FILED
SUPREME COURT
STATE OF WASHINGTON
6/19/2019 3:45 PM
BY SUSAN L. CARLSON
CLERK

NO. 97228-1

THE SUPREME COURT
OF THE STATE OF WASHINGTON

PAUL HAMAKER, individually and as a putative class representative, and JOSEPHINE HAMAKER, individually and as a class representative,

Respondents,

vs.

HIGHLINE MEDICAL CENTER, a Washington non-profit corporation,

Petitioner,

REBECCA A. ROHLKE, individually, on behalf of the marital community and as agent of non-party Hunter Donaldson; JOHN DOE ROHLKE, on behalf of the marital community; RALPH WADSWORTH, individually, on behalf of the marital community, and as agent of non-party Hunter Donaldson, JANE DOE WADSWORTH, on behalf of the marital community; TIM CARDA, individually, on behalf of the marital community, and as agent of non-party Hunter Donaldson, JANE DOE CARDA, on behalf of the marital community; GRACIELA PULIDO, individually, on behalf of the marital community and as agent of non-party Hunter Donaldson, JOHN DOE PULIDO, on behalf of the marital community, KIMBERLY WADSWORTH, individually, on behalf of the marital community and as agent of non-party Hunter Donaldson, and JOHN DOE WADSWORTH, on behalf of the marital community,

Defendants

ANSWER TO HIGHLINE MEDICAL CENTER'S PETITION FOR REVIEW

Darrell L. Cochran, WSBA No. 22851
Christopher E. Love, WSBA No. 42832
Loren A. Cochran, WSBA No. 32773
Counsel for Respondent

PFAU COCHRAN VERTETIS
AMALA, PLLC
911 Pacific Avenue, Suite 200
Tacoma, Washington 98402
(253) 777-0799

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I. IDENTITY OF RESPONDENT

Paul and Josephine Hamaker ask this Court to deny review of Division One of the Court of Appeals' unpublished opinion *Hamker v. Highline Med. Ctr.*, No. 77578-2-I, 2019 WL 1370438, at *1 (Wash. Ct. App. Mar. 25, 2019).

II. RESTATEMENT OF THE CASE

A. Background Facts

1. Highline contracted with Hunter Donaldson to work as its "authorized agent" in signing, notarizing, recording, and collecting on medical services liens against Highline's patients

On February 23, 2011, Hunter Donaldson contracted with Highline Medical Center ("Highline") to record and collect on medical services liens recorded on Highline's behalf against patients' claims or recoveries from third-party tortfeasors responsible for the patients' injuries. CP 1457-65.

Consistent with the contract's provisions, Hunter Donaldson signed and recorded each and every lien at issue in this lawsuit as "HUNTER DONALDSON, LLC, as ***agent for Claimant***." *See* CP 200, 202, 204, 206, 1525, 1527, 1529, 1531. Additionally, Hunter Donaldson identified itself in communications with the Hamakers and other patients as "the authorized agent of **Highline Medical Center,**" and represented that Highline "claims a lien on any damages that the patient named above may recover"; that "[o]ur lien was duly executed and recorded"; and that "[i]t is your legal obligation to ensure that this lien is paid." CP 1557, 1559 (emphasis in original); *see also* CP 1561, 1563 (emphasis in original)

(Hunter Donaldson identifying itself as "the duly authorized recovery agent for **Highline Medical Center**").

According to Highline's former director of patient financial services, where a patient had "private" (commercial) insurance, Highline should "always bill the private insurance" before recording a lien in order to comply with commercial insurers' timely filing requirements for submitting claims. CP at 1605-06. Accordingly, when Highline marked an account as "self-pay," Highline normally attempted to discover whether the patient had insurance. *Id.* However, in practice, when patients' injuries arose from a motor vehicle accident their accounts were "automatically transferred to [Hunter Donaldson] . . . for processing and management" due to an internal code used by Highline. CP 624. And after Highline assigned patient accounts to Hunter Donaldson, no efforts were made to obtain the patient's health insurance information or actually bill health insurance. CP at 1609 (Hunter Donaldson information form sent to the Hamakers requesting tortfeasors' insurance information but not the Hamakers' insurance information); CP at 1484-486 ("Third Party Liability (TPL) Process Flow" chart indicating that accounts with Hunter Donaldson subject to a "TPL hold" where insurance not billed); 1550-551 (patients' commercial and governmental insurance not billed because accounts had been assigned to Hunter Donaldson, and Highline attempted to bill such insurance only after removing the accounts from Hunter Donaldson's inventory).

On June 5, 2013, Hunter Donaldson informed Highline of potential

issues regarding the validity of the medical services liens on Highline's behalf. CP 836-39. Ultimately, on June 20 and June 23, 2014, Highline ordered Hunter Donaldson to stop recording liens against patients without Highline's approval, to release any and all liens Highline "deem[ed] appropriate," and to cease collections efforts on liens. CP 1514, 1517.

2. Highline recorded and collected on invalid, unlawful medical services liens against the Hamakers

On May 30, 2012, the Hamakers received emergency medical treatment from Highline in connection with injuries suffered in an automobile collision with a third party. CP 1525, 1527. They possessed commercial health insurance— United Healthcare/UMR—through their employer at the time of treatment. CP 625, 1565-66, 1573. However, because they expected to be reimbursed by the third party responsible for the accident, the Hamakers paid their respective bills from Highline at the time—$542.85 each—on their own. CP 1574-75, 1591, 1601-02.[1] Additionally, on the same day Highline charged each of the Hamakers' accounts an additional $833. CP 627-28.

On July 2, 2012, Hunter Donaldson, on Highline's behalf, recorded medical services liens against the Hamakers' right of recovery from the

[1] Highline's contention that the Court of Appeals mistakenly relied on this $542.85 amount as a basis for its holding because these amounts were charged by a different entity—"Highline Emergency Physicians, PLLC"—than Highline grossly mischaracterizes the Court of Appeals' opinion. Petition at 3, 4, The opinion clearly distinguished between these "physician services" charges and subsequent "facility charges" totaling $1660 charged to the Hamakers' accounts by Highline. Slip Op. at 3, 5. And the Court of Appeals relied only on the amounts the Hamakers paid toward the $1660 "facility charges"—totaling $1110.72—as the basis for its holding regarding injury suffered by the Hamakers. *Id.* at 5, 7, 10-12. Thus, Highline's references to a distinction between the two types of charges is a complete red herring.

third-party tortfeasor responsible for their traumatic injuries with the King County Auditor's Office. CP 1525, 1527. The liens were notarized by a Hunter Donaldson corporate officer, Rebecca Rohlke, and signed by Hunter Donaldson's Chief Executive Officer, Ralph Wadsworth, as "HUNTER DONALDSON, LLC, as agent for Claimant." CP 98, 1525, 1527. In turn, Rohlke's notary jurat certified that Wadsworth had personally appeared before her in King County, was sworn in, and had subscribed the lien. CP 1525, 1527.

However, all of these representations were false, as Rohlke had always resided in California despite misrepresenting Washington State residency to obtain a notary license; Rohlke actually notarized the liens in California; and Hunter Donaldson used an automatically-generated copy of Wadsworth's signature on the lien in lieu of Wadsworth actually appearing and signing. CP 45-52, 57-62, 179-181, 298-301, 303-05, 307-08, 312, 328-29, 334-37, 343, 345-46, 360-61, 364, 366. Additionally, all the liens were signed by Wadsworth or other Hunter Donaldson employees, as opposed to Highline, the statutorily-authorized claimant under chapter 60.44 RCW.[2] *See* CP 202, 204, 206, 208.

Subsequently in July or August 2012, after Highline recorded its liens against the Hamakers, Hunter Donaldson called Mr. Hamaker, stated that it was calling on behalf of Highline, and informed him that Highline

[2] Before the trial court, the Hamakers alleged that any and all of these defects rendered the liens invalid. CP 46-52, 57-63. Likewise, the Hamakers' motion for partial summary judgment before the trial court argued that each of these defects rendered the liens invalid because they failed to comply with RCW 60.44.020's requirements for liens. CP at 53-61.

had recorded a "lien." CP 1569-70, 1572, 1582-83, 1585, 1594. Hunter Donaldson did not tell Mr. Hamaker that the lien was against his third-party recovery, causing Mr. Hamaker to believe that the lien was against his real property. CP 1585-86, 1593. When Mr. Hamaker contacted Highline to question why a lien had been recorded against himself and Mrs. Hamaker despite having paid their bill, he was informed that they had paid a "physician's fee" but still owed a "facility fee." CP 1137, 1582-84.

In an April 29, 2014 letter to the Hamakers' personal injury attorney, Hunter Donaldson identified itself as "the authorized agent of Highline Medical Center," represented that Highline "claim[ed] a lien on any damages that [the Hamakers] might recover," and claimed that ***"[o]ur lien was duly executed and recorded***" and that "[i]t is ***your legal obligation*** to ensure that this lien is paid." CP 1557, 1559 (emphases added). The letter requested that the Hamakers "issue a separate, single-party check" for the final lien amount. *Id.*

In a subsequent June 26, 2014 letter, Hunter Donaldson identified itself as "the duly authorized recovery agent for Highline Medical Center" and that it was "withdrawing" the liens. CP 1561, 1563. However, Highline did not record actual lien releases—as opposed to merely sending these advisory "withdrawal" letters—for the Hamakers with the county auditor. CP 1452, 1610-11 (search results from the King County Auditor's Office's website stating that Highline did not record lien releases for the Hamakers until July 12, 2017).

Subsequently, Highline sent the Hamakers bills dated August 29, 2014, for $833 each and stating that their accounts were "past due." CP 1613, 1615. After receiving the bills, Mr. Hamaker contacted Highline to request that the amounts be billed to their commercial health insurance; Highline attempted to bill these amounts to UMR, but UMR denied the claims as untimely. CP 625, 1578.[3]

In 2015, the Hamakers settled their personal injury case for $16,343.43. CP 1617. At the time, their knowledge was that Highline had billed them each for $833; had recorded multiple liens against them without recording a corresponding release; and had sent them correspondence stating that it was their "legal obligation" to ensure that the liens were paid. CP 872-73, 1557, 1559.[4] Accordingly, the Hamakers (correctly) believed that Highline's liens had not been released and directed their personal injury attorney to pay "$1110.72".[5] to Highline. CP 872-73, 1596, 1598-99, 1617. Highline has never refunded these payments to the Hamakers. CP 872-73, 1591.

B. Procedural History

On February 4, 2016, the Hamakers filed their putative class action complaint, alleging five claims against Highline: (1) declaratory and

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[3] UMR did pay medical bills related to the Hamakers' automobile accident when timely submitted by other healthcare providers. CP 1565-66.

[4] In support of its motion for summary judgment, Highline submitted a declaration for an employee claiming that it had "written off" these charges to the Hamakers. CP 622, 654. However, Highline never informed the Hamakers that these charges allegedly had been written off. CP 872-73.

[5] This amount was less than the total $1666 billed by Highline to the Hamakers because their personal injury attorney was "reducing [Highline's] fees pursuant to Mahler." CP 1617.

injunctive relief; (2) violations of the CPA; (3) negligence; (4) fraud; and (5) unjust enrichment. CP 20-23, 25-29. All claims were predicated on Highline's medical services liens and Highline's lien practices. CP 11-14, 20-29.

On August 4, 2017, Highline moved for summary judgment; on the same date, the Hamakers also moved for class certification and filed two cross-motions (1) for partial summary judgment on the issue of the invalidity of the liens filed against the Hamakers and putative class members and (2) seeking a declaratory judgment declaring the liens unenforceable due to the passage of time and ordering Highline to pay the costs of recording lien releases. CP 44-64, 186-194, 246-278, 588-617.

Highline contended that summary judgment in its favor was warranted because: (1) the Hamakers "lack[ed] standing to challenge the validity of the notices of claim"; (2) the Hamakers could not "present a genuine issue of material fact on the essential element of damages"; and (3) Highline was "not liable for acts of independent contractor, [Hunter Donaldson]." CP 599-605; Slip Op. at 6.

On October 17, 2017, the trial court entered its summary judgment order dismissing the Hamakers' claims and orders denying the Hamakers' own pending motions for class certification and cross motions for summary judgment, all on the basis that the Hamakers lacked standing. CP 1760-1770; Slip Op. at 6.

C. The Court of Appeals' Opinion

On March 25, 2018, the Court of Appeals issued an opinion

reversing the trial court's orders granting summary judgment in favor of Highline and denying the Hamakers' motions for summary judgment, declaratory relief, and class certification, holding that the record viewed in the light most favorable to the Hamakers raised genuine issues of material fact regarding injuries sufficient for standing to assert the Hamakers' claims. Slip Op. at 2, 11, 13. Regarding their non-CPA claims, the Court of Appeals concluded that the evidence viewed in the light most favorable to the Hamakers created "a genuine issue of material fact as to whether the Hamakers suffered an injury as a result of the alleged wrongful conduct" because:

> Highline maintained a practice of billing a patient's carrier when the patient had private health insurance. In the absence of a patient's health insurance information, Highline would mark the account as a "self-pay" account and send the patient a letter requesting insurance information.
>
> Here, the Hamakers' account was marked as "self-pay" after they did not provide their health insurance information to Highline. The account was then transferred to HD because Highline's code indicated the injuries arose from a motor vehicle accident. Instead of requesting health insurance information from the Hamakers when the bill for the facility fees arose, Highline immediately recorded medical liens. The Hamakers did not know they owed facility fees until they received the notice of the liens.
>
> Neither Highline nor HD ever asked the Hamakers if they wanted the facility fees to be paid by their health insurer. Although the Hamakers used their credit card to pay the physician fees, they did not know of the facility fee at that time. Moreover, while the Hamakers originally chose to pay the physician fees out of pocket, they sent several other medical bills stemming from the accident to their insurer. Accordingly, filing the lien without first

> notifying the Hamakers that they owed money forced them to pay Highline out of their settlement. Thus, HD's decision to file a medical lien before informing the Hamakers of the facility fees deprived them of the choice to have their health insurer pay for the fees.

Slip Op. at 11.

Regarding the Hamakers' CPA claims, the Court of Appeals observed that "[w]hen the claimed injury is the payment of money, 'the issue is whether the plaintiff was wrongfully induced to pay money on a debt not owed or to incur expenses that would not otherwise have been incurred." Slip Op. at 12 (quoting *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 62, 204 P.3d 885 (2009). It then reasoned that, viewing the evidence in the light most favorable to the Hamakers:

> HD's lien practices caused them to pay for certain medical bills out of their settlement instead of having their insurance pay for them. Thus, when viewing the evidence in the light most favorable to the Hamakers, they demonstrated they incurred costs they otherwise would not have.

Slip Op. at 12-13. Accordingly, it held that the evidence raised "a genuine issue as to whether the Hamakers suffered an injury under the CPA."[6] *Id.* at 13.

III. ARGUMENT

A. Review is Unwarranted Under RAP 13.4(b)(1) and (b)(2) because Highline Fails to Demonstrate a Conflict With Previous Washington Appellate Decisions

[6] The Court of Appeals also noted that because it "determined the Hamakers' payment to Highline constituted an injury under the CPA" it did not reach "their other theories of injury." Slip Op. at 13 n. 10.

1. The Court of Appeals' holding that the evidence created a genuine issue of material fact regarding the existence of a CPA injury is completely consistent with this Court's opinion in *Panag*

Highline contends that the Court of Appeals' holding that the evidence raised genuine issues of material fact regarding the existence of a CPA "injury" in this case is inconsistent with this Court's decision in *Panag*. It specifically contends that *Panag* held that a plaintiff fails to establish a CPA injury where the evidence demonstrates "payment of less than a valid debt," Petition at 14, and the evidence demonstrated that the Hamakers "owed a valid debt of $1,666 to Highline" and "paid less than that valid debt." *Id.* at 13. But Highline mischaracterizes both the record and *Panag*.

First, Highline misrepresents the record when it asserts that Appellants ***owed*** a "valid debt." At the time the Hamakers paid this amount to Highline, Highline had already "written off" all remaining amounts billed to them. CP at 625. Because Highline never informed them of this fact and because Highline still had liens publicly recorded against them, however, they paid money to Highline. CP at 873.

Moreover, even assuming *arguendo* that the Hamakers still owed a "valid debt" to Highline when they submitted this payment, neither *Panag* nor *Flores v. Rawlings Co., LLC.*, 117 Haw. 153, 169, 177 P.3d 341 (2008) —discussed with approval by *Panag*—supports Highline's proposition that "payment of less than a valid debt" cannot constitute a CPA injury. Indeed, in discussing *Flores*, *Panag* expressly ***rejected*** arguments identical to Highline's:

> Farmers reads *Flores* as holding a CPA claimant does not suffer legally cognizable injury unless he or she is induced to pay more than what is actually owed. As in *Indoor Billboard,* however, the decision cannot be read so broadly. *Flores* does not hold that remanding payment in response to an improper collection notice is a necessary precondition to establish injury. ***Nor does it hold that injury cannot be established if the plaintiff actually owes more than the amount paid***.

Panag, 166 Wn.2d at 61 (emphasis added). Further contrary to Highline's mischaracterizations, this Court subsequently characterized *Panag* as holding that "a CPA plaintiff can establish injury based on unlawful debt collection practices even where there is no dispute as to the validity of the underlying debt." *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 431, 334 P.3d 529 (2014) (citing *Panag*, 166 Wn.2d at 55-56 & n.13). As the Court of Appeals correctly observed in its opinion, evidence a CPA injury exists where the plaintiff has "'incur[red] expenses that would not otherwise have been incurred.'" *Panag*, 166 Wn.2d at 62 (internal quotation marks omitted) (quoting *Flores*, 177 P.3d at 358).

Here, as observed by the Court of Appeals, the evidence viewed in the light most favorable to the Hamakers established that: (1) their commercial health insurance paid other medical bills related to their accident when submitted (CP 1565-66); (2) Highline's policy was that it should always bill a patient's commercial health insurance before recording a lien to comply with timely claim submission requirements (CP 1605-06); (3) Highline normally attempted to obtain insurance information from accounts it marked as "self-pay" (CP 1606); (4) Highline's practice

was to not attempt to obtain health insurance information or bill health insurance when assigning patient accounts to Hunter Donaldson for lien recording and collection attempts (CP 1484-86, 1550-51, 1609); (5) the Hamakers' patient account was "automatically transferred to [Hunter Donaldson] . . . for processing and management" due to an internal code Highline used that indicated their injuries arose from a motor vehicle accident (CP 624); (6) Highline never requested health insurance information from the Hamakers or asked them if they wanted insurance to pay the facility charges before filing liens against them (CP 873); (7) Highline represented to the Hamakers that it was their "***legal obligation*** to ensure that" the liens were paid and requested payment on them (CP 1557, 1559 (emphases added)); (8) after Mr. Hamaker learned of a remaining balance through a direct billing by Highline, he requested Highline bill his insurance (CP 625, 873, 1578, 1613, 1615); (9) his insurance rejected payment of those bills as untimely once finally submitted by Highline (CP 625, 1578); and (10) the Hamakers directed their personal injury attorney to pay the liens because they observed liens were still recorded against them and Highline had represented it was their obligation to pay. CP 872-73, 1596, 1598-99, 1617.

Thus, entirely consistent with *Panag*, the Court of Appeals correctly held that the evidence raised genuine issues of material fact as to whether the Hamakers incurred "expenses that would not otherwise have been incurred," a CPA injury. *Accord Panag*, 166 Wn.2d at 62 (internal quotation marks omitted).

2. Highline failed to preserve for review challenges to the "unfair or deceptive practice" element of the Hamakers' CPA claim

As it did before the Court of Appeals, Highline attempts to divert this Court from the actual issue at hand—the existence of a material issue of fact regarding the Hamakers' CPA injury—by arguing that the Court of Appeals' opinion conflicts with *Panag* because the evidence failed to demonstrate an "unfair or deceptive practice" that "induced the Hamakers to incur expenses that would not otherwise have been incurred." Petition at 13.

But the existence of an "unfair or deceptive act or practice" and "injury" are ***separate*** elements of a CPA claim. *Panag*, 166 Wn.2d at 37. And Highline did not move for summary judgment on the former element. Slip Op. at 6. This Court does not consider non-constitutional issues raised for the first time on appeal. RAP 2.5(a). This is particularly true in the summary judgment context. RAP 9.12; *Silverhawk, LLC v. KeyBank Nat. Ass'n*, 165 Wn. App. 258, 265, 268 P.3d 958, 962 (2011) (citing RAP 9.12 and refusing in summary judgment context to consider argument raised for first time on appeal).

Even if the Court addressed Highline's argument, though, the Hamakers did assert an "unfair or deceptive act or practice": Highline's lien practices of (1) representing to the Hamakers that the liens were "duly executed and recorded" when they contained multiple defects rendering them invalid, (2) representing that it was the Hamakers' "legal obligation to ensure" that these invalid liens were paid; and (3) recording these liens

for the facility charges without attempting to discover whether the Hamakers had commercial insurance or asking them if they wanted to bill those charges to their insurance. Whether those practices meet the "unfair or deceptive act or practice" element ***as a matter of law*** is not an issue properly decided for the first time on appeal.

Likewise, by continually arguing that the evidence failed to demonstrate a genuine issue material of fact regarding whether Highline's unfair or deceptive acts or practices "induced' the Hamakers to pay or was "casually related" to Highline's actions, Highline attempts to inject causation issues into this appeal regarding "injury." But "causation" is also a CPA element separate from injury. *Panag*, 166 Wn.2d at 37. And Highline also failed to move for summary judgment on this ground. Accordingly, because Highline raises issues of causation under the CPA for the first time on appeal, its arguments are not properly before this court.[7] RAP 2.5(a); RAP 9.12; *Silverhawk, LLC*, 165 Wn. App. at 265.

Even if this Court considered Highline's causation arguments, though, the Hamakers' theory of the case is that that they were injured by Highline's unfair or deceptive practices of recording, asserting as valid and demanding payment on liens that they contend were invalid due to violating RCW 60.44.020's requirements. Moreover, as recognized by the Court of Appeals, Highline's practice of recording and pursuing payment

[7] Although Highline made passing references to "causal links" before the trial court, these were insufficient to meet its burden to raise the issue on summary judgment and preserve it for appeal. *Admasu v. Port of Seattle*, 185 Wn. App. 23, 40, 340 P.3d 873 (2014) ("passing reference" to an issue inadequately raised it for purposes of summary judgment).

on these liens without asking the Hamakers whether they wanted to pay with their insurance was casually related to their injury—their payment to Highline out of their settlement funds instead of their insurance paying for them. Slip Op. at 12-13. Accordingly, even if this Court reached the causation issue, the Court of Appeals' opinion remains entirely consistent with *Panag* and Washington's well-established body of CPA precedent.

3. The Court of Appeals' holding that the evidence created a genuine issue of material fact regarding the existence of injury supporting the Hamakers' standing to assert their non-CPA claims is consistent with this Court's precedent

Highline further argues that the Court of Appeals' holding that the Hamakers demonstrated an "injury" sufficient to assert their their unjust enrichment claim conflicts with *Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 166, 776 P.3d 681 (1989) and *Hawkinson v. Coniff*, 53 Wn.2d 454, 458, 334 P.3d 540 (1959). Specifically, it argues that the Hamakers' "voluntar[y]" payment precludes an unjust enrichment claim under both cases. But neither case supports this proposition.

In *Lynch*, the issue was whether a personal injury attorney was entitled to attorney fees from a hospital under an unjust enrichment theory by convincing his client's insurer to pay the hospital for his client's charges incurred there. 113 Wn.2d at 163-64. On review, the *Lynch* court observed that unjust enrichment occurs only where "money or property has been placed in a party's possession such that in equity and good conscience the party should not retain it." *Id.* at 166. *Lynch* concluded that because the hospital simply had received money owed by the

attorney's client, those circumstances did not demonstrate an "unjust" retention of money requiring it to pay the attorney his fees. *Id.*

Unlike the circumstances in *Lynch*, the circumstances in this case are not as simple as "Highline received money owed by the Hamakers." As the Court of Appeals correctly recognized the evidence in this case viewed most favorably to the Hamakers demonstrates that Highline could have gotten paid by the Hamakers' insurance instead of from their personal injury settlement had Highline bothered to ask first before filing and demanding payment on its liens. Accordingly, the Court of Appeals' holding that the evidence demonstrated an injury supporting the Hamakers' unjust enrichment claim is consistent with *Lynch*.

Furthermore, Highline did not raise *Hawkinson* or the rule it embodies—the "voluntary payment doctrine"—before the trial court or the Court of Appeals. *See Davenport v. Washington Educ. Ass'n*, 147 Wn. App. 704, 736, 197 P.3d 686 (2008) (describing *Hawkinson*'s rule as the "voluntary payment doctrine"). This Court does not consider issues or arguments raised for the first time in a petition for review. RAP 2.5(a); *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252, 961 P.2d 350 (1998). And even if it did, the evidence viewed most favorably to the Hamakers demonstrates that the payments were not voluntary; rather, Highline recorded liens against the Hamakers, informed them that it was their "legal obligation" to ensure the liens were paid out of their settlement funds, and further billed them for these charges. Accordingly, the Court of Appeals' opinion is consistent with *Hawkinson*.

Finally, Highline contends that it was "entitled to dismissal" of the Hamakers' fraud and negligence claims given "the lack of any evidence" of "any knowing and materially false statements by Highline" or "any violation of any duty." Petition at 15-16. But once again, Highline failed to move for summary judgment on these grounds before the trial court, failing to preserve these issues for appeal. Moreover, Highline's "arguments" are merely conclusory, and this Court does not consider conclusory arguments. RAP 10.3(a)(6), .4; *see also* RAP 13.4(e). "Such '[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.'" *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012) (quoting *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)).

4. <u>The Court of Appeals' opinion did not "ignore" "well-settled law applicable to the debtor-creditor relationship between the Hamakers and Highline Medical Center"</u>

Next, Highline engages in a puzzling, lengthy *non-sequitur* regarding its "options" under Washington law such as not pursuing payment at all or pursuing payment directly from the Hamakers. Petition at 16-17. It then veers backs into discussing numerous issues not properly before the appellate courts, such as whether Highline committed an "unfair or deceptive" act, as well as numerous conclusory statements that its liens contained only "technical deficiencies" and that "Highline did not violate the CPA or any other statute, regulation, contract, or common law rule" with respect to the Hamakers. Petition at 17.

Highline then arrives back at something at least approaching

relevance to this appeal: the unremarkable proposition that chapter 60.44 RCW allows medical providers to record and pursue payment on liens. Petition at 18. However, it immediately veers back into conclusory, unsupported arguments such as "[t]hat statute does not suggest that a medical provider with a right to claim a lien has any duty to seek payment directly from the patient before or after asserting a lien claim" and "[n]othing in the statute suggests that a medical provider can be liable for a CPA violation or any other 'wrongdoing' by simply filing a notice of claim that facially complies with the requirements of former RCW 60.44.020." *Id.*

Notably, even if the Court considered these conclusory arguments, they utterly fail to identify what "well-established" ***Washington appellate decisions*** conflict with the Court of Appeals' opinion in this case or how they do so, as required for review under RAP 13.4(b)(1) or (b)(2). And even if the Court ignored this fatal flaw in the petition, Highline's argument is premised on the mischaracterization that the Court of Appeals held that it can be legally liable for "simply filing" liens against the Hamakers. As repeatedly discussed above, the Court of Appeals based its holdings on Highline's full course of conduct surrounding its lien practices depriving the Hamakers of an opportunity to pay their charges through insurances rather than out of their settlement funds.

Finally, Highline claims that "in light of" general principles of insurers' subrogation rights under Washington law, "the injury embraced by the Court of Appeals is illusory." *Id.* But the generalized precedent

Highline cites does not hold that an insurer's potential subrogation interest in any way precludes a showing of "injury" under the CPA or the Hamakers' common law causes of action. Further, Highline merely speculates that the Hamakers' insurer would have asserted a subrogation claim against their settlement funds had the insurer paid Highline and whether the insurer would have collected the same amount from the Hamakers as the Hamakers paid to Highline. Because parties may not rely on speculation unsupported by the evidence in summary judgment proceedings, the Court of Appeals' opinion did not improperly ignore Highline's speculative arguments regarding subrogation. *See Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

B. The Court of Appeals' Opinion Does Not Involve An Issue of Substantial Public Interest

Finally, Highline claims that review is warranted under RAP 13.4(b)(4) because the Court of Appeals' opinion involves an issue of substantial public interest. However, it immediately returns to its conclusory arguments about errors in the Court of Appeals' opinion, including supposed errors regarding the operation of chapter 60.44 RCW, as well as causation arguments not properly preserved before the trial court. And it once again utterly mischaracterizes the Court of Appeals' opinion as holding that "Highline's mere filing of notices of claim could expose Highline to cognizable claims." Petition at 19. In fact, it only arrives at a supposed public interest impact in the petition's conclusion,

stating in a throwaway line that the Court of Appeals' opinion will "invite additional litigation against medical professionals." Petition at 20. But not only is Highline's conclusion completely speculative and unsupported, it actually is belied by the record in this case because Highline itself has ceased utilizing medical services liens. Accordingly, Highline has failed to demonstrate that review is warranted under RAP 13.4(b)(4).

IV. CONCLUSION

For the foregoing reasons, the Hamakers respectfully ask this court to deny review of the Court of Appeals' opinion in this case.

RESPECTFULLY SUBMITTED this 19th day of June 2019.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: /s/ Darrell L. Cochran
Darrell L. Cochran, WSBA No. 22851
Christopher E. Love, WSBA No. 42832
Loren A. Cochran, WSBA No. 32773

PFAU COCHRAN VERTETIS AMALA, PLLC
911 Pacific Avenue, Suite 200
Tacoma, Washington 98402
(253) 777-0799

CERTIFICATE OF SERVICE

Sarah Awes, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on June 19, 2019, I delivered via Email a true and correct copy of the above document, directed to:

Jake Winfrey
Todd Reichert
Jennifer Koh
FAVROS LAW
701 5th Ave, Ste. 4750
Seattle, WA 98104

DATED this 19th day of June 2019.

/s/ Sarah Awes_____________
Sarah Awes
Legal Assistant

PCVA LAW

June 19, 2019 - 3:45 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97228-1
Appellate Court Case Title:	Paul Hamaker and Josephine Hamaker v. Highline Medical Center
Superior Court Case Number:	16-2-02870-5

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