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Supreme Court No. 92778-2
Court of Appeals No. 46105-6-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RONALD AUER and JOHN TRASTER
Appellants/Cross-Respondents

vs.

J. ROBERT LEACH and JANE DOE LEACH, his wife; CHRISTOPHER
KNAPP and JANE DOE KNAPP, his wife; GEOFFREY GIBBS and
JANE DOE GIBBS, his wife; ANDERSON HUNTER LAW FIRM, P.S.,
INC., and SAFECO INSURANCE,
Respondents/Cross-Appellants

On Appeal from the Snohomish County Superior Court
SCSC Case No. 11-2-03105-3

APPELLANTS' ANSWER AND JOINDER
IN AMICUS BRIEF OF ALPS

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Petitioners Ronald Auer and John Traster agree with Amicus filer Attorneys Liability Protection Society (ALPS) that this issue is becoming a common argument made in legal malpractice cases, and as ALPS has argued, “is an issue that frequently emerges in legal malpractice cases in Washington.” The lower courts are issuing conflicting rulings as to whether (i) expert testimony is required to prove elements beyond the standard of care; and (ii) the extent same is necessary on a summary judgment motion.

Since filing the Petition for Review in this matter, Division 3 of the Court of Appeals issued a published opinion in the matter of *Slack v. Luke*, No. 32921-6-III (March 10, 2016). In that decision, Division 3 followed this Court’s ruling as set forth in *Walker v. Bangs*, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979) that the “general rule is to *permit* but not *require* expert testimony” and that Washington does not require expert testimony “when the negligence charged is within the common knowledge of lay persons.” (Emphasis added). Division 3 went out to find that plaintiff “was not required to present expert legal testimony concerning the adequacy of her WLAD claim. Whether her underlying claim had merit ultimately was a determination for a jury to decide. This was not a situation where expert testimony was needed to establish whether an attorney was negligent as in *Walker*.” This ruling is consistent both with this Court’s prior ruling in *Walker* and its progeny, as well as *Brust v.*

Newton, 70 Wn.App. 286, 852 P.2d 1092 (1993)—holding that absent only one conclusion, the element of causation is up to the trier of fact.

As noted in the Petition for Review, ALPS’s motion for amicus consideration, and the motion to consolidate in *Joudeh v. Pfau Cochran* (Supreme Court No. 925372) there are now two competing decisions from Divisions 1 and 2, **requiring** an expert to prove causation, and Division 3’s decision in *Slack* following the general rule that expert testimony is “permitted”, but not necessarily required. In the instant case, the trial court further erred when it granted summary judgment on the grounds that such expert testimony was necessary to prove “causation” and then refused to consider a supplemental expert witness declaration providing such an opinion.

Absent definitive guidance from this Supreme Court, the trial courts and appellate courts will continue to issue conflicting rulings on this issue, and will create resulting confusion as to the standard based upon existing legal precedent as argued in the Petition and ALPS’s motion. Moreover, Petitioners submit that if there is going to now be a “new standard” of requiring expert testimony to prove all elements of malpractice, such a decision should be issued from the highest court, and Petitioners should be permitted to now cure that problem under this Court’s decision in *Keck v. Collins*.

As such, good cause exists for this Court to consider the Petition and Amicus request, and grant review in this matter.

Dated: April 6, 2016

LAW OFFICES OF BRIAN H. KRIKORIAN

A handwritten signature in black ink, appearing to read "Brian H. Krikorian", written over a horizontal line.

By _____
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On April 6, 2016, I caused to be served a copy of the document described as **Petitioner's Answer to Amicus Filing** on the interested parties in this action, by United States, First Class Mail and email, addressed as follows:

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

Executed this 6th day of April, 2016.



Brian H. Krikorian

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Attached please find Petitioner's Answer to Amicus filing in in Supreme Court Cause No.92778-2.

Thank you,

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