rev. denied*, 87 Wn.2d 1006 (1976).

In *Magaña*, unlike here, the trial court entered extensive findings that a corporation had blatantly attempted to resist discovery, providing false and misleading responses, failing to search massive amounts of materials, and ultimately suppressing relevant evidence. 167 Wn.2d at 584-87, 589. The trial court also expressly found that this willful and deliberate misconduct severely prejudiced Magaña's ability to prepare for trial because so many years had passed that much evidence was lost. *Id.* at 587-90. Finally, the trial court entered lengthy findings that no lesser sanctions would achieve the crucial goals of deterrence, punishment, compensation and education. *Id.* at 584, 590-92.

Here, by contrast, the trial court entered no findings supporting willfulness, prejudice or lesser sanctions. It said nothing on the record. No evidence has been lost – the doctors can still testify that Ms. Blair was badly injured when she slipped and fell in the truck stop's spilled fuel that had been present for some time. Ms. Blair's medical records also still exist, and remain in the possession of the truck stop's counsel, who listed all of her treating physicians on its witness disclosure. Unlike in *Magana*, the truck stop can easily prepare for this trial, as it always could have. These harsh sanctions are wholly unjustified, and unjustifiable.

B. The Blairs received no explanation as to why they suffered the ultimate sanctions, which they do not deserve because they literally did nothing wrong.

Thus, the very extensive findings in *Magaña* stand in sharp contrast to the non-existent findings here. None of the trial court's seven orders in this case explained why the trial court imposed the harshest sanctions available: the initial order (July 2007) rejects the Blairs' request for a continuance due to serious problems in counsel's office with a blunt "DENIED" (CP 15-16); the second order (August 2007) strikes half of the Blairs' witnesses, limits them to seven witnesses, and imposes \$750 in sanctions, yet contains no findings at all (CP 216-17); the third order (September 2007) denied the Blairs' request to add a witness, again without explanation (CP 254-55); the fourth order (also in September 2007) denied the Blairs any clarification, without explanation (CP 256-57); the fifth order (October 2007) strikes more witnesses, and sanctions the Blairs \$500 more for attempting to add those witnesses, but again makes no findings of willfulness, prejudice or lesser sanctions (CP 277-79); the sixth order (November 2007) denies the Blairs' request for a continuance to seek discretionary review, again without findings (CP 304-06); finally, the seventh order (*June 2008* – nearly a year after the initial July 2007 order)

grants the truck stop's motion to dismiss, again without findings or other explanation (CP 307-09). Copies of all of these orders are attached to this Brief.

As this Court can plainly see, the Blairs received virtually no explanation from the trial court before it denied them their right to a trial by jury for their very substantial claims. This is particularly troubling where, as here, the behavior that the trial court was sanctioning was plainly and unequivocally that of their counsel, not of the Blairs. Unlike in *Magaña* (or in *Smith v. Behr*, *supra* n.1, for a second example) where the client was largely at fault for hiding relevant evidence, here the Blairs' counsel unequivocally explained that turmoil in his office – in no way brought on or preventable by the Blairs – caused him to tardily file their witness disclosures, a legal pleading that only their counsel could file. CP 128-30.

In these circumstances, this Court should hold that the least severe but sufficient sanction (as required by *Fisons*, 122 Wn.2d at 355-56) cannot include depriving the clients of their day in court, whether by striking key expert witnesses or by dismissing their case. Any sanctions should be designed to educate and deter the counsel who failed to act (and other counsel). Merely punishing the blameless Blairs serves no good purpose.

C. The trial court's failure to explicitly consider prejudice to the defendant and lesser sanctions, on the record, was an abuse of discretion requiring reversal and remand.

Indeed, this case is much more like *Rivers*, *supra* n.1. There, as here, the procedural failures were largely the fault of counsel. 145 Wn.2d at 679. Of course, the "sins of the lawyer" may be "visited on the client" (*id.*) but the sanctions must be just. In *Rivers*, the parties' counsel agreed to a two-week extension for discovery responses and obtained a court order pushing out the primary-witness-disclosure due date. *Id.* When plaintiff's counsel requested a further extension, however, defense counsel denied the request and brought a motion to compel. *Id.* at 680.

Plaintiff's counsel's response explained that she had a "bad cold" and busy schedule that made meeting with her client difficult. *Id.* She sought three more days to answer. *Id.* This would have made her filing about one month late. The trial court later ordered her to meet this deadline or face dismissal, finding that plaintiff had waived any objections to the discovery requests by not responding promptly. *Id.* at 681.

Plaintiff's counsel did not receive this order, however, until eight days after that deadline. *Id.* at 682. She filed the responses the next day, and amended responses the following day, but

opposing counsel moved to dismiss because plaintiff had not fully answered and had asserted objections that the trial court had already ruled were waived. *Id.* at 682-83. Plaintiff also failed to timely file witness disclosures and a status report, even under the extended deadline. *Id.* at 683. The trial court dismissed plaintiff's claims. *Id.* The Court of Appeals affirmed. *Id.* at 684.

This Court, however, reversed. Looking to the three ***Burnet*** factors (willful or deliberate violation of a court order, substantial prejudice to opposing party's ability to prepare for trial, and explicit consideration of lesser sanctions) this Court first concluded that counsel's failures to comply with several court orders constituted willful and deliberate failures to comply with specific court orders. *Id.* at 689-93. While the Court noted facts in the record supporting the prejudice element, it also noted that such a "conclusion was not affirmatively stated on the record by the trial court, as required by our decision in ***Burnet***." *Id.* at 693-94.

As to lesser sanctions, the trial court's order stated that the "court has considered lesser sanctions of terms and exclusion of testimony, but has determined that dismissal of [Petitioner's] complaint with prejudice is the only appropriate remedy" 145 Wn.2d at 696. But this Court held that the trial court's failure to

expressly address lesser sanctions on the record before dismissing a case is an abuse of discretion requiring reversal (*id.*):

The record in this case indicates that Petitioner manifested a somewhat casual disregard for the rules of discovery and her obligation to comply with the orders of the court under those rules. Whether she should be subject to the drastic sanction of dismissal cannot be determined under the limited language used by the trial court in its order of dismissal. Before resorting to the sanction of dismissal, the trial court must clearly indicate on the record that it has considered less harsh sanctions under CR 37. Its failure to do so constitutes an abuse of discretion.

This Court reiterated that the trial court failed to make an adequate record on lesser sanctions at 698-99:

Although the trial court in this case stated that it considered lesser sanctions of terms and exclusion of testimony before concluding that dismissal was the only appropriate remedy, it did not make a sufficient record before reaching that conclusion as required by our decision in ***Burnet***.

The Court therefore remanded for specific findings on the record regarding all three ***Burnet*** factors (*id.* at 700):

We remand to the trial court for a new determination whether the complaint should be dismissed, with specific findings on the record (1) whether Petitioner's failure to obey discovery orders and case event schedule deadlines was willful or deliberate; (2) whether Petitioner's actions substantially prejudiced Respondent's ability to prepare for trial; and (3) whether the court considered less severe sanctions than dismissal before resorting to the drastic remedy of dismissal.

The same is true here. As in ***Rivers***, the failures to meet court deadlines in this case were due to counsel's personal or

business difficulties (which were frankly more serious than a “bad cold”) not to any effort by the Blairs to avoid listing their treating physicians. As further discussed below, the Blairs had absolutely no reason to withhold the names of these doctors – of whom the defendant was fully aware – as the doctors fully support the Blairs’ claims. The harshest sanctions are simply not appropriate here. But at the very least, this Court should remand for thorough fact finding on the *Burnet* factors under *Rivers*.

D. This Court should give meaningful substantive review to whether the harshest sanctions of striking witnesses and dismissing actions are appropriate where, as here, counsel is primarily responsible for any failure to meet trial court deadlines.

The *Rivers* decision plainly calls for a searching review of the trial court’s justification for imposing such drastic sanctions. Justices Chambers and Sanders concurred in *Rivers*, but strongly urged the trial court to impose lesser sanctions: **“A client should not be penalized under such circumstances.”** 145 Wn.2d at 701 (emphasis added). This is correct. Where, as here, a client is not directly responsible for her counsel’s failure to comply with deadlines, only the most egregious of circumstances should justify “the drastic remedy of dismissal.” *Id.* at 700. Any penalty should, if at all possible, be visited on counsel, not on the clients.

The harshest sanctions – striking witnesses and dismissing actions – plainly implicate due process concerns. See, e.g., **Hovey v. Elliott**, 167 U.S. 409, 17 S. Ct. 841, 42 L. Ed. 215 (1897); **Hammond Packing Co. v. Arkansas**, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1908); **Mitchell v. Watson**, 58 Wn.2d 206, 361 P.2d 744 (1961); **Smith**, 113 Wn.2d at 330-31; **Snedigar**, 53 Wn. App. at 487; **Associated Mortg.**, 15 Wn. App. at 227-28. Not only must the record very clearly justify harsh sanctions, but this Court should give meaningful substantive review to whether lesser sanctions are required in these circumstances. See **Fisons**, 122 Wn.2d at 355-56 (only the least severe sanction sufficient to the purposes should be imposed).

In virtually all of the cases cited above (including those in n.1) a party's failure or refusal to respond to discovery at least arguably could be taken as an admission that material facts unknown and unavailable to the requesting party would be contrary to the non-responsive party's position. See also, e.g., **Lawson v. Black Diamond Coal Mining Co.**, 44 Wash. 26, 86 P. 1120 (1906) (reversing dismissal and remanding for determination of whether defendant's failure to respond should be taken as an admission of material facts). Here, by contrast, the defendant admits that it knew

about 35 of plaintiffs' past treating physicians. Answer at 3. Moreover, there is no question here that Ms. Blair's physicians will testify that this slip-and-fall proximately caused her injuries. See, e.g., CP 338-40, 342, 355. No evidence has been hidden or lost. Thus, no reasonable inference exists that the Blairs wished to withhold evidence unfavorable to them: on the contrary, the evidence entirely favors them, and the doctors and their opinions were disclosed to the truck stop. *Id.*

This leaves the question, why would the Blairs fail or refuse to list these doctors as witnesses? The answer is simple: they wouldn't. Rather, their counsel had reserved the right to call the witnesses disclosed on the defendant's own witness list, including all of the treating physicians. CP 387-88. The defense had done precisely the same thing as to the Blairs' witnesses. CP 468. Since the trial court had limited the Blairs to only seven witnesses, it made no tactical sense to use up those few opportunities listing witnesses of whom defendants already knew and whom the Blairs had already reserved the right to call.

In sum, no evidence in this record justifies imposing the harshest sanctions on the Blairs under the standards established in ***Burnet*** and ***Fisons***. The trial court gave no indication – much less

making explicit statements on the record – as to why the Blairs had committed willful and deliberate violations that prejudiced the defense, and deserved only the harshest sanction. *Burnet* is not satisfied, so reversal is proper.

But *Fisons* suggests that the ultimate sanction is simply inappropriate in this case. Since the Blairs (a) always intended to produce the evidence supporting their claims, and (b) are highly unlikely ever to become plaintiffs in another lawsuit, sanctioning them in such a devastating manner will not “deter” or “educate” them in any meaningful sense, other than teaching them a profound sense of injustice. Most people could not imagine themselves being sanctioned so unjustly, so it cannot deter or educate others either. Since this sanction does not directly impact trial counsel, the deterrent effect on him (and other trial counsel) is attenuated at best. While this certainly punishes the Blairs, dismissing cases solely as punishment violates due process. See, e.g, *Lawson*, *supra*. Dismissal does not compensate the defendants either, so *Fisons* is not satisfied, and remand for trial is appropriate.

E. The truck stop's arguments are contrary to the facts, the law, and the common sense of justice.

The truck stop's Answer argues that *Burnet* requires only a record justifying sanctions, not "formal findings as such." Answer 5-6. Yet the very portion the truck stop quotes says that when "the trial court 'chooses one of the harsher remedies . . . it must be apparent from the record that **the trial court explicitly considered whether a lesser sanction would probably have sufficed.**'" Answer 6 (emphasis altered) (quoting *Burnet*, 131 Wn.2d at 494 (quoting *Snedigar*, 53 Wn. App. at 487)). It also "must be apparent from the record" whether the trial court "**found** that the disobedient party's refusal to obey a discovery order was willful or deliberate and substantially prejudiced the opponent's ability to prepare for trial." *Id.* (emphasis altered). Since the Blairs fully intended to disclose their treating physicians – indeed, had disclosed them sufficiently that the defendant could list all of them on its own witness disclosure – no "willful and deliberate" finding is supported on this record.

The truck stop relies on *Scott v. Grader*, 105 Wn. App. 136, 18 P.3d 1150 (2001), which is inapposite. There, Division I addressed "whether a trial court may exclude the testimony of a

late-disclosed expert witness who failed to produce any [personal] financial or employment records, when the court had earlier imposed an unchallenged order requiring that the witness permit all 'material discovery' as a condition for being allowed to testify at all." 105 Wn. App. at 137-38. Here, the excluded experts did not refuse to produce any discovery, much less defy an explicit court order. **Scott** is nothing like this case.

Indeed, the **Scott** court expressly limited its holding to situations in which, unlike here, the trial court explicitly forewarned the plaintiff, ordering that the expert's failure to provide discovery would result in that expert's exclusion:

The order at issue in this appeal is the [December 7th] ruling, in which the court excluded Dr. Murphy after hearing from counsel in an unreported telephone conference. The **Burnet** requirements do not apply to that order because the court was merely enforcing the sanction specified in its earlier, unchallenged order for the occasion that arose. We find no **Burnet** violation.

105 Wn. App. at 142-43. Since the trial court's earlier order explicitly stated both the reasons for imposing a lesser sanction, and also a warning that the harsher sanction would be imposed for further defiance of that order, **Burnet** was plainly satisfied.

But here, no such explicit warnings or explanations were given to the Blairs. On the contrary, they received only cryptically

“denied” orders. See Appendix. Nor was the trial court merely enforcing a sanction specified in an earlier, unchallenged order. Rather, the trial court immediately imposed the extremely harsh sanction of striking half of the Blairs’ witnesses, plus monetary sanctions. The trial court then imposed even harsher sanctions: precluding the Blairs from calling witnesses listed by the defense whom the Blairs had expressly reserved the right to call, and imposing further monetary sanctions. None of these sanctions is supported in the record, much less explicitly justified by the trial court on the record.

The capper, however, was the trial court’s dismissal of the Blairs’ cause of action, nearly a year after the Blairs had disclosed their witnesses, and much longer after the truck stop had disclosed all of Ms. Blair’s treating physicians on its own primary witness disclosure. *Compare* CP 127-32 *with* CP 308 & CP 84-92. The truck stop’s motion was entirely based on the trial court’s exclusion of all of Ms. Blair’s treating physicians. CP 280-85. The trial court’s order again dismisses without any explanation as to why the Blairs deserved the harshest sanctions in this case. CP 308. **Scott** is inapposite, and **Fisons** and **Burnet** are not satisfied.

The truck stop also relies on a second inapposite case, ***Johnson v. Horizon Fisheries, Inc.***, 148 Wn. App. 628. Answer 10. There, the plaintiff sought a voluntary dismissal under CR 41(a), which the trial court granted, conditioned upon the plaintiff paying the costs of the first suit if he re-filed the same suit. 148 Wn. App. at 631-32. When plaintiff re-filed, the trial court stayed his action until he paid the earlier costs. *Id.* at 632. He sought a payment plan, which the trial court granted. *Id.* But he failed to make those payments, and as the defendant continued to litigate its defenses, the plaintiff failed to respond to discovery, identify witnesses, etc. *Id.* The trial court dismissed plaintiff's claims due to his willful and deliberate defiance of court orders, prejudicing the defendant's trial preparations, and because no lesser sanctions would be sufficient. *Id.* at 633.

As in ***Scott***, and unlike here, the trial court in ***Horizon*** entered a specific order requiring the plaintiff to comply on pain of dismissal, and gave him numerous warnings. Unlike in ***Scott***, the ***Horizon*** trial court also entered specific findings on willful and deliberate violations, prejudice to the defendant, and lesser sanctions. While it is true, as the truck stop argues, that "the result"

is the same in *Horizon* and in *Blair*, the circumstances are not the same. Here, the result is unjust.

Toward the end of its Answer, the truck stop throws out a smattering of unsupported and insupportable theories that did not form the basis of the appellate court's or the trial court's decisions. Answer 11-13. It raises a claim about an "offer of proof," but since the trial court struck all of the Blairs' expert witnesses as a **sanction** and **without explanation**, and then again sanctioned them for begging to be permitted to call a recently-discovered witness, it is impossible to see where the opportunity to make an offer of proof might have arisen (at least not without being sanctioned yet again). The trial court plainly knew what the physicians would say, in as much as their absence was its sole ground for dismissing the action, and the truck stop repeatedly said they were necessary to testify on medical causation. No case says that a party must make an offer of proof when a trial court strikes witnesses as a sanction in order to preserve an argument that the **sanction is unjust**, and the truck stop cites no such case.

The truck stop also reiterates its argument that the Blairs were trying to "convert" fact witnesses into expert witnesses by reserving the right – just as the truck stop did – to call the witnesses

disclosed by the defense. But again, the truck stop fails to respond to the Blairs' real point: Ms. Blair's treating physicians and care providers plainly could testify to the fact that the truck stop's negligence in failing to clean up the fuel spill of which it was aware and which caused Ms. Blair's slip and fall did cause her very severe injuries. She never had these pains and problem before her fall, and she needed to have both hips replaced after her fall. This, together Ms. Blair's own similar testimony, is sufficient to carry the question to the jury.

CONCLUSION

For the reasons stated above, this Court should reverse the sanctions and remand for a trial. At a minimum, it should remand for a hearing to determine whether any facts justify such drastic sanctions.

RESPECTFULLY SUBMITTED this ^{2nd} day of April, 2010.

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CERTIFICATE OF SERVICE BY MAIL

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E. BLAIR,

Plaintiff,

v.

TA-SEATTLE EAST #176, dba TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER DENYING PLAINTIFFS' MOTION TO CONTINUE TRIAL DATE

THIS MATTER having come before the Court and the court having considered the pleadings and submissions of the parties, and being fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Continue Trial Date is DENIED.

DONE IN OPEN COURT THIS 13 day of July, 2007.

Harry J. McCarthy

HONORABLE HARRY J. MCCARTHY

ORDER DENYING PLAINTIFFS' MOTION TO CONTINUE TRIAL
DATE - 1

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1 PRESENTED BY:

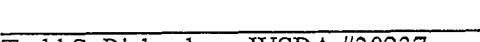
2 WILLIAMS, KASTNER & GIBBS PLLC

3
4 By 
5 Rodney L. Umberger, Jr., WSBA #24948
Taryn M. Darling Hill, WSBA #38276

6 Attorneys for Defendant TravelCenters
7 of America

8 COPY RECEIVED; APPROVED AS TO
9 FORM; NOTICE OF PRESENTATION
WAIVED:

10 LAW OFFICE OF TODD S. RICHARDSON, PLLC

11
12 By 
Todd S. Richardson, WSBA #30237

13 Attorneys for Plaintiffs Maureen T. Blair
14 and Kenneth E. Blair

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ORDER DENYING PLAINTIFFS' MOTION TO CONTINUE TRIAL
DATE - 2

2066804.1

Williams, Kastner & Gibbs PLLC
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Seattle, Washington 98101-2380
(206) 628-6600

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The Honorable Harry J. McCarthy
Hearing Date: August 13, 2007
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E.
BLAIR,

Plaintiffs,

v.

TA - SEATTLE EAST #176, dba
TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER GRANTING DEFENDANT
TRAVELCENTERS OF AMERICA'S
MOTION TO STRIKE PLAINTIFF'S
DISCLOSURE OF POSSIBLE
PRIMARY WITNESSES

THIS MATTER having come on duly and regularly before the Court, and the Court
having considered the record and file herein, and the pleadings of the parties, including:

1. Defendant TravelCenters of America's Motion to Strike Plaintiff's Disclosure of Possible Primary Witnesses;
2. Declaration of Rodney L. Umberger in Support of Defendant's Motion to Strike Plaintiff's Disclosure of Possible Primary Witnesses, and exhibits thereto, and exhibits thereto;
3. Plaintiff's Response to Defendant's Reply to Motion to Strike
4. Defendant's Reply in Support of Motion to Strike; and
5. Plaintiff's Opposition to Defendant's Motion to

ORDER GRANTING DEFENDANT TRAVELCENTERS OF
AMERICA'S MOTION TO STRIKE PLAINTIFF'S DISCLOSURE
OF POSSIBLE PRIMARY WITNESSES - 1

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(206) 628-6600

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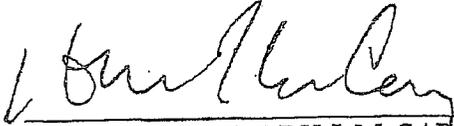
1 Now, therefore, it is hereby

2 ORDERED, ADJUDGED, AND DECREED that Defendant TravelCenters of

3 America's Motion to Strike Plaintiff's Disclosure of Possible Primary Witnesses is

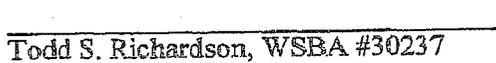
4 GRANTED *as indicated below.* (X)

5 DONE IN OPEN COURT THIS 14 day of August, 2007.

6
7
8 
HONORABLE HARRY J. MCCARTHY

9
10 PRESENTED BY: (X) *Witness #11 on Plaintiff's*
Disclosure of Possible
11 WILLIAMS, KASTNER & GIBBS PLLC *primary witnesses is STRICKEN*
of the remaining 14 witnesses
12 
13 By *Plaintiff shall select 7*
to be called as witnesses
14 Rodney L. Umberger, Jr., WSBA #24948 *and notify defendant by*
Taryn M. Darling Hill, WSBA #38276 *August 17, 2007 which 7 are*
to be called. The
15 Attorneys for Defendant TravelCenters *Motion to strike 7 of the*
of America *14 witnesses is granted*
16
17 COPY RECEIVED; APPROVED AS TO *Plaintiff shall pay*
18 FORM; NOTICE OF PRESENTATION *Defendant \$750.00*
WAIVED: *(X) in terms.*

19 LAW OFFICE OF TODD S. RICHARDSON, PLLC

20
21 By 
Todd S. Richardson, WSBA #30237

22 Attorneys for Plaintiffs Maureen T. Blair
23 and Kenneth E. Blair

24
25 ORDER GRANTING DEFENDANT TRAVELCENTERS OF
AMERICA'S MOTION TO STRIKE PLAINTIFF'S DISCLOSURE
OF POSSIBLE PRIMARY WITNESSES - 2

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COPY TO:
C/PLTF _____ C/DEF _____
DATE: 9-24-07

The Honorable Harry J. McCarthy
Hearing Date: September 21, 2007
Without Oral Argument

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E. BLAIR,

Plaintiff;

v.

TA-SEATTLE EAST #176, dba TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER DENYING PLAINTIFFS' MOTION TO ADD ADDITIONAL WITNESS

THIS MATTER having come before the Court and the court having considered the pleadings and submissions of the parties, including:

1. Plaintiff's Motion to Add Additional Witness;
2. Defendant TravelCenters of America's Opposition to Plaintiff's Motion to Add Additional Witness;
3. Plaintiff's Reply to TravelCenters of America's Opposition;
4. _____;
5. _____; and
6. _____.

ORDER DENYING PLAINTIFFS' MOTION TO ADD ADDITIONAL WITNESS - I

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601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

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BY: *al*

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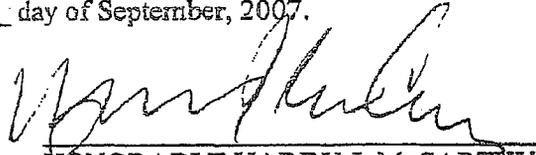
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The Court being otherwise fully advised in the premises;

It is hereby ORDERED that Plaintiff's Motion to Add Additional Witness is DENIED.

It is further ORDERED that Exhibit A of Declaration of Debra Harris in Support of Motion to Add Witness is STRICKEN.

DONE IN OPEN COURT THIS 24 day of September, 2007.


HONORABLE HARRY J. McCARTHY

PRESENTED BY:

WILLIAMS, KASTNER & GIBBS PLLC

By 
Rodney L. Umberger, Jr., WSBA #24948
Taryn M. Darling Hill, WSBA #38276

Attorneys for Defendant TravelCenters of America

COPY RECEIVED; APPROVED AS TO FORM; NOTICE OF PRESENTATION WAIVED:

LAW OFFICE OF TODD S. RICHARDSON, PLLC

By Todd S. Richardson, WSBA #30237

Attorneys for Plaintiffs Maureen T. Blair and Kenneth E. Blair

ORDER DENYING PLAINTIFFS' MOTION TO ADD ADDITIONAL WITNESS - 2

Williams, Kastner & Gibbs PLLC
501 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

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The Honorable Harry J. McCarthy
Hearing Date: September 21, 2007
Without Oral Argument

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E. BLAIR,

Plaintiff,

v.

TA-SEATTLE EAST #176, dba TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER DENYING PLAINTIFFS' MOTION FOR CLARIFICATION

THIS MATTER having come before the Court and the court having considered the pleadings and submissions of the parties, including:

- 1. Plaintiff's Motion for Clarification;
- 2. Defendant TravelCenters of America's Opposition to Plaintiffs' Motion for Clarification;
- 3. Plaintiff's Reply to TravelCenters of America's Opposition;
- 4. _____;
- 5. _____; and
- 6. _____.

ORDER DENYING PLAINTIFFS' MOTION FOR CLARIFICATION

-)

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(206) 628-6600

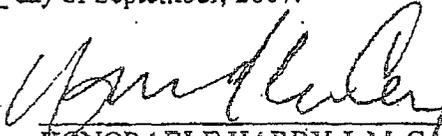
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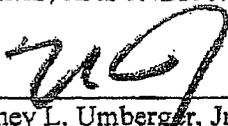
1 The Court being otherwise fully advised in the premises;
2 It is hereby ORDERED that Plaintiffs' Motion for Clarification is DENIED.

3
4 DONE IN OPEN COURT THIS 21 day of September, 2007.

5
6
7 
8 HONORABLE HARRY J. McCARTHY

9 PRESENTED BY:

10 WILLIAMS, KASTNER & GIBBS PLLC

11
12 By 
13 Rodney L. Umberger, Jr., WSBA #24948
Taryn M. Darling Hill, WSBA #38276

14 Attorneys for Defendant TravelCenters
15 of America

16 COPY RECEIVED; APPROVED AS TO
17 FORM; NOTICE OF PRESENTATION
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18 LAW OFFICE OF TODD S. RICHARDSON, PLLC

19
20 By Todd S. Richardson, WSBA #30237

21 Attorneys for Plaintiffs Maureen T. Blair
22 and Kenneth E. Blair

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ORDER DENYING PLAINTIFFS' MOTION FOR CLARIFICATION

- 2

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Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

Honorable Harry J. McCarthy
Hearing Date: Friday, October 12, 2007
Without Oral Argument

FILED
KING COUNTY, WASHINGTON

OCT 15 2007

~~SUPERIOR COURT CLERK~~
Tonja Hutchinson

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E. BLAIR,

Plaintiffs,

v.

TA - SEATTLE EAST #176, dba TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER GRANTING DEFENDANT TRAVELCENTERS OF AMERICA'S MOTION TO STRIKE ADDITIONAL WITNESSES NAMED IN PLAINTIFFS' WITNESS AND EXHIBIT LIST

THIS MATTER having come on duly and regularly before the Court, and the Court having considered the record and file herein, and the pleadings of the parties, including:

1. Defendant TravelCenters of America's Motion to Strike Additional Witnesses Named in Plaintiffs' Witness and Exhibit List;

2. Declaration of Rodney L. Umberger in Support of Defendant TravelCenters of America's Motion to Strike Additional Witnesses Named in Plaintiffs' Witness and Exhibit

List, and exhibits thereto;

3. Plaintiff's Opposition

4. Defendant Travel Center's Reply; and

ORDER GRANTING DEFENDANT TRAVELCENTERS OF AMERICA'S MOTION TO STRIKE ADDITIONAL WITNESSES NAMED IN PLAINTIFFS' WITNESS AND EXHIBIT LIST - 1

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5. _____

Now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that Defendant TravelCenters of America's Motion to Strike Additional Witnesses Named in Plaintiffs' Witness and Exhibit List is GRANTED, and plaintiffs are prohibited from calling Dr. Owen Higgs, and Keith Drury, PT, as witnesses at trial.

It is further ORDERED, ADJUDGED, AND DECREED that Defendant TravelCenters of America is granted terms in the amount of \$ 500.00, for the reason set forth below:

1. Plaintiff has violated the County order
2. by adding 2 additional witnesses that
3. they were prohibited from adding
4. due to untimely disclosure. ; and
5. _____

DONE IN OPEN COURT THIS 15 day of October, 2007.


HONORABLE HARRY J. McCARTHY

ORDER GRANTING DEFENDANT TRAVELCENTERS OF AMERICA'S MOTION TO STRIKE ADDITIONAL WITNESSES NAMED IN PLAINTIFFS' WITNESS AND EXHIBIT LIST - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 PRESENTED BY:

2 WILLIAMS, KASTNER & GIBBS PLLC

3
4 By 

Rodney L. Umberger, Jr., WSBA #24948
Taryn M. Darling Hill, WSBA #38276

5
6 Attorneys for Defendant TravelCenters
of America

7
8 COPY RECEIVED; APPROVED AS TO
9 FORM; NOTICE OF PRESENTATION
WAIVED:

10 LAW OFFICE OF TODD S. RICHARDSON, PLLC

11
12 By _____

Todd S. Richardson, WSBA #30237

13
14 Attorneys for Plaintiffs Maureen T. Blair
and Kenneth E. Blair

15
16 KARL E. MALLING, P.S.

17 By _____

Karl Erik Malling, WSBA #7047

18
19 Co-Counsel for Plaintiffs Maureen T. Blair
and Kenneth E. Blair

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ORDER GRANTING DEFENDANT TRAVELCENTERS OF
AMERICA'S MOTION TO STRIKE ADDITIONAL WITNESSES
NAMED IN PLAINTIFFS' WITNESS AND EXHIBIT LIST - 3

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Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

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The Honorable Harry J. McCarthy
Hearing Date: November 9, 2007
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E.
BLAIR,

Plaintiffs,

v.

TA - SEATTLE EAST #176, dba
TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER DENYING PLAINTIFFS'
MOTION FOR STAY OF
PROCEEDINGS PENDING PETITION
FOR DISCRETIONARY REVIEW

THIS MATTER having come before the Court and the court having considered the pleadings and submissions of the parties, including:

1. Plaintiff's Motion for Stay of Proceedings Pending Petition for Discretionary Review;
2. Declaration of Karl Malling Re: Stay of Proceedings;
3. Defendant's Opposition to Plaintiffs' Motion for Stay of Proceedings Pending Petition for Discretionary Review;
4. _____; and
5. _____.

ORDER DENYING PLAINTIFFS' MOTION FOR STAY OF
PROCEEDINGS PENDING PETITION FOR DISCRETIONARY
REVIEW - 1

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601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

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BY: *at*

1 The Court being otherwise fully advised in the premises;

2 It is hereby ORDERED that Plaintiffs' Motion for Stay of Proceedings Pending Petition
3 for Discretionary Review is DENIED.

4 DONE IN OPEN COURT THIS 9 day of November, 2007.

5
6 HARRY J. McCARTHY

7 HONORABLE HARRY J. McCARTHY

8
9 PRESENTED BY:

10 WILLIAMS, KASTNER & GIBBS PLLC

11
12 By 

13 Rodney L. Umberger, Jr., WSBA #24948
Taryn M. Darling Hill, WSBA #38276

14 Attorneys for Defendant TravelCenters
of America

15
16 COPY RECEIVED; APPROVED AS TO
17 FORM; NOTICE OF PRESENTATION
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18 LAW OFFICE OF TODD S. RICHARDSON, PLLC

19
20 By _____

Todd S. Richardson, WSBA #30237

21 Attorneys for Plaintiffs Maureen T. Blair
and Kenneth E. Blair

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ORDER DENYING PLAINTIFFS' MOTION FOR STAY OF
PROCEEDINGS PENDING PETITION FOR DISCRETIONARY
REVIEW - 2

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601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 KARL E. MALLING, P.S.

2 By

3 Karl Erik Malling, WSBA #7047

4 Co-Counsel for Plaintiffs Maureen T. Blair
5 and Kenneth E. Blair
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ORDER DENYING PLAINTIFFS' MOTION FOR STAY OF
PROCEEDINGS PENDING PETITION FOR DISCRETIONARY
REVIEW - 3

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601 Union Street, Suite 4100
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(206) 628-6600

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The Honorable Harry J. McCarthy

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MAUREEN T. BLAIR and KENNETH E. BLAIR,

Plaintiffs,

v.

TA - SEATTLE EAST #176, dba TRAVELCENTERS OF AMERICA,

and

OAK HILL CAPITAL MANAGEMENT, INC.,

Defendants.

NO. 06-2-16111-4 SEA

[PROPOSED]

ORDER GRANTING DEFENDANT TRAVELCENTERS OF AMERICA'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

THIS MATTER having come on duly and regularly before the Court, and the Court having considered the records and files herein, and the pleadings of the parties, including:

1. Defendant TravelCenters of America's Motion to Dismiss or for Summary Judgment;
2. Declaration of Rodney L. Umberger in Support of Defendant TravelCenters of America's Motion to Dismiss and Motion to Enlarge Time, and exhibits thereto;
3. Plaintiff's Response to Defendant's Motion to Dismiss or for Summary Judgment;

ORDER GRANTING DEFENDANT TRAVELCENTERS OF AMERICA'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT - 1

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Seattle, Washington 98101-2380
(206) 628-6600

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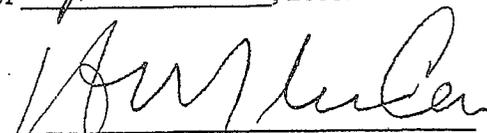
1 4. Declaration of Todd S. Richardson in Support of Plaintiffs' Response to
2 Dismiss or for Summary, and exhibits thereto; and

3 5. Defendant TravelCenters' Reply to Plaintiffs' Untimely Filed Opposition to
4 Defendant's Motion to Dismiss or for Summary Judgment.

5 Now, therefore, it is hereby

6 ORDERED, ADJUDGED, AND DECREED that Defendant TravelCenters of
7 America's Motion to Dismiss or for Summary Judgment is GRANTED, and Plaintiffs' claims
8 against Defendant are hereby dismissed with prejudice, and judgment entered accordingly.

9 DONE IN OPEN COURT THIS 30 day of June, 2008.

10
11 
12 HONORABLE HARRY J. MCCARTHY

13 PRESENTED BY:

14 WILLIAMS, KASTNER & GIBBS PLLC

15
16 By 
Rodney L. Umberger, Jr., WSBA #24948

17 Attorneys for Defendant TravelCenters
18 of America

19 COPY RECEIVED; APPROVED AS TO
20 FORM; NOTICE OF PRESENTATION
21 WAIVED:

22 LAW OFFICE OF TODD S. RICHARDSON, PLLC

23 By _____
Todd S. Richardson, WSBA #30237

24 Attorneys for Plaintiffs Maureen T. Blair
25 and Kenneth E. Blair

ORDER GRANTING DEFENDANT TRAVELCENTERS OF
AMERICA'S MOTION TO DISMISS OR FOR SUMMARY
JUDGMENT - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

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KARL E. MALLING, P.S.

By Karl Erik Malling, WSBA #7047

Co-Counsel for Plaintiffs Maureen T. Blair
and Kenneth E. Blair

ORDER GRANTING DEFENDANT TRAVELCENTERS OF
AMERICA'S MOTION TO DISMISS OR FOR SUMMARY
JUDGMENT - 3

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Seattle, Washington 98101-2380
(206) 628-6600

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