IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT NO. ~~97059-5~~ 90756-5
COURT OF APPEALS NO. 71430-9-I

JEROME C. HURLEY and BESSIE M. HURLEY, et al.,

Petitioners,

vs.

CAMPBELL MENASHA, LLC, et al.,

Respondents.

RESPONSE TO AMICI BRIEFS

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I. INTRODUCTION

The issues raised by the *amici* are the current focus of a raging debate before Washington's legislators and regulators at the Department of Natural Resources. Indeed, our state has commissioned numerous scientific studies, hosted public hearings, and has considered and adopted new rules aimed at the very result the amici purport to support: comprehensive scientific review of the factors contributing to landslides in areas subject to logging. The *amicus curiae* briefs filed by the various interest groups in this matter only serve to illustrate the tension between litigation and the regulatory process, and the Petitioners' efforts to influence and shape logging industry regulations to support the prosecution of damage claims.

The positions and arguments presented by *amici* are not new to this case. The same positions and arguments were well briefed and argued by the parties before both the trial court and the court of appeals. The generalized research and opinions re-asserted by *amici* now suffer the same fate they did below: they are not relevant or applicable to the *specific* claims of *these* appellants. Plaintiffs and their *amicus* supporters describe this event as a "landslide". That is a complete mischaracterization. [1]

[1] Plaintiffs' experts reached their conclusions without even looking at the site. The damage in this case was caused by flood erosion. CP 497-503, 964-969. The facts are that the damage to the plaintiffs' property was caused by a huge storm which caused a massive

Amici urge the Court to usurp the province of our legislators and regulators by imposing strict liability on timber companies and owners who are conducting logging activities on slopes of indefinite "steepness" and undefined "instability," regardless of whether the risk can be reduced by modernized regulations and regardless of whether the studies they trumpet have any connection whatsoever to the facts of this case. The arguments of *amici* should be presented (and have been presented) in the appropriate forum: before the Forest Practices Board, the Department of Natural Resources and related panels and committees, which are vigorously considering and debating these very issues. Mere theory on a "hot topic" is not a sound basis on which to forge new law on strict liability.

II. AMICI'S REPETITION OF PRIOR POSITIONS AND ARGUMENTS IS REDUNDANT AND UNHELPFUL

Amici contend their interests are limited to "assuring that the Court's review of this matter is based on scientifically correct fundamentals, not scientific misinterpretations or misunderstandings." *Montgomery Amicus Brief at 1.* The *amicus* briefs, however, only repeat the same or similar studies and arguments the Petitioners presented to the

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flood that roared down this Glenoma mountainside, turning its streams into raging rivers which tore away the stream banks and took out everything in its path, including mature trees, roots and all. The few discreet "landslides" were relatively small and did not even reach the plaintiffs' property. This may explain why plaintiffs did not order or present to this court any part of the trial transcript.

trial court on summary judgment, to the jury during a six-week trial, and, ultimately, to the Court of Appeals. *See, e.g.,* CP 26-67, 106-131, 1166-1172; *Opening Brief at* 3-4, 7, and 24; and the *Petition for Review at 3-6* ("It is well recognized in the scientific community that clear cutting has an unavailable and destabilizing effect on steep slopes..." *citing* CP 87, 112, and 1170-1171 (loss of root strength), CP 111-112 (increased water absorption), CP 88 (initiation zones may not exhibit surface expression)).

Amici present nothing new about the "science of landslides" other than reference to two newer studies which are *not* part of the record on appeal under RAP 9.1, and which are just "more of the same."[2] Identical points and arguments were refuted and rejected below, in part because they were a poor fit to facts of *this* case. *See* CP 502 (Martin Road landslide too deep for root cohesion to have been a factor), CP 967-969, 1642-1664 (debris flow would have occurred even without logging due to the site specific and weather conditions). Notably, the question of whether reasonable care can reduce or eliminate the risk of logging on steep slopes is the subject of several ongoing debates before the tribunals tasked with

[2] Both *The Mass Wasting Effectiveness Monitoring Project,* Washington State Department of Natural Resources (2012), and *The Southern Willapa Hills Retrospective Study,* Washington State Department of Natural Resources (2013), concern research involving the correlation between landslides and "areas not recognized...as unstable slopes," a theme well explored by the parties and Courts below. *Olympic Forest Coalition Amicus Brief* at 5-6.

mitigating these risks, and it is a primary factor in the Forest Practices Board's adoption of Section 16: Guidelines for Evaluating Potentially Unstable Slopes and Landforms on November 12, 2014.[3]

Amici's legal arguments also retread worn ground. Petitioners advanced two theories of "strict liability" at the trial court level. Petitioners first argued that Menasha's clear cutting "resulted in dam (sic) blocking the streams, which dams gave way causing the harm..." *Opening Brief* at 3-4. Petitioners relied on the same case advanced by *amici*: *Johnson v. Sultan Ry. & Timber Co.*, 145 Wash. 106, 258 P. 1033 (1927). In *Johnson,* a logger caused branches and debris to fall into a creek running across the plaintiffs' property, which eventually moved downstream to create a log jam. After a period of unusual rainfall and snowmelt, the creek rose and dammed behind the log jam. The log jam ultimately gave way and plaintiffs' property was flooded. *Johnson,* 145 Wash. at 107-108. The Court imposed liability in the absence of evidence that the logger breached its then-existing standard of care, stating it "appears that under the law the appellant would be liable if it constructed a dam or jam in a water course which, when heavy rains came, gave way and resulted in the flooding of the farm of the appellants." *Id. at 110.*

[3]http://www.dnr.wa.gov/Publications/fp_board_manual_section16.pdf.

It is difficult to see why *Amici* resurrect *Johnson* now. Petitioners' arguments under *Johnson* failed on summary judgment and they abandoned it entirely on appeal because their experts had *zero* evidence that there was any leftover debris from *Menasha's* logging activities or that it caused dams that blocked or obstructed water flow resulting in flooding. CP 966, 975, 660. As Respondents pointed out to the trial court, *Johnson* was authored before modern statutes and regulations were created governing the logging industry, and certainly long before regulations establishing that certain downed timber should actually be *left in* streams to protect water temperature and fish habitat. *See* WAC 222-30 *et seq.* Unlike the logger in *Johnson,* Menasha and its logging company did not cause branches to be left in streams so as to "construct a dam or jam in a water course," and Petitioners do not dispute this. Even under the doctrine of "strict liability," it is they who "have the burden of proving **that the activity of the defendant** was the proximate cause of the alleged damages." *Vern J. Oja & Associates v. Washington Park Towers, Inc.*, 15 Wn. App. 356, 363, 549 P.2d 63 (1976) *aff'd*, 89 Wn.2d 72, 569 P.2d 1141 (1977). This case is nothing like *Johnson,* which is really a water law case that does not apply.

Amici focus on Petitioners' second theory of strict liability, that "clearcut logging on steep, unstable slopes in and near the rain-on-snow zone directly above residential properties" constitutes an "abnormally

dangerous activity." As recognized by the Court of Appeals, "[n]o court in Washington or elsewhere has imposed strict liability for timber harvest activities." *Hurley v. Port Blakely Tree Farms L.P.*, 182 Wn. App. 753, 332 P.3d 469, 474 (2014). In fact, there is only one known case to have considered the question: *In re Flood Litigation*, 216 W.Va. 534, 607 S.E.2d 863 (2004), in which the Supreme Court of Appeals of West Virginia applied the six Restatement (Second) of Torts § 520 factors and summarily rejected the plaintiffs' claim that removing timber produced conditions that created an abnormally high risk of flooding for which the defendants should be strictly liable. The Court of Appeals in this case agreed.

Every other case reviewed by *amici* was analyzed by the parties and did not change the Court of Appeals' conclusions. Washington has recognized the doctrine of "strict liability" as established in the Restatement (Second) of Torts § 519 and § 520. *Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 6, 810 P.2d 917, *amended*, 117 Wn.2d 1, 817 P.2d 1359 (1991).[4] The Restatement (Second) of Torts § 520 lists six factors for the

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[4] Under § 519:

> (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land, or chattels of another resulting from the activity, although he has exercised the utmost care to prevent such harm.
>
> (2) Such strict liability is limited to the kind of harm, the risk of which makes the activity abnormally dangerous.

Restatement 2nd of Torts § 519 (1977).

Court to consider in determining whether an activity is "abnormally dangerous:"

> (a) existence of a high degree of risk of some harm to the person, land or chattels of others;
>
> (b) likelihood that the harm that results from it will be great;
>
> (c) inability to eliminate the risk by the exercise of reasonable care;
>
> (d) extent to which the activity is not a matter of common usage;
>
> (e) inappropriateness of the activity to the place where it is carried on; and
>
> (f) extent to which its value to the community is outweighed by its dangerous attributes.

Restatement (Second) of Torts § 520 (1977). "[A]ny one of them is not necessarily sufficient of itself in a particular case, and ordinarily several of them will be required for strict liability." *Klein,* 117 Wn.2d at 7, quoting Restatement 2nd of Torts § 520, comment f (1977).[5]

Like Petitioners, *amici* rely on *Klein v. Pyrodyne*, supra, under which the Court subjected the *highly regulated arena* of public fireworks displays to strict liability. *Unlike* this case, the regulations considered in *Klein* were *intended* to promote public safety and prevent the very injury that occurred. In contrast, logging regulations are designed to protect

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[5] Conduct that in and of itself is not *abnormally dangerous* does not become so simply because it is dangerous in defined circumstances. *See Doe v. Johnson,* 817 F.Supp. 1382, 1385 (1993).

public resources such as water quality and fish habitat. *See* WAC 222-22-010(1) (purpose of the logging industry regulations is to protect public, not private resources). More importantly, there was no doubt in *Klein* that the harm was caused by the singular activity at issue: fireworks. Here there are multiple factors that contribute to landslides, and no guarantee that the "activity," logging, can be connected to the purported harm at all.

Langan v. Valicopters, Inc., 88 Wn.2d 855, 567 P.2d 218 (1977), is similarly unhelpful. In *Langan* the Court imposed strict liability on crop dusters who sprayed property adjacent to an organic farm after the wind carried the chemicals to the organic crop. *Langan,* 88 Wn.2d at 857. *Langan* does not fit the facts of this case. Menasha was not using chemicals subject to the whims of the wind and its operations were approved and monitored by the Department of Natural Resources. Moreover, the alleged harm did not occur instantly as it did in *Langan,* (and *Klein*), but nearly a decade later after a record-setting storm generated landslides and flooding throughout half the state, many occurring in native forests and land that had not been logged in over 100 years. CP 498, 500. *Amici do not even argue* Petitioners were harmed by Menasha's *actual operations*, as the organic farmers were harmed by the crop dusters' *actual operations* in *Langan.* CP 500, 666. They don't tie Petitioners' claim to anything about Menasha's logging operations at all. Rather, *amici* want the

Court to impose a sea change on the logging industry by imposing strict liability every time a landslide happens on a hillside that has been logged, with *no* clear definition of "how steep" or "how unstable" the slope must be for the doctrine to apply. Most of the timber in Western Washington is located on mountainsides. *Amici's* theory would render economically viable timberland completely unusable as soon as anyone builds downhill.

Finally, *amici's* reliance on *Siegler v. Kuhlman*, 81 Wn.2d 448, 502 P.2d 1181 (1972), *cert. denied*, 411 U.S. 983, 93 S.Ct. 2275, 36 L.Ed.2d 959 (1973), missed the boat. In that case strict liability was imposed on the act of hauling gasoline in commercial quantities as freight upon public highways. The Court recognized that where there is the intervention of an "outside force beyond the control of the manufacturer, the owner, or the operator of the vehicle hauling [the gasoline]", the rule of strict liability **should not apply**. *Siegler*, at 460.[6]

Here there were many, many forces outside the control of Menasha that caused or contributed to the flood and damage at issue, which is why the Court of Appeals found this Court's decision in *Crosby v. Cox Aircraft Co. of Washington*, 109 Wn.2d 581, 746 P.2d 1198 (1987), so compelling.

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[6] *Amici* also rely on *Wilber v. Western Properties*, 114 Wn. App. 169, 173, 540 P.2d 470 (1975), a water law case. In contrast to *Olympic Forest Coalition's Amicus Brief* at 7, strict liability was *not* applied to restriction of a drainage pipe that caused flooding. Rather, the court stated "Western's duty to Wilber was *akin* to a duty of strict liability." *Id.* at 174. It made no analysis of the doctrine.

Crosby considered the imposition of strict liability on "ground damage caused by aircraft." *Crosby,* 109 Wn.2d at 583. After all, the "risk of harm" created by the danger of an aircraft crashing to the ground is great. Airplane crashes, like the landslides at issue in this case, can be caused by a multitude of factors unrelated to the "activity" (aviation, logging) at issue:

> The causes of aircraft accidents are legion and can come from a **myriad of sources**. Every aircraft that flies is at risk from every bird, projectile and other aircraft. Accidents may be caused by improper placement of wires or buildings or from failure to properly mark and light such obstructions. The injury to the ground dweller may have been caused by faulty engineering, construction, repair, maintenance, metal fatigue, operation or ground control. Lightning, wind shear and other acts of God may have brought about a crash. **Any listing of the causes of such accidents undoubtedly would fall short of the possibilities. In such circumstances the imposition of liability should be upon the blameworthy party who can be shown to be at fault.**

Crosby, 109 Wn. 2d at 587-88 (emphasis added). Contrary to the contentions in *Olympic Forest Coalition's Amicus Brief* at 8, the *Crosby* Court did not merely concern itself with "third party negligence, such as a drunken pilot. Division I correctly applied *Crosby* to this case, observing "that many causes may contribute to the risk of landslides. The steepness of the slope, the presence of "rain on snow" zone, the occurrence of an exceptional storm event, the effectiveness of applicable governmental logging regulations, and the extent to which those regulations are adhered to, together or individually, may cause a landslide." *Hurley,* 332 P.3d at

476.

> The record shows that the occurrence of landslides is seldom the work of one factor. As the *Crosby* Court noted, under these circumstances the imposition of strict liability is inappropriate and any liability should fall upon the party shown to be at fault. We conclude that this factor weighs against imposing liability without the need for a finding of negligence.

Hurley, 332 at 476.

Again, the issues in *Crosby* are the same issues here, and *amici* offer nothing novel or new in their analyses. *Amici* advocate for the conclusion that logging "steep, unstable slopes" is an "abnormally dangerous" activity only *how steep is "steep?"* Shall the Court determine the degree of steepness or instability for which the doctrine should be invoked? *What about the facts of this case, which show the landslide would have occurred regardless of whether the hillside was harvested because of the overwhelming amount of water eroding the soil from an extraordinary and exceptional storm event?* CP 497-503, 964-969.

Landslides aren't just caused by *logging*, even when they happen to occur at an area that was logged. For this reason the Court of Appeals correctly adhered to the Supreme Court's prior statement in *Crosby,* that "[i]n such circumstances the imposition of liability should be upon the blameworthy party who can be shown to be at fault." *Crosby*, 109 Wn.2d at 588.

III. GENERALIZED STUDIES PRESENTED IN THE AMICUS BRIEFS ARE NOT APPLICABLE TO THE SPECIFIC FACTS IN THIS CASE

Under regulations in place when Respondent Menasha filed its Forest Practices Applications in 2000, the Department of Natural Resources categorized applications to log potentially unstable slopes as "Class IV," which required an environmental checklist in compliance with the State Environmental Policy Act (SEPA). CP 824-826. Menasha's FPA, however, was categorized as "Class III-14." CP 779. Class III applications **did not require** a SEPA analysis and **did not require** additional geotechnical review by a qualified expert for the purpose of analyzing the site for potentially unstable slopes. CP 824-826, Appendix 1. In fact, Menasha's unit was located in an area that had previously been analyzed for "mass wasting" or landslide potential, under the 1996 Kosmos Watershed Analysis. CP 781, 784, 832-886. The Kosmos Analysis identified and Menasha's FPA proactively disclosed two "mass wasting map unit areas," or "MWMU #1" areas. CP 781, 784, and 805. Washington State's "prescriptions" for "MWMU 1" areas are as follows:

- No harvest in high mass wasting hazard units (MWMU #1 and #2). This is the preferred prescription.
- Harvesting may occur within portions of these units if a finer-scale (secondary) slope stability assessment delineates areas that do not exhibit the mass wasting characteristics described above...

CP 837. Menasha's FPA confirmed the two MWMU #1 areas in its unit – the "steep slopes" in question -- would **not** be logged **at all**. CP 781, 784, and 805. And they weren't.

Like Petitioners below, *amici* contend there are steep slopes that harbor potentially dangerous, subsurface areas of instability that could not have been identified by the State in its Watershed Analyses, or even by geologists in the field for lack of a "surface expression." *Montgomery Amicus Brief at 4; Olympic Forest Coalition Amicus Brief at 5-6. Amici* ignore the fact that Petitioners offered no evidence on summary judgment (or at trial on their negligence claim) that there *were other unstable areas that were not field identified at this unit* and that *should not have been logged.* Both Petitioners' and *amici's* "ultra-hazardous activity" designation is grounded in the assumption that the Respondents were logging inherently unstable and risky steep slopes when in fact the opposite was true. Menahsa avoided the "unstable and risky" areas entirely in accordance with the State's exacting regulations-which are even more exacting now. CP 888-899, 901-910.

Indeed, the science behind Plaintiffs' "loss of root cohesion" theory is anything but "established," especially at the location of the logging unit in question:

> Root cohesion is a factor in shallow slides on the order of about three feet deep because tree roots in the Cascade Range average 24 to 36 inches in depth according to studies the plaintiffs' expert relies upon. The slides I observed at the unit above Martin Road were much deeper than 36 inches. In some cases, the slides were as deep as 10-20 feet, beyond the reach of any tree roots.

CP 502. In fact, one of the authors of the very studies Plaintiffs rely on notes "evapo-transpiration is not significant in the winter or during one short-term event," like the event in January, 2009. *Id.*

The evidence in *this case* established the slides and debris flows *at issue here* **would have occurred regardless of whether the hillside was logged simply because of the overwhelming amount of water eroding the soil from an extraordinary and exceptional storm event**. CP 497-503, 964-969.[7]

> Some landslides occurred in places where a thin layer of soil covered the bedrock surface where no trees grew and no logging was done. It also appears that the depth of soil that moved was in some places is much greater than the depth of tree roots. The mechanism triggering the earth movement was pore pressure build up in the ground caused by water saturating the ground. Failure actually occurred near the soil/rock interface. In my opinion, the amount of water that infiltrated into the ground from the rain and snow melt was of such volume that the landslides would have occurred whether large trees were there or not. It is true that a tree canopy can result in less water concentrated on the ground

[7] As stated above, the slide events relevant to this case were much deeper than the root zone of the trees and in fact did not actually reach Petitioners' property. The damage to the Petitioners' property was actually caused by the flood water which gouged out deep channels and spread the earth and water across the property. CP 132A. The "event" in this case" was a flood.

> and in the ground but in this case, the amount of that water entering the ground was so great that the trees would not have prevented what occurred. This same thing occurred in many areas where the trees had not been harvested.

CP 967, 968-969.

In other words, the presence of trees and "tree roots" would have made no difference at the logging site in light of the deluge introduced by this unprecedented storm. *Amici* offer the same treatise on the hazards of mountain logging that the Petitioners offered below, but it must be disregarded in the absence of any actual connection to *this logging unit,* and frankly, that's what makes this case such a poor exemplar on which to premise strict liability. Even Petitioners' experts admitted these studies were intended for *regional* application; they do not address the unique topography and geology of the Glenoma region or *this particular logging site*. CP 498. Interesting but *inapplicable* statistical studies do not substitute for actual evidence that *this logging site was abnormally hazardous,* that *DNR's regulations were insufficient,* or that *the timber harvest was the proximate cause* of *these slides in question. Boeing Co. v. Heidy,* 147 Wn.2d 78, 85, 51 P.3d 793 (2002).[8]

[8] Disapproved of on other grounds in *Harry v. Buse Timber & Sales, Inc.*, 166 Wn.2d 1, 201 P.3d 1011 (2009).

Subjecting timber owners to nebulous strict liability standards pursuant to unclear criteria in a poor factual case is unrealistic and would absolutely have a chilling effect on the logging industry. *Amici* should (and have) presented their arguments to the appropriate audiences: the Department of Natural Resources, the Forest Practices Management Board, the Cooperative Evaluation Monitoring and Research Committee, the Timber/Fish/Wildlife Policy Committee, and others groups and agencies which are examining and updating logging regulations, reports and manuals regularly.

IV. POLICY ARGUMENTS ABOUT THE LOGGING INDUSTRY SHOULD BE ADDRESSED TO WASHINGTON LEGISLATORS AND REGULATORS, NOT THIS COURT

Amici contend DNR's regulations "aren't good enough" so loggers and landowners should be strictly liable for landslides even if they follow the rules and regulations perfectly. This case is not the proper forum to enact new law shaping the future of the logging industry, a point driven home by the generalized nature of the *amicus briefs.*

More importantly, Washington is already taking up the challenge. On May 9, 2014, the Department of Natural Resources promulgated a policy requiring landowners proposing forest practices near "unstable slopes that could affect public safety" to prepare a site-specific geologic report:

> Based on the information provided on the Slope Stability Informational Form and our existing application screening tools, each application should receive a desk review to identify public safety considerations that are in general proximity to the application area. Primary public safety considerations are developed areas (i.e. homes, businesses, barns, etc.), major public roads, and permanent recreational trails and/or recreational developments. Use data such as aerial photos, maps, and local knowledge; to the extent they are available. FPAs that are in general proximity to public safety concerns should be forwarded to the Forest Practices Science Team. A Science Team Geologist will then evaluate the applicable landforms' potential to deliver sediment or debris to those concerns. Finally, the presence of landforms that may pose, through delivery, a potential threat to public safety will require the applicant to supply a geotechnical report prepared by a qualified expert.[9]

Clearly the Department of Natural Resources is vigorously pursuing new guidelines and rules to reduce and/or eliminate risk of slides near potentially unstable slopes. It has developed a detailed "flow chart" for processing Forest Practices Applications involving such slopes,[10] and on November 12, 2014, the State Forest Practices Board met to consider revisions to the Forest Practices Manual, a "technical supplement" document that guides the Department of Natural Resources' discretion. On that day the Forest Practices Board adopted revisions to Section 16, the "Guidelines for Evaluating Potentially Unstable Slopes and Landforms:"[11]

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[9] http://www.dnr.wa.gov/Publications/bc_tfw_materials_6_20140605.pdf

[10] http://www.dnr.wa.gov/Publications/fp_unstableslopes_FPAprocessing_flowchart1.pdf

[11] http://www.dnr.wa.gov/Publications/fp_board_manual_section16.pdf

> Board Manual Section 16 contains guidelines to evaluate potentially unstable slopes and landforms on forest land. Like all Board Manual sections, it does not contain rules or impose requirements. Instead, it is an advisory technical supplement to the forest practices rules, offering approaches for landowners and other forest professionals to achieve complete assessments that will lead to complete Forest Practices Applications (FPAs) and successful proposals.

The section includes a *detailed* and extensive analysis of all the issues, research and studies raised by *amici,* with the sole purpose of providing guidance to those presenting and evaluating Forest Practices Applications, including reviewers at the Department of Natural Resources, landowners and qualified experts. In fact, proposed questions for the expert analysis include:

> 1. What are the project objectives (e.g., timber harvest unit evaluation, road construction or abandonment, landslide mitigation)?
>
> 2. Which types of unstable slopes and landforms have been identified (see Part 5)?
>
> 3. What are their spatial and temporal distributions (see Part 5)?
>
> 4. Which office and field methods were used to identify and delineate unstable slopes and landforms (see Part 6)?
>
> 5. Based on an analysis of available information (see Parts 7.1, 7.2, 7.3), what is the geotechnical interpretation of physical processes governing unstable slope/landform movement, mechanics, and chronologies of each identified feature?
>
> 6. What are the project limitations (e.g., quantity or quality of technical information, site access, project timeframe) that might

influence the accuracy and precision of identifying, delineating, and interpreting unstable slopes and landforms?

7. What are the scientific limitations (e.g., collective understanding in the scientific community of landform physical processes) that might influence the identifications, delineation, and interpretion of unstable slopes and landforms?

8. What is the potential for material delivery from each identified unstable slope and landform to areas of public resource sensitivity or where public safety could be threatened (see Parts 7.4)?

9. What are the relative roles of natural processes and land management activities in triggering or accelerating instability?

10. What level of confidence is placed in the identification, delineation, and interpretation of unstable slopes and landforms? How does the confidence level impact any recommendations for unstable slope management and/or mitigation? [12]

The law imposes strict liability only in very limited situations. It is not imposed simply because activities, such as transportation, result in accidents. In this case, the plaintiffs had a six week trial but failed to prove any lack of ordinary care by Menasha.[13] *Amici* would have this court throw out the continuing efforts being made cooperatively by the state of Washington and the timber industry and replace that with a one dimensional, court-imposed "strict liability" mandate. This would certainly advance the *amici's* political agenda. However, in reality, the goal of

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[12] http://www.dnr.wa.gov/Publications/fp_board_manual_section16.pdf

[13] The physical facts of the site were known and the actions of Menasha were well documented. Yet plaintiffs did not show even one violation of the DNR or industry rules. The Brief of *Amici* ignores the actual facts of this case and does not establish the required legal basis for strict liability.

minimizing the effect of forest management on landslides must be achieved by a combination of state law, regulatory agencies, and industry practices. This requires ongoing study, hearings, analysis of scientific data, and a public forum to sort out the conflicting interests of groups such as *these amici*. It is respectfully submitted that this is not the role of the Supreme Court.

DATED this 23rd day of December, 2014.

Respectfully submitted:

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