No. 92353-1

SUPREME COURT
OF THE STATE OF WASHINGTON

OLIVER L. WUTH, a minor by and through his Guardian Ad Litem KEITH L. KESSLER; and BROCK M. WUTH and RHEA K. WUTH, husband and wife,

Respondents,

v.

LABORATORY CORPORATION OF AMERICA, a foreign corporation; DYNACARE LABORATORIES, INC., a foreign corporation; DYNACARE NORTHWEST, INC., a domestic corporation, d/b/a DYNACARE LABORATORIES, INC., a domestic corporation

Petitioner,

KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 1, d/b/a/ VALLEY MEDICAL CENTER; JAMES A. HARDING, M.D.; and OBSTETRIX MEDICAL GROUP OF WASHINGTON, INC., P.S., a domestic corporation,

Defendants.

ANSWER TO PETITION FOR REVIEW

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I. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Should this Court overrule *Harbeson v. Parke Davis, Inc.*, 98 Wn.2d 460, 467, 656 P.2d 483 (1983), which authorized "an action based on an alleged breach of the duty of a health care provider to impart information or perform medical procedures with due care," resulting in the birth of a child with birth defects?

B. Did the Court of Appeals correctly hold that the trial court did not abuse its discretion in denying a new trial based upon counsel's statement in closing argument that deterrence is one of the purposes of tort law because the trial court's curative instruction to the jury that it is "not appropriate to award damages in this case to deter specific defendants or to send some sort of message" cured any possible prejudice?

C. Did the Court of Appeals correctly affirm the trial court's discretionary decision to strike an expert's testimony at trial under ER 702 and 703 based upon the expert's acknowledged lack of expertise, training or experience in the field of maternal fetal medicine and genetic testing?

II. RESTATEMENT OF FACTS

Petitioner LabCorp's petition for review is based on significant factual misstatements. Specific misrepresentations of the

procedural posture of this case are addressed in the second and third argument sections of this answer, which explain why this Court should not accept review to consider the discretionary trial management decisions to which LabCorp objects in its petition. This restatement of the facts addresses the underlying bases for the Wuths' medical negligence claims against LabCorp:

Respondents Brock and Rhea Wuth sought genetic testing because they knew that Brock carried a specific chromosome defect resulting in a 50% chance their offspring would inherit the severe birth defects that afflicted Brock's relatives. LabCorp, knowing genetic testing had been ordered for a family history of chromosomal abnormality, failed to take the most basic steps to determine the location of the genetic defect, giving the Wuths the false assurance that their 12-week fetus would be born free of the abnormality for which they specifically sought testing. As a result, their son Oliver was born with severe birth defects that will require a lifetime of special medical care, special training, and round-the-clock caretaking.

LabCorp would have this Court believe that LabCorp was sued "for not calling [Rhea's] physician to suggest that he order a different test." (Petition 2) But the jury heard overwhelming evidence that LabCorp negligently 1) misplaced or lost a detailed report from

Children's Hospital that identified the nature and precise chromosomal location of the genetic defect for which the Wuths sought pre-natal testing (Ex. 12; RP 2661-62; Ex. 37-01); 2) failed to ask co-defendant Valley Medical Center (which settled with the Wuths while this appeal was pending) to send this critical clinical information about the defect, contrary to LabCorp's own protocols (Exs. 19-14, 37-01, 55; RP 972-74, 980-82, 1155, 1161, 1320-21, 2663, 3166, 3366, 3538-39, 3572, 3825-27); 3) failed to correctly identify the genetic defect, which was readily discernible from the standard karotype test LabCorp performed even if LabCorp never received the Children's report (RP 1193, 1208, 3842-44); and 4) violated its own policies by failing to recommend additional testing that could have confirmed the defect. (Exs. 37-01-02, 38; RP 1182-84, 2628-29, 3453, 3570, 4798-99) (*See* CP 11608)

The jury heard evidence that LabCorp violated the standard of care, in part, because it assigned a trainee who had quit 10 days earlier and was three days away from his last day at LabCorp to perform the Wuths' genetic testing. (RP 1178, 2955-57)[1] The trainee did not even look at the requisition form, which would have told him

[1]The trainee had given notice that he was quitting after less than 18 months on the job in part because of the workload pressure imposed by LabCorp's "productivity requirements." (RP 3390, 3437-38, 3559-60; Exs. 48, 239)

that the purpose of the test was to look for a genetic defect reflected in a family history of severe chromosomal abnormality. (RP 987-88, 3610-11) And although LabCorp's policy required that a supervisor check the trainee's work before it was submitted to LabCorp's director for review, no one looked at the trainee's work before LabCorp's director issued a report declaring the sample "normal" – even though the director also had before him the requisition form, which specifically disclosed a family history of chromosomal abnormality. (Ex. 19 – 13-14) LabCorp's director admitted at trial that "in hindsight" "someone" from LabCorp should have contacted Valley Medical or the Wuths' physician, defendant Dr. Harding, before issuing the erroneously benign report. (RP 3380-81, 3550-51; *see also* testimony of LabCorp's cytogenetics expert at RP 3561-62, 3569-72)

Because the jury had overwhelming evidence to find that LabCorp failed to meet the most fundamental standards of care of a medical laboratory engaged in genetic testing, this Court should deny review of the Court of Appeals' well-reasoned decision affirming the jury's verdict.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. This Court should not revisit *Harbeson*, which in no way denigrates disabled plaintiffs; Division One's decision is wholly consistent with *McKernan*.

This Court authorized "an action based on an alleged breach of the duty of a health care provider to impart information or perform medical procedures with due care," resulting in "the birth of a child suffering congenital defects" in *Harbeson v. Parke Davis, Inc.*, 98 Wn.2d 460, 467, 476, 656 P.2d 483 (1983). *Harbeson* and its progeny – including this Court's recent decision in *Stewart-Graves v. Vaughn*, 162 Wn.2d 115, 170 P.3d 1151 (2007) (a case LabCorp does not cite, much less address, in its petition for review) – require health care providers to competently perform genetic testing in order to respect parents' "right to reproductive autonomy." *Stewart-Graves*, 162 Wn.2d at 130, ¶28. This Court recognized in *Stewart-Graves* that "the duty of health care providers to provide nonnegligent prenatal counseling and medical care extends to children not yet conceived or born," as well as to their parents, without a hint that *Harbeson's* reasoning or holding was in question. 162 Wn.2d at 133, ¶33. There is no reason for this Court to revisit *Harbeson* in this case, where the Court of Appeals carefully and correctly affirmed a jury's verdict, reached after six weeks of trial, that LabCorp's negligence

caused a lifetime of medical expenses for severely disabled Oliver Wuth and a lifetime of emotional anguish for his parents.

As the Court of Appeals correctly recognized, ¶44, this case does not conflict in any way with this Court's holding in *McKernan v. Aasheim,* 102 Wn.2d 411, 687 P.2d 850 (1984), that parents cannot recover the routine living expenses of raising a *healthy* child. (Petition 8-9) The claim in *McKernan* was based on the defendant's failure to perform a tubal ligation that would have prevented the plaintiff parents from becoming pregnant with a child who had no special or extraordinary economic needs; the trial court here refused to allow the jury to award damages prohibited by *McKernan.* (CP 2248) *McKernan* is fully consistent with, and does not call into question, the reasoning of *Harbeson,* and this case does not present grounds for review under RAP 13.4(b)(1).

Nor does the Court of Appeals decision present any issue justifying review under RAP 13.4(b)(4). Contrary to the personal views of the sole legal commentator relied upon by LabCorp that actions for medical negligence resulting in the birth of a child with genetic defects should not be allowed because "the choice of abortion contraconception by the parent" should not be "plausible" (Petition 6), Washington parents have the "right to prevent the birth of a

defective child." *Harbeson*, 98 Wn.2d at 472. As a consequence, health care providers have the duty to use reasonable care and "impart to their patients material information as to the likelihood of future children being born defective, to enable the potential parents to decide whether to avoid the conception *or birth* of such children." *Harbeson*, 98 Wn.2d at 472 (emphasis added).

This Court deliberately imposed this duty to "promote societal interests in genetic counseling and prenatal testing, deter medical malpractice, and at least partially redress a clear and undeniable wrong" in *Harbeson,* 98 Wn.2d at 473 (quotation and citation omitted). LabCorp urges this Court to accept review to abolish the tort recognized in *Harbeson* "in light of developments in medicine and genetic testing" (Petition 7), but it is those very advances in genetic testing that the Wuths and their doctors relied on LabCorp to competently perform. Advances in genetic testing, combined with the enduring rights of women and their partners to reproductive choice and the principles of tort law underlying *Harbeson*, make it more, not less, important for health care providers such as LabCorp to fulfill their duty of competence to allow parents to prevent the birth of children with identifiable genetic defects.

Providing Oliver the financial ability to meet his special medical and social needs and recompensing his parents for the heartbreak they did everything in their power to prevent in no way "'disavow[s]' the value of life or in any way suggest[s] that the child is not entitled to the full measure of legal and nonlegal rights and privileges accorded to all members of society." *Harbeson,* 98 Wn.2d at 481 (quotation and citation omitted). If taken to its logical conclusion, LabCorp's argument that recognizing a tort cause of action for the consequences of its negligence somehow denigrates the disabled would foreclose an award of damages to any plaintiff disabled as a consequence of a defendant's negligence.

Regardless of the supposedly pejorative sobriquet by which LabCorp chooses to call it, the Wuths' negligence claim is firmly "rooted in the common law tradition." *Putnam v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 982, ¶15, 216 P.3d 374 (2009). LabCorp fails to identify any principle of tort law or public policy that would be furthered by shifting the enormous financial burden of raising a special needs child to the parents (and ultimately to the State and its taxpayers) rather than imposing it upon the corporation whose negligence caused those damages. *See Harbeson,* 98 Wn.2d at 479 (burden of the extraordinary expenses associated with the

child's impairment should be placed "on the party whose negligence was in fact a proximate cause of the child's continuing need for such medical care and training," rather than "on the parents or the state"). The trial court, in denying LabCorp's request to set aside the verdict,[2] and the Court of Appeals, in affirming that decision, ¶¶ 92-93, *see also* ¶¶ 52-54, correctly recognized that the jury fulfilled its constitutional role in awarding as damages the extraordinary expenses that Oliver will incur over his remaining 70-year life expectancy and in compensating his parents for their profound emotional distress. This Court should decline LabCorp's invitation to nullify the jury's verdict by overruling *Harbeson*.

B. The Wuths did not ask for punitive damages at trial, and the Court of Appeals properly deferred to the trial court's assessment of claimed misconduct.

The Wuths did not ask for punitive damages at trial. As set out more fully in the Brief of Respondents at 51-53, the trial court

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[2] "[The Wuths] knew they . . . didn't want to have a disabled child who had the same abnormality that Mr. Wuth carried, and so they just did everything that they were supposed to do.

They went to their doctor, they went to Valley, they went to Dr. Harding, they brought all their information, they were timely, they were prepared, they followed up, and they prepared the way, with joy, for Oliver . . . And then they gave birth to a child who, from the moment that, as Mrs. Wuth said, as she looked into his eyes, she knew much was wrong, much was missing, and then they began the task of raising Oliver." (1/24/14 RP 68-69)

repeatedly prohibited any argument for punitive damages, or that the jury award damages to "send a message." (RP 198-99, 5254-55; 1/24/14 RP 51-52) The Wuths' counsel obeyed this restriction, arguing only that the tort system holds defendants accountable for two reasons – compensation and deterrence, while affirmatively acknowledging that "deterrence is not punishment." (RP 5257) The trial court sustained LabCorp's objection when the Wuths' counsel briefly mentioned deterrence in discussing damages. (RP 5308) When thereafter defendant Dr. Harding's counsel stated that the "purpose of damages, for compensation and deterrence . . . do not apply to Dr. Harding" (RP 5381), LabCorp asked for a curative instruction (*not* a mistrial). (RP 5383) The trial court then gave the curative instruction that LabCorp requested (RP 5385) – that "the purpose of damages . . . is to compensate" and that it is "not appropriate . . . to award damages in this case to deter specific defendants or to send some sort of message." (RP 5389)

LabCorp misrepresents this record in claiming that "[t]he Court of Appeals . . . determined that the trial court erred by allowing the Wuths' counsel to make arguments that constituted requests for punitive damages." (Petition 11) Again, the Wuths' counsel never asked for punitive damages. What the Court of Appeals said is that

the discussion of deterrence was "strikingly similar to an argument that we deemed improper in *Broyles v. Thurston Cty.*, 147 Wn. App. 409, 445, 195 P.3d 985 (2008)." ¶105. *Broyles* disapproved a closing argument asking the jury in an employment discrimination case to award "fair compensation" that would insure that what happened to plaintiffs "will never happen again," as "speak[ing] to future harm to the plaintiffs," but "not a clear call to the jury to impose punitive damages." 147 Wn. App. at 445, ¶75. And, as here, Division Two properly did not order a new trial in *Broyles,* deferring to the trial court's decision and affirming the jury's verdict.

The Wuths disagree with the Court of Appeals' decision that counsel's argument "presented a needless risk of confusing the jury," ¶105, or that it is improper to inform the jury in arguing liability of the policy of deterrence underlying tort law.[3] But the Court of Appeals was correct in deferring to the trial court's assessment of the consequence of this argument in denying a new trial under CR 59.

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[3] Jurors should know the societal interests they fulfill. "[D]eterring negligence and compensating for injury" are the "underlying principles" of tort law. *Mohr v. Grantham*, 172 Wn.2d 844, 856, ¶20, 262 P.3d 490 (2011). An accurate statement about the policy underlying tort law is not improper argument. *See Miller v. Kenny*, 180 Wn. App. 772, 817, ¶109, 325 P.3d 278 (2014) ("appeal[] to the jurors' interest as members of the public to 'protect the public interest' and to enforce the public 'compact' that insurance companies have under the law . . . is not improper argument in a[n insurance] bad faith case.").

(1/24/14 RP 50-52) LabCorp essentially argues for de novo review of the trial court's decision on the effect of claimed misconduct during closing argument, and for a new trial as a matter of law if a defendant can characterize counsel's closing argument as a call for punitive damages. (Petition 13-14) To the contrary, the appellate courts defer to the trial court's favored position to determine within the context of the entire trial whether counsel engaged in misconduct and whether any misconduct so severely prejudiced the opposing party as to warrant a new trial. *See Teter v. Deck,* 174 Wn.2d 207, 215-16, ¶15, 274 P.3d 336 (2012) (deferring to Judge (now Justice) Gonzalez's discretionary decision to grant a new trial based on misconduct of counsel and an error in law in excluding evidence) (Petition 12). *Accord, ALCOA v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, 539, 998 P.2d 856 (2000).

The Court of Appeals decision is not in conflict with this Court's decision over a century ago establishing that Washington does not authorize the award of punitive damages absent statutory authority in *Spokane Truck & Dray Co. v. Hoefer*, 2 Wash. 45, 25 Pac. 1072 (1891) (Petition 11, 15). LabCorp has not cited a single case reversing judgment on a jury's verdict on the grounds that a closing argument that never mentions punishment or punitive damages

somehow violated that restriction, and LabCorp fails to identify any decision that is in conflict with the Court of Appeals' holding here that "Washington courts presume that juries follow all instructions given," including a prompt curative instruction. ¶106.

The Court of Appeals correctly held that LabCorp was required to show a "substantial likelihood" that any "misguided closing argument" affected the jury's verdict. ¶106; *see Alcoa,* 140 Wn.2d at 541; *Carnation Co. v. Hill,* 115 Wn.2d 184, 186, 796 P.2d 416 (1990); *Broyles,* 147 Wn. App. at 445, ¶75. Contrary to LabCorp's argument (Petition 14-15), this Court does not presume prejudice based upon an improper statement in closing argument that is promptly addressed by a curative instruction. *See Carnation Co.,* 115 Wn.2d at 186; *Freeman v. Intalco Aluminum Corp.*, 15 Wn. App. 677, 680-81, 552 P.2d 214 (1976); *Kimball v. Otis Elevator Co.*, 89 Wn. App. 169, 178, 947 P.2d 1275 (1997).

LabCorp offers no reason to second-guess the Court of Appeals' deferral to the trial court's denial of a new trial based on claimed misconduct in closing argument that was not a "clear call" for punitive damages, that was immediately addressed by a curative instruction, and where the jury awarded damages supported by

substantial evidence. The lower courts' decisions do not raise any issues for review under RAP 13.4(b)(1) or (4).

C. The Court of Appeals properly affirmed the trial court's discretionary decision to strike LabCorp's unqualified expert from testifying at trial under ER 702 and 703.

The trial court properly exercised its discretion under ER 702 and 703 to exclude LabCorp's gynecologist Dr. London on the ground that he was not qualified by experience or training to testify to the standard of care of a maternal fetal medicine physician with respect to genetic testing, and that his opinion lacked a proper factual basis. LabCorp casts as a violation of due process its claim before the Court of Appeals of "procedural irregularities" in the trial court's decision. (Petition 15; LabCorp Br. 9, 25;) But LabCorp had plenty of notice and was repeatedly heard, after substantial briefing and argument, on the issue both before and after the trial court exercised its discretion to exclude LabCorp's expert under ER 702 and 703. The Court of Appeals' affirmance of that discretionary decision raises no issues for review by this Court under RAP 13.4(b)(1) or (3).

The procedural facts are, once again, not as represented by LabCorp. As explained in more detail in the Brief of Respondents at 72-75, defendant Dr. Harding sought to exclude Dr. London from testifying under ER 702 and 703 in April 2013, five months before he

and the Wuths entered into a high-low agreement on the eve of the October 2013 trial. (CP 2459-72, 13650, 14277-80, 14290) Before the trial court ruled on that motion, LabCorp in June 2013 relied upon Dr. London's opinion in response to Dr. Harding's motion for summary judgment, which sought dismissal of all but one of the Wuths' claims against him. (CP 2604, 2736) In his summary judgment reply, Dr. Harding renewed his objection to Dr. London's expert testimony, arguing that Dr. London did not have the qualifications to testify to the standard of care for a perinatologist working with genetic counselors. (CP 2907-10, 2915) As the Court of Appeals recognized, ¶65, although LabCorp defended the qualifications and opinions of another expert upon whom it relied (CP 3083-85), LabCorp made no attempt to support Dr. London's qualifications "until the matter was heard on oral argument," ¶65, when the trial court found that Dr. London "doesn't have anywhere near the expertise that would be needed in this specific case" (7/18/13 RP 46) and granted Dr. Harding's motion to strike Dr. London as a witness. (CP 3141)

At the trial court's invitation (7/18/13 RP 48; CP 3141), LabCorp moved to reconsider the July 18, 2013 order preventing Dr. London "from offering opinions at trial." (CP 3151-55) LabCorp then

let the discovery deadline pass, six weeks later, without designating a new expert. (CP 14290) Dr. Harding's renewal of his motions in limine while LabCorp's motion for reconsideration was pending gave LabCorp yet another opportunity to brief the issue. (CP 6356-62, 7494-96) The trial court then denied reconsideration (CP 6383-85) and granted Dr. Harding's motion in limine. (CP 11751-54) LabCorp's claim that these evidentiary and trial management decisions violated its due process rights ignores the abundant notice and repeated opportunities it was given to be heard on this issue, both before and after the trial court ruled. The Court of Appeals decision affirming the trial court's exercise of discretion raises no grounds for review under RAP 13.4(b)(3).

LabCorp also asserts that this case raises the issue whether the appellate courts should review de novo a trial court's exclusion of expert testimony on summary judgment. (Petition 15) But the trial court partially *denied* summary judgment, allowing LabCorp to allege Dr. Harding's fault at trial under the theory for which there *was* competent expert testimony – that Dr. Harding breached the standard of care if the jury found that he did not direct Valley Medical's medical assistant to send to LabCorp the genetic testing report that would have assisted LabCorp in looking for the

chromosomal defect at issue. (CP 3141, 11958-59) LabCorp claimed on appeal that it was prejudiced by a *summary judgment* ruling, but (as it repeatedly acknowledged in the trial court: CP 3143, 3151, 7494, 10993; 10/23 RP 23-24) the court's decision was an evidentiary ruling that its expert was not qualified to testify *at trial.* Under settled law, that is clearly a matter for the trial court's discretion. *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 355, ¶16, 333 P.3d 388 (2014) ("[T]rial courts are given broad discretion to determine the circumstances under which expert testimony will be allowed.").

The Court of Appeals properly recognized that the trial court's ultimate decision to exclude Dr. London from testifying *at trial* was made not on summary judgment, but in connection with LabCorp's motion for reconsideration, heard months after entry of the order partially granting and partially denying summary judgment. ¶66. That fact, standing alone, distinguishes this case from *Taylor v. Bell,* 185 Wn. App. 270, 340 P.3d 951 (2014), *rev. denied*, 183 Wn.2d 1012 (2015) (Petition 16, 18), in which Division One held that an appellate court reviews de novo a trial court's decision excluding an expert's declaration on summary judgment. And LabCorp (wisely) does not ask the Court to modify the established rule that motions for reconsideration, like other CR 59 motions, are reviewed for abuse of

discretion. *See Brundridge v. Fluor Federal Services, Inc.*, 164 Wn.2d 432, 454, ¶41, 191 P.3d 879 (2008) (CR 59); *Wagner Development, Inc. v. Fidelity & Deposit Co.*, 95 Wn. App. 896, 906, 977 P.2d 639, *rev. denied*, 139 Wn.2d 1005 (1999) (reconsideration of summary judgment).

This Court's decision in *Keck v. Collins*, 2015 WL 5612829 (Sept. 24, 2015) (Petition 1), has nothing to do with the issue raised by LabCorp. In *Keck*, this Court held that the trial court abused its discretion in striking on summary judgment an untimely expert's declaration as a discovery sanction without considering the *Burnet* factors. 2015 WL 5612829, at *5, ¶24 ("trial courts must consider the factors from *Burnet*, 131 Wn.2d 484, 933 P.2d 1036 [(1997)], before excluding untimely disclosed evidence"). The trial court here did not exclude Dr. London from testifying at trial as a discovery sanction, but because he was unqualified to give an opinion on the standard of care for a perinatologist with respect to genetic testing. That is a discretionary decision, fully supported by the facts, reached with all the process LabCorp was due, and not a basis for this Court's review under RAP 13.4(b)(1) or (3).

Accepting LabCorp's invitation for this Court to review *de novo* the trial court's evidentiary ruling excluding Dr. London from

testifying at trial under ER 702 and 703, would, in any event, yield the same decision reached below. Dr. London was not qualified by "knowledge, skill, experience, training, or education," ER 702, to testify to a perinatologist's standard of care in connection with genetic testing. Dr. London had *never* worked with genetic counselors in a prenatal diagnostic clinic, had *never* worked for a laboratory that performed cytogenetic testing, and, having *never* practiced as a maternal-fetal medicine specialist, had *no* experience or expertise on how maternal-fetal medicine specialists share responsibilities with genetic counselors. (CP 4874) Dr. London's expertise is in contraception, menopause, and osteoporosis. (CP 4875, 4940) Dr. London had never performed the CVS procedure Dr. Harding used to extract from Rhea Wuth's womb the genetic sample on which LabCorp performed its botched genetic testing. (CP 13796, 13806)

Further, Dr. London's belief that Dr. Harding breached a standard of care by failing to "follow up" with LabCorp was not based on the type of information "reasonably relied upon by experts in the particular field in forming opinions." ER 703. Based on nothing more than "lunch table" polling of medical residents and "gyn people" he did not know and could not identify, Dr. London

concluded that Dr. Harding should have reviewed LabCorp's test results himself and determined if follow-up was necessary, rather than rely on Valley's genetic counselor. (CP 4876-77) Dr. London then confused the issue in this "lunch table" discussion by asking his unidentified colleagues about the follow up necessary for tests not at issue in this case, including breast biopsies. (CP 4877, 13804)

The Court of Appeals correctly affirmed the trial court's decision excluding LabCorp's expert as unqualified. That decision presents no issue of constitutional magnitude, conflicts with no decisions from this Court or the Court of Appeals, and is not a basis for review under RAP 13.4(b)(1) or (3).

IV. CONCLUSION

This Court should deny review.

Dated this 23rd day of October, 2015.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 23, 2015, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

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Attached for filing in searchable .PDF format is the Answer to Petition for Review, Cause No. 92353-1, and the Response to RAP 13.5 Motion for Discretionary Review, Cause No. 92341-8. The attorneys filing these documents are Howard M. Goodfriend, howard@washingtonappeals.com and Catherine W. Smith, cate@washingtonappeals.com.

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