

Supreme Court No. 92972-6
Court of Appeals No. 72416-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

ESTATE OF VIRGIL VICTOR BECKER, JR., by its Personal
Representative, Jennifer L. White,

Petitioner,

v.

FORWARD TECHNOLOGY INDUSTRIES, INC.,

Respondent.

**RESPONDENT'S ANSWER TO PETITIONER'S MOTION FOR
LEAVE TO FILE A SUPPLEMENT TO THE PETITION FOR
DISCRETIONARY REVIEW**

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I. INTRODUCTION

The Court should deny her motion for leave to file a supplemental brief; strike the underlying supplemental brief; and direct her to file a statement of additional authorities in strict compliance with RAP 10.8.

II. IDENTITY OF ANSWERING PARTY

Respondent Forward Technology Industries, Inc. (“FTI”) files this answer to Petitioner Becker’s motion for leave to file a “supplement” to her petition for discretionary review.

III. STATEMENT OF ISSUES

1. Whether the Court should deny petitioner’s motion for leave to file an argumentative supplemental brief and strike the underlying supplemental brief because Rule of Appellate Procedure 10.8, and cases interpreting that rule do not authorize a party to file a supplemental brief containing additional arguments?

2. Whether the Court should direct her to strictly comply with RAP 10.8 and simply file a statement of additional authorities that does “not contain argument” (quoting RAP 10.8)?

V. STATEMENT OF PERTINENT FACTS

Petitioner Becker first filed a Statement of Additional Authorities on June 2, 2016, which contains four pages of legal argument, accompanied by a Third Circuit decision. On June 28, 2016, she then filed

a legally argumentative “Motion for Leave to File Supplement to Petition for Review,” which fails to comply with RAP 17.3, and cites no legal authority in support of the relief she seeks. Her motion also attaches a 14-page argumentative “supplemental” brief, along with a Third Circuit decision that reverses a Pennsylvania district court case, *Sikkellee v. Precision Airmotive Corp.*, 45 F. Supp. 3d 431 (M.D. Pa. 2014).

As requested by the Supreme Court’s Acting Clerk in her June 29, 2016 letter, Respondent FTI is only answering Petitioner Becker’s Motion for Leave to File Supplement to Petition for Review. If the Court, in fact, *grants* her motion for leave to file a supplemental brief, then FTI requests the opportunity to file a response.

Neither Becker nor FTI cited the now reversed *Sikkelee* case in their respective petition for discretionary review and answer. Despite this omission by both parties, Becker states as a “relevant fact” that the Washington Court of Appeals “extensively relied upon the lower district court’s opinion in *Sikkelee*[.]” (*See* Pet’r’s Mot. for Leave at 2). But the Court of Appeals cited *Sikkelee* only twice in a 20-page opinion containing 54 footnotes. *See Becker v. Forward Tech. Indus.*, 192 Wn. App. 65, 79 n.32, 80 n.36, 365 P.3d 1273 (2015). A cursory review of this case shows that the Court did not rely on *Sikkelee* in concluding that the Federal Aviation Act and related federal regulations preempted the

standard of care for Becker’s product liability action against FTI for allegedly assembling and welding defective carburetor floats.¹

In reaching its decision, the Washington Court of Appeals primarily relied on, analyzed, and interpreted: (1) Washington and Ninth Circuit cases; (2) federal statutes; and (3) twelve specific federal safety standards for engine fuel systems, including the carburetor and the component parts at issue here. *See Becker*, 192 Wn. App. at 74-81 (citing and quoting *Ventress v. Japan Airlines*, 747 F.3d 716(9th Cir.), *cert. denied*, 135 S. Ct. 164 (2014); *Gilstrap v. United Airlines, Inc.*, 709 F.3d 995 (9th Cir. 2013); *Stengel v. Medtronic, Inc.*, 704 F.3d 1224 (9th Cir. 2013); *Martin ex re. Heckman v. Midwest Express Holdings, Inc.*, 555 F.3d 806, 809 (9th Cir. 2009); and *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007)).

I. ARGUMENT

A. **THERE IS NO LEGAL BASIS TO GRANT PETITIONER LEAVE TO FILE SUPPLEMENTAL BRIEFING.**

In this civil case, Petitioner Becker cites no legal authority in support of the relief she seeks—leave to file a supplemental brief—and

¹ The Court of Appeals correctly states that “Avco Corporation, a type certificate holder, built the airplane’s engine” and that “Precision Airmotive Corporation, a ‘parts manufacturer approval’ (PMA) holder, built the carburetor and its component parts, including the float.” *Becker*, 192 Wn. App. at 69. The Court of Appeals also notes that Plaintiff Becker cited the Federal Aviation Regulations (14 CFR *et seq.*) in its cause of action against FTI. *Becker*, 192 Wn. App. at 72 n.9.

Respondent FTI finds none. Her motion for leave should be denied. The

Court should be guided by RAP 10.8, which 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 (emphasis added). “The rule permitting the furnishing of additional authorities to the court does not authorize a party to file an additional appellant’s or respondent’s brief, but is confined to permitting a party to ‘file a statement of additional authorities, *without argument*.’” *Rye v. Seattle Times Co.*, 37 Wn. App. 45, 55-56, 678 P.2d 1282, review denied, 102 Wn.2d 1004, cert. denied, 469 U.S. 1087, 105 S. Ct. 593, 83 L. Ed. 2d 703 (1984). The Court should deny her motion for leave to file a supplemental brief, and strike her supplemental brief because it contains impermissible legal argument.

In *Futurewise v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 242, 189 P.3d 161 (2008)² the Supreme Court denied a motion to strike a statement of supplemental authority because the statement did not

² The Court in *Lauer v. Pierce Co.*, 173 Wn.2d 242, 267 P.3d 988 (2011) noted that the holdings in *Futurewise* were not binding because it was a plurality opinion. Nevertheless, it did not alter the Court’s interpretation of RAP 10.8.

contain argument. Here, both Petitioner Becker's motion for leave and her underlying supplemental briefing contain extensive legal argument.

VII. CONCLUSION

Becker's motion for leave to file a supplemental brief should be denied.

Dated this 8 day of July, 2016.

Respectfully submitted,

FLOYD, PFLUEGER & RINGER, P.S.

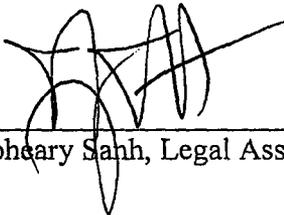
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CERTIFICATE OF SERVICE

I, Sopheary Sanh, hereby certify that I filed the foregoing with the Supreme Court of the State of Washington, and served same upon the following counsel of record via U.S. mail, email and/or legal messenger below:

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DATED this 8th day of July, 2016 at Seattle, Washington.



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Case Name: ESTATE OF VIRGIL VICTOR BECKER, JR., Petitioner, v. FORWARD TECHNOLOGY INDUSTRIES, INC., Respondent.	Cause No. 92972-6 Attorney for: Respondent FORWARD TECHNOLOGY INDUSTRIES, INC
Attorney: Francis S. Floyd, WSBA No. 10642 ffloyd@floyd-ringer.com Amber L. Pearce, WSBA No. 31626 apearce@floyd-ringer.com John S. Safarli, WSBA No. 44056 jsafarli@floyd-ringer.com	Document: 1. Notice of Withdrawal and Substitution of Counsel; and 2. Respondent's Answer to Petitioner's Motion for Leave to File a Supplement to the Petition for Discretionary Review

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