Claude's analysis of the petition in *Appvion*

No.

There is a real legal question buried in here, but this petition is a poor vehicle for it and the petitioner has done a poor job of presenting it.

What's genuinely good in the petition

The strongest point — and it deserves more than the footnote the court of appeals gave it — is that PwC addressed its opinion letters "To the Shareholder and Board of Directors of Paperweight Development Corp.," and the ESOP *was* the sole shareholder. Holding as a matter of law on a Rule 802.06(2) motion that an auditor could not reasonably foresee reliance by the entity it named as an addressee is a striking proposition, and ¶ 28 n.9 is thin treatment of it.

The second decent point is doctrinal drift. *Citizens State Bank* expressly declined to adopt Restatement § 552's limitation to a known, limited class and instead routed accountant liability through ordinary Wisconsin negligence principles. *Krier* ¶ 43 then described the "triangular relationship" in *Citizens* and *Chevron* as illustrating "the kind of foreseeable reliance" that can support third-party liability. That is descriptive language. Here the circuit court converted it into a prerequisite ("the parties needed to be in a 'triangular relationship'"), and the court of appeals said it could not "remove the requirement of a triangular relationship from the case law." An illustration hardening into an element is exactly the sort of thing worth correcting, and it will recur.

Why that isn't enough

The question presented is misframed, and the misframing matters. The petition asks whether it is foreseeable that a sole shareholder will rely on audit letters addressed to it — full stop. The actual holding was that PwC could not foreseeably anticipate reliance *to assess the fairness of a share price the ESOP's own trustee and independent appraiser had already set*. PwC's § 809.62(3)(c) objection lands. A court that granted on the petition's question would find, at argument, that the case is about something narrower. Petitioner never squarely engages the holding; footnote 6's "other advisors shouldn't matter at the pleading stage" is the closest it comes, and that's an assertion rather than an argument.

The facts do a lot of the work, which is the hallmark of a law-application case rather than a law-development case. Three allegations from the ESOP's own complaint and incorporated federal pleading carry the result: the trustee set each semiannual price in reliance on an independent appraiser it commissioned; the audited financials themselves attributed the redeemable-stock valuation to the trustee and its third-party appraiser, with PwC expressing no opinion on it; and the prices were set before each audit was completed. On those facts, the pleaded theory isn't classic reliance on a misrepresentation at all — it is "PwC should have audited our appraiser and blown the whistle." That's a duty-to-investigate-and-warn claim wearing reliance clothing, and it can be resolved without touching *Krier*'s boundaries.

The vehicle problems are severe. The court of appeals affirmed on the narrowest ground and left five alternative grounds untouched. At least two are substantial. The § 893.66(1) statute of repose runs six years from the act or omission; PwC's last opinion issued March 13, 2015, and suit was filed July 15, 2020, which appears to bar every audit year but the last. Causation is independently problematic given the temporal sequence. A grant would buy the court a doctrinal pronouncement followed by either a remand or a pile of issues briefed once, below, two years ago — and quite possibly the same judgment.

The decision is a per curiam and cannot be cited even for persuasive value. PwC overplays this (non-citability is a reason the decision is harmless, not a reason the underlying confusion doesn't exist), but it does mean nothing is propagating into the reporters, there is no district split, and no published rule requires harmonizing.

The petition's affirmative theory proves too much. The argument that auditor, client, and any relying third party "always create a triangular relationship" would collapse the limitation entirely and make every auditor answerable to every investor. That is a request to adopt a new doctrine, not to harmonize existing ones — and it undercuts the claim that the court of appeals departed from settled law.

Finally, the petition never identifies which § 809.62(1r) criterion it invokes, as § 809.62(2)(c) requires. Substance beats form, and the "Brief Statement of Criteria" does gesture at (1r)(d) and statewide importance, so I wouldn't deny on that alone. But the omission is symptomatic: what the petition actually asks for is error correction of a fact-bound, non-precedential mandate, and *Cook v. Cook* is the right answer to that.

Where the response overreaches

Two things in PwC's brief should be discounted. The "the ESOP sold $248.5 million and bought $75.2 million, so it came out ahead" argument is a merits point that ignores which transactions produced which alleged losses and doesn't belong in a response to a petition. And the claim that the ESOP's failure to sue PwC federally proves non-reliance is inference, not pleading analysis. The brief is also generally more merits-heavy than a PFR response needs to be — though given how the petition was framed, that's a defensible tactical choice.

Bottom line

The *Krier*-as-element problem is worth fixing someday. Fix it in a case where a court has actually held that a triangular relationship is a required element, in a published opinion, where the holding is dispositive and no statute of repose is waiting in the wings. This isn't that case. Deny.