No. 1017812

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 83487-8

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LESLIE GORDON & FRED GORDON, individually and as wife and husband,

Respondents,

v.

PROVIDENCE HEALTH & SERVICES-WASHINGTON, d/b/a PROVIDENCE REGIONAL MEDICAL CENTER,

Appellant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In its unpublished opinion, Division One properly held that the trial court erred in finding Providence Health & Services-Washington d/b/a Providence Regional Medical Center ("Providence") liable as a matter of law for injuries its former employee Leslie Gordon suffered after slipping on ice in a parking garage at Providence. Viewing the evidence in the light most favorable to Providence as the nonmoving party on summary judgment, Division One correctly concluded that a reasonable jury could find that Providence satisfied its duty of care to Ms. Gordon as an invitee by promptly sending an employee to the garage to warn incoming drivers (including Ms. Gordon) of the icy conditions during the brief period of time before maintenance arrived with de-icer—all within an hour of Providence first learning of the dangerous condition.

Division One's holding merely reaffirms decades of Washington law holding that (a) the factfinder in a premises liability case must consider all of the evidence of the parties' actions when determining whether the landowner breached its duty to exercise reasonable care and (b) breach and proximate

cause in a negligence claim are nearly always inherently factual questions for the jury.

Citing no Washington authority supporting their novel interpretation of a comment to the Restatement (Second) of Torts, petitioners Leslie and Frank Gordon ("Petitioners") now ask this Court to hold that a landowner is negligent per se if the landowner learned of a dangerous condition on the land in time to warn an invitee of the danger and the invitee was subsequently injured by that dangerous condition. In other words, Petitioners seek to impose strict liability on landowners regardless of the reasonableness of the landowner's efforts to warn the invitee, the invitee's own contributory negligence, or any other actions the landowner took to safeguard the invitee and alleviate the situation. This Court has previously refused to make landowners the guarantor of an invitee's safety. Division One adhered to this Court's precedent by rejecting Petitioners' strained interpretation of a landowner's duty to an invitee. This Court should deny review of the Court of Appeals' decision.

II. RESTATEMENT OF ISSUE

The issue presented by the Court of Appeals' decision is

properly framed as:

Whether the Court of Appeals properly concluded that a jury must weigh conflicting evidence to determine whether Providence breached its duty to exercise reasonable care to Ms. Gordon as an invitee and proximately caused Ms. Gordon's injuries where there is evidence that (a) Providence sought to remove icy patches in its parking garage and warn incoming employees of the icy conditions within 15 to 30 minutes of learning of the danger, and (b) Ms. Gordon acknowledged Providence's warning prior to her fall?

III. RESTATEMENT OF THE FACTS

Providence incorporates the facts as set forth in its Opening Brief and Division One's February 6, 2023 unpublished opinion.

IV. ARGUMENT THAT REVIEW SHOULD BE DENIED

Petitioners fail to identify any grounds warranting review under RAP 13.4(b)(1), (2), or (4). Petitioners do not identify a single Washington case that conflicts with Division One's unpublished decision. Nor do Petitioners raise any issue of "substantial public interest" regarding the highly fact-specific

inquiry Division One conducted in considering whether factual issues preclude summary judgment. Instead, the Court of Appeals' decision merely reaffirms two basic, fundamental principles of Washington law: (1) breach and proximate cause in a negligence action are factual issues rarely appropriate for resolution on summary judgment and (2) a jury must consider the totality of the evidence in considering whether a defendant breached a duty to exercise reasonable care.

A. Petitioners fail to identify a single Washington case that conflicts with Division One's unpublished decision. (RAP 13.4(b)(1), (2))

This Court should deny review of Division One's unpublished decision because it does not conflict with any decision of this Court or any published decision of the Court of Appeals. RAP 13.4(b)(1), (2).

1. Division One's decision is consistent with well-settled Washington law, including *Tincani*, *Iwai*, and the Restatement.

Petitioners cannot credibly contend that Division One's unpublished decision conflicts with *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 875 P.2d 621 (1994), *Iwai v. State Employment Security Dep't*, 129 Wn.2d 84, 915 P.2d 1089

(1996), or the Restatement (Second) of Torts § 343 (1965) ("Restatement § 343"). Even a cursory glance at the appellate court's opinion reveals that Division One expressly *relied on* the Restatement, *Tincani*, *Iwai*, and their progeny in reaching its decision here. *See, e.g.*, Opinion 4 (citing *Tincani*), Opinion 5 (quoting *Tincani*), Opinion 5–6 (discussing and quoting Restatement § 343), Opinion 9 (citing *Iwai*), Opinion 10–11 (citing *Tincani*).

Division One correctly applied the Restatement standards governing a landowner's duty of care to an invitee that this Court approved in *Tincani* and *Iwai*:

> [A] landowner is subject to liability for harm caused to his tenants by a condition on the land, if the landowner (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to tenants; (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect the tenant against danger.

Opinion 5 (alteration in original) (quoting *Curtis v. Lein*, 169

Wn.2d 884, 890, 239 P.3d 1078 (2010)). *Curtis* relied on *Mucsi v. Graoch Assocs. Ltd. P'ship No. 12*, 144 Wn.2d 847, 855–56, 31 P.3d 684 (2001) in articulating this standard. *Mucsi*, in turn, cited Restatement § 343. In fact, the standard Division One identified is identical in all material respects to the language in Restatement § 343. *See also Iwai*, 129 Wn.2d at 96 (quoting Restatement § 343).

Expressly relying on *Tincani* and Restatement § 343, Division One further explained:

> In contrast to what a licensee may expect, an invitee 'is . . . entitled to expect that the possessor will exercise reasonable care to make the land safe for his [or her] entry'." *Tincani*, 124 Wn.2d at 138–39 (alterations in original) (quoting RESTATEMENT (SECOND) OF TORTS § 343 cmt. b). "Reasonable care requires the landowner to inspect for dangerous conditions, 'followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances.'" *Id*. at 139 (alteration in original) (quoting RESTATEMENT (SECOND) OF TORTS § 343 cmt. b).

Opinion at 5. *See also Iwai*, 129 Wn.2d at 96 ("[t]he phrase

'reasonable care' imposes on the landowner the duty to inspect for dangerous conditions, followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances") (internal quotation marks omitted) (quoting *Tincani*, 124 Wn.2d at 139 and Restatement § 343 cmt. b).

Division One then accurately summed up Petitioners' burden on their premises liability claim:

> "In short, '[t]o prevail, a plaintiff must prove (1) the landowner had actual or constructive notice of the danger, and (2) the landowner failed *within a reasonable time to exercise sensible care in alleviating the situation*."

Opinion at 6 (emphasis in original) (quoting *Mucsi,* 144 Wn.2d at 859) (citing *Geise v. Lee*, 84 Wn.2d 866, 871, 529 P.2d 1054 (1975))). As the Court of Appeals recognized, "[a] jury must determine whether the defendant was negligent . . . *in light of all the existing circumstances*." Opinion 10 (alterations and emphasis in original) (quoting *Maynard v. Sisters of Providence*, 72 Wn. App. 878, 884, 866 P.2d 1272 (1994)).

Taking the totality of the evidence and all reasonable inferences in Providence's favor, Division One correctly

concluded that summary judgment is inappropriate because a jury could find that Providence *had* exercised sensible care within a reasonable time. For instance, Providence had 15 to 30 minutes' notice before Ms. Gordon fell, during which time it "dispatched employees (a) to assess the situation, (b) to provide warnings as they were able, and (c) to put down rock salt or de-icer, which arrived contemporaneously with Gordon's fall." Opinion 7. It is, indeed, "a reasonable inference that [Travis] Wise's waving of his arms was meant to communicate some danger on the road ahead" and "a reasonable jury could conclude Gordon, in slowing down, understood that warning, however imperfect it may have been." Opinion 11. Based on this evidence, "it is for the jury to decide whether, given all the circumstances (including Gordon driving by), that handwaving was a reasonable attempt to warn Gordon, or in fact did warn Gordon, assuming as [the Court] must that Wise is correct that they 'made eye contact' and she understood the meaning of that motion." Opinion 11.

By concluding the jury, not the trial court should "consider whether all of Providence's actions, taken together, or in light of the totality of the evidence, were sensible," and "whether there

was sufficient time for Providence to do any more than it did," Division One's decision is consistent with a fundamental tenant of Washington law: breach and proximate cause are inherently factual inquiries for the jury to resolve *based on the totality of the evidence*. Opinion 10. *See, e.g.*, *Wuthrich v. King County*, 185 Wn.2d 19, 27, 366 P.3d 926 (2016) ("Whether the roadway was reasonably safe and whether it was reasonable for the County to take (or not take) any corrective actions are questions of fact that must be answered in light of the totality of the circumstances."); *Owen v. Burlington Northern & Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005) ("If the roadway is inherently dangerous or misleading, then the trier of fact must determine the adequacy of the corrective actions under all of the circumstances."); *Afoa v. Port of Seattle*, 176 Wn.2d 460, 469, 296 P.3d 800 (2013) (material issues of fact as to whether owner/operator of airport breached its duty to invitee precluded summary judgment); *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 668, 240 P.3d 162 (2010) (genuine issue of material fact exist as to whether defendant breached its duty to invitee), *rev. denied*, 171 Wn.2d 1012 (2011); *Bordynoski v. Bergner*, 97 Wn.2d 335, 341, 644 P.2d 1173 (1982) (agreeing

with the Court of Appeals that, "[c]onsidering the totality of circumstances and viewing the evidence most favorably to" plaintiff as the nonmoving party, trial court erred in directing a verdict that plaintiff was contributorily negligent as a matter of law); *Brady v. Whitewater Creek, Inc.*, 24 Wn. App. 2d 728, 521 P.3d 236, 249 (2022) (factual issues existed as to whether landlord breached its duty to tenant and whether landlord's alleged breach was the proximate cause of tenant's harm); *see also Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446, 451, 433 P.2d 446 (1967) ("What is a reasonably safe condition depends upon the nature of the business conducted and the circumstances surrounding the particular situation.") (cited in the Petition at 18).

2. *Geise* does not conflict with *Tincani*, *Iwai*, or the Restatement.

Petitioners attempt to manufacture a conflict under RAP 13.4(b)(1) and (2) by contending that Division One failed to "follow[] the clear standards of the Restatement" and instead "reached back to *Geise v. Lee*, 84 Wn.2d 866, 529 P.2d 1054 (1975), a pre-Restatement case," to improperly "frame the issue on appeal." Petition 8. Petitioners apparently take the position

that a landowner is not entitled to "reasonable time" in which to respond to a dangerous condition if the landowner had knowledge of the condition in time to warn the invitee. *See* Petition 9, 18–19. Division One wisely rejected Petitioners' strained interpretation of *Geise* and the Restatement for several reasons.

First, Petitioners' criticism of Division One's reliance on *Geise*, a "pre-Restatement" case, is puzzling given that the Court of Appeals was quoting *Mucsi*, not *Geise*. It is undisputed that *Mucsi* is a "post-Restatement" case. Regardless, *Geise* remains good law to this day—and Petitioners cite no authority suggesting otherwise.[1]

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[1] *Geise* was decided in 1975—a decade *after* the Restatement (Second) of Torts was published. Even if this Court did not expressly cite to or adopt Section 343 of the Restatement in *Geise*, "[m]ost appellate cases discussing the duties owed to invitees have recognized *Geise* as controlling for all landowners." *Iwai*, 129 Wn.2d at 92. Noting that *Ford v. Red Lion Inns*, 67 Wn. App. 766, 840 P.2d 198 (1992) "set forth Restatement (Second) of Torts §§ 343 & 343A (1965) as the appropriate tests for determining landowner liability to invitees," this Court discussed with approval "*Ford*'s well reasoned reading of *Geise*" and held that "[t]he reasoning in *Ford* is clearly consistent with *Geise*." *Iwai*, 129 Wn.2d at 93, 95. This Court harmonized *Geise*, *Ford,* and *Tincani* and expressly approved of the legal standard articulated in all three cases: "Taken together, *Geise, Ford,* and *Tincani* reject the natural accumulation rule and impose Restatement (Second) of Torts §§ 343 and 343A as the appropriate standards for determining landowner liability to invitees." *Iwai*, 129 Wn.2d at 95.

Second, *Mucsi*'s articulation of an invitee's burden on a premises liability claim *is a correct statement of the law*. As discussed above, it is well-settled in Washington that a jury must determine whether a defendant is negligent "in light of all the existing circumstances." *Maynard*, 72 Wn. App. at 884. *See also Tincani*, 124 Wn.2d at 139 (landowner's duty to exercise reasonable care requires repairs, safeguards, or other warnings "*as may be reasonably necessary for [the invitee's] protection under the circumstances*." (alteration in original, emphasis added) (quoting Restatement § 343 cmt. b).

As Division One noted, Petitioners cite no authority supporting their proposition that the timing or duration of the landowner's knowledge is irrelevant when evaluating breach or causation. Opinion 9. Nor could they. As the Restatement, *Tincani*, and *Iwai* all make clear, the duty to safeguard an invitee from a dangerous condition on the land arises *only* upon a landowner's actual or constructive knowledge of the danger. *See Iwai*, 129 Wn.2d at 96; *Tincani*, 124 Wn.2d at 138; Restatement § 343; Opinion 5–6. Therefore, in order to properly evaluate the reasonableness of a defendant's efforts to alleviate a dangerous condition, the jury must *necessarily* also evaluate the promptness

of Providence's actions.[2]

For instance, a reasonable jury could conclude that a landowner exercised reasonable care by sending an employee to flag incoming drivers and attempt to warn them of icy conditions within minutes of the landowner discovering the ice. A reasonable jury could also conclude that these same efforts were *not* sensible where the landowner was aware of the ice for six hours and could have taken additional measures to alleviate the situation. The only difference between these two verdicts is the *timeliness* of the defendant's actions upon learning of the ice.

Division One applied the correct legal standard in holding that a jury must consider whether Providence "fail[ed] to exercise reasonable care to protect [Ms. Gordon] against danger," *Curtis*, 169 Wn.2d at 890, or, stated another way, "failed within a reasonable time to exercise sensible care in alleviating the situation." *Mucsi*, 144 Wn.2d at 859. *See* Opinion 5–6, 10–11.

[2] Petitioners' fixation on Providence having "enough time to warn Ms. Gordon" is irrelevant. Petition 19. The factual issue is whether Providence's actions (*i.e.*, attempting to warn drivers while waiting for the de-icer to arrive) were reasonable *given the limited time that Providence had between learning of the icy conditions and Ms. Gordon's injury.*

3. Petitioners fail to cite any Washington case adopting their strict liability interpretation of a landowner's additional "duty to warn."

The Court of Appeals also prudently rejected Petitioners' strained interpretation of the Restatement that would impose an additional per se "duty to warn." Petitioners' proposed rule (1) has never been adopted by a Washington court, (2) would still result in the same correct decision that Division One reached here, and (3) would be contrary to public policy by making landowners the guarantors of an invitee's safety under a strict liability standard—a proposition that this Court has already expressly rejected. Review is therefore not warranted under RAP 13.4(b)(1), (2), or (4).

a. No Washington court has adopted Petitioners' strained interpretation of a comment to the Restatement (Second) of Torts § 343.

Petitioners propose an amorphous and illogical interpretation of comment b to the Restatement (Second) of Torts § 343 that no Washington court has ever adopted.

Ignoring all but a single sentence of comment b, Petitioners contend that landowners owe an invitee an "additional duty" to warn if a landowner cannot "exercise

reasonable affirmative care to see that the premises are safe for the reception of the visitor": in other words, unless the landowner can *guarantee* the invitee's safety on the premises, the landowner must *always* warn the invitee of any potential dangers. *See, e.g.,* Petition 7, 14. According to Petitioners, there are therefore only "three possible choices for a landowner who knows of a dangerous condition": "(1) repair the condition, (2) warn of the condition, or (3) both warn and repair, depending on the issues involved in each case." *See* Petition 6 (citing *Tincani*, 124 Wn.2d at 133 and *Iwai*, 129 Wn.2d at 96). This is incorrect.

First, none of the cases Petitioners cite "adopted" a requirement that a landowner owes an "additional duty" to warn an invitee in order to satisfy the duty of reasonable care. Petition 14. Besides generally citing to *Tincani* and *Iwai*,[3] Petitioners identify only two cases that purportedly support their position: *Wiltse v. Albertson's Inc.*, 116 Wn.2d 452, 805 P.2d 793 (1991) and *Jarr v. Seeco Constr. Co.*, 35 Wn. App. 324, 327, 666 P.2d 392 (1983). Petition 14. But *Wiltse* and *Jarr* do no more than

[3] *Tincani* and *Iwai* merely recite the definition of "reasonable care" contained in comment b to the Restatement § 343. Neither case quotes the language that Petitioners contend gives rise to an additional duty to warn.

quote Restatement § 343 and several of the comments thereto (including comment b). *See Wiltse*, 116 Wn.2d at 457 n. 3; *Jarr*, 35 Wn. App. at 326–37. Neither case even analyzes, let alone adopts, a landowner's "additional" duty to warn.

The issue in *Wiltse* was whether the plaintiff had the burden of proving the landowner had actual or constructive knowledge of the dangerous condition—an undisputed element here. *See* 116 Wn.2d at 453. *Jarr* is also inapposite. There, the Court considered whether the defendant was a possessor of the land and, if so, whether the duty of reasonable care extends only to protecting against foreseeable harms within the control of the possessor. *Jarr*, 35 Wn. App. at 329. Petitioners' reliance on *Jarr* is particularly misplaced because the Court in that case held that factual issues precluded summary judgment. *See* 35 Wn. App. at 330 ("the obviousness of the danger, the alleged contributor negligence of Jarr, and the reasonableness of Terrace's conduct at the open house are also questions of ultimate fact for the trier of fact").

Second, even if Washington courts have expressly adopted comment b, the comment only imposes upon the landowner the duty to "exercise *reasonable* affirmative care" to ensure the

premises are safe. *See also Jarr*, 35 Wn. App. at 329 (landowner owes invitee duty "to use reasonable care with respect to those dangerous conditions on the premises which posed an unreasonable risk of harm"). Taken in context with the rest of comment b, a landowner can exercise this reasonable care in a number of ways, including "such repair, *safeguards*, or warning as may be reasonably necessary for [the invitee's] protection *under the circumstances*." Restatement § 343 cmt. b (emphasis added). *See also Tincani*, 124 Wn.2d at 139 (same); *Iwai*, 129 Wn.2d at 96 (same).

In other words, both this Court and the Restatement recognize that a landowner may satisfy its duty "to exercise reasonable affirmative care" by taking actions other than repair or warning to "safeguard" the invitee. Division One wisely refused to "ignore the term 'safeguards,' which is broader than either just fixing or warning." [4] Opinion 11–12 (rejecting Petitioners' proposed interpretation of the law, which would disregard any "other actions the landowner took"). Simply put,

[4] By ignoring this language, it is Petitioners, not Division One, who "render[] a significant element of the Restatement nugatory." Petition 20.

Petitioners have failed to identify any Washington case limiting a landowner's duty "to either fixing the hazard and, if not, warning the invitee" of every single danger on the premises. Opinion 10.

4. Factual issues preclude summary judgment on the reasonableness of Providence's efforts to warn Ms. Gordon.

Even if, as Petitioners claim, it is "the law that if a landowner has actual knowledge of a dangerous condition on his or her land and chooses to warn an invitee of a dangerous condition, the warning must be sufficient under the negligence standards as described in cmt. b. of § 343 of the Restatement" (Petition 17), Petitioners fail to articulate how Division One's decision conflicts with either (a) Petitioners' interpretation of comment b *or* (b) any decision by this Court or the Court of Appeals.

It is undisputed that Providence *did* take steps to warn invitees of the ice. As Petitioners admit, the question then is whether that warning was "sufficient under the negligence standards" described in comment b. *See* Petition 17. Division One expressly considered this question and held that the

sufficiency of Providence's warning was a factual issue for the jury. *See* Opinion 11 (one of "several questions that a jury should consider on the merits" is "did Providence warn Gordon sufficiently"). Division One's decision is therefore consistent even with Petitioners' (erroneous) interpretation of the law.

Indeed, even disregarding the other actions Providence took, genuine factual issues exist regarding the sufficiency of Providence's warning. For instance, a jury must determine (1) whether Mr. Wise moving his arms and making eye contact with Ms. Gordon was a sufficient "signal for her to slow down" and notify her of the icy conditions; (2) whether Ms. Gordon actually made eye contact with Mr. Wise and saw him waving his arms; (3) whether Ms. Gordon nodded her head in acknowledgement of Mr. Wise's warning; (4) whether Ms. Gordon did slow her car down in response to Mr. Wise's warning of the icy conditions; and (5) whether Ms. Gordon unreasonably ignored Mr. Wise's warnings, the icy conditions in the garage, or was otherwise contributorily negligent. *See* Opinion 2, 11–12.

As addressed below, holding Providence liable as a matter of law under these disputed facts would be akin to adopting a strict liability standard where a landowner is negligent per se if

it "elects" to warn (*see* Petition 21) and an invitee is nevertheless injured. Division One adhered to well-established Washington premises liability law by rejecting such a rule and concluding that factual issues preclude summary judgment. Crucially, Division One's unpublished decision does not hold that Providence's warning would *always* be sufficient under any circumstances; the Court merely rejected Petitioners' position that Providence's warning to Ms. Gordon was insufficient *as a matter of law*. *See Charlton v. Toys R Us—Delaware, Inc.*, 158 Wn. App. 906, 915, 246 P.3d 199 (2010) ("But Ms. Charlton has it backwards—the trial court did not hold that water on a floor is *never* a dangerous condition; it rejected her position that a wet floor is *always* a dangerous condition, and that she was therefore excused from presenting evidence of an unreasonable risk created by this particular wet floor.") (emphasis in original) (cited in the Petition at 18).

5. Adopting Petitioners' proposed interpretation of the law would overturn this Court's prior holdings that a landowner is not a guarantor of an invitee's safety.

This Court should deny review of Division One's unpublished decision because adopting Petitioners'

interpretation would rewrite decades of Washington law to make landowners the guarantors of an invitee's safety, impose strict liability for an invitee's injury whenever a landowner "elects" the duty to warn and had "enough time to warn"; and create perverse incentives for landowners to take fewer steps to warn against dangerous conditions.

It is Petitioners' interpretation of the law, not Division One's unpublished decision, that creates an "unworkable quandary." Petition 14. While Petitioners articulate various iterations of their amorphous view of the law, the relevant inquiry under Petitioners' rule when a landowner elects the "duty to warn" boils down to: (1) whether the landowner had enough time to warn the invitee and (2) whether the invitee was nevertheless injured. If both elements are satisfied, the landowner is per se liable—regardless of how long the landowner knew of the dangerous condition or whether the landowner took any other actions to repair or safeguard. Under this standard, there will *never* be a factual dispute as to the reasonableness of the warning or the cause of the injury (including, for instance, the plaintiff's contributory negligence).

As Division One concluded, this is not, and cannot be, the

state of the law in Washington. *See* Opinion 11–12. Indeed, this Court has expressly rejected adopting a rule that would "make the landlord a guarantor of the safety of those lawfully on the premises." *Geise*, 84 Wn.2d at 871; *Iwai*, 129 Wn.2d at 92 (noting that this Court had previously "[r]ecognize[d] that the landlord is not the guarantor of occupants' safety" in *Geise*); *Mucsi*, 144 Wn.2d at 859 (recognizing again that "the Court in *Geise* emphasized the landowner is not a guarantor of safety").

Moreover, Petitioners' strict liability rule would incentivize landowners *not* to warn invitees of dangerous conditions. It would instead be more prudent for landowners to attempt to remediate the danger in a timely manner and provide no warning while those remedial efforts were ongoing. After all, the amount of time the landowner knows of the dangerous condition is irrelevant to Petitioners as long as the landowner had enough time to warn. The amount of time the landowner knows of the danger would, however, still be relevant when determining the reasonableness of the remedial efforts. Landowners could therefore protect themselves from strict liability *only* by focusing on removing or repairing the dangerous condition, even if they also could have warned invitees and avoided injuries in the

interim. This would lead to absurd results. *See Maynard*, 72 Wn. App. at 884 n.5 ("One purpose of tort law is to reduce injuries. It would be poor policy to protect those [landowners] who do nothing and expose those who try to reduce the risk of liability.").

B. There is no issue of significant public interest warranting review by this Court. (RAP 13.4(b)(4))

Finally, far from involving any issue of substantial public interest, Decision One's opinion underscores the inherently fact-specific inquiry of determining breach and causation in a premises liability claim. As discussed previously, the jury in a premises liability claim "must determine whether the defendant was negligent and, if so, the plaintiff's comparative fault *in light of all the existing circumstances*." *Maynard*, 72 Wn. App. at 884 (emphasis added); *see* Opinion 10. This inquiry depends on the unique facts of the case.

Here, the jury must consider "whether there was sufficient time for Providence to do any more than it did" and "whether all of Providence's actions, taken together, or in light of the totality of the evidence, were sensible." Opinion 10. Division One identified three primary questions that the jury—not the trial court—should consider on the merits: "(a) what were the

safeguards Providence took, (b) again, were those safeguards 'sensible,' and (c) did Providence warn Gordon sufficiently." Opinion 11.

Because Division One identified and applied the correct legal standard here, the jury's resolution of the remaining factual issues is inherently specific to this particular case. This case does not raise any issue of substantial public interest under RAP 13.4(b)(4).

V. CONCLUSION

Respondents respectfully request that the Petition for Review be denied under RAP 13.4(b).

DATED this 6th day of April, 2023.

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