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No. 66100-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

UWEM USORO and ETCETERA ENGINEERING
TRANSPORTATION & ALLIED SERVICES, INC., Individually and a
Washington Corporation,

PLAINTIFFS/APPELLANTS,

V.

CHARLES HELM AND JANE DOE HELM AND HELM & HELM,
INC, P.S., Husband and Wife and a Washington Corporation,

DEFENDANTS/RESPONDENTS.

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

INTRODUCTION..... 1

REPLY TO STATEMENT OF FACTS 2

REPLY TO ARGUMENT 11

A. Standard of Review: This Court reviews the evidence de novo to determine whether a jury could determine that a reasonable judge would have found Usoro’s experts declarations, report and other evidence on record under the facts of this case 11

B. The evidence would support a jury verdict that a reasonable judge would find that Usoro’s Experts declarations and Report Support Existence of Material Issues and that Helm Submitted Not A Single Evidence From their Experts to Contradict Usoro’s 16

 1. Helm raised new issues on Appeal not raised at the trial Court that must be disregarded by this Court..... 16

 2. The trial Court’s error and failure to admit all of Ganz’s opinions in absence of Helm’s expert’s challenge to must be rejected by this Court 17

 3. This Court must reject Helm’s argument that Usoro’s case is a Case within a Case and that Usoro was not his Client..... 18

 4. Usoro provided a total of 8 declarations plus Olin’s declaration at the trial Court that did not contain inadmissible hearsay, the trial Court failed to specifically identify the Portions of Usoro or Olin’s declarations that are inadmissible hearsay and disregarded all..... 23

CONCLUSION..... 25

TABLE OF AUTHORITIES

CASES	Page(s)
Bohn V. Cody, 119 Wn. 2d 357, 363 (1992).....	23
Brust V. Newton, 70 Wn. App.286, 287,852 P.2d 1092(1993)	11, 15
Brust, 70 Wn. App.286 at 293	12, 14, 19
Daugert V. Pappas, 104 Wn. 2d 254, 257-58, 704 P.2d 600(1985).....	14, 15, 18
Fishman v. Brooks, 487 N.E.2d 1377 (Mass. 1986)	19
In re Pennington, 142 Wn. 2d 592, 602-03, 14 P.3d 764(2000).....	12
In Brust V. Newton, 70 Wn. App.288, 287,852 P.2d 1092 (1993)	12
Leipham V. Adams, 77 Wn. App. 827, 833(1955).....	23
Phillips v. Clancy 152 Ariz.415, 733 P.2d 300, 306 (1986).....	14
Sofie, 112 Wash.2d at 645-46, 771 P.2d	15
State V. WWJ Corp. 597 138 Wn. 2 nd 595(1999).....	17

State V. Tomas,
135 Wn. 2d 133 (1998)2, 17

Wright v. Williams
47 Cal.App.3d 802, 121 Cal. Rptr. 194(1975).....14, 17

OTHER AUTHORITIES

R. Mallen &Smith,
Legal Malpractice §27.10, at 659(3rd ed.1989).....16

RAP2.3(a) (3).....17

RPC 1.1.....20

RPC 1.2.....8,20, 21

RPC 1.4(b).....8,23

RPC1.5.....20, 23

RPC1.7.....8,20

INTRODUCTION

Helm's Appeal brief replicated more of the same flawed arguments on their April 2010's opposition to Etcetera's Motion for Summary Judgment that mischaracterized Usoro's Commercial Coverage on their 1998 vehicle.CP626-650. Helm continues to twist facts, just as at the trial Court, that Usoro did not have what he called; "First party loss" but rather "Third Party" or "liability only". Helm's argument stemmed from Columbia's \$95,000 settlement on the personal injury lawsuit brought against Etcetera, adding to the confusion even-though evidence supports facts that Usoro was issued with Certificate of Liability Insurance by Rohner on 2/10/2005. CP 197-198. To establish Rohner breached the standard of care should have been unraveled through Discovery which Helm admitted he did not engage Rohner in 2008 through 2009. CP157¶4 Interrogatory No. 9.

Helm argues both at trial court and on this appeal, that Usoro's Malpractice should be litigated as a; "Case within a Case", rather than Helm's negligence and breach of standard of care during collection of judgment. CP 463-471(Helm's brief at pages 1¶2, 29¶2, 34¶1, 35¶2). Undoubtedly, Usoro's Malpractice should be decided upon Helm's negligence characterized by lack of litigation experience, by his own admission, after the Underlying judgment was vacated in 2008. CP 288¶3.

Instead, Helm asks this Court to paint with a broad brush and ignore the factual details in Usoro's legal malpractice and to narrow the inquiry to a mechanical process of counting factors or issues, to reach inferences favorable to him on abbreviated Summary Judgment the trial Court was impatient to probe any details.

Helm's brief raised new issues not raised at the trial Court and attacked Usoro's experts declarations and report from Joseph Ganz, Bret Espey, Tawni Berg and Anders Olin. Helm argues that Berg and Espey's declarations allegedly contained; "information not relied by CPAs or upon self serving information supplied by Usoro", "Espey report relies upon numerous inaccurate assumptions....", and that Ganz's opinion were "simply incorrect, inadequate". Meanwhile, Helm provided no evidence from any of his experts. In General, an appellate Court will not consider an issue raised for the first time on Appeal. **State V. Tomas, 135 Wn. 2d 133 (1998)**. Usoro's experts should be allowed to testify at trial to substantiate the basis for their report and declarations on Usoro's malpractice. Unlike the trial Court, this Appeal Court should recognize the need for a full trial and reverse and remand.

REPLY TO STATEMENT OF FACTS

Helm cannot decide whether this appeal raises factual questions or legal questions on the lengthy misrepresentation of facts regarding

Usoro's 1998 vehicle that Rohner issued valid Certificate of liability insurance on 2/10/2005(Helm's Brief at pages 1-21). CP 47-49. But then claims that Usoro and Etcetera have not met burden of proof on legal issues, not factual questions (Helm's brief at page 23). Helm disagrees with Usoro's experts without any evidence to the contrary which creates material issues that cannot be litigated on appeal. Usoro's experts established attorney-client relationship, breach of standard of care and damages totaling \$512,424. These are material issues that cannot be determined by the trial Court. CP 327-331, CP 333-341, CP 474-475. Both at the trial Court and on this appeal, Helm failed to submit evidence to support that Usoro and Etcetera;

- (i) Had "First Party loss" or "Third Party" coverage rather than Commercial Liability Insurance on their 1998 vehicle except Rohner's manipulation of Etcetera's fax cover page with inscription of; "liability only" as shown on CP 698 that contradicts CP695 during Motion to vacate judgment.
- (ii) That the Certificate of liability Insurance issued by Rohner to Etcetera on 2/10/2005 did not have \$1,000,000 policy limit and cannot be "liability only". CP 197.

- (iii) That Rohner did not issue Etcetera with Amended Certificate of Liability Insurance for the 1998 vehicle (Policy Amended Effective 02/10/2005). CP 197.
- (iv) That Rohner transmitted the necessary papers to Columbia after adding Etcetera's 1998 vehicle on 2/10/2005 based on their 1996 Eldorado bus with Columbia. CP 198.
- (v) That Rohner complied with a written 30days cancellation notice based on Policy to: Ports of Seattle, City of Seattle, Department of Licensing and Etcetera. CP 197-198, CP 295¶7-10;
- (vi) That Rohner complied with Insuremax's business practises during issuance and cancelation of Usono's policy showing she was not negligent or breached the standard of care for improper cancellation of Usono's coverage in 2005;
- (vii) Evidence of any written memo or letter that Rohner suggested to Usono to insure the 1998 Town Car with Cornhusker Insurance in Oregon for covering other vehicles owned by Etcetera except on her declarations attached with motion to vacate (Helm's brief at page 4).
- (viii) Evidence of Rohner's correspondence with Cornhusker Insurance that Etcetera's prior policy was cancelled and

was unable to re-issue the 1998 Town Car (Helm's brief at pages 4-5);

- (ix) That Usoro insured the 1998 vehicle with Cornhusker Insurance because Rohner informed Usoro she would be withdrawing the coverage to Etcetera on 2/10/2005 (Helm's brief at page 4);
- (x) Evidence that Rohner's expert contradicted investigative report of The Law Offices of Anders F. Olin dated April 22, 2005 after she received a copy.
- (xi) That Helm reduced the Contingency fee agreement of 20% with Usoro in writing during collection of judgment.

Helm's appeal brief blindly relied on Rohner's declaration in support of Motion to vacate in November 2008 that Usoro's 1998 vehicle was not covered in 2005. CP 685-698. Due to Helm's misrepresentations, Usoro raised an alarm at the trial Court that the Exhibits attached with Rohner's declaration during Motion to vacate were manipulated, cut and pasted, fabricated , a distraction , confusing and unclear that it came from Etcetera, CP360 ¶1. The vehicles listed on Etcetera's fax cover page relied as evidence that Usoro did not have coverage had November 19, 2004 date on it, CP 695, CP 698. Usoro's 1998 vehicle was purchased in early February 2005 and was involved in an accident in March 2005.

CP695. It cannot be used to support disputes in 2005. Usoro had more than three 1998 Town Cars prior to accident. Later on, Rohner issued Certificate of liability Insurance to 1998 with VIN#: ILNFM82W0WY731340, as described in Rohner's email dated 2/10/2005. CP 314-315. Rohner relied on these documents during Motion to vacate while Helm did not confer with Usoro for explanations why Etcetera's fax cover page had 2004 date which was manipulated to 3/18/05. CP 360¶2, CP 696-698. Rather, during Rohner's Motion to vacate, Helm defence was that he "discussed with Steven Rockey regarding Etcetera's coverage". CP 663¶15, CP 665 ¶23-24, CP 666¶33. At the trial Court, Usoro addressed the alleged Cornhusker Insurance coverage for other vehicles. CP 360-363. This fact was ignored by the trial Court.

Helm's failure to conduct discovery with Rohner was the driving nail into the coffin of the Underlying case. Evidence showed Rohner scrambled to have other Insurance companies insure the 1998 vehicle after learning of the accident but was unsuccessful. She then continued to misrepresent that Usoro's coverage was cancelled after being issued with coverage on February 10, 2005. CP 685-690. Evidence showed that Rohner contacted Cochrane Company attempting to use them to backdate

Usoro's coverage after the vehicle was involved in an accident. On the fax letter Rohner requested thus:

“Good Afternoon. Please add the following unit to the above reference policy: 1998 Lincoln T/C ILNFM 82W9WY731340 value \$7000. If you have any question, please feel free to contact me at the office. Thank you and have a great day”. [Emphasis] CP 314

Rohner's request was rejected by Cochrane Company's Vice President on their letter dated 4/19/2005. CP 317-318. The fact that Rohner breached the standard of care was authenticated by Olin's investigative report on April 22, 2005. CP 439-442. The Cochrane Company responded to Usoro's 1998 coverage on a letter dated 4/19/ 2005 thus: CP 317¶1-4, CP 447-448.

“We did receive a request from this agent to add the 98 Lincoln, serial number ending in 31340, which we got in our office on 4-19 although it was dated 2-10 and it even had a phrase, “Ignore, my error, wrong account”. The same day, we received a duplicate fax, again telling us not to add the unit...” [Emphasis]

Olin's investigation showed that Rohner added Etcetera's 1998 Town Car on February 10, 2005 and neglected to forward the documents to Columbia. CP 314-315. Helm failed to conduct extensive discovery and deposition of Rohner and all witnesses after judgment was vacated in 2008. Helm rather relied on the little evidence submitted by Rohner during Motion to vacate judgment. Helm failed to confer with Usoro to enable

him litigate the underlying case. CP 666. Instead, Helm argues that Usoro could not have prevailed in the underlying case, but admits he had no litigation experience, CP 288¶3. Helm failed to withdraw from Usoro's case for lack of litigation experience and did not tell Usoro of his limited experience in litigation in violation of RPC 1.4.

Usoro rejected Helm's request to settle with Rohner for what he described as "nuisance value" for "--\$5,000- \$10,000" having lost a judgment of \$180,479.67 under his watchful eyes. (Helm's brief at page 12).CP 508¶2, CP 364. Helm failed to advise Usoro that they could not prove their damages at trial and why trial was unnecessary. He did not forward the initial retainer fee of \$500 paid by Usoro on June 10, 2009 for their expert, Kevin Grambush. CP 125. Grambush would have reviewed Usoro's financial documents regardless of whether the July and August 2009 retainers were paid or not. Usoro lost the opportunity to prove their damages at trial. Usoro purchased a second 1998 Lincoln in June 2005. Given that Etcetera was disputing the coverage with Rohner, Insuremax and Columbia; Usoro could not insure the new vehicle under Etcetera's name. He transferred it to their sister company called, Access Transportation. CP 363¶3, CP 561. The transfer was to enable Usoro register it with the Department of Licensing in Olympia. Access

Transportation is no longer in business due to huge legal costs litigating underlying case since 2005.

Usoro's declarations neither constituted hearsay, speculations and improper lay opinions nor did Olin's constitute inadmissible hearsay and lacking necessary foundation showing that he could not be designated as Usoro's expert. Olin is a Washington attorney and background information that Helm allegedly claimed that he did not provide on affidavit on June 2, 2010 could still be authenticated during trial. CP 439. A review of Usoro's declarations would support the true account of facts regarding Helm's representation during collection of judgment. In the declarations, Usoro merely expressed his frustrations indicating that Helm knew he did not have litigation experience, did not tell Usoro or withdraw from the underlying case except relying on what he was told by Steven Rockey on Usoro's coverage. CP 665. Therefore, Usoro's declarations did not contain improper lay opinions. Usoro's three declarations referenced by Helm completely misrepresented the context of the testimony at the trial court. CP 167-182, CP 265-269, CP 293-303. The trial Court erroneously concluded that both Olin and Usoro's declarations contained inadmissible hearsay and opinions.

The very purpose of trial is to allow each side to present evidence, not to pile inference upon inference from Summary Judgment pleadings as

the trial Court did in Usoro's malpractice case. At trial, Usoro could prove they were Helm's Clients during collection of judgment. Usoro's experts could easily prove their damages and Usoro would testify the contractual relationship with Helm and their damages. Usoro would prove they were issued with Certificate of liability Insurance on February 10, 2005, and that Rohner negligently cancelled their coverage after being informed of the accident on March 19, 2005. Usoro would prove that Rohner did not provide Usoro and Etcetera with notice of cancellation of policy within Thirty (30) based on the amended policy effective 2/10/2005. CP 197-198. Usoro could also prove the malpractice against Helm through the testimony of their experts.

This Court should reject Helm's cynical spin on Usoro's Commercial Coverage on their 1998 Town Car. (Helm's brief at pages 3-12). This Appeal Court should focus on Helm's actions and in-actions from the date of hiring on April 2008 through August 2009 during collection of default judgment. Helm instead did not withdraw until two (2) months to trial without either following the new case schedule nor conducting a single discovery with Rohner except that; "everything he intended to discover were provided in Steven Rockey's Motion to vacate judgment". CP 666 ¶ 31. Without any evidence from Helm to show that Rohner did not breach the standard of care, and given lack of explanations

for failure to follow the new case schedule entered in December 2008, Helm should be precluded from arguing that Usoro could not have prevailed in the underlying case. Usoro lost the opportunity to take their case to trial.

REPLY TO ARGUMENT

- A. Standard of Review: This Court reviews the evidence de novo to determine whether a jury could determine that a reasonable judge would have found User's experts declarations, report and other evidence on record under the facts of this case.**

Usoro and Etcetera argued in their opening brief that the issue in Usoro's Legal Malpractice is whether a reasonable judge would have found that attorney-client relationship exists between Usoro, Etcetera and Helm. **Brust V. Newton, 70 Wn. App.286, 287,852 P.2d 1092(1993).** Whether a reasonable judge would have found that Helm breached the Standard of care, or that Usoro suffered damages for sixteen (16) months Helm sat as their attorney during collection of judgment resulting in the dismissal of Usoro's underlying case for lack of prosecution, is a question of facts to be determined by the jury, not the trial court. This Court determines whether a reasonable judge would have dismissed Usoro's legal malpractice with prejudice and disregarded Usoro and Olin's declarations as inadmissible hearsay. And whether a reasonable judge would have disregarded Usoro's financial experts' testimony showing that

Usoro and Etcetera suffered damages totaling \$512,424 is a question of facts and a question of law. And whether attorney-client relationship exists between Helm and Etcetera and Usoro is also a question of facts and law.

Helm's argument that the trial Court did not abuse its discretion in granting summary judgment in their favor should be jettisoned by this Court, (Helm's brief at page 21-22). Helm's position erroneously ignores the simple fact that Usoro's legal malpractice arose from the underlying representation for collection of judgment, that involves a mixed question of law and question of fact: "We view this determination as a mixed law and fact; as such, the trial court's factual findings are entitled to deference, but the legal conclusion flowing from those finding are review de no". **In re Pennington, 142 Wn. 2d 592, 602-03, 14 P.3d 764(2000)**. Exactly why this Court held in **Brust** that the jury's task in a legal malpractice trial is to determine what a reasonable judge would have done. **Brust, 70 Wn. App. 286 at 293**. Helm's argument fails that a reasonable judge would have found in their favour like the trial Judge.

Additionally, Helm's argument was premised on that fiction that every Judge would rule the same way like the trial judge in this case, if presented with the same set of facts. This argument is without merit. Rather than seen that different judges hearing the same evidence in Usoro's malpractice case could come to different findings and

conclusions, which they do so all the time, requires that Helm's argument must be rejected. In desperation, Helm further argued that the trial Court did not "strike" or "decline" to consider Berg and Espey's declaration and report. Helm attempts to minimize the trial Court's error, arguing that the, "trial Court did not strike the two declarations of Joseph Ganz", and that the Court was justified for what he called the, "failure to present evidence sufficient to support Etcetera's claims". (Helm's brief at page 24). Contradicting himself, Helm further argued the, "trial Court did decline to consider the portions of Ganz's opinions in his declaration of 6/11/10 that address whether an attorney-client relationship existed between Usoro and Helm" (Helm's brief at pages 23¶2 and 24¶1). Pointedly, Ganz's opinion established attorney-Client relationship between Etcetera, Usoro and Helm. CP 467¶5. During discovery, Helm admitted they were, "Attorneys for Etcetera Engineering, Transportation, and Allied Services, Inc from August 18, 2009, after judgment was entered, to the time of their withdrawal was effective on August 23, 2009". CP 346¶ RFA 2. And yet, the trial Court ignored this fact and dismissed the malpractice case as to Etcetera with prejudice. CP 593-596.

With overwhelming evidence from Usoro's experts, this Court should reject Helm's argument that Usoro's case was dismissed as a result of, "their failure to present sufficient evidence to support Etcetera's

claims”. (Helm’s brief at page 23-24). The trial Court simply declined to consider Usoro’s financial experts testimony and wrongly dismissed their malpractice case, CP 593-596. Helm attempts to unsuccessfully distinguish **Daugert V. Pappas, 104 Wn. 2d 254, 257-58, 704 P.2d 600(1985)**, that “a judge is in a much better position” to make determination in Usoro’s case. *Id* 258-259 (Helm’s brief at page 34). Apparently, Helm ignores the context of this statement by the Court of Appeal given that the Court opined, “That in most legal malpractice actions the jury should decide the issue of cause in fact”. *Id* at 258. **In Brust V. Newton, 70 Wn. App.288, 287,852 P.2d 1092 (1993), review denied, 123 Wn. 2d 1010(1994)**. This Court opined that, “The line between questions for the judge and those for the jury in legal malpractice action has generally been drawn between questions of law and questions of fact” *Id* at 290-291. See **Phillips v. Clancy 152 Ariz.415, 733 P.2d 300, 306 (1986), Wright v. Williams 47 Cal.App.3d 802, 121 Cal. Rptr. 194, 197 (1975)**, (attorney malpractice cases are treated in the same manner as other negligence actions). “To rule otherwise would be to withdraw from the jury in a malpractice suit the resolution of purely factual disputes in all cases”. *Id* at 291. **Daugert** was held as an exception to the rule. In cases involving attorney’s alleged failure to perfect an appeal, this Court opined that “the burden of proving causation takes on a

different light”, Id at 258. Therefore, **Daugert’s** should not be controlling in Usoro’s. The trial judge cannot be in much better position to decide Usoro’s questions of fact and questions of law in the malpractice case considering that this court held that, “at trial both parties presented expert testimony on the likelihood of review and reversal of the Court of Appeals decision by the Supreme Court”, Id at 256. Unlike **Daugert**, Usoro and Etcetera submitted their experts’ opinions at the trial Court to support their malpractice lawsuit against Helm which was ignored. Rather, the trial Court turned around and dismissed Usoro’s malpractice with prejudice on August 26, 2010.CP 593. There was no evidence from Helm contradicting Joseph Ganz, Tawni Berg and Bret Espey’s declarations and report regarding attorney-client relationship, standard of care and Usoro’s damages of \$512,424.

In **Brust** this Court held that the question of “damages was similarly factual in nature”. **Id at 293**. Contrary to Helm’s argument that Usoro could not prove their damages and that Bret Espey’s opinion on damages was based on “information not relied by CPAs” without any evidence must be rejected. This Court held that; “damage determinations are a classic example of the type of questions which are traditionally decided by a jury. **Sofie, 112 Wash.2d at 645-46, 771 P.2d**(the power to weigh evidence and determine facts is consigned to the jury under the

constitution , and the amount of damages in a particular case is an ultimate fact); **R. Mallen &Smith, Legal Malpractice §27.10, at 659(3rd ed.1989)** (courts agree that the determination of the extent of the injury is for the trier of fact, and there appear to be no reported decisions treating the extent of damage as an issue of law)”.**Id at 293**. Similarly, the Trial Court erred in disregarding Usoro’s financial experts’ opinions and moved to dismiss Usoro’s malpractice with prejudice. This Court must correct this anomaly and remand.

B. The evidence would support a jury verdict that a reasonable judge would find that Usoro’s Experts declarations and Report Support Existence of Material Issues and that Helm Submitted Not A Single Evidence From their Experts to Contradict Usoro’s.

1. Helm’s raised new issues on Appeal not raised at the trial Court that must be disregarded by this Court.

Helm’s brief raised new issues not raised at the trial Court. Helm argues that Berg and Espey’s declarations allegedly contained; “information not relied by CPAs or upon self serving information supplied by Usoro.....”, that “Espey report relies upon numerous inaccurate assumptions....”, that “trial Court did not strike the two declarations of Joseph Ganz”, that “Ganz declaration is not adequate” and that “Ganz’s declaration is simply incorrect”, (Helm’s brief at pages 23, 24, 34¶3). These arguments were not raised at the trial Court. Helm’s brief is nothing

than hearsay without expert to collaborate them. In General, an appellate Court will not consider an issue raised for the first time on Appeal. **State V. Tomas, 135 Wn. 2d 133 (1998)**. Issues not raised before at the trial Court does not merit review under **RAP2.5 (a) (3). State V. WWJ Corp. 597 138 Wn. 2nd 595(1999)**. Helm did not hire an expert to provide substitute opinion to contradict Usoro's experts' declarations and report. Therefore, other issues raised by Helm must be jettisoned to the extent that he further argued that Berg and Espey reports and declaration present "many issues impacting the credibility of the opinions expressed therein".

2. The trial Court's error and failure to admit all of Ganz's opinions in absence of Helm's expert's challenge must be rejected by this Court.

In their brief, Helm offered several mistaken arguments regarding Etcetera's underlying case that Etcetera did not have coverage and Usoro could not prove their damages rather than evidence showing Helm's work during collection of judgment between 2008 through 2009. Helm's rampage and attacks on Joseph Ganz opinions for establishing attorney-client relationship, standard of care and that Usoro's Underlying case could not have been dismissed and would have gone to trial "but for" Helm's negligence must be rejected by this court. Helm's brief wrongly projects the law on Ganz's opinion lending credence to his negligence during collection of judgment in 2008. Helm cannot litigate the

Underlying case or provide a trajectory of a case within a case on this appeal. Helm's Attorneys misdirected and confused the trial Court to believe that Usoro's case should be premised as a "Case within a Case" (Helm's brief at page 34). Ganz's opinions rather focused on Helm's representation during collection of judgment. CP463-471. Similarly, Ganz was not hired to opine on whether "Rohner's conduct fell below the standard of care", or "that Etcetera requested only liability coverage for 1998 Lincoln", or that "Etcetera could not have survived summary judgment against Rohner" (Helm's brief at page 34). Exactly what Helm should have done through discovered in the underlying case. Mr. Olin's report established Rohner's breach of standard of care which she did not rebut in 2005. CP 439-448. Rather, Ganz was hired by Usoro to evaluate Helm's negligence during collection of judgment and not whether Ganz's opinion should support the litigation of the Underlying case as a case within a case.

3. This Court must reject Helm's argument that Usoro's case is a Case within a Case and that Usoro was not his Client.

In their brief, Helm requests this Court to evaluate Usoro's malpractice as a "hypothetical" ruling by the trial Court as "a case within a case". Helm unsuccessfully attempts to support his position with **Daugert**, **that** it is a case within a case. In that case, this Court held that;

“The trial court hearing the malpractice claim merely retries, or tries for the first time, the client’s case of action which the client asserts was lost or compromised by the attorney’s negligence, and the trier of fact decides whether the client would have fared better but for such mishandling “.see e. g ; Cline V Watkins, 66 Cal. App.3d 174, 135 Cal.Rptr.838 (1977), at 257.

Similarly, this Court rejected argument that the judge in legal malpractice action decides all issues that would have been resolved by a jury in the underlying case-within-a-case: “[T]he majority of courts and legal scholars considering whether a particular issue should be for the judge or jury in legal malpractice action have declined to analyze it in terms of whether the issue should have been one for the judge or the jury in the original proceeding”. **Brust at 290**. Therefore, Helm’s cynical spin of “case within a case” must be rejected by this Court. (Helm’s brief at pages 1¶2, 29¶2, 34¶1, 35¶2). The same principles of fairness and equity in deciding malpractice case was enunciated in the case of **Fishman v. Brooks, 487 N.E.2d 1377 (Mass. 1986)**. The Massachusetts Court of Appeal recognized the fine line regarding the approach to the trial of a legal malpractice action, except as to reasonable settlement values, “no expert testimony from an attorney is required to establish the cause and the extent of the plaintiff’s damages”. Helm’s argument that Mr. Ganz should be the only expert to prove Usoro’s damages in the malpractice fails. Usoro’s financial experts already did. CP 522-530, CP 532-536.

Howbeit, Helm cannot ask this Court to consider Usoro's malpractice as a "Case within a Case" and to affirm the wrong orders of the trial court that dismissed Usoro's legal malpractice with prejudice. To argue that Usoro could not have prevailed in the underlying case, Helm was required to itemize activities of his representations during collection after judgment was vacated in December 2008. Helm's negligence caused Usoro a second chance to prove their damages at trial set in October of 2009 due to lack of litigation experience. CP 288¶3. Helm did not tell Usoro he did not have litigation experience in violation of **RPC 1.2, RPC 1.1, RPC1.7**. Above all, Helm did not have a written contingency fee agreement in violation of **RPC 1.5**. Usoro was not required to show evidence that the trial judge that vacated the underlying judgment breached the standard of care. The underlying trial Judge vacated the judgment and set a trial date so that Usoro and Etcetera could prove their damages on the merit. Still in denial of this fact, Helm showed no evidence both at the trial Court or this appeal that he made:

1. Minimum efforts to show that he followed the new Case Schedule entered on December 16, 2008.
2. Minimum efforts to engage Rohner in Discovery between December 2008 –August 2009 except that "No discovery was conducted", CP

157, and that, “anything I would have hoped to discover was provided in support of Ms. Rohner’s Motion to Vacate”. CP 666.

3. Minimum efforts opposing Rohner’s Motion to vacate the underlying judgment pursuant to CR 60 except that he, “Was immediately concerned after reading Ms. Rohner’s motion to vacate default judgment”, CP 664¶19 . And yet, Helm did not communicate his concerns to Usoro in violation of **RPC 1.2**. CP 467. Helm rather took the easy way out and argued on service of process, “That responding to these two arguments would be futile” CP 664¶19, CP469¶1. Helm’s argument fails whereas Rohner was served with Summons and Complaint by ABC Legal Services on 8/21/06. CP 320.
4. Minimum efforts explaining why Usoro’s witness disclosures were not filed on May 18, 2009 and June 19, 2009 due dates except that; “Witness disclosures are not filed with the Court”, CP 157 ¶5. Helm acknowledged Usoro provided “names of two individual”, including Usoro’s expert, Grambush, hired to prove their damages, and yet, did not file additional witness disclosure due on June 19, 2009 and does not realize that Usoro is also a witness. Helm contradicts himself and continues to deny that; “Mr. Usoro had not given me the names of any witnesses to disclose. CP 666¶26, CP 469¶2.
5. Minimum efforts why Helm did not forward the initial retainer of \$500 sent by Usoro for Grambush except that, “Defendants did not forward the initial \$500 check because Etcetera Engineering, Transportation and Allied Service , Inc. never sent a second \$500

check , as contemplated in the consulting engagement letter”, CP 159 ¶ 7. However, Grambush’s agreement states, “It is our policy to obtain an advance payment for all consulting services. Therefore, an advance payment of \$1,500 will be due upon commencement of the agreement, in three months installments of \$500 to be received in June, July, and August”. CP 455.

6. Minimum efforts to show that Mr. Grambush would not have reviewed Usoro’s financial documents had Helm forwarded June 2009 retainer of \$500 until July 2009 payment was paid.
7. Minimum efforts why the Jury demand was not filed except that Helm “did not think that the Etcetera case warranted a jury as the trier of fact”. CP 666 ¶31.
8. Minimum efforts to withdraw from underlying case on time. Helm rather stayed on and withdrew two (2) months to trial. Helm’s defense was that, “discovery may reveal that Plaintiffs failure to hire another attorney for Etcetera Engineering Transportation and Allied Services after Defendants withdrew, oppose the motion to summary judgment, or ask for continuance of the motion for summary judgment hearing, are acknowledgments as to liability or fault”. CP 162 ¶Interrogatory15.

By the same token, without evidence, Helm cannot argue that Usoro showed no evidence, “that any term in the agreement guaranteed recovery” during collection of judgment (Helm’s brief at page 36¶ 2).

There is no doubt that Usoro is Helm's Client. Helm does not deny lack of written agreement and his actions violated **RPC 1.5**, CP662¶10. The **RPC 1.4(b)** requires a lawyer to "Explain a matter to the extent necessary to permit the Client to make an informed decision regarding representation". A lawyer is more often than not confronted with Clients who have little or no sophistication with regard to legal issues, lawsuits, and the exigency of trial and are very much at the mercy of the lawyer's presentation of information. **Bohn V. Cody, 119 Wn. 2d 357, 363 (1992), Leipham V. Adams, 77 Wn. App. 827, 833(1955).** This Court must reject Helm's argument that attorney-client relationship did not exist between him and Usoro.

- 4. Usoro provided a total of 8 declarations plus Olin's declaration at the trial Court that did not contain inadmissible hearsay, the trial Court failed to specifically identify the Portions of Usoro or Olin's declarations that are inadmissible hearsay and disregarded all.**

The trial Court abused its discretion by not considering Usoro's eight (8) declarations and branded them as inadmissible hearsay and opinions. CP 167-182, CP 236-240, CP254-257, CP 265-269, CP 293-303, CP402-412, CP 421-434, CP 494-499. Helm's brief identified only Usoro's three (3) declarations that allegedly contained inadmissible hearsay arguing the trial Court "properly struck inadmissible evidence". (Helm's brief at page 26). The trial Court failed to consider the context

that Usoro's offered these testimonies. Helm attempts to justify the trial Court's wrong Orders that; "it was disregarding only inadmissible portions and considered the remainder", without evidence the trial Court worded its orders thus. (Helm's brief at page 22). The trial Court's Order was ambiguous to the extent it, "grants the motion to strike those portion of the Usoro and Olin's declaration that contain inadmissible hearsay, opinions and conclusions", without specifying which of Usoro's eight declarations was being referenced in the Orders. CP 596. Undoubtedly, not all of Usoro and Olin's testimonies are inadmissible hearsay. This Court must correct the trial Court's error and misapplication of the law. Simply put, Usoro was expressing his frustrations in the declarations regarding Helm's misrepresentations of factual information during discovery. CP 149-164, CP344-354, CP 288-289, CP 661667. Evidence showed that Usoro made the following statements in all his declarations; "Mr. Helm did not show me business courtesy and responsibility by returning my phone calls until January 2009 when I finally got hold of him" CP 169, "Helm claimed that all the decisions he made was based on his "good" judgment without my input as the person or individual that hired him in the first place, CP 237¶4, " With a new case schedule in place, it gave Etc. Engineering a second chance to prove its damages as shown in the complaint filed by Estudillo", CP 299, and "I found my expert witness and submitted his

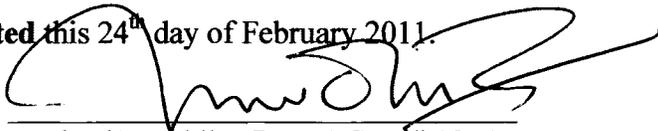
name and phone number to Helm to conclude arrangement with Kevin Grambush”, CP 300¶23,et al. These testimonies are not improper statements and cannot be inadmissible hearsay, or, that Usoro was testifying as an expert or attorney (Helm’s brief at page 27-28).

Helm’s arguments that; (a) Espey’s declaration did not address Etcetera’s claimed damages and relies on the Berg’s report , (b) Olin did not establish any factual foundation for expressing opinion on Rohner’s standard of care for an insurance agent, (c)Usoro’s testimony contained inadmissible hearsay, speculations and improper lay opinions , (d) Etcetera’s legal malpractice claims were properly dismissed, and (e) that Ganz’s opinion does not create an issue of material fact, et al, must be rejected by this Court.

CONCLUSION

For all the reasons stated in the Brief of Appellants and this Reply Brief, the trial Court respectfully erred in granting Summary Judgment to Helm and dismissed Usoro’s malpractice with prejudice and disregarded Usoro and Olin’s declarations as inadmissible hearsay. Usoro respectfully asks the Court to reverse the Summary Judgment and remand for trial.

Respectfully submitted this 24th day of February 2011.

By: 

Raphael Nwokike, Esq. WSBN#:33148
Attorney for the Appellants.

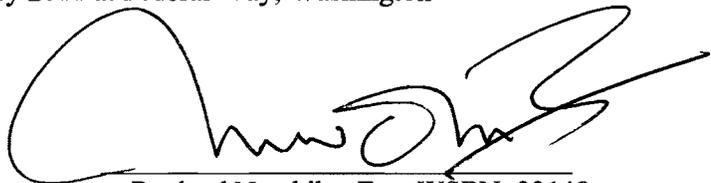
CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

On February 24th, 2011, I caused the following pleadings, a copy of the foregoing **REPLY BRIEF OF APPELLANTS** served by Seattle Legal Messengers on the below Counsel for the Respondents at the following address:

Christopher Tompkins
Betts Patterson Mines, PS
701 Pike Street, Suite 1400
Seattle, WA 98101

Dated this 24th day of February 2011 at Federal Way, Washington

A handwritten signature in black ink, appearing to read 'Raphael Nwokike', written over a horizontal line.

Raphael Nwokike, Esq. WSBN: 33148
Attorney for the Appellants.