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STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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Court of Appeals No. 72533-5-I

HAITHAM JOUDEH,

Petitioner/Appellant,

vs.

PFAU COCHRAN VERTETIS AMALA, PLLC, a Washington
Professional Limited Liability Company d/b/a PFAU COCHRAN
VERTETIS KOSNOFF, PLLC; DARRELL L. COCHRAN, Individually
and on behalf of the Marital Community comprised of DARRELL L.
COCHRAN and JANE DOE COCHRAN,

Respondents.

PETITIONER'S RAP 3.3 MOTION TO CONSOLIDATE THIS CASE
WITH *AUER v. LEACH*, SUPREME COURT CASE NO. 927782

Brian J. Waid
WSBA No. 26038
Jessica M. Creager
WSBA No. 42183
WAID LAW OFFICE
5400 California Ave. S. W., Ste D
Seattle, Washington 98136
Counsel for Petitioner/Appellant

I. Identity of Moving Party:

Petitioner Haitham Joudeh was the plaintiff in the underlying King County Superior Court legal malpractice case, and the appellant in the underlying Division I appeal.

II. Relief Sought:

Petitioner Joudeh asks the Court to consolidate this case, including his pending Petition for Review, with the similarly-pending Petition for Review in *Auer v. Leach*, Washington Supreme Court Case no. 927782, pursuant to RAP 3.3(b). Both cases raise the same, fundamental issue of how a legal malpractice plaintiff proves proximate cause, and more particularly whether the legal malpractice plaintiff must offer expert testimony to prove proximate cause. This fundamental issue is also pending in *Slack v. Luke*, a Division III Court of Appeals Case no. 32921-6. See n. 1, *infra*.

III. Parts of the Record Relevant to the Motion:

The parts of the Record in this case relevant to this Motion include:

1. *Joudeh* Petition for Review, p. 2 (Issue no. 1: “Consistent with *Daugert v. Pappas*, how does a legal malpractice victim prove causation in a legal malpractice action?”).
2. *Joudeh* Petition for Review, pp. 10-13 (“Victims of legal malpractice prove causation through inferences drawn from Evidence in

the trial-within-the-trial”).

3. Court of Appeals Opinion, Appendix A to *Joudeh* Petition for Review, pp. 9-12.

In addition, the following parts of the Record in *Auer v. Leach*, Washington Supreme Court Case no. 927782 are relevant to this Motion:¹

1. *Auer* Petition for Review, pp. 1-2, 11-13 (Is expert testimony required to establish proximate cause)?

2. Court of Appeals Opinion in *Auer v. Leach*, Appendix B to *Auer* Petition for Review, pp. 18-24.

3. Motion to Publish filed by Attorneys Liability Protection Society in *Auer v. Leach*, Div. II Case no. 46105-6-II. See n. 1.

IV. STATEMENT OF GROUNDS FOR RELIEF SOUGHT

RAP 3.3(b) authorizes consolidation of cases pending in this Court if doing so “would save time and expense and provide for a fair review of the cases.” The Petitions for Review in *Joudeh* and *Auer* both raise essentially the same, fundamental issue of how a legal malpractice plaintiff proves proximate cause. *Joudeh* Pet. for Rev. pp. 2, 10-13; *Auer* Pet. for Rev., pp. 1-2, 11-13. Indeed, the Motion to Publish, filed by the Attorneys Liability Protection Society (“ALPS”) in the Division II *Auer* in

¹ To obviate any issue related to whether the Court can or should take judicial notice of pleadings from other cases, copies of the referenced pleadings from *Auer v. Leach* and *Slack v. Luke* are attached as Exhibits to the Declaration of Brian J. Waid submitted in support of this Motion.

case, explained that “this is an issue that frequently emerges in legal malpractice cases in Washington” and urged publication to “assist counsel in legal malpractice cases, as well as professional liability insurers like ALPS.” Waid Decl., Ex. B, pp. 2, 3.

Furthermore, the Petitions for Review in *Joudeh* (Pet., pp. ii-iii) and *Auer* (Pet., p. ii), as well as the Answer to the Petition for Review in *Joudeh* (Ans., pp. 11-16), cite many of the same key Washington appellate decisions related to proximate cause in legal malpractice cases, as do the Court of Appeals opinions in both *Joudeh* (Opinion, pp. 9-12) and *Auer* (Opinion, pp. 19-24). These same issues and authorities are also currently under submission in the Division III case of *Slack v. Luke*, Case no. 32921-6,² which is the case referenced by Mr. Talmadge in the Motion to Publish in *Auer*. Waid Decl., Ex. B, pg. 2 ¶3.

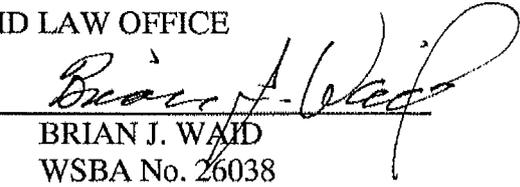
The Petitions for Review in both *Joudeh*, a Division I case, and *Auer*, a Division II case, involve the same issue, *i.e.*, how a legal malpractice plaintiff proves proximate cause, and more particularly whether the legal malpractice plaintiff must offer expert testimony to prove proximate cause. The same issue is also currently awaiting decision in Division III.

² Pertinent excerpts from the appellate briefs in *Slack v. Luke* are attached as Exhibits C, D, and E to the Declaration of Brian J. Waid. See n. 1 above relative to ER 201(f).

The Court should therefore consolidate this case with *Auer v. Leach*, Washington Supreme Court Case no. 927782 because doing so will allow for the most efficient consideration of the issues involved, and will be fair to all parties.

DATED: February 22, 2016.

WAID LAW OFFICE

BY: 

BRIAN J. WAID
WSBA No. 26038
JESSICA M. CREAGER
WSBA No. 42183
5400 California Ave. SW, Suite D
Seattle, Washington 98136
Telephone: 206-388-1926
Attorneys for Petitioner

PROOF OF SERVICE

I hereby certify that on this 22nd day of February, 2016, I caused a copy of the foregoing Petitioner's RAP 3.3(b) Motion to Consolidate This Case With *Auer v. Leach*, Washington Supreme Court Case No. 927782 to be delivered to Respondents, through their attorneys on the following in the manner indicated below:

Counsel for Respondents:	<input checked="" type="checkbox"/> U.S. Mail
Jeffrey P. Downer	<input type="checkbox"/> Hand Delivery
Spencer N. Gheen	<input checked="" type="checkbox"/> <u>Email</u>
Lee Smart, P.S., Inc.	
One Convention Place, Suite 1800	
701 Pike Street	
Seattle, Washington 98101	

I further hereby certify that on this 22nd day of February, 2016, I caused a copy of the foregoing Petitioner's RAP 3.3(b) Motion to Consolidate This Case With *Auer v. Leach*, Washington Supreme Court

Case No. 927782 to be delivered to Counsel of Record in *Auer v. Leach*, through their attorneys on the following in the manner indicated below:

Counsel for Petitioners in *Auer v. Leach*:

Brian H. Krikorian
Law Offices of Brian Krikorian
4100 194th Street SW, Suite 215
Lynnwood, Washington 98036

U.S. Mail
 Hand Delivery
 Email

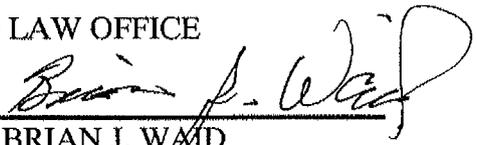
Counsel for Respondents in *Auer v. Leach*:

Philip Meade
Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, Washington 98121

U.S. Mail
 Hand Delivery
 Email

Dated: February 22, 2016.

WAID LAW OFFICE

BY: 

BRIAN J. WAID
WSBA No. 26038

One of Petitioner's Attorneys

No. 925372

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 72533-5-I

HAITHAM JOUDEH,

Petitioner/Appellant,

vs.

PFAU COCHRAN VERTETIS AMALA, PLLC, a Washington
Professional Limited Liability Company d/b/a PFAU COCHRAN
VERTETIS KOSNOFF, PLLC; DARRELL L. COCHRAN, Individually
and on behalf of the Marital Community comprised of DARRELL L.
COCHRAN and JANE DOE COCHRAN,

Respondents.

DECLARATION OF BRIAN J. WAID IN SUPPORT OF
PETITIONER'S RAP 3.3(b) MOTION TO CONSOLIDATE THIS CASE
WITH WITH *AUER* v. *LEACH*, SUPREME COURT CASE NO. 927782

Brian J. Waid
WSBA No. 26038
Jessica M. Creager
WSBA No. 42183
WAID LAW OFFICE
5400 California Ave. S. W., Ste D
Seattle, Washington 98136
Counsel for Petitioner

Brian J. Waid, under penalty of perjury, testifies as follows:

1. I am one of the attorneys of record for Petitioner/Appellant Haitham Joudeh in the above-captioned matter, and make this Declaration as authorized by RPC 3.7, based on my personal knowledge.

2. Attached hereto, marked as Exhibit A and incorporated by this reference, is a true and accurate copy of the Petition for Review filed in *Auer v. Leach*, Washington Supreme Court Case no. 927782. A copy of the Court of Appeals opinion issued in that case is attached to the Petition for Review as an Appendix.

3. Attached hereto, marked as Exhibit B and incorporated by this reference, is a true and accurate copy of the Motion to Publish filed by Attorneys Liability Protection Society ("ALPS") in *Auer v. Leach*, Washington Court of Appeals, Division II Case no. 46105-6-II.

4. Attached hereto, marked as Exhibit C and incorporated by this reference, is a true and accurate copy of an **excerpt** from the Brief of Appellant filed in the case entitled *Slack v. Luke*, Washington Court of Appeals, Division III Case no. 32921-6, consisting of the title page, pp. i-v, and pp. 1-2, 20-26.

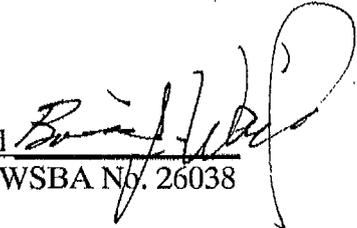
5. Attached hereto, marked as Exhibit D and incorporated by this reference, is a true and accurate copy of an **excerpt** from the Brief of Respondents filed in the case entitled *Slack v. Luke*, Washington Court of

Appeals, Division III Case no. 32921-6, consisting of the title page, pp. i-vi, and pp. 1-2, 16-23.

6. Attached hereto, marked as Exhibit E and incorporated by this reference, is a true and accurate copy of an **excerpt** from the Reply Brief of Appellant filed in the case entitled *Slack v. Luke*, Washington Court of Appeals, Division III Case no. 32921-6, consisting of the title page, pp. i-iv, and pp. 3-10.

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

Dated: February 22, 2016.

/s/ Brian J. Waid 
BRIAN J. WAID, WSBA No. 26038

PROOF OF SERVICE

I hereby certify that on this 22nd day of February, 2016, I caused a copy of the foregoing Declaration of Brian J. Waid in Support of Petitioner's RAP 3.3(b) Motion to Consolidate This Case With *Auer v. Leach*, Washington Supreme Court Case No. 927782 to be delivered to Respondents, through their attorneys on the following in the manner indicated below:

Counsel for Respondents:
Jeffrey P. Downer
Spencer N. Gheen
Lee Smart, P.S., Inc.
One Convention Place, Suite 1800
701 Pike Street
Seattle, Washington 98101

U.S. Mail
 Hand Delivery
 Email _____

I hereby certify further that on this 22nd day of February, 2016, I caused a copy of the foregoing Petitioner's RAP 3.3(b) Motion to Consolidate This Case With *Auer v. Leach*, Washington Supreme Court Case No. 927782 to be delivered to Counsel of Record in *Auer v. Leach*, through their attorneys on the following in the manner indicated below:

Counsel for Petitioners in *Auer v. Leach*:

Brian H. Krikorian
Law Offices of Brian Krikorian
4100 194th Street SW, Suite 215
Lynnwood, Washington 98036

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Counsel for Respondents in *Auer v. Leach*:

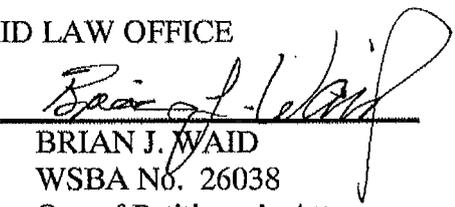
Philip Meade
Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, Washington 98121

U.S. Mail
 Hand Delivery
 Email

Dated: February 22, 2016.

WAID LAW OFFICE

BY:


BRIAN J. WAID
WSBA No. 26038

One of Petitioner's Attorneys

OFFICE RECEPTIONIST, CLERK

To: shidalgo@waidlawoffice.com
Cc: 'Brian J. Waid'; 'Jessica Creager'
Subject: RE: Filing in Joudeh v. Pfau Cochran Vertetis Amala, PLLC [Case No. 925372]

Received on 02-22-2016

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Sarah Hidalgo [mailto:shidalgo@waidlawoffice.com]
Sent: Monday, February 22, 2016 3:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Brian J. Waid' <bjwaid@waidlawoffice.com>; 'Jessica Creager' <jcreager@waidlawoffice.com>
Subject: Filing in Joudeh v. Pfau Cochran Vertetis Amala, PLLC [Case No. 925372]

Good afternoon,

Please see the attached documents for filing in JOUDEH vs. PFAU COCHRAN VERTETIS AMALA, PLLC, a Washington Professional Limited Liability Company d/b/a PFAU COCHRAN VERTETIS KOSNOFF, PLLC; DARRELL L. COCHRAN, Individually and on behalf of the Marital Community comprised of DARRELL L. COCHRAN and JANE DOE COCHRAN [Case No. 925372].

A hardcopy of the Declaration Exhibits (A-E) will be mailed via USPS today.

Thank you,

Sarah K. Hidalgo
Assistant to Brian J. Waid and Jessica Creager

Waid Law Office
5400 California Ave SW, Suite D
Seattle, WA 98136
P: 206.388.1926
F: 206.388.1925
shidalgo@waidlawoffice.com

The Waid Law Office does not represent anyone without a written fee agreement. Review of potential matters does not create an attorney/client relationship. This communication is confidential pursuant to RPC 1.18(b).