71894-1

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION 1

No. 71894-1

FRANKLIN R. LACY Plaintiff-Appellant

v.

RICHARD RASMUSSEN, BETTY J. RASMUSSEN, RASMUSSEN WIRE ROPE & RIGGING, CO., RASMUSSEN EQUIPMENT CO., BILL JOOST, LANDMANN WIRE PRODUCTS, WEISNER, INC., WEISNER STEEL PRODUCTS, INC.

Defendants-Respondents.

On Appeal from San Juan Superior Court, Cause No. 10-2-05171-7

APPELLANT FRANKLIN R. LACY'S REPLY BRIEF

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INTRODUCTION

Plaintiff-Appellant's (PL) reply to Weisner, Inc. and Weisner Steel Products, Inc. (W) and Landmann Wire Rope Products, Inc. (L) (collectively WL). Defendants Richard Rasmussen, Betty J. Rasmussen, owners Rasmussen Wire Rope & Rigging Co., Rasmussen Equipment Co., Bill Joost (BJ) (collectively DF) were represented as Defendants on the original lawsuit filing except additional Defendants John Doe Rasmussen and Jane Doe Rasmussen were also Named instead of Betty J. Rasmussen, whose name was added with court permission on August 26, 2011 along with WL. Chang Doe Shackle Manufacturing Co. was also named representing the China Manufacturer, whose position in the list of responsible parties is occupied by WL as the manufacturer's representatives. It was confirmed in sworn deposition and answer to interrogatories that BJ refers to WL regularly indirectly as manufacturers of the goods provided to PL by telling PL that DF is ordering them directly from the manufacturers, as he did repeatedly (cp00028 describing that inspections were not performed by DF but possibly would have been made by PL "or in the hands of manufacturers of the products sold." No extra distributor was mentioned. Also see PL's brief table item 10 referring to page 8, Item5; and page 14. This shows DF gets the application from the customer and Products recommended from the

manufacturer(cs154, Ex B, p141, L 21 to p142, L 6; p143, L 6-14)).
It should be pointed out that August 26, 2011 was a Friday. This is when Judge Eaton added the new defendants and gave Plaintiff one year in order to keep the case active. The following Monday was August 29, 2011. As was briefed, PL did not have the Rules of Civil Procedure due to The Superior Court of the County of San Juan Court Clerk's procedural miss-direction and despite PL's best efforts to find them (cp 640-642). He did not have the Rules of Civil Procedure for Washington State Courts until September 6, 2012. This was after the Court orders removing WL from the case were granted. This was also after WL's were individually served with the Summons and Complaint including giving the 60 days to respond (cp 000147). The statutes on privity have been loosened with some statutes cited no longer being valid. Cases involving injury are not required to have privity. (RCWA § 4.16.250, RCWA § 4.16.260, RCWA § 4.16.326 (1) (g), (2). For WL pleadings see cp 625-644, 728-745, which apply herein.

Regarding DF, PL had the costs of rebuilding and reinstalling the dock system after it let loose annually due to unscrewing the newly installed alleged stainless steel top quality shackles year after year. PL outlined in the complaint different things that were tried to stop the unscrewing including locking shackles as recommended by BJ (Cp 139,

(6) (b); cp1063 (C) p. 104, lines 7-13).

After the shackle unscrewing problem is resolved, PL's dock system would be in high demand because: 1. It replaces piling-type designs requiring shallow water and bottom soil that is not too hard to accept pilings; 2. The vast majority of shorelines are deep water and/or have rock bottoms that won't accept pilings to secure docks; 3. The 14 foot tide changes and long pole leverage against dock system pilings makes a requirement to haul these piling supported docks out each year; 4. PL's dock system can be left in place year around with its long range stretchy nylon rope tethering system easily absorbing changes in tide as evidenced by one float remaining in place year around since 1966 when it had extra tied tethers that by passed the alleged unscrewing shackles; 5. Because most waterfront parcels are deep water or rocky, owners of these parcels have the option of PL's dock system or no dock at all off their property; 6. Having a dock greatly appreciates waterfront parcel property values; 7. The prosperous waterfront property owners would have the convenience of not having to dock their boat elsewhere if they can find space. The waiting lists for dock space tend to be long.

With his patent expired, PL has lost the right to license his patent design to dock builders around the country because reworking and solving the dock unscrewing shackle bolt problem had to be resolved before

licensing could begin (Please see cp1063, Ex 'G'; (cs273 (cp2656-), Ex 'C' through 'I' (cp2690-2695). These zero tide change 6-hour periods all occurred in the summer. As was shown in October 2014, even minimal tide changes create currents too swift to work under water. It was also covered in timely PL affidavits both from PL and from Richard Aarons who had firsthand knowledge of what had occurred cs243 (cp2277 to 2281; cp1713-1719; 1856-1860; 2424-2425;1625-1711).

PL's serious permanent right leg injury is a calamitous and immediate reflection of the serious and dangerous nature of the defective shackles repeatedly sold to PL without warnings. PL could have easily lost his life by: 1. The 10,000 pound shackle released dock float running over PL and becoming hung up on the rocks with PL under it. If PL didn't drown, he would have died of hypothermia in the 54 degree water after 30 minutes. PL knew this from his U. S. Coast Guard boater's training; 2. The 10,000 pound dock float that ran over PL had three 6-inch attachment eyebolts rigidly mounted in alignment under each dock float corner. If the dock float happened to have been aligned so that the eyebolts pointing downward were even with the center of the narrow, shallow rock trench where PL was pushed over and under the dock float, then the eyebolts would have slit PL open from his lower body through his head, and PL would be dead; 3. If the sand that filled the narrow rock trench around PL

was just a little bit higher, then the lower square edge of the front of the 10,000 pound dock float would have peeled off the front body and face of PL, and he would be dead. The property's sand depth is variable with a build up through the fall, winter, and spring months with the sands brought in by storms and with a net erosion of sand due to the wake of boat traffic washing it away during the summer. That is why the picture taken in late summer 2014 shows minimal sand at the accident site (cp2656-), Ex 'J', cp2856.

DF's last introduction paragraph is just an attempt to change from responding to PL's brief directly for which there is no defense to reiterating an old defense to force the Court to not be able to compare issues. PL's issues are quite clear and spelled out in a way that DF could respond to all the issues. This DF comment is designed to try to get the Court to only read DF's side and not give PL's case any time for review. It worked in Superior Court with a judge looking for short cuts to lighten his very heavy work load. PL respectfully asks that this DF strategy not be allowed to work in this court. Rather than answer PL's Brief, DF is clearly trying to get the Court to go in another analytic direction thereby increasing judicial workload. However cases with injuries are excluded from limitation, tolling, and privity considerations.

ASSIGNMENT OF ERRORS

WL are in error trying to limit the assignment of errors to just DF except item 6. Actually items 1, 2, 3, 4, 5, 6, 8, and 9 apply to the court's orders excluding them from the case. This has already been covered in PL's Brief, so it won't be repeated. The court incorrectly determined that PL's claims against WL were barred by the statute of limitations. They are not. Dismissal was also improper because all of PL's claims are allowed as exceptions by the Washington Product Liability Act (WPLA). Also, PL's lack of contractual privity with WL is allowed as an exception because of the dangerous and injury-causing result of WL selling highly defective goods without the defects being discernable under heavy chrome plating when delivered and without the 'country of origin' markings and the diligence required of them during manufacture of China manufactured goods before they subject the public to such sudden and dangerous hazards (cp 625-644, 728-745, and the statutes herein, p. 20-25).

For DF's response, it is being assumed that Assignment of Errors has been retitled Issues of Appeal. PL's reply follows:

Issue #1: Are Lacy's breach of contract claims barred for sales occurring more than four years before Lacy filed the complaint?

Answer: No. Lacy was not aware that the shackles were failing. They were purchased and repurchased new. They had to be unscrewing, which is a normal phenomenon with two tide changes of up to 14 feet each day to cause the unscrewing. What reputable merchant would repeatedly sell new

alleged top quality stainless steel shackles that would have 100% of them come apart in chunks in less than 7 months? The shackle bolts had to be unscrewing because of the tide changes each day, which is a natural occurence. Unscrewing shackle bolts is not a failure. Faced with a limited duration patent, PL was under constant pressure to try to prevent the shackle bolts from unscrewing. PL made every effort to resolve the issue so he could license his patented design to dock builders without going bankrupt from sales with all their dock sections coming loose from shackle bolts unscrewing.

Issue #2: Are Lacy's consequential damage claims barred by the language of the contract?

Answer: No. The language of the readable parts of the terms and conditions clearly only applies to equipment. PL's cash-in-advance purchases are like going into a food store and buying a pound of bacon except PL did not see the pound of bacon in advance of his purchase because DF picked it out without providing the top quality goods that PL had specified and without making a catalogue available to PL so he could participate in determining what was being purchased. Unknown to PL, DF was providing a lesser quality good to PL at a premium price possibly to maximize profits. DF did not make PL aware that he was getting a lesser quality good that BJ picked out because he had it in stock. DF pretended that he

was helping PL to prevent the shackle bolts from unscrewing by switching from a screw pin shackle bolt to a locking nut shackle bolt with locking cotter pin (cs154, cp1063***, EX 'C', p.104, L7-13; EX 11 at end (separate cp)). DF is barring PL from collecting consequential damages even though he was the only one who knew that the alleged stainless steel top quality shackles would be of lesser quality manufactured uninspected and untested by China manufacturers against PL's firm instructions and by DF representing that the shackles are manufactured in England. PL alleges fraud against him by DF and WL since DF and WL regularly agreed by themselves to come up with PL's alleged top quality goods, which they knew were of lesser quality and defective (cp1518-1541, 1542-1566). Fraud allows consequential damage claims to be allowed.

Issue #3: Are Lacy's tort claims barred for incidents occurring more than three years before Lacy filed the complaint?

Answer: No. Lacy had no knowledge of the continuum of alleged top quality stainless steel shackles coming apart in chunks with resulting failure and damages until June 20, 2009 and, therefore, his claims are not barred. Further Lacy's case involving multiple injuries is excluded.

Issue #4: Are Lacy's tort claims related to the 2008 dock system failure precluded by the Independent Duty Doctrine?

Answer: No. There was no time specified in the terms and

conditions which only applied to equipment. PL took BJ at his word that the terms and conditions do not apply to PL purchases since they are not equipment. In keeping with these assertions from BJ, Pl wrote above his signature that he was only signing for goods listed on the front page and any statements on the back do not apply to his purchases then and on purchases into the future. PL did not receive terms and conditions on the back starting with the end of 1998. The Rasmussen Defendants owe Lacy an independent duty to provide top quality goods that are not manufactured in China as they promised. PL had to wait until the summer when approximately 5 days each year provided a zero tide change for 6 hours in order to replace the missing dock lines and stainless steel shackles, which were installed in unused condition. One dock float tended to remain due to expensive tethering independent of the shackles.

Issue #5: Were Lacy's consequential damage claims properly dismissed because he produced no admissible evidence to support those claims?

Answer: No. Lacy's claims are very real supported by evidence and should not be dismissed. There were affidavits and an independent support affidavit from Richard Aaron. There were also pictures and sworn deposition pages and exhibits supporting PL's claims (cp1063***(clerk separate papers); (cp1518-1541, 1542-1566);1718-1722; 2277-2281; 2656).

Issue #6: Do the Rasmussen Defendants have a fiduciary relationship with

Lacy?

Answer: Yes. The Rasmussen Defendants are sellers involved in keeping PL ignorant of the parameters of the goods they sell and independently selecting products, deciding which products PL will get, and getting paid for them using PL's debit card on file before they are shipped with just a pallet and box count for paper work.

Issue #7: Are the Rasmussen Defendants entitled to their attorneys' fees?

Answer: No. The terms and conditions were not provided after 1998. Not even the partly unreadable terms and conditions from the initial purchases were provided. PL and BJ disclaimed the partly unreadable terms and conditions for all future terms and conditions, and DF dropped sending PL the terms and conditions on future purchases, which were phoned in with BJ sending out a blank back page with PL's debit card receipt attached. PL was making cash-in-advance purchases by telephone totally relying on BJ's recommendations. The alleged contract is not valid for PL purchases. There was no agreement on its terms and conditions except that they did not apply to PL's goods purchases. This case is not frivolous. No Attorney fees should be collected.

STATEMENT OF CASE

This is about Plaintiff's (**PL**'s) patented rough water dock system whose patent has expired due to Defendants Rasmussen (**DF**) through Bill

Joost (**BJ**) selling Plaintiff Lacy alleged stainless steel shackles 'from England' that turned out to be from China. They were 100% defective, but the defects could not be seen when they were shipped to PL and visually inspected. The shackles also arrived without the federally required 'country of origin' markings.

In reply to DF's Response, many of his response items are inaccurate and/or distortions. As a result PL asks your honors to please actually read the cited deposition quotes particularly of PL and verify the case law and determine whether DF is accurately interpreting their statute references. The legislature's laws allow situations similar to PL's out of fairness. Plaintiff has two legal depositions allowed by Judge Eaton for this case in the March 2014 hearing. There is the original version, and there is PL's deposition as corrected within the 30 days allowed to include missing words and clarity. The corrected copy is the full deposition with the same page numbers and line numbers as the uncorrected deposition except there is a one page overflow for page 113, 119, and 121. This means that the corresponding page number for DF 'cp' references should have 3 page numbers added to find the same referenced page after page 121. All corrections in his deposition can be easily located because they are in boldface. Below is a table of all the DF respondent 'cp's' from PL's deposition in the order they appear in DF's 'Case Law' and

Lacy Deposition without Lacy Corrections on DF Response	**Corrected Lacy Deposition (boldface)**
[CP 1000 Lacy Dep. p.95, lines 13~~-23~~ to p 97, line 15].	CP 1175 - 1177
[CP 1001-02 Lacy Dep. p.99, line 22 to p. ~~100~~ 110, line ~~6~~ 2].	CP 1179 - 1190
[CP 1003-05 Lacy Dep., p. ~~101~~ 99, line ~~20~~ 22 to p. ~~103~~ 110, line ~~8~~ 2].	CP 1179 - 1190
[CP 1006-07 Lacy Dep., p. ~~109~~ 99, line ~~19~~ 22 to p. 110, line 2].	CP 1179 - 1190
[CP 1008 Lacy Dep., p. ~~114~~ 115, line 14 to 24].	CP 1195
[CP 1009-10 Lacy Dep., p. ~~119~~ 121, line ~~15~~ 10 to p. ~~120~~ 123, line 10].	CP 1201 - 1203
[CP 1011-12 Lacy Dep. p. ~~121~~ 124, line 10 to p. ~~122~~ 125, line2].	CP 1204 - 1205
[CP 1012-13 Lacy Dep., p. ~~122~~ 125, line 6 to p. ~~123~~ 126, line 9].	CP 1205 - 1206
[CP 1014-15 Lacy Dep., p.~~128~~ 131, line 25 to p. ~~129~~ 132, line 5].	CP 1211 - 1212
[CP 1016-17 Lacy Dep., p. ~~137~~ 140, line 7 to p. 141, line ~~18~~ 25].	CP 1220 - 1221
[CP 1011-12 Lacy Dep. p. ~~121~~ 124, line 10 to p. ~~122~~ 125, line 2].	CP 1203 – 1204
[CP 1003-05 Lacy Dep., p. ~~101~~ 99, line ~~20~~ 22 to p. ~~103~~ 110, line ~~8~~ 2].	CP 1179 - 1190
[CP 994, Lacy Dep. p. 85, lines ~~11-13~~ 1 tp p. 87, line 5, 2004]	CP 1165 - 1167
[CP 998, Lacy Dep., p.91, line 3 top. ~~92~~ 95, line ~~4~~ 1]	CP 1172 - 1176
[CP 1006-07 Lacy Dep., p. ~~109~~ 99, line ~~19~~ 22 to p. 110, line 2]	CP 1179 - 1190
[CP 995-96, Lacy Dep., p. 87, line 14 to p. ~~89~~ 90, line ~~8~~ 19].	CP 1167 - 1170
[CP 1009-10 Lacy Dep., p. ~~119~~ 121, line ~~15~~ 10 to p. ~~120~~ 123, line 10]	CP 1201 - 1203
[CP 1003-05 Lacy Dep., p. ~~101~~ 99, line ~~20~~ 22 to p. ~~103~~ 110, line ~~8~~ 2].	CP 1179 - 1190
[CP 995-96, Lacy Dep., p. 87 line 14 to p. ~~89~~ 90, line ~~8~~ 19]	CP 1167 - 1170
[CP 1009-10 Lacy Dep., p. ~~119~~ 121, line ~~15~~ 10 to p. ~~120~~ 123, line 10].	CP 1201 - 1203
[CP 1015, Lacy Dep. p. ~~129~~ 128, line ~~8~~ 24 to p. 130, line ~~21~~ 4].	CP 1208 - 1210

Lacy Deposition without Lacy Corrections on DF Response	**Corrected Lacy Deposition (boldface)**
[CP 1018, Lacy Dep., p. ~~218~~ 221, lines ~~14-15~~ 9 to p. 222, line 23].	CP 1301 - 1302
[CP 1017, Lacy Dep. p. ~~176~~ 179, lines 23-24].	CP 1259
[CP 1010-11, Lacy Dep. P ~~120~~ 123, line 20 to p. ~~121~~ 124, line 1].	CP 1202 - 1203
[CP 1893, Lacy Dep., p. ~~132~~ 135, lines **2-lO](emphasis** added).	CP 1214
[CP 1018, 1020 Lacy Dep. p. ~~218~~ 221, line 9 to p. 222, line 23, Exhibit 62].	CP 1301 - 1302
[CP 1018, Lacy Dep., p. ~~218~~ 221, line 9 to p. 223 line ~~14-~~ 23].	CP 1301

The DF statement of Issues on Appeal is grossly in error. There are too many corrections to be made for the allotted 25 pages for reply. Please see PL's brief and the table references of PL's deposition after corrections.

DF's terms and conditions form was bound in five parts with tractor feed edge strips in order to draw the joined forms across the printer's platen with jerking ink smearing motions. Each paper was necessarily thin in order to print 5 pages simultaneously. The ink for the terms and conditions was lightly applied to the thin paper to prevent bleeding through to the front of the form. The ink on the front of the receipt was heavily applied, and it did bleed through to the terms and conditions on the back further contributing to making it unreadable. The lower right quadrant of the terms and conditions were truly unreadable with the faintness, smearing, and ink bleeding through from the receipt's front page (cp1831, 1833 (back sides)). PL was able to computer enhance one copy

that DF provided during discovery. He used that enhanced page on the back of all his cp 1063 exhibit copies except the allegedly enhanced copies that DF came up with that are hard to read. Please see the receipt back (alleged terms and conditions on the back of cp 1063, EX 4, 5, 6 , 7). DF reduced the number of bound copies for those exhibits from 5-part to 4-part forms possibly so that the DF's back side terms and conditions would be readable. Please see these exhibits and decide for yourselves. PL also has unreadable original terms and conditions of the back of receipts from that early period (cp1831, 1833 (back sides)). Please also see PL's brief argument that the terms and conditions only apply to equipment, not for the parts purchased for cash paid before shipping through PL's debit card number kept on file by DF (see RCWA 62.A.9A-102 (44)).

Another question comes up. Can DF fraudulently withhold information concerning the poor quality of the goods sold and then bar PL from collecting consequential damages that accrues as a result of these inferior goods? PL was kept totally uninformed of these material facts throughout the time period involved.

PL was convinced that the shackles were unscrewing until June 20, 2009 (cp2277-2281).

After 2008 PL had the one remaining dock float double shackled at each connection and redundantly tethered with 1" diameter double braided

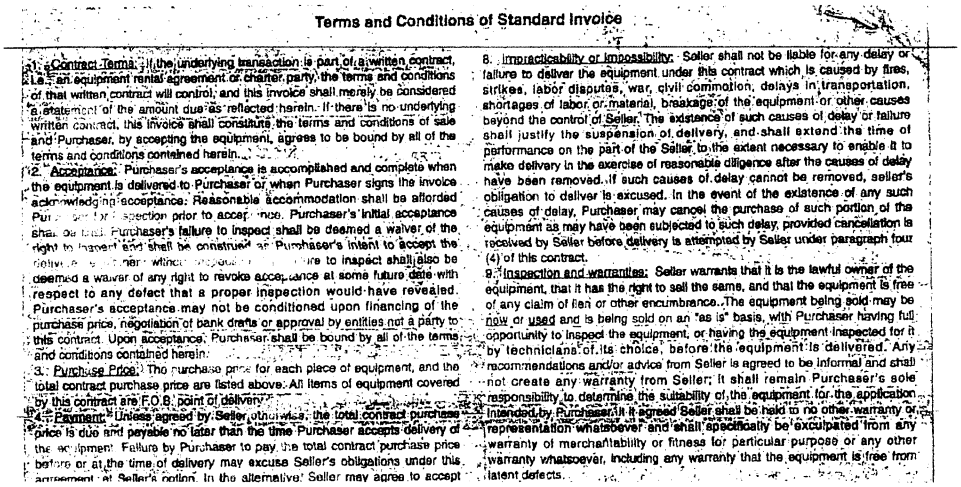
tied nylon lines, which by-passed the shackle joinings for a temporary backup fastening. Each double shackle connection involved 6 shackles. Generally, PL used unused shackles bought before August 2008 for one path and newly received shackles for the second path. It was later learned in deposition that the newly received shackles were allegedly top quality type 316 stainless steel shackles made in Thailand instead of the former shackles that PL learned in discovery and/or around June 20, 2009 were lesser quality type 304 stainless steel shackles made in China. PL remembers a situation where no shackle path remained for each connection. One tied rope tether was all that kept the dock float from letting loose.

PL included his challenge for paying attorney fees in his appeal. PL's Notice of Appeal had the time constraints of the Orders for Summary Judgment. With the fact of PL's appeal challenge to the award of Attorney fees, the appeal against final judgment and the quantifying of attorney fees happened after PL's Notice of Appeal and would be mute. The arguments and evidence added concerning attorney fees should very much be allowed in consideration of the whole appeal of which attorney fees is an intrinsic part.

As shown PL's motion is for a review de novo and for Discretionary Review in addition to review for court errors that prevented

justice to be served. As already shown, PL did not have the Washington State Rules of Civil Procedure until September 6, 2012 because of Court Clerk procedural misdirection and because extensive internet searches would not cause them to come up. The fault was not PL's. The non-access to the Rules of Civil Procedure went on for approximately half this case including all WL pleadings up to the earlier premature appeal in this court of their orders of dismissal before September 6, 2012. Plaintiff was placed at a distinct disadvantage. Plaintiff, in Pro Se, actually believed the law concerning those Motions for Summary Judgment would be interpreted most favorable to the non-moving party through his submitted affidavit and pleadings and evidence even to the extent that the Judge may not believe the non-moving parties case. PL read this before he answered DF's Motion for Summary Judgment. That is why PL concentrated on proving to the Court the alleged dishonesty of DF. That is why PL believed that the court was required to believe PL's affidavit, which was honest against whatever DF argued. PL was only allowed 20 pages of pleadings before the hearing of March 15, 2014. PL tore into the depositions of Defendants Bill Joost, Richard Rasmussen, and Betty J. Rasmussen to show the alleged dishonesty because it all comes down to their word against mine. It would have thrown out their unreadable terms and conditions based upon the unreadability and BJ's initial affirmations

that it does not apply to PL's purchases.



Terms and Conditions of Standard Invoice

1. Contract Terms: If the underlying transaction is part of a written contract, i.e., an equipment rental agreement or charter party, the terms and conditions of that written contract will control, and this invoice shall merely be considered a statement of the amount due as reflected herein. If there is no underlying written contract, this invoice shall constitute the terms and conditions of sale and Purchaser, by accepting the equipment, agrees to be bound by all of the terms and conditions contained herein.

2. Acceptance: Purchaser's acceptance is accomplished and complete when the equipment is delivered to Purchaser or when Purchaser signs the invoice acknowledging acceptance. Reasonable accommodation shall be afforded Pur[illegible]spection prior to accep[illegible]nce. Purchaser's initial acceptance sha[illegible] Purchaser's failure to inspect shall be deemed a waiver of the right to inspect and shall be construed as Purchaser's intent to accept the deliv[illegible]ner which [illegible]re to inspect shall also be deemed a waiver of any right to revoke acceptance at some future date with respect to any defect that a proper inspection would have revealed. Purchaser's acceptance may not be conditioned upon financing of the purchase price, negotiation of bank drafts or approval by entities not a party to this contract. Upon acceptance, Purchaser shall be bound by all of the terms and conditions contained herein.

3. Purchase Price: The purchase price for each piece of equipment, and the total contract purchase price are listed above. All items of equipment covered by this contract are F.O.B. point of delivery.

4. Payment: Unless agreed by Seller otherwise, the total contract purchase price is due and payable no later than the time Purchaser accepts delivery of the equipment. Failure by Purchaser to pay the total contract purchase price before or at the time of delivery may excuse Seller's obligations under this agreement at Seller's option. In the alternative, Seller may agree to accept

8. Impracticability or Impossibility: Seller shall not be liable for any delay or failure to deliver the equipment under this contract which is caused by fires, strikes, labor disputes, war, civil commotion, delays in transportation, shortages of labor or material, breakage of the equipment or other causes beyond the control of Seller. The existence of such causes of delay or failure shall justify the suspension of delivery, and shall extend the time of performance on the part of the Seller to the extent necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If such causes of delay cannot be removed, seller's obligation to deliver is excused. In the event of the existence of any such causes of delay, Purchaser may cancel the purchase of such portion of the equipment as may have been subjected to such delay, provided cancellation is received by Seller before delivery is attempted by Seller under paragraph four (4) of this contract.

9. Inspection and warranties: Seller warrants that it is the lawful owner of the equipment, that it has the right to sell the same, and that the equipment is free of any claim of lien or other encumbrance. The equipment being sold may be new or used and is being sold on an "as is" basis, with Purchaser having full opportunity to inspect the equipment, or having the equipment inspected for it by technicians of its choice, before the equipment is delivered. Any recommendations and/or advice from Seller is agreed to be informal and shall not create any warranty from Seller; it shall remain Purchaser's sole responsibility to determine the suitability of the equipment for the application intended by Purchaser. It is agreed Seller shall be held to no other warranty or representation whatsoever and shall specifically be exculpated from any warranty of merchantability or fitness for particular purpose or any other warranty whatsoever, including any warranty that the equipment is free from latent defects.

Item 1 last sentence: "If there is no underlying written contract, this invoice shall constitute the terms and conditions of sale and purchase, by accepting the equipment, agrees to be bound by all of the terms and conditions contained herein." Plaintiff was not sold any equipment, so he didn't inspect any equipment. Therefore PL is not bound by these term and conditions. In reference statutes it is found that the law considers equipment entirely different from the basic goods purchased. It is not equipment as defined by Webster's Dictionary. RCWA 62A.9A-102 (44)

Item 2 Acceptance: is defined after equipment is delivered. That is when the terms and conditions start . However no equipment was delivered so there was no acceptance as defined herein. Therefore these terms and conditions are not accepted. "Upon acceptance, Purchaser shall be bound by all the terms and conditions herein." Since there is no

equipment sold, there is no acceptance, and these terms and conditions do not apply to PL's purchases.

Please read item 9, Inspection and warranties: It is inconspicuously buried in the fine print. Even new equipment allegedly has no warranty and is sold "as is". PL alleges that these terms and conditions are tantamount to a license to steal after providing DF known China manufactured junk. This clause does not apply to PL; although they did try, by unannounced changing "equipment" to "goods" on a version they sent PL in discovery.

ARGUMENT

ARGUMENT SUMMARY

RCWA § 4.16.040 If D F prevails that the written contract is in effect, then the limitation would be 6 years, not 3 years.

RCWA § 4.16.080 (4) PL is claiming fraudulent concealment. Three year tolling starts when the discovery by the aggrieved party of the facts constituting the fraud is known. That would be June 20, 2009 for the shackles all being inferior and releasing chunks of metal. Additional alleged fraud like 'country of origin' lacking on the shackles and unsupervised buying and untruths was learned during or after depositions. This statute involves a no contract situation. DF is mixing the statutes, and Judge Eaton wrongly allowed it.

RCWA § 4.16.170 Only one defendant needs to be served to satisfy tolling for the statute of limitations to be satisfied. As manufacturers (as also called by DF in brief and elsewhere), WL was referred to as manufacturer and named, (unknown) Chang Doe Shackle Manufacturing Company, in PL's complaint. Their **names and addresses** were not known until July 15, 2011. PL alleges that DF is distorting the facts throughout their arguments. Please review PL's deposition references in Statement of Case for a fair picture of events. The references are in the order referred to by DF in their response even if some had to be repeated to maintain this order. A Court Clerk error caused her not to file the Summons and Complaints, which were filed by three different professional process servers with the court in a timely manner in January 2012. It was re-filed in May 2012 plus a Summons and Amended Complaint was served and filed in May 2012 giving out-of-state Defendants another 60 days to respond (cp147). This was during the period when PL did not have the Washington State Superior Court's Rules of Civil Procedure due to no fault of PL (cp 640-642).

RCWA § 4.16.180 In the WL matter "the time of his or her absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action." WL's tolling would be from July 15, 2011, except that PL's multiple injuries remove tolling.

RCWA § 4.16.250 Concerning PL's right leg hip, knee, peroneal nerve,

and ankle permanent injury, which has involved PL receiving a permanent handicap parking permit (cp1715-1716).

RCWA § 4.16.260 "When two or more disabilities shall coexist at the same time the right of action accrues, the limitation shall not attach until they are all removed." So far only the right knee has been replaced. The right leg hip, peroneal nerve (which also triggers bad back pains), and ankle injuries have not been removed.

RCWA § 4.16.326 (1) (g), (2) Limitation for filing is 6 years except for wrongful death or personal injury. Then there would be no limitations for filing.

RCWA § 62A.1-205 (6), (10) This makes the alleged contract void even if it applies to all goods, which I believe they are now trying to do as was learned in discovery. Please read items 1, 2, and 9 to allegedly demonstrate their shirking of all ethics responsibilities. Truly this is procedurally unconscionable.

RCWA § 62A.4-103 (e) "If there is also bad faith it includes any other damages the party suffered as a proximate consequence." This also applies for this case.

RCWA § 62A.2-311 (2) DF usurped buyer's responsibility by keeping product information away from PL and deciding with the China Manufacture's Representative what will be provided.

RCWA § 62A.2-512 (2) With the promised goods coming from England, PL

had every confidence that care in construction would be exercised and testing done so that PL will receive a product as basic as a shackle that is free of defects. That is the case for shackles that PL recently ordered directly from England. If PL knew that DF was supplying him with shackles from a China manufacturer, he would have zero confidence in their ability to be loaded as rated. They would have been rejected immediately. But DF sent him shackles without a country of origin prominently stamped into each one in violation of Federal law, which PL was not aware of until discovery. PL alleges that this is fraudulent concealment. Then their contract says that it is for equipment, and PLlearned in discovery that DF changed the terms to be for goods. The terms allege that once you receive the goods even new goods, you own it no matter how bad it is if the defects are hidden and not apparent upon delivery. This includes goods that were negligently produced. By the alleged terms if they sell PL junk, PL would be stuck for what he paid, and PL will be made to pay DF's attorney fees and be liable for consequential damages caused by this junk. By the way, PL can only inspect them. Now they claim that PL is expected to hire an expensive test lab to test each of these $100 items just like DF would expect PL to go into a hardware store and buy some shackles and then hire a metallurgist to destructively analyze them. PL alleges that this is impractical nonsense.

RCWA § 62A.2A-519 (3) This common sense law could be applied to PL purchases (cp1518-1541, 1542-1566) (cp1518-1541, 1542-1566).

RCWA § 62A.7-208 (1) (recpt. filled in according to what was not ordered)

RCWA § 62A.3-103 (4) This involves the issuer responsible in PL's situation for selling China manufactured goods against PL's adamant refusal to buy them. PL alleges that is fraud. Especially fraudulent is the removal of the 'country of origin' required stamping (cp2277-2281). PL has unmarked shackles that he received from DF.

RCWA § 62A.7-203 (misdescription or misreceipt (China manftr. left off)

RCWA § 62A.2-316 (1), (2), (3) (a), (b), (c), (4) Denial of implied warranty must be conspicuous. It was not. Plus in recent review PL learned that implied warranty on equipment and any other merchant responsibility on the alleged terms are being denied (Terms and Conditions 1, 2, 9 of cp547). It is not fair dealing to sneak these inferior shackles, etc. in as cash-in-advance purchases and by terms try to make PL permanently own them without recourse after only a visual inspection. It goes against the standards of fair dealing.

RCWA § 62A.9A-102 (44) 'goods' is defined. Although 'equipment' can fall under the category of goods, not all goods can be called equipment. A piece of rope is not 'equipment'. A shackle is not equipment. PL has bought both from DF's selection and charges. Richard Aarons in his affidavit does not consider shackles as equipment, and I in my affidavit do not consider shackles as equipment (cp2277-2281; 1713-14). Even Richard Rasmussen

did not consider shackles as equipment, and neither does Webster's Dictionary as was already covered (cp1063, EX 'C', cp1063, EX'C', p124, lines 2-13; p25, line 24 to p27, line23(separate clerk group)).

"4. Goods-Related Definitions.
a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former Section 9-105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification."

RCWA § 7.72.010 (2) (4) alleged grinding off country of origin is remanufacture plus (4) pertains to the scope of this case's eligibility for this Product Liability Claim. This case applies to this statute.

RCWA § 7.72.030 (1) (a), (b), (c), (2) (a), (c), (3) Liability of Manufacturer as noted fits this case.

RCWA § 7.72.060 (1) (b) (ii), (iii), (2), (3) 12 year useful life limitation for claims. The failure of the shackles was discovered June 20, 2009.

RCWA § 19.86.090 Court discretion – Treble Damages

RCWA § 19.86.120 Four years from June 20, 2009 applies to this statute except the injuries remove all limitations including statutes and tolling.

To fit within the twenty five pages, some arguments are not repeated from the Statement of the Case herein, but they are of importance.

Lack of privity is allowed because of PL's multiple injuries. 28 Seattle U. L. Rev 239, Seattle University Law Library, 2007 "A seller's Responsibilities to Remote Purchasers for Breach of Warranty in the Sale of Goods Under Contract Law" Thomas J. Holdychat footnotes 20, 60 with case law cited. 60 Wash. 622, Supreme Court of Washington,

THORNTON v. DOW et al. Nov. 26, 1910. Headnote 1
"1**Products Liability** - Inherently or imminently dangerous products, privity One is liable for injuries to another with whom he does not stand in privity of contract, where the thing causing the injuries is of a noxious or dangerous kind, or where he has been guilty of fraud or deception in passing off the thing, because one dealing with an imminently dangerous article owes a public duty to exercise caution adequate to the peril, and because one who, actually knowing the danger of an article, puts it forth by some fraud, is guilty of a breach of duty, growing out of the fraud, which extends to persons injured thereby; but one who has been negligent only in some respect with reference to the sale or construction of a thing not imminently dangerous is liable only for breach of contract, out of which no duty arises to strangers."

There is no limitation because PL suffered 4 serious injuries to his right leg with three of them not yet removed. RCWA § 4.16.250, RCWA § 4.16.260, RCWA § 4.16.326 (1) (g), (2). PL was not aware that the shackles were failing until June 20, 2009. PL's tort claims are very much applicable. In addition the tort claims would have been limited to 6 years, not 3 years if the alleged contract was in force for this case as ruled (another error RCWA 4.16.040)). However PL's multiple injuries remove these limitations.

There absolutely was and is sudden and dangerous shackle failure threat clear through to today as was realized June 20,2009. Just by chance divers were not seriously injured or killed when scraping off the vegetation from the shackles in order to closely inspect them.

Consequential damages must be allowed because 1. This clause was in the unreadable lower right quadrant of the alleged Terms and Conditions; 2. Prior clauses such as 1, 2, and 9 make the acceptance of these terms not in force because 'equipment' wasn't accepted. This was a requirement for the Terms and Conditions to go into effect; 3. The terms were not negotiated and

careful reading of a computer enhanced version like those submitted by PL in depositions make them substantially and procedurally unconscionable. At around $126,000 per year dock work losses on PL's submitted tax returns, the losses were cumulatively many thousands of dollars as shown on PL's complaint. DF has copies of these tax returns.

Please see arguments under cp595- 654, 728-824 for Discretionary Review, which also apply herein and is requested. The court can consider all matters in discretionary review cases. PL did not have the Washington State Superior Court Rules of Civil Procedure until September 6, 2006 through no fault of PL's (cp 640-642). Please see the Statement of Case herein for further discussions. Please consider all evidence presented. Some later evidence is reinforcement of points already made in response to DF's Motion for (Partial) Summary Judgment.

There is no time barring because of PL's multiple injuries. PL is ordered by his doctor not to lift anything heavier than a gallon of milk. He must have use of a wheel chair at the airport and a walker at his residence. He has a permanent handicapped parking plaque, and he must sleep sitting up.

PL was only answering deposition questions put to him. If he expanded his testimony, he would have been objected to as being argumentative. PL is not and was not contradicting himself. PL did deny the terms and conditions including for future purchases on the first

purchase receipt. DF calls the form front page "Invoice"; whereas it is actually a cash (debit card) receipt. PL's corrected deposition is cp 1036-1306.

PL's "my contract" comment was taken out of context. DF was trying to allege that PL had received a Terms and Conditions with 'goods' written everywhere instead of 'equipment'. PL was choosing the 'equipment' worded document instead of the 'goods' document. He was not professing ownership or applicability for the document.

When PL said "thoroughly read" he knew that "thoroughly" is an adverb telling his level of effort in **how** he 'read' (a verb) it. It doesn't speak to the alleged Terms and Conditions, and it certainly does not call them thorough when there is the lower right quadrant of the page missing. Having grown up with a school teacher mother, PL is astounded that the court's misinterpretation is even being considered. The Webster's Dictionary defines 'thoroughly' as 'painstakingly.' PL also testified that the back of the receipt is "very, very, very hard to read". Richard Rasmussen said something similar for the copy provided in discovery that was computer enhanced several times (cp1063, EX'A', p. 134, lines 19-22).

CONCLUSION

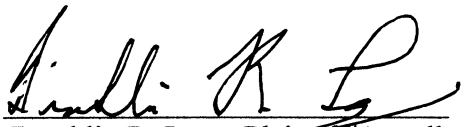
There is something inherently wrong and unjust when PL must work very hard and diligently within conditions of tide changes and strong

currents to determine why the stainless (ss) shackles bought from Rasmussen were unscrewing. New ss shackles were bought from Rasmussen to replace the ones no longer holding his patented dock system, and different solutions were tried to stop the unscrewing. Some of these solutions were recommended by Rasmussen's Bill Joost who continued to make selections for alleged best quality goods to hold PL's dock system in Salt Water. PL never complained about the price of the goods bought. He just wanted the best quality for his application. Then on June 20, 2009, PL learned that all these years DF was providing lesser quality goods year-after-year from lesser quality unsupervised manufacturers. PL asked for mediation, but DF stalled. PL was permanently injured in his right leg causing considerable pain and disability from his right hip socket peripheral bone fragments when the injury dislocated it, right peroneal nerve damage from its being forced against the shinbone just below the knee, right ankle joint damage, and right knee replacement from its having been forced completely backwards . Now PL learns that he cannot be compensated, but he also had to pay DF's legal expenses. This is truly against existing statutes, which deny any statute of limitation being in force for injuries.

PL respectfully asks the Court of Appeals to grant the conclusions in his brief. The trial court more recently denied PL's Motion

for Change of Venue. PL respectfully requests that the more recent Orders approving the amount of Attorney fees and the final judgment for this case be independently over turned.

Dated this 9th day of March 2015.



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PROOF OF SERVICE

I, Richard Aarons, am over 18 years of age and have no interest in this case. I hereby certify under penalty of perjury under the laws of the State of Washington that on this day I caused to be served in the manner indicated a true and accurate copy of

APPELANT'S REPLY BRIEF

via Federal Express and sent in same or served in person to SUPERIOR COURT OF WASHINGTON IN AND FOR SAN JUAN COUNTY, located at COURT HOUSE, 350 COURT STREET, #7, Friday Harbor, WA 98250 AND sent by FAX and Priority Mail and Federal Express to The Honorable Richard J. Johnson, Clerk, Court of Appeals, Div. 1, One Union Square, 600 University Street, Seattle, WA 98101-4170

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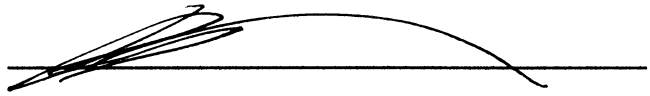
March 9, 2015



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