No. 47462-0-II

SUPREME COURT
OF THE STATE OF WASHINGTON

ANGEL GARCIA-TITLA, individually, and LETICIA SARMIENTO FLORES, individually and the marital community composed thereof

Petitioners,

v.

SFC HOMES, LLC, a Washington Corporation,

Respondent.

PETITION FOR REVIEW

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III. ISSUE PRESENTED FOR REVIEW

Under Washington statutory and case law, when is an entity deemed a general contractor for purposes of liability under *Stute v. PBMC*, 114 Wn.2d 454, 788 P.2d 545 (1990) where an employee of a subcontractor is injured on a construction project? This Court should provide guidance as to the proper legal standard or test for determining when an entity is acting as a general contractor at a construction project and therefore has the duty of safety on the project. No true rule or test exists to determine what evidence must be brought forth to prove that an entity has the *Stute* duty of care. The Division II Court of Appeals decision is in conflict with the Supreme Court case of *Stute v. PBMC* and with several decisions of Division I. Review of the Court of Appeals' decision should be accepted as the requirements of RAP 13.4(b)(1) and (2) are met.

IV. STATEMENT OF THE CASE

Angel Garcia Titla was working on a construction site owned and developed by SFC Homes. CP 125. Garcia Titla was working as a framer for the framing subcontractor, FRDS. CP 55, 58. SFC Homes hired FRDS to frame one of several homes at a Gig Harbor site that SFC Homes owned and developed. CP 57, 58. As Garcia Titla stood on a wooden piece of lumber that was eventually to become the second-story floor of the house, the joist (lumber) broke, causing him to fall to the ground with the lumber tumbling down upon him. CP 61-64. Garcia Titla suffered painful injuries when his body hit the ground and the joist hit his head. CP 62-63.

Neither FRDS nor SFC Homes had provided adequate safety equipment on the site, but instead provided a harness and lanyard in a situation where workers had no place to tie off. CP 77, 78, 81-83. Garcia Titla brought a personal injury claim under *Stute v. PBMC* against SFC Homes. CP 38-40.

Before trial, SFC Homes brought a motion for summary judgement claiming that it was not the general contractor of the job site (CP 10, 17); it was not the owner/developer in control of the job site (CP 10); and it contracted directly with framing contractors who supervised themselves and so it owed no duty to Garcia Titla, hence it breached no duty (CP 10, 11, 105-107). SFC Homes claimed that an owner who is a general

contractor, but who chooses not to retain control of his site, does not owe the *Stute* duty of care as that relates to safety. CP 17-19. SFC Homes plead that its owner, Mr. Atsushi Iwasaki, allowed the framing contractor FRDS to supervise itself because it was an independent contractor. CP 20.

Counsel for SFC Homes stated "as an independent contractor, FRDS was free to do the work in its own way." CP 20 and "SFC Homes did not retain the right to interfere with the manner in which FRDS completed its work, nor did SFC Homes affirmatively assume responsibility for worker safety." CP 20. SFC Homes argued that Garcia Titla had not proven that SFC Homes was the general contractor of the jobsite. CP 21. SFC Homes argued that as an owner who chose not to retain control of his jobsite, SFC Homes could not be sued under a *Stute* theory of liability. CP 20. SFC Homes did not leave another general contractor in its place to assume the safety role and satisfy the *Stute* duties. There were no contracts available to review, which is commonplace in residential construction. Many "handshake" agreements exist within these trades and in the construction business, especially in residential construction. There is no case law which lays out the elements required to be deemed the general contractor with the duty of safety at a construction jobsite. Garcia Titla provided evidence that SFC Homes was a general contractor, but the trial court ruled that he did not prove that SFC Homes was the general contractor at that site at

that time. Garcia Titla provided county records to prove his case, as identified below:

According to county records, the owner of the construction site was SFC Homes. CP 125. SFC Homes is a licensed general contractor by trade. CP 130, 132, 138, 436. SFC Homes has a website where it advertises that its company is in the "housing business" (CP 144) as a builder of homes for "construction" of "detached houses." CP 144. There was no other entity identified in any public record as being either the owner or the general contractor for this construction site. Garcia Titla provided evidence that the Assessor-Treasurer's office listed SFC Homes as a grantor for the construction site at issue, and listed a parcel number for the construction site at issue, parcel number 4002540250. CP 125. The parcel number led to records confirming that this was a "new construction" site (CP 126) belonging to SFC Homes. CP 125. A corporations search of SFC Homes lead to two corporations, SFC Homes Services, LLC and SFC Homes LLC, both under UBI number 602231397. CP 128. A general contractor's search under UBI 602231397 lead to Washington's General and Specialty Contractor website which lists SFC Homes as a Construction Contractor. CP 130. The specialty listed for SFC Homes was "General." CP 130. Garcia Titla provided evidence that

defendant's declarant, Mr. Atsushi Iwasaki, was one of the managers of this construction company. CP 130.

Beyond that, Garcia Titla provided evidence that Washington Labor and Industries website lists SFC Homes LLC under UBI 602231397 as a Construction Contractor with a specialty license as a general contractor. CP 132. Defendant's Declarant, Mr. Atsushi Iwasaki, was listed as one of its principals, both under expired and renewed general contractor's license #SFCHOHL900RO. CP 132-133. Based upon SFC Homes' UBI number, the Department of Revenue listed SFC Homes LLC as a company engaging in "New Single-Family Housing, Construction." CP 138. Garcia Titla provided evidence that SFC Homes was owned by Mr. Iwasaki's company, Sumitomo Forestry Group. CP 144. The website for Sumitomo Forestry Group holds itself out as being "in the Housing Business." CP 144. Under "Our Business" it listed SFC Homes, LLC, and states that SFC Homes LLC is engaged in the "Construction and subdivision sales of detached houses." CP 144. This evidence was provided to prove that SFC Homes, as general contractor/owner/developer, owed a duty of safety upon its jobsite to Garcia Titla.

Garcia Titla also provided evidence of breach of duty by SFC Homes in his response to Defendant's Summary Judgement motion. He

plead that SFC Homes had a duty to provide a safe place to work under RCW 49.17.060 (CP 111-114) and *Stute v. PBMC.* CP 111-116. He plead violations of the Washington Administrative Code (CP 118), specifically WAC 296-155. CP 118 and CP 120.

To this evidence, SFC Homes replied that although it was in fact a general contractor by trade and did have a general contractor's license, it was not at that site at that time, the general contractor of that project. CP 146. Garcia Titla had no further opportunity to reply. The trial court found that Garcia Titla had not proven that SFC Homes was the general contractor at the site at the time of Garcia Titla's injury, nor that he was the owner/developer who held the *Stute* duty of care. The trial court granted SFC Homes' summary judgement motion. CP 483-484. The Court of Appeals Division II Affirmed, determining that county records are not enough to prove a general contractor was the general contractor in charge of safety at its construction project. This ruling conflicts with *Stute,* and allows the admitted owner and general contractor of a construction site to avoid its *Stute*-imposed non-delegable duty for safety.

V. ARGUMENT

A. The decision of the Court of Appeals Division II on the issue of general contractor/owner/developer liability is in conflict with the Supreme Court decision in *Stute v. PBMC* and with the Court of Appeals Decisions of Division I.

Under RCW 49.17.060(2), general contractors on a multi-employer jobsite owe a non-delegable duty to all employees on the jobsite to ensure WAC/DOSH safety regulations are complied with. *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 464, 788 P.2d 545 (1990). This duty is imposed on general contractors because they have innate supervisory authority over the jobsite due to their position as the general contractor. *Id.* This duty has been extended to owner-developers that were analogous to general contractors in Division I cases. *Weinert v. Bronco Nat'l Co.*, 58 Wn. App. 692, 696, 795 P.2d 1167 (1990); *Afoa v. Port of Seattle*, 160 Wn. App. 234, 245, 247-48, 247 P.3d 482 (2011). In *Kamla v. Space Needle Corporation*, 147 Wn.2d 114, 121, 52 P.3d 472 (2002), this Court held that a jobsite owner owes a non-delegable duty to all employees on the jobsite when it retains the right to direct the manner in which the work is performed. Division I of the Court of Appeals stated the rule as follows: liability depends on "whether the business entity retains control or supervisory authority over the performance of a subcontractor's work as to be analogous to a general contractor." *Afoa v. Port of Seattle*, 160 Wn. App. at 247. The right to direct the work can exist even where the owner does not actually interfere with the independent contractor's work. *Phillips v. Kaiser Aluminum & Chem. Corp.*, 74 Wn. App. 741, 750, 875 P.2d 1228 (1994). "Whether the right to control has been retained depends on

the parties' contract, the parties' conduct, and other relevant factors." *Id.* at 750. In Garcia-Titla's case, there was no contract, so the parties' conduct has to come into play. Here, SFC Homes left its subcontractors alone to supervise themselves. This violates *Stute v. PBMC*.

Here, the relevant factors include the fact that SFC Homes is a general contractor by trade, has a general contractor's license, holds itself out as a general contractor, did purchase this land to develop it into single family homes, did build such homes, did sell them, and was listed as the owner of the parcels in county records. SFC Homes contracted with subcontractors via oral contracts and left them to supervise themselves on this multi-housing new construction project. These factors raise a genuine issue of material fact as to whether SFC Homes carries the *Stute* duty of safety, to be determined by the trier of fact. Here, Garcia Titla sued SFC Homes under a *Stute* theory of negligence and breach of the non-delegable duty to maintain a safe work place. A breach of the *Stute* duty is a breach of omission: If the general contractor did not supervise its site, it breached its duty. (WAC 296-155-100). If the general contractor left its framers to frame alone, without supervising the safety aspect of their job, it breached its duty. (WAC 296-155-100; 110). A general contractor must require safety meetings and the general contractor must keep the documentation of those meetings. (WAC 296-155-110). If he states in his sworn

Declaration that he maintained no control over his jobsite - as SFC Homes has done here - he breached his duty. (WAC 296-155-100). If he claims that he hired independent contractors, and left them to fend for themselves, he breached his duty. (WAC 295-155). Garcia Titla plead a violation of WAC 296-155, and of case law, namely *Stute v. PBMC*, in its Response to Defendant's Motion for Summary Judgement. CP 116, 118, 120). Iwasaki's Declaration proved the breach of duty, or at the very least created a genuine issue of material fact as to whether a duty existed and was breached, because he swore in his Declaration that the framers were treated as independent contractors and left to supervise themselves. He breached the duty of care required of general contractors and owner/developers who leave no general contractor in charge of safety.

SFC Homes is a general contractor. Whether it was working at this site as the general contractor, or whether it was an owner/developer is not material. If it did not leave a general contractor at the site daily, to supervise safety, then as a default it becomes the owner in control of the site, whether it chose to exercise that control or not. *(See Stute,* supra*)*. That is why SFC Homes' argument should have failed when it argued that Garcia Titla must prove that SFC Homes was more than the owner/developer, and was more than a general contractor, with a general contractor's license. Garcia Titla did not have to prove that SFC Homes

was choosing to act as the general contractor at that site at that time. Or, that SFC Homes did not retain control by choice, and as such, did not have the duty of control by law. There is no choice in the matter for SFC Homes, because it chose to purchase land, hire subcontractors, and build homes upon it. That thrusts the non-delegable *Stute* duties upon SFC Homes.

Garcia Titla had to prove that (1) he was working at the job site (CP 80); (2) no one from SFC Homes ever came around to supervise the safety aspect of the job (CP 79, 83, 84); and (3) he suffered an injury after a joist broke under his feet. CP 62. He testified to these facts in his Deposition, submitted in SFC Homes' summary judgement moving papers. He stated that he never spoke to anyone from SFC Homes at any time (CP 83, 84) proving that SFC Homes did not have a safety orientation with him and did not come around daily to inspect the jobsite. He also testified that he attended no safety meetings by anyone while he worked at that jobsite. CP 79.

With regard to the issue of breach: Breach is an element of negligence is not ripe for summary judgement. Nevertheless, Garcia Titla identified the case law *(Stute)* that created SFC Home's duty of safety, and the statutory law (WAC 296-155) that identified SFC Homes' breach of that duty. The threshold evidence to defeat summary judgement was met.

The Court of Appeals Division II stated Plaintiffs "identified specific regulations that they alleged were violated, but did not provide any support for their allegations." *(Court of Appeals Division II decision dated April 26, 2016, page 10, attached at Appendix A).* The Court further stated "Garcia Titla responded to Interrogatories stating that it would supplement its answers and provide safety minute meetings, daily walk around inspections, and the general contractor's safety manual, and then did not produce this evidence." *(Court of Appeals Division II decision, April 26, 2016, page 3, attached at Appendix A).* However, Garcia Titla testified that these documents did not exist, and so he could not have provided them in his responses. He personally testified to the lack of safety oversight in his Deposition, in evidence at the time of Defendant's Summary Judgement motion. His testimony regarding lack of safety oversight provided the evidence of breach of the general/owner's non-delegable duty. Causation is left to the trier of fact - but duty exists. SFC Homes specifically violated RCW 49.17.060; WAC 296-155 and *Stute v. PBMC*, 114 Wn.2d 454 (1990), and Garcia-Titla so plead in his Response to Defendant's Summary Judgement Motion. CP 111-121.

Even a prior Division II case, *Doss v. Rayonier Inc.* 803 P.2d 4, 60 Wash. App. 125 (1991) stated that whether a defendant is an

owner/developer or a general contractor matters not. In that case Division II, citing the Division I case of *Weinert v. Bronco National Co.*, Wn.App 692, 795 P.2d 1167 (1990) stated:

> We do not overlook the fact that defendant is an owner/developer rather than a general contractor hired by an owner. We see no significance to this factor insofar as applying *Stute* to the facts of this case. The owner/developer's position is so comparable to that of general contractor in *Stute* that the reasons for the holding in *Stute* apply here. The purpose of the statutes and regulations relied upon in *Stute* is to protect workers. The basis for imposing the duty to enforce those laws on a general contractor exists with respect to an owner/developer who, like the general contractor, has the same innate overall supervisory authority and is in the best position to enforce compliance with safety regulations. (*Doss, supra*).

In Weinert v. Bronco National Co., Wn.App 692, 795 P.2d 1167 (1990), the Court ruled that an owner/developer was liable for injuries sustained by an employee of the construction company hired by its siding subcontractor. The employee fell from scaffolding erected by its own employer. No evidence showed that the owner/developer had participated in the erection of the scaffolding, yet the owner/developer was still liable. The Division I Court of Appeals in *Weinert* stated:

> The Deposition testimony before the Court asserts that Weinert was working on defective planks used in the scaffolding and that the scaffolding was unstable. It also provides a basis for a trier of fact to find that defective scaffolding was a proximate cause of Weinert's fall and resulting injuries.... In reaching its conclusion, the *Stute* Court rejected the contention that before such a duty could be imposed, there must be proof the general contractor controlled the work of the subcontractor.... We do not overlook

> the fact that Bronco is an owner/developer rather than a general contractor hired by an owner. We see no significance to this factor insofar as applying *Stute* to the facts of this case. (See *Weinert*, supra).

The Division I Court ruling in this case conflicts with *Weinert*. Garcia Titla's Deposition testimony has asserted that he was working on a defective plank. That plank was unstable, proven by the fact that the plank broke under his feet. This testimony provides the basis for a trier of fact to find that a defective piece of wood was a proximate cause of Garcia Titla's fall and resulting injuries and the lack of appropriate safety equipment caused him to fall to the ground. Like in *Weinert* following *Stute*, in reaching its conclusion, this Court should reject the Court of Appeals Division II contention that before such a duty can be imposed, there must be proof that the general contractor controlled the work of the subcontractor and chose to be the general contractor "at that time" at his jobsite. All the cases since *Stute,* place the duty to provide a safe place to work on entities like SFC Homes. As such, SFC Homes was the correct entity to sue in this case and should not have been summarily dismissed.

SFC Homes argued that *Stute* was not the case on point, and instead *Kamla v. Space Needle* 147 Wn.2d 114 (2002) governed this case. *Kamla* is not analogous to this case. *Kamla* involved an owner (the

Space Needle) who was not a general contractor, and an independent contractor that was not a subcontractor.

Independent contractors differ from subcontractors. The title itself explains the difference: Independent contractors are independent, whereas subcontractors work under a higher contractor – the general or prime contractor. Subcontractors work on construction sites, which are hazardous employment sites, where safety is of utmost importance because injuries are very likely. Like a father to his children, the general or prime contractor is responsible for the safety of his subcontractors, per the mandates of *Stute.* Contrary to Defendant's pleadings, *Kamla v. Space Needle*, 147 Wn.2d 114 (2002) does not apply to this case. In *Kamla*, the Space Needle was not a general contractor, and it did not hire subcontractors to build a residential home. The Space Needle hired a fireworks company to put on a fireworks show. The Court found that nonetheless, if the Space Needle had been in the business of fireworks, it could have been considered an owner who retained control of the fireworks display at issue in that case. Since the Space Needle was not an owner who was in the business of fireworks, it did not meet the requirements of being an owner in control. The Space Needle did not need to place another entity between itself and the fireworks independent contractor, the independent contractor was not a subcontractor, and the

Space Needle was not building a residential or commercial home. The Space Needle was simply an owner, who hired an independent contractor.

In this case the trial court found that, like the Space Needle in *Kamla*, SFC Homes declared itself to be an owner who chose not to retain control. Therefore, it did not inherit the *Stute* duties. This is not a legally permissible interpretation of Washington law, because *Stute* and its progeny mandate that the general contractor has a *per se* duty of safety for all workers at its job site. *(Stute v. PBMC,* 114 Wn.2d 454, 788 P.2d 545 (1990). If the owner fails to hire a general contractor, then he inherits the *per se* duty. *(Id).*

Genuine issues of material fact remain to be decided as to whether SFC Homes is the general contractor and/or owner/developer (or both) for this job site. The correct party to sue in a construction site negligence action, is the general contractor, the owner/developer, or both. *Stute v. PBMC*, 114 Wn.2d 454, 788 P.2d 545 (Wash. 1990). These parties have a non-delegable, *per se* duty to enforce safety regulations at their construction sites. *(Id).* The way to determine the identity of the general contractor and owner/developer is to investigate public records. After investigating public records, and under a *Stute* theory of liability, Garcia

Titla brought his action against SFC Homes. SFC Homes stated the ISSUE in its summary judgement motion as follows:

> "Whether summary judgment must be granted as a matter of law where SFC Homes was an owner of property and not a general contractor." CP 16.

SFC Homes stated under LEGAL ANALYSIS:

> Summary Judgment should be granted as a matter of law where SFC Homes was an owner and not a general contractor... CP 18; SFC Homes...neither acted nor served as a general contractor... CP 17; SFC Homes was an owner, and not a general contractor... CP 10, 16, 17, 18, 21; SFC Homes was the land owner and not the general contractor... CP 11, 21; SFC Homes is not similar enough to a general contractor to justify imposing the same non-delegable duty of care to ensure WISHA compliant work conditions... CP 29.

Mr. Atsushi Iwasaki, in his declaration for SFC Homes, stated that SFC Homes "had no control" over its framing subcontractor FRDS, and had "no right to control" FRDS. CP 106. It did not control the jobsite, and it did not control Garcia Titla's employer FRDS. CP 106. SFC Homes pled that FRDS was treated like an independent contractor, therefore, the duties imposed upon general contractors by the case of *Stute v. PBMC* could not apply to SFC Homes. CP 20-23. It plead that "SFC Homes reasonably relied on FRDS to ensure WISHA compliance." CP 22. Such reliance on a subcontractor for safety oversight is a violation of WAC 296-155. Mr. Iwasaki did not state in his Declaration that any other group was

hired by SFC Homes to act as the general contractor. Instead, his counsel plead that the subcontractors were independent contractors and were left to supervise themselves. CP 20-23,106. Mr. Iwasaki's position was clear: He was not a general contractor, so *Stute* duties could not apply to him. CP 20-23,106. This approach was taken so as to remove this case from the realm of *Stute,* and place it under the guidelines of *Kamla.* Certainly, this approach is often taken with defendants who are not general contractors. But SFC Homes is a general contractor and so cannot escape the duty imposed by *Stute.*

To counter Mr. Iwasaki's declaration, Garcia Titla's response to SFC's summary judgement provided irrefutable evidence that SFC Homes was a general contractor. CP 130, 132, 133, 138, 144. In that response Garcia Titla provided to the court the aforementioned public records which were not limited to but included: SFC Homes' general contractor's license (CP 130); SFC Homes' website information where it holds itself out as a General Contractor and Builder of Homes (CP 144); SFC Home's County Assessor Record listing it as the owner of the property where Garcia-Titla fell (CP 125); and SFC Homes registration with the Department of Revenue listing it as a Builder of New Construction Homes (CP 138). The admission in SFC Homes' reply brief that SFC Homes at all relevant times had a general contractor's license, coupled with the

aforementioned county records created a genuine issue of material fact as to whether SFC Homes was the general contractor at the site of this injury and at the time of this injury. In his Motion for Reconsideration Garcia Titla further provided the building permit from the City of Gig Harbor listing SFC Homes as the general contractor of the site in question. CP 198, 427. He did not provide this document in his reply to Summary Judgment. He did not believe that a general contractor holds *Stute* duties only when he chooses to be the general contractor at his site "at the time" of an injury; that he could choose to be a general contractor of some of his sites but not all, and at some times but not others; leaving no other general contractor in his place to handle safety. Well before excluding the building permit submitted with Garcia Titla's Motion for Reconsideration, (CP 427) the record held irrefutable proof that SFC Homes was a general contractor at that site, at the time of this injury. Taking all reasonable inferences in the light most favorable to Garcia Titla, summary judgement should not have been Affirmed by the Court of Appeals Division II, because the ruling conflicts with the Supreme Court case of *Stute v. PBMC*, and with other Court of Appeals cases.

VI. CONCLUSION

This Court should accept review. This Court should allow Mr. Garcia Titla's trial to proceed. The Court of Appeals' decision with regard to general contractor liability is at odds with several Division I Court of Appeals' decisions and with the Supreme Court case of *Stute v. PBMC*. The Court of Appeals Division II mistook the duty of safety that a general contractor has to its subcontractors' with the duty of safety that an owner may or may not have to its independent contractors. These are different duties. They cannot be used interchangeably. Garcia Titla presented substantial evidence by way of county records to show that SFC Homes was a general contractor, or in the alternative was the owner who retained control of the jobsite because he did not hire a general contractor to oversee safety.

Currently at the lower Courts, the Supreme Court cases of *Stute* and *Kamla* are used to either prove or disprove that an entity has the duty of safety based upon arbitrary evidence presented on a case by case basis, but no true rule or test exists to determine what evidence *must* be brought forth to prove that an entity has the *Stute* duty of care. A case holding that (1) public records are not enough to identify general contractors; (2) sub contactors at a construction site can be classified as independent contractors; and (3) general contractors are allowed to leave their jobsites

unsupervised, runs directly against the public policy behind *Stute v. PBMC*. A subcontractor on a construction site is not the same as an independent contractor at a site that is not new construction. The duties are not the same, and cannot be interchanged. It cannot be said that this general contractor, SFC Homes, did not owe a duty to the subcontractors upon its jobsite. The duty is thrust upon SFC Homes by law, and is not negated by a declaration stating that SFC chose not to retain control, and chose to leave its subcontractors to supervise themselves.

DATED this 17th day of May, 2016.

Respectfully submitted,

BETSY RODRIGUEZ, PS

Betsy Rodriguez, WSBA 28096
Attorney for Petitioner

APPENDIX

A. Court of Appeals of the State of Washington, Division II, No. 47462-0-II. Unpublished Opinion. Filed April 26, 2016.

B. RCW 49.17.060 General Safety Standard

C. Washington Administrative Code (WAC) 269-155-100

D. Washington Administrative Code (WAC) 296-155-110

APPENDIX – A

Filed
Washington State
Court of Appeals
Division Two

April 26, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ANGEL GARCIA TITLA, individually, and LETICIA SARMIENTO FLORES, individually, and the marital community composed thereof, Appellants, v. SFC HOMES LLC, a Washington corporation, Respondent.	No. 47462-0-II UNPUBLISHED OPINION

MELNICK, J. — Angel Garcia Titla and his wife, Leticia Sarmiento Flores, appeal the trial court's orders granting summary judgment to SFC Homes, LLC and denying their motion to reconsider. They argue genuine issues of material fact existed as to whether SFC Homes was the general contractor of the site where Garcia Titla's injury occurred and whether SFC Homes committed safety violations. They also argue the trial court abused its discretion in denying their motion to reconsider based on newly discovered evidence. We affirm.

FACTS

I. COMPLAINT

On March 11, 2014, Garcia Titla and Sarmiento Flores (Plaintiffs) filed a complaint for damages against SFC Homes alleging negligence for failing to provide a safe workplace that caused Garcia Titla to suffer damages. The complaint alleged that on or about May 20, 2011, SFC Homes was the "property owner and/or general contractor for construction of a residential dwelling. . . . As the owner in control and/or general contractor, [it] was responsible for all safety

and compliance with safety regulations on the job site." Clerk's Papers (CP) at 2. Garcia Titla alleged that he was employed by FRDS Construction, Inc., a subcontractor on the project, and that he was injured while working as a framer at the work site.

In its answer, SFC Homes denied all facts alleged in the complaint, except that it was licensed to do business in Pierce County and that it was the property owner of the work site. SFC Homes asserted seven affirmative defenses.

II. MOTION FOR SUMMARY JUDGMENT

On January 8, 2015, SFC Homes filed a motion for summary judgment. In support of its motion, SFC Homes provided evidence that it was not the general contractor of the project where Garcia Titla's injury occurred and that it had not violated any Washington Administrative Code (WAC) provisions.[1]

The evidence in the summary judgment motion included the following testimony from Garcia Titla's deposition. On May 20, 2011, Garcia Titla worked on a residence being constructed on property owned by SFC Homes. FRDS employed him to frame houses.[2] Upon completion of the first story, Garcia Titla began installing plywood as the floor for the second story. To install the plywood, he stood between two joists, but one of the joists broke when he pushed himself off of it. He fell and suffered injuries.

Although FRDS supplied safety harnesses, Garcia Titla was not wearing one at the time of the accident. Because the joist he fell from exceeded eight feet, a harness was required if there was a place to tie it. Garcia Titla had no place to tie the rope for the harness, so he built secondary

[1] SFC also included a letter from the Department of Labor and Industries to FRDS that stated there were no health or safety violations in the workplace. However, this letter referenced a different work site.

[2] Garcia Titla worked with FRDS on two other houses prior to the accident.

fall protection out of two-by-fours, but they were out of reach when he fell. Garcia Titla admitted that he installed the joist that broke and caused his fall and injuries. Although FRDS held safety meetings for other projects, Garcia Titla did not attend a safety meeting for this specific project. He knew that safety harnesses were required when working above eight feet, and that if he could not tie up the harness, he was supposed to place two-by-fours at a height of four feet as secondary fall protection. Garcia Titla never spoke with anyone from SFC Homes.

In support of its summary judgment motion, Atsushi Iwasaki, the President of Sumitomo Forestry America, Inc., SFC Homes's parent company, submitted a declaration. He admitted that SFC Homes owned the property where the alleged accident occurred. Iwasaki stated that SFC Homes hired FRDS to perform framing on the work site because SFC Homes had no knowledge of framing, and it relied on FRDS's expertise. He also stated that SFC Homes "did not participate in construction work, control any of the work performed by any subcontractor on the subject project, or maintain the right to control any of the work performed by any subcontractor." CP at 106.

The documents in support of the motion also included Garcia Titla's answers to SFC Homes's first interrogatories and requests for production. In response to an interrogatory asking Garcia Titla to state every fact on which he relied for his claim that SFC Homes was the general contractor and that SFC Homes had responsibility for safety and safety regulations on the jobsite, Garcia Titla said he "will be requesting Safety meeting minutes, walk around Safety inspection notes, a Site specific safety plan, and a Safety manual from the General Contractor and will Supplement this Answer upon receipt." CP at 95. Another interrogatory asked Garcia Titla to state the facts upon which he claimed he was owed a duty and how SFC Homes breached that duty. He responded:

> The General Contractor owes the duty to provide a safe place to work to every worker on his job site, Plaintiff was a worker at this jobsite. Therefore, plaintiff was owed this duty. The general contractor breached this duty. Plaintiff suffered an injury. He fell through a piece of wood that broke under his feet. He was provided no fall protection.

CP at 96. A request for production by SFC Homes asked for copies of all documents that supported his answer. Garcia Titla responded that he attached a building permit that listed SFC Homes as the general contractor.[3] Garcia Titla did not conduct any discovery until after the discovery deadline passed.

Garcia Titla responded to the motion for summary judgment and claimed that the Pierce County Assessor-Treasurer electronic property information listed SFC Homes as the general contractor for the property.[4] Garcia Titla included a number of documents that showed SFC Homes's Unified Business Identifier (UBI) number, contractor's license and status, and the cover page of Sumitomo Forestry's website that listed SFC Homes as being in the construction business.

On February 6, 2015, the trial court heard arguments on SFC Homes's motion for summary judgment. SFC Homes argued that it was not the general contractor and it "did not retain the right to control any of the work for which [Garcia Titla] was hired."[5] CP at 240. SFC Homes told the trial court that it had a contract that it received from FRDS's owner that shows FRDS entered into

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[3] This document is not included in the record.

[4] The document does not list SFC Homes as the general contractor. SFC Homes is listed as the grantor of the parcel.

[5] SFC Homes explained to the trial court that any documents about the named general contractor were not requested by the plaintiffs until after the discovery deadline, but no document linking SFC Homes as a general contractor for this project existed because it did not serve in this capacity.

a contract with Henley USA, LLC, not SFC Homes.[6] The trial court granted the motion for summary judgment in a written order on February 6, 2015.

III. MOTION FOR RECONSIDERATION

On February 13, 2015, Garcia Titla and Sarmiento Flores filed a motion for reconsideration of the trial court's written order granting summary judgment. In addition to arguing that the trial court made legal errors, they argued that they obtained newly discovered evidence which, with reasonable diligence, could not have been discovered and produced when the court heard the motion for summary judgment. They claimed the newly discovered evidence consisted of a certified document from the City of Gig Harbor which showed SFC Homes was the contractor that applied for and received the building and plumbing permits at the site where Garcia Titla's injuries occurred. They also claimed that the evidence showed SFC Homes did not own the property.

Garcia Titla and Sarmiento Flores argued that under CR 59(a)(3), the trial court should grant the motion to reconsider because they were surprised by the existence of a contract for the site between Henley USA and FRDS and that surprise materially affected their rights. In support of the motion, they included the deposition testimony of their expert, Mike Sotelo, about the level of control SFC Homes had over the work site and the potential safety violations at the site.[7] Sotelo opined that SFC Homes had a duty to Garcia Titla because even if it was the owner and not the general contractor, it controlled the site. He further opined that it seemed as though SFC Homes

[6] SFC Homes did not submit the contract to the trial court before the motion. The trial court asked for the contract after the plaintiffs filed the motion to reconsider. Henley USA, LLC is another company owned by Sumitomo Forestry America, SFC Homes's parent company.

[7] Sotelo's deposition occurred after the motion for summary judgment was filed and after the plaintiffs filed their response, but four days prior to the hearing on the motion for summary judgment and prior to the motion for reconsideration. CP at 205.

committed violations because it did not have a written safety plan, and he believed SFC Homes breached its duty to Garcia Titla because it failed to provide oversight.

SFC Homes opposed the motion to reconsider, arguing that the records, dating back to 2011, did not constitute "newly discovered evidence" because they were clearly obtainable at the time of summary judgment. CP at 268. SFC Homes also argued that the plaintiffs could have discovered the contract with reasonable diligence, but they did not engage in discovery other than submitting untimely discovery less than one week before the discovery cutoff.

The trial court heard arguments on the motion to reconsider. The trial court questioned whether it could consider the new documents offered by the plaintiffs. The trial court noted that it did not understand why they did not have access to their own expert's testimony to refute the evidence in the summary judgment motion. In addition, the trial court pointed out that the plaintiffs failed to present any evidence showing a safety violation. The trial court denied the motion to reconsider in a written order. Garcia Titla and Sarmiento Flores appeal.

ANALYSIS

I. MOTION FOR SUMMARY JUDGMENT

Garcia Titla and Sarmiento Flores argue that the trial court erred in granting SFC Homes's motion for summary judgment because genuine issues of material fact existed as to whether or not SFC Homes was the general contractor. We disagree.

A. Standard of Review

We review summary judgment orders de novo, engaging in the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law." CR 56(c). We view the evidence and draw reasonable inferences in a light most favorable to the nonmoving party. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995).

A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apartment–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton*, 115 Wn.2d at 516. If the moving party satisfies its burden, the nonmoving party must present evidence demonstrating that a material fact remains in dispute. *Atherton*, 115 Wn.2d at 516.

The response, by affidavits or as otherwise provided under CR 56, must set forth specific facts that reveal a genuine issue for trial. *Grimwood v. Univ. of Puget Sound*, Inc., 110 Wn.2d 355, 359, 753 P.2d 517 (1988). "[C]onclusory statements of fact will not suffice." *Grimwood*, 110 Wn.2d at 360. If the nonmoving party fails to do so, and reasonable persons could reach but one conclusion from all the evidence, then summary judgment is proper. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

B. The Trial Court Properly Granted Summary Judgment

To establish a claim of negligence, a plaintiff must prove four elements: duty, breach of duty, causation, and injury. *Kennedy v. Sea–Land Serv., Inc.*, 62 Wn. App. 839, 856, 816 P.2d 75 (1991). "Existence of a duty is a question of law." *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Breach and proximate cause are generally fact questions, but "if reasonable

minds could not differ, these factual questions may be determined as a matter of law." *Hertog*, 138 Wn.2d at 275.

A general contractor is someone "whose business operations require the use of more than one building trade or craft upon a single job or project or under a single building permit." RCW 18.27.010(5). Prior to the adoption of Washington Industrial Safety and Health Act of 1973 (WISHA), the Washington Supreme Court held that RCW 49.16.030 (WISHA's predecessor) "created a nondelegable duty on general contractors to provide a safe place to work for employees of subcontractors." *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 463, 788 P.2d 545 (1990). A general contractor has a duty to comply with WISHA regulations for the protection of all employees on the jobsite. *Stute*, 114 Wn.2d at 463. The court reasoned that the "general contractor should bear the primary responsibility for compliance with safety regulations because the general contractor's innate supervisory authority constitutes sufficient control over the workplace." *Stute*, 114 Wn.2d at 464.

Garcia Titla and Sarmiento Flores failed to present evidence that SFC Homes was the general contractor of the site where the injury occurred. SFC Homes did have a contractor's license, but Garcia Titla and Sarmiento Flores did not present evidence that SFC Homes acted as the general contractor at this specific site. Therefore, the plaintiffs failed to present any evidence to create a genuine dispute of material fact that SFC Homes was the general contractor.

We also disagree with the plaintiffs that SFC Homes had liability as the owner of the property. Jobsite owners have a duty to provide a safe workplace only if the owner/developer has the same innate overall supervisory authority as the general contractor and is in the best position to enforce compliance with safety regulations. *Doss v. ITT Rayonier, Inc.*, 60 Wn. App. 125, 127 n.2, 803 P.2d 4 (1991). Jobsite owners are not per se liable for negligence at a work site. *Kamla*

v. Space Needle Corp., 147 Wn.2d 114, 123, 52 P.3d 472 (2002). So unless there is some control over the work exercised by the jobsite owner/developer, no duty to provide a safe workplace exists.

"The test of control is not the actual interference with the work of the subcontractor, but the right to exercise such control." *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 330-331, 582 P.2d 500 (1978). In *Kelley*, general supervisory functions over the work were sufficient to establish control over the work conditions of the subcontractor's employee. 90 Wn.2d at 331. "'It is not enough that [the jobsite owner] has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations.'" *Kamla*, 147 Wn.2d at 121 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c (1965)). "'There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.'" *Kamla*, 147 Wn.2d at 121 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c. If a jobsite owner does not retain control over the manner in which an independent contractor completes its work, the jobsite owner does not have a duty under WISHA to "comply with the rules, regulations, and orders promulgated under [chapter 49.17 RCW]." RCW 49.17.060(2). The *Kamla* court also reasoned:

> Because jobsite owners may not have knowledge about the manner in which a job should be performed or about WISHA compliant work conditions, it is unrealistic to conclude all jobsite owners necessarily control work conditions. Instead, some jobsite owners may reasonably rely on the contractors they hire to ensure WISHA compliance because those jobsite owners cannot practically instruct contractors on how to complete the work safely and properly.

147 Wn.2d at 124-25.

SFC Homes did not retain control over the work so that a duty of care would arise. Per Iwasaki's declaration, FRDS provided control over the framing because SFC Homes had no experience in this area. SFC Homes relied on FRDS's expertise. Garcia Titla did not raise any

material issue of fact as to this matter. In addition, Garcia Titla never interacted with anyone from SFC Homes.

Garcia Titla and Sarmiento Flores also fail to create a genuine issue of material fact regarding breach of any duty SFC Homes may have had. If a jobsite owner does not retain control over the manner in which an independent contractor completes its work, the jobsite owner does not have a duty under WISHA to "comply with the rules, regulations, and orders promulgated under [chapter 49.17 RCW]." RCW 49.17.060(2). Yet, if the owner does retain that control, he/she must comply with WISHA. *See Kamla*, 147 Wn.2d at 122.

Garcia Titla and Sarmiento Flores presented no evidence that would have created a duty on SFC Homes as the jobsite owner to comply with WISHA, nor did they present evidence of any WISHA or DOSH violations to the trial court. They argued that they only needed to allege there were WISHA violations, and that they would later prove them to the jury.[8] This argument is inaccurate. Legal conclusions that the defendant was negligent are inadmissible, but expert opinions that help establish the elements of negligence are admissible. *Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 420-21, 150 P.3d 545 (2007). The plaintiffs only offered an expert opinion in their motion to reconsider. As we explain later in this opinion, the trial court properly refused to consider this testimony. The plaintiffs failed to present competent evidence that SFC breached a duty or that there were safety violations. They identified specific regulations that they alleged were violated, but did not provide any support for their allegations.[9] Without

[8] The trial court noted that this was actually to be a bench trial.

[9] Plaintiffs' counsel told the trial court they would allege six violations and included WAC 296-155-100 and WAC 296-155-110, but did not specify the other four.

such evidence at summary judgment, they failed to show that a material fact on this issue was in dispute.

Because Garcia Titla and Sarmiento Flores failed to establish that a genuine issue of material fact existed and they could not prove a prima facie case of negligence, the trial court properly granted summary judgment.

II. MOTION TO RECONSIDER

Garcia Titla and Sarmiento Flores argue that the trial court should have granted their motion to reconsider pursuant to CR 59(a)(4) because they presented new evidence that they could not, with reasonable diligence have discovered prior to the summary judgment motion showing that SFC Homes was the general contractor.[10] We disagree.

A. Standard of Review

"'We review a trial court's denial of a motion for reconsideration for abuse of discretion.'" *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008) (quoting *Kleyer v. Harborview Med. Ctr.*, 76 Wn. App. 542, 545, 887 P.2d 468 (1995)). "A trial court abuses its discretion only if its decision is manifestly unreasonable or rests upon untenable grounds or reasons." *Davies*, 144 Wn. App. at 497. "An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court." *Holaday v. Merceri*, 49 Wn. App. 321, 324, 742 P.2d 127 (1987).

[10] They list CR 59(a)(3), (7), and (9) in their brief but do not argue them. Their brief argues only that the motion should have been granted under CR 59(a)(4) based on the new evidence they produced for the motion. Therefore, we only address this argument.

B. The Trial Court Did Not Abuse Its Discretion

A party is entitled to reconsideration of rulings where there is "[n]ewly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial." CR 59(a)(4). Courts have recognized that "a summary judgment hearing afford[s] the parties ample opportunity to present evidence. If the evidence was available but not offered until after that opportunity passes, the parties are not entitled to another opportunity to submit that evidence." *Wagner Dev. v. Fid. & Deposit Co. of Maryland*, 95 Wn. App. 896, 907, 977 P.2d 639 (1999). This evidence cannot be considered to be newly discovered evidence which a party could not with reasonable diligence have discovered and produced at the trial. CR 59(a)(4).

The documents the plaintiffs relied on were public records from 2011. They were available at the time of the summary judgment motion. The plaintiffs did not exercise due diligence in obtaining this evidence and the trial court did not abuse its discretion in denying the motion to reconsider.

We agree with the trial court's determination that even if the court considered the new evidence, it still would not have created a genuine dispute as to a material fact. The newly found evidence did not counter the evidence provided by SFC Homes that it did not control the jobsite in a way that gave rise to a duty. If anything, the contract that "surprised" the plaintiffs supported SFC Homes's contention that it was not the general contractor at this site. In addition, Sotelo's deposition testimony was general because he did not review all of the evidence before testifying about his expert opinion. The plaintiffs would still have failed to create a genuine dispute of material fact.

We hold that the trial court did not abuse its discretion because it had reasonable grounds to uphold the original summary judgment order and deny the motion to reconsider. We affirm the trial court's final judgment denying the motion for reconsideration.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Melnick, J.

We concur:

Worswick, P.J.

Lee, J.

APPENDIX – B

RCW 49.17.060

Employer—General safety standard—Compliance.

Each employer:

(1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the workplace; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter.

[2010 c 8 § 12007; 1973 c 80 § 6.]

APPENDIX – C

WAC 296-155-100

Management's responsibility.

(1) It is the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health.

(2) You must instruct employees required to handle or use poisons, caustics, and other harmful substances regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required.

(3) In job site areas where harmful plants or animals are present, you must instruct employees who may be exposed regarding the potential hazards, and how to avoid injury, and the first-aid procedures to be used in the event of injury.

(4) You must instruct employees required to handle or use flammable liquids, gases, or toxic materials in the safe handling and use of these materials and made aware of the specific requirements contained in Parts B, D, and other applicable parts of this standard.

(5) Permit-required confined spaces. The requirements of chapters **296-24**, 296-62 and **296-155** WAC apply.

(6) You must ensure that work assignments place no employee in a position or location not within ordinary calling distance of another employee able to render assistance in case of emergency.

Note: This subsection does not apply to operators of motor vehicles, watchpersons or other jobs which, by their nature, are single employee assignments. However, a definite procedure for checking the welfare of all employees during working hours should be instituted and all employees so advised.

(7) You must post and keep posted a notice or notices (Job Safety and Health Protection - Form F **416-081-909**) to be furnished by the department of labor and industries, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act, and of specific safety and health standards employees should contact the employer or the nearest office of the department of labor and industries. You must post such notice or notices at each establishment in a conspicuous place or places where notices to employees are customarily posted. You must take steps to ensure that such notices are not altered, defaced, or covered by other material.

[Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, **49.17.060**. WSR 16-09-085, § 296-155-100, filed 4/19/16, effective 5/20/16; WSR 06-05-027, § 296-155-100, filed 2/7/06, effective 4/1/06. Statutory Authority: Chapter **49.17** RCW. WSR 95-04-007, § 296-155-100, filed 1/18/95, effective 3/1/95; WSR 94-15-096 (Order 94-07), § 296-155-100, filed 7/20/94, effective 9/20/94; WSR 91-24-017 (Order 91-07), § 296-155-100, filed 11/22/91, effective 12/24/91. Statutory Authority: RCW **49.17.040** and **49.17.050**. WSR 86-03-074 (Order 86-14), § 296-155-100, filed 1/21/86; Order 76-6, § 296-155-100, filed 3/1/76; Order 74-26, § 296-155-100, filed 5/7/74, effective 6/6/74.]

APPENDIX – D

WAC 296-155-110

Accident prevention program.

(1) **Exemptions.** Workers of employers whose primary business is other than construction, who are engaged solely in maintenance and repair work, including painting and decorating, are exempt from the requirement of this section provided:

(a) The maintenance and repair work, including painting and decorating, is being performed on the employer's premises, or facility.

(b) The length of the project does not exceed one week.

(c) The employer is in compliance with the requirements of WAC **296-800-140** Accident prevention program, and WAC **296-800-130**, Safety committees and safety meetings.

(2) You must develop a formal accident-prevention program, tailored to the needs of the particular plant or operation and to the type of hazard involved. The department may be contacted for assistance in developing appropriate programs.

(3) The following are the minimal program elements for all employers:

A safety orientation program describing the employer's safety program and including:

(a) How, where, and when to report injuries, including instruction as to the location of first-aid facilities.

(b) How to report unsafe conditions and practices.

(c) The use and care of required personal protective equipment.

(d) The proper actions to take in event of emergencies including the routes of exiting from areas during emergencies.

(e) Identification of the hazardous gases, chemicals, or materials involved along with the instructions on the safe use and emergency action following accidental exposure.

(f) A description of the employer's total safety program.

(g) An on-the-job review of the practices necessary to perform the initial job assignments in a safe manner.

(4) You must outline each accident-prevention program in written format.

(5) You must conduct crew leader-crew safety meetings as follows:

(a) You must hold crew leader-crew safety meetings at the beginning of each job, and at least weekly thereafter.

(b) You must tailor crew leader-crew meetings to the particular operation.

(6) Crew leader-crew safety meetings must address the following:

(a) A review of any walk-around safety inspection conducted since the last safety meeting.

(b) A review of any citation to assist in correction of hazards.

(c) An evaluation of any accident investigations conducted since the last meeting to determine if the cause of the unsafe acts or unsafe conditions involved were properly identified and corrected.

(d) You must document attendance.

(e) You must document subjects discussed.

Note: Subcontractors and their employees may, with the permission of the general contractor, elect to fulfill the requirements of subsection (5)(a) and (b) of this section by attending the prime contractors crew leader-crew safety meeting. Any of the requirements of subsections (6)(a), (b), (c), and (7) of this section not satisfied by the prime contractors safety meetings must be the responsibility of the individual employers.

(7) You must prepare minutes of each crew leader-crew meeting and you must maintain a copy at the location where the majority of the employees of each construction site report for work each day.

(8) You must retain minutes of crew leader-crew safety meetings by the employer for at least one year and you must make them available for review by personnel of the department, upon request.

(9) You must conduct walk-around safety inspections as follows:

(a) At the beginning of each job, and at least weekly thereafter, you must conduct a walk-around safety inspection jointly by one member of management and one employee, elected by the employees, as their authorized representative.

(b) You must document walk-around safety inspections and such documentation must be available for inspection by personnel of the department.

(c) You must maintain records of walk-around inspections until the completion of the job.

[Statutory Authority: RCW **49.17.010**, **49.17.040**, **49.17.050**, **49.17.060**. WSR 16-09-085, § 296-155-110, filed 4/19/16, effective 5/20/16. Statutory Authority: RCW **49.17.010**, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-155-110, filed 5/9/01, effective 9/1/01; WSR 00-08-078, § 296-155-110, filed 4/4/00, effective 7/1/00. Statutory Authority: Chapter **49.17** RCW. WSR 94-15-096 (Order 94-07), § 296-155-110, filed 7/20/94, effective 9/20/94; WSR 92-09-148 (Order 92-01), § 296-155-110, filed 4/22/92, effective 5/25/92. Statutory Authority: RCW **49.17.040** and **49.17.050**. WSR 86-03-074 (Order 86-14), § 296-155-110, filed 1/21/86; Order 74-26, § 296-155-110, filed 5/7/74, effective 6/6/74.]

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date entered below, I sent via first class mail, postage prepaid and email a copy of this Petition to:

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DATED this 17th day of May, 2016.

Cristina Espinoza
Legal Assistant to Betsy Rodriguez