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SUPREME COURT
STATE OF WASHINGTON
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No. 91777-9

(Washington Court of Appeals No. 72835-1-I)

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SUPREME COURT OF THE STATE OF WASHINGTON

KUT SUEN LUI and MAY FAR LUI,

Plaintiffs/Petitioners,

v.

ESSEX INSURANCE COMPANY,

Defendant/Respondent.

RESPONSE TO MOTION TO STRIKE PETITIONERS' SECOND
STATEMENT OF ADDITIONAL AUTHORITIES

J. Dino Vasquez, WSBA #25533
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I. IDENTITY OF PARTY

Kut Suen Lui and May Far Lui (the “Luis” or “Petitioners”) ask that the Motion to Strike the Second Statement of Additional Authority (“Motion to Strike”) be denied.

II. ARGUMENT

A. *Nothing in RAP 10.8 Limits Its Application to Newly Created Law.*

Rule of Appellate Procedure 10.8 states:

A party or amicus curiae may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.

RAP 10.8. This Court has noted that “nothing in the rule limits its application to newly created law.” *Futurewise v. W. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 242, 248 n.2, 189 P.3d 161 (2008) (declining to strike a statement of additional authority which cited to “legal authorities that are not new”). Accordingly, the fact that *Gray v. Allstate Indem. Co.*, 2015 U.S. Dist. Lexis 21109 (M.D. Penn. 2015) was issued several months before the Petition for Review was filed does not mean the case is ineligible for citation under RAP 10.8.

Petitioners' *Second Statement of Additional Authorities* is unlike the unique situation that arose in *O'Neill v. City of Shoreline*, 183 Wn. App. 15, 332 P.3d 1099 (2014). There, a party's RAP 10.8 statement primarily cited a Washington case that was brought specifically to the parties' attention by the Court itself. Thus, the statement "provided no new information and wasted the time of the court." 183 Wn. App. at 23.

Because Petitioners' *Second Statement of Additional Authorities* conforms to the requirements of RAP 10.8 and does provide new information, RAP 10.8 is properly invoked. The Motion to Strike should be denied.

B. Gray is Applicable to the Issues before this Court.

RAP 10.8 prohibits a party from presenting argument based on the cases cited in a statement of additional authorities. Petitioners complied with the rule in citing *Gray v. Allstate* and simply identified the issue to which the case applies. Essex, on the other hand, argues explicitly in its Motion that *Gray* is not relevant to the issues before the Court (pg. 3).

Mindful of the constraints of RAP 10.8, Petitioners say only that the argument of Essex is wrongly focused on selective policy language rather than the policy as a whole. If the Court wishes written argument

concerning the applicability of *Gray v. Allstate*, Petitioners will promptly provide it.

Respectfully submitted this 24th day of August, 2015.

KARR TUTTLE CAMPBELL

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that on Monday, August 24, 2015, I caused to be served the foregoing document to:

Michael McCormack Bullivant Houser Bailey PC 1700 Seventh Ave., Ste. 1810 Seattle, WA 98101 206-292-8930 Michael.mccormack@bullivant.com <i>Counsel for Defendant Essex Insurance Company</i>	<input checked="" type="checkbox"/> via hand delivery via ABC Legal Messengers. <input type="checkbox"/> via first class mail, postage prepaid. <input checked="" type="checkbox"/> via email.
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I declare under penalty of perjury under the laws of the state of Washington on Monday, August 24, 2015, at Seattle, Washington.


Heather L. Hatrup

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Kut Suen Lui and May Far Lui v. Essex Insurance Co.
No. 91777-9

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