NO. 95415-1

SUPREME COURT OF THE STATE OF WASHINGTON

WYNN LOILAND and SUZANNE LOILAND,

Appellants,

v.

STATE OF WASHINGTON,

Respondent

STATE OF WASHINGTON'S ANSWER TO APPELLANTS' PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

GARTH A. AHEARN
Assistant Attorney General
WSBA No. 29840
Torts Division
P.O. Box 2317
Tacoma, WA 98401-2317
253-593-6136
OID No. 91105

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I. INTRODUCTION

This lawsuit arises out of a fire department's response to a rolled over truck in a ditch along Interstate 5 (I-5). Loiland was performing his job as a professional firefighter at the scene when he was hit by another vehicle that left the roadway. The trial court granted summary judgment dismissing Loiland's claims against the driver whose truck was in the ditch, the Washington State Patrol (WSP), and the Washington Department of Transportation (WSDOT), based on the professional rescuer doctrine, which limits a professional rescuer's claims against persons whose negligence caused the need for a response by the professional rescuer where they were injured. *Loiland v. State of Washington,* No. 76096-3-I, slip op. at 4 (Wash. Ct. App., Dec. 26, 2017).

Loiland initially sought direct review, which this Court denied, transferring the appeal to Division I. *Id.* The Court of Appeals affirmed the trial court's dismissal, because: "where the negligent acts of multiple parties cause the public safety issue that necessitates the [professional] rescuer's presence, the professional rescuer doctrine bars recovery from each of these parties." *Loiland, s*lip op. at 7. The doctrine thus bars Loiland's claims against WSDOT and WSP, in which he alleges that the State was negligent in failing to deice the road and leaving the scene without marking it as contacted by WSP.

Loiland claims the Court of Appeals' decision conflicts with Washington law holding the doctrine inapplicable to barring a rescuer's claim based on "intervening" or "independent" acts of negligence. But there is no conflict because the alleged negligence of WSP and WSDOT is not "intervening" or "independent." *Loiland*, slip op. at 6-10. Rather, Loiland's claims are based on those state agencies' allegedly negligent actions having caused him to respond as a professional rescuer to the site. *Id.*

Alternatively, Loiland asks to abolish the professional rescuer doctrine but makes no showing that the doctrine, as applied in this state, is harmful. Thus, there is no basis for overruling the doctrine and so discretionary review should be denied.

II. COUNTERSTATEMENT OF ISSUES

Plaintiff is a firefighter and alleges that he was at the scene of that accident because of the negligence of the original driver, negligence of the WSDOT for failing to deice the highway, and negligence of the WSP for failing to mark the vehicle as "cleared." While at the scene, he was injured by a passing motorist.

1. Did the Court of Appeals correctly apply existing law when it concluded that a professional rescuer cannot sue multiple tortfeasors who are all allegedly responsible for the rescuer being called to a scene where the rescuer is injured?

2. Should this Court overturn more than four decades of precedent and abolish the professional rescuer doctrine, where Plaintiff fails to show that the doctrine as applied in Washington State is harmful?

III. COUNTERSTATEMENT OF THE CASE

A. Statement of Facts

On November 21, 2011, at 3:30 in the morning WSDOT received a call from WSP requesting sand/deicer be applied to southbound I-5 near the 272nd street overpass in Federal Way due to icy conditions. Clerk's Papers (CP) at 207. About an hour later, there was a single vehicle rollover accident involving a Ford Ranger pickup at that location. CP at 177. The driver (Pedro Lopez) and passenger were traveling to Lacey when the driver lost control, due in part, to ice on the roadway and came to rest in a ditch. CP at 177.

WSP Trooper Sgt. Alexander responded. He noted there were areas of patchy ice and poor visibility due to fog. CP at 177. At the scene, Sgt. Alexander called for a tow truck. CP at 177. While waiting for the tow truck to arrive, Sgt. Alexander observed the roadway was very icy. CP at 178. He also saw a number of cars lose control due to the ice. CP at 178. Concerned for the safety of Lopez, his passenger, and the tow truck driver, Sgt. Alexander requested cancellation of the tow truck and transported Lopez and his passenger to a local restaurant so they could call a friend for

a ride. CP at 178. Sgt. Alexander advised radio to have day shift troopers remove the truck when roadway and visibility conditions improved. CP at 178.

Meanwhile, Valley Communications (911) was receiving a number of calls about a vehicle off the roadway in the general location of where the truck was. CP at 336-37. One of the callers described a "car" rather than a truck being on the side of the road. CP at 336-37. Concerned there was another accident, Valley Communications dispatched Engine 66 from South King Fire & Rescue and Engine 73 from the Kent Fire Department to the scene. CP at 336-37. While in route, Valley Communications records show Engine 66 and Engine 73 were advised through their mobile data terminals, WSP cleared a pickup (Lopez's truck) in the area but due to the vehicle description there was possibly a different accident. CP at 182, 336-37.

It is recognized nationally that some of the most dangerous scenarios faced by firefighters are operations on highways and other busy roadways. CP at 204-05. Firefighters are advised never to trust approaching traffic and always to maintain an acute awareness of the high risk of working in or near moving traffic. CP at 201. The first responding vehicle is to set up a block strategy. CP at 201. The block creates a physical barrier between the accident scene and approaching traffic to help mitigate the risk of the being hit while working on the roadway. CP at 201.

Engine 66, driven by Loiland arrived first at the scene. CP at 294. They did not see Lopez's truck until they passed it. CP at 195. Engine 66 did not reposition itself to create a block. CP at 196. Engine 73 arrived shortly after Engine 66 and positioned themselves approximately 100 feet north of the work area. CP at 294. Engine 66 did not request Engine 73 to provide a block of the immediate work area. CP at 191, 294. After determining there was no one in the truck or in the immediate vicinity who needed attention, Engine 66 released Engine 73 from the scene. CP at 342. Loiland was placing yellow scene tape around the truck when he was hit by the vehicle driven by Perez. His ongoing suit against Perez is not the subject of this appeal.

B. The Court of Appeals Ruling

The Court of Appeals affirmed the trial court's summary judgment dismissing Loiland's claims against the WSP and the WSDOT. Applying existing case law and examining out of state cases, the court held "that, where the negligent acts of multiple parties cause the public safety issue that necessitates the rescuer's presence, the professional rescuer doctrine bars recovery from each of these parties." *Loiland, s*lip op. at 7. Thus, multiple negligent parties are treated just like an individual whose negligence causes the need for a rescuer to respond to a scene.

The court then addressed whether the alleged WSP or WSDOT negligence "caused the public safety issue to which Loiland responded." As to WSDOT, the court explained that Loiland's allegation was that failure to deice the road caused the original accident and the later, injurious accident. Thus, under Loiland's theory of liability, "its failure to deice was a cause of Loiland's presence" at the rescue site. *Loiland, s*lip op. at 7. With regard to the WSP, the court explained that under Loiland's theory of liability, he was called to the accident site and exited his firetruck because the WSP trooper failed to mark the truck. Thus, "WSP's alleged negligence was a cause of Loiland's presence" at the rescue site. *Loiland, s*lip op. at 7-8. As a result, the state agencies are "in exactly the position addressed by the professional rescuer doctrine." *Loiland, s*lip op. at 8 (citing *Sutton v. Shuffelberger*, 31 Wn. App. 579, 587, 643 P.2d 920 (1982)).

The court rejected Loiland's arguments that the WSP and WSDOT's actions should be considered "independent or intervening negligence". Applying *Beaupre v. Pierce County*, 161 Wn.2d 568, 166 P.3d 712, 716 (2007) and cases cited therein, the Court of Appeals rejected that argument. In prior cases dealing with intervening or independent negligence, the later "negligence was unrelated to the act that caused the professional to be at the scene." *Loiland, s*lip op. at 9. But "[n]either WSDOT nor WSP injured Loiland while he was responding to a roadside accident;" instead, the

alleged negligence by the WSP and the WSDOT occurred before Loiland responded to call, and that alleged negligence was not "independent of the public safety issue to which Loiland responded." *Id.*

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. Review is Not Warranted Because the Court of Appeals Decision is Consistent with the Decisions of this Court and the Court of Appeals Limiting Liability to Professional Rescuers

Contrary to Loiland's contentions, Washington precedent interpreting the professional rescuer doctrine is well-settled and harmonious, and the Court of Appeals' decision is entirely consistent with that case law and there is no conflict warranting this Court's review.

1. A professional rescuer cannot recover from persons whose negligence caused the rescuer to be at the scene and the rescuer was injured by a hazard generally associated with the rescue activity

Understanding the professional rescuer doctrine starts with this Court's holding in *Maltman*: "It is the business of professional rescuers to deal with certain hazards, and such an individual cannot complain of the negligence which created the actual necessity for exposure to those hazards." *Maltman v. Sauer*, 84 Wn.2d 975, 979, 530 P.2d 254 (1975). The "proper test" for the hazards and injuries barred by the doctrine is:

> Whether the hazard ultimately responsible for causing the injury is inherently within the ambit of those dangers which are unique to and generally associated with the particular rescue activity.

Maltman, 84 Wn.2d at 979.

The doctrine is not an affirmative defense where a defendant might be negligent but where liability is defeated for other reasons. Under the professional rescuer doctrine there is *no duty* owed to the plaintiff in the first place. *Sutton,* 31 Wn. App. at 587, n.2. *See also*, *Carson v. Headrick*, 900 S.W.2d 685, 688 (1995).

2. The professional rescuer doctrine does not bar a rescuer's claim for damages against third parties whose intervening or independent negligence caused injury

As recognized by this Court and the Court of Appeals, the professional rescuer doctrine has limits. It does not apply to independent acts of negligence that injure the professional rescuer.

For example, in *Ballou v. Nelson*, 67 Wn. App. 67, 71, 834 P.2d 97 (1982), the doctrine did not prevent the rescuer from suing individuals who intentionally struck the rescuer. An intentional assault is distinct from the negligence that brought the officer to the rescue scene. Similarly, when a police officer is injured in a motor vehicle accident while responding to a prowler call, the officer can sue the driver as "intervening negligence," because it was not the driver's action that caused the officer to be traveling to the rescue sight. *See Ward v. Torjussen*, 52 Wn. App. 280, 286, 758 P.2d 1012 (1988). Finally, in *Sutton*, the court held that a police officer could sue a passing car that hit him during a traffic stop. The professional rescuer

doctrine did not "forgive negligent or intentional injury…by an intervenor." *Sutton*, 31 Wn. App. at 588.

These legal principles are now well-established in Washington. This Court approved this line of Court of Appeals cases when it affirmed that the professional rescuer doctrine "does not apply when an independent or intervening act causes the professional rescuer's injury." *Beaupre,* 161 Wn.2d 568. The *Beaupre* Court then addressed the line between intervening actions and persons "responsible for bringing the rescuer to a scene"—the very issue raised by the Petition. *Beaupre* held that there is a difference between a party whose negligence required the plaintiff to respond to the scene and a subsequent intervener. In *Beaupre,* an officer was in pursuit of a domestic violence suspect on foot when he was hit by another officer's police car. The Court held that the professional rescuer doctrine did not bar the injured officer from taking action against his fellow officer's intervening negligence. "The doctrine does not apply to negligent or intentional acts of intervening parties *not responsible for bringing the rescuer to the scene.*" *Id.* at 575 (emphasis added).

3. The opinion below presents no conflict with case law warranting this Court's review

The Petition claims the court below "misapplied the professional rescuer doctrine." Petition for Review (Petition) at 9. Specifically, it argues

that WSP actions "neither created the Lopez crash nor caused Loiland's presence" at the scene and therefore the actions of WSP's conduct constituted independent or intervening negligence. Petition at 10. This assertion is in direct conflict with Loiland's previous arguments in his motion for partial summary judgment, where he stated if WSP Sgt. Alexander had acted differently at the Lopez accident scene it would have "prevented" Mr. Loiland from being at the scene.

As for WSDOT, the Petition admits the "failure to deice . . . prior to the Lopez crash was a proximate cause of that crash." Petition at 12. It is undisputed that Loiland responded to the Lopez accident. Thus, based on Loiland's own arguments both the actions of WSDOT and WSP were causes of Loiland being at the scene where he was then injured by a known hazard.[1]

As a threshold matter, the Rules of Appellate Practice require a showing of a conflict in the legal rules used by the different courts, not merely a dispute over how a court applied existing law to a unique set of facts. *See* RAP 13.4(b)(1)-(4). Because the thrust of the Petition claims that the Court of Appeals misapplied existing law, review may be denied on that basis.

[1] WSP and WSDOT deny they were negligent. However, for the purpose of properly focusing the issue, they admit negligence for the purpose of this argument only.

In any event, the Court of Appeals applied the law correctly. And that factually unique ruling does not conflict with any cases decided by this Court or other courts of appeals.

With regard to the claim against WSP, the Petition claims "it is clear" that the "WSP's conduct constituted independent negligence." Petition at 10. But Loiland relies on a principle not found in cases to assert that his claim involves independent negligence. He argues that the WSP's negligence did not create the original crash or cause Loiland's presence at the site. *Id.* But no case law requires the WSP to show that it literally caused the first crash. Plus, the Court of Appeals' opinion contradicts Loiland's characterization—the opinion expressly states that under Loiland's theory, "WSP's alleged negligence *was a cause* of Loiland's presence". *Loiland,* slip op. at 7 (emphasis added). Thus, the decision did not, as Loiland claims, reject the independent negligence rule in circumstances where the WSP did *not* cause Loiland to be present at the site. It rejected the independent negligence rule because it concluded that WSP was a cause of Loiland to be at the site. Thus, the opinion avoids the conflict claimed by Loiland.

With regard to the WSDOT, the Petition claims there was continuing negligence in failing to deice the highway after the accident that led to Loiland responding to the scene. Based on this, Loiland claims that case law should have treated the WSDOT's actions as an independent act

of misconduct. Petition at 13. Again, Loiland's arguments ignore the fact that WSDOT's alleged negligence was the same negligence that caused the original accident that caused Loiland's presence at the site of his injury. *Loiland,* slip op. at 7. And, as the opinion notes, Loiland cites no cases where the original negligence causing an accident is transformed into independent negligence. *Loiland,* slip op. at 10. Indeed, Loiland's approach could swallow the professional rescuer rule by creating a duty to remedy the need for a professional rescuer's response or risk being liable.

Thus, applying Loiland's own arguments, the Court of Appeals' ruling is consistent with *Beaupre*. First, the alleged negligent actions of WSDOT and WSP were a cause of Loiland being at the scene as a professional rescuer. Second, being hit on a highway by an errant vehicle is a known risk of working as a professional rescuer while responding to an incident on a busy highway. The Court of Appeals' decision follows the distinction this Court made in *Beaupre* between the independent/ intervening negligent actions of a party who was "not responsible for bringing the rescuer to the scene," *Beaupre*, 161 Wn.2d at 575, from the actions of a party who causes the rescuer to come to the scene.

In the end, there is no merit to Petitioner's claims of a conflict and the law remains unchanged by the Court of Appeals' ruling. Negligent conduct that causes the situation to which an officer responds ("creates the

need" for his presence) is subject to the professional rescuer doctrine. Therefore, the fact there can be multiple actors who are a cause of the professional's presence not only is in concert with the general rule regarding proximate cause but is also consistent with the reality that there are often more than one cause of why a professional rescuer must respond to a scene.[2]

The Court of Appeals' opinion is consistent with *Ballou* as well. In *Ballou,* the court stated: "While the fireman's rule prevents a fireman [from] recovering for negligently or recklessly caused fire, it does not provide protection to one who commits independent acts of misconduct after firefighters have arrived on the premises." *Ballou*, 67 Wn. App. at 71. Here, the Court of Appeals expressly found that the alleged negligent state actions were not independent injurious acts after the rescuer arrived.[3]

Sutton provides a further example of this distinction. In *Sutton*, the court refused to apply the doctrine to a motorist who struck an officer who was standing on the side of the road, writing another motorist a ticket. *Sutton*, 31 Wn. App. at 588. The driver's negligent act occurred after the officer was already on the scene, thus it did not "create the need" for his presence. However, the court did state that the traffic violator could use the

[2] A multiple car accident on a freeway is a prime example. Often times, more than one person or entity is a cause of the accident, which requires the professional rescuer to respond.

doctrine, because it was her negligence that created the need for the officer to be on the scene. *Id.* at 588. But here, WSDOT's and WSP's allegedly negligent actions came before and they were part of what created the need for Loiland to be at the scene. They did not commit an independent act of negligence while Loiland was at the scene which was separate from why Loiland had to respond to the scene so the doctrine applies. As such, the Court of Appeals' decision is consistent *Ballou.*

Finally, there is no merit to Loiland's argument claiming a conflict with *McCoy* because it addressed the application of the liability imposed by the rescuer doctrine, not the limits imposed by the professional rescuer doctrine. *McCoy v. American Suzuki Motor Corp.*, 136 Wn.2d 350, 961 P.2d 952 (1998). These are two independent and distinct issues. As this Court explained in *Maltman*, the rescuer doctrine addresses the scope of potential liability—that is, what hazards are attributed to the person whose negligence caused the need for a rescue:

> The "rescue doctrine" articulated in *French v. Chase,* 48 Wn.2d 825, 297 P.2d 235 (1956), implicitly necessitates a special criteria for assessing the applicability in a given case to a professional rescuer. We conclude that the proper test for determining a professional rescuer's right to recover under the "rescue doctrine" *is whether the hazard ultimately responsible for causing the injury is inherently within the ambit of those dangers which are unique to and generally associated with the particular rescue activity.*

Maltman, 84 Wn.2d at 979 (emphasis supplied). There is no conflict with this case because there is no debate that the hazard which injured Loiland is inherently within the ambit of the dangers generally associated with responding to a roadside incident. In short, the Petition fails to shows any conflict that warrants this Court's review.

B. There is No Reason or Basis to Abolish The Professional Rescuer Doctrine

Loiland's Petition also renews his request asking this Court to overrule the professional rescuer doctrine entirely. As he did when initially seeking direct review from the trial level, Loiland again argues that the professional rescuer doctrine is outdated, rife with exception, conflicts with this court's holding in *Gregoire v. City of Oak Harbor,* 170 Wn.2d 628, 244 P.3d 924 (2010), has been criticized by academics, and is unfair. These arguments have little substance and do not rise to a showing that the precedent is harmful as applied in Washington and should be overruled.

The professional rescuer doctrine is not outdated. Washington never adopted the century-old, premises-liability based firemen's rule. This Court did not even address the issue until 1975 in *Maltman.* Thus, Washington's professional rescuer doctrine arose from modern legal and policy principles.[4]

[4] The distinct label given to this doctrine by the Washington courts is more than a matter of semantics. Indeed, Washington has one of the broadest definition of the rule in

The doctrine is not rife with exceptions. There are only two exceptions in Washington State. As reviewed above, the doctrine does not preclude suit for injuries due to intentional torts or independent/intervening acts of negligence. And, as explained above, neither exception applies here.

Gregoire does not support Loiland's request to overrule the doctrine. The Court's discussion in *Gregoire* regarding the assumption of risk analysis applicable to the rescuer doctrine is inapposite here. *Gregoire* involved whether a jailor's duty to keep a prisoner free from harm is nullified by an inmate assuming the risk of death by suicide. *Gregoire*, 170 Wn.2d at 635. That singularly unique question about assumption of the risk is irrelevant to the professional rescuer doctrine test outlined by this Court in *Maltman*.

Application of the professional rescuer doctrine is not premised on an officer assuming the specific risk that causes the injury. An officer needs only to encounter a known risk "generally associated" with the work for the doctrine to apply. It does not matter whether they have encountered exactly

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the United States, applying it to all professional rescuers—not just fire fighters and police officers. *See, e.g., Maltman*, 84 Wn.2d 975; *and, Black Industries, Inc. v. Emco Helicopters Inc.*, 19 Wn. App. 697, 577 P.2d 610 (1978). In these cases, the court held that civilian and military rescuers are also barred from bringing suit. *Maltman* involved the crash of a helicopter, and the ensuing deaths of its pilot and crewmembers. *Black Industries* involved the crash of a helicopter flown by a private pilot. In each case, the helicopter was responding to an emergency: in *Maltman*, an automobile accident, and in *Black Industries,* a forest fire. The plaintiff in each case brought suit against the person whose negligence caused the rescue attempt (in *Maltman*, the individual who caused the motor vehicle accident, and in *Black Industries*, the individual who started the forest fire).

the same situation before. *Maltman*, 84 Wn.2d at 979 (the risk need only be "generally associated" with officer's work); *see also Prosser & Keeton on Torts* § 61, at 432 (5th ed. 1984) (police officers are "trained to be on guard for any such general dangers inherent in the profession"). Therefore, this Court's discussion in *Gregoire* regarding the aspects of assumption of risk does not support overturning the doctrine.[5]

Loiland's reliance on law review articles provides him no relief as well. Of the four states addressed in the articles, each state continues to have some form of the doctrine that remains recognized judicially or in the case of Michigan has been codified by the Legislature. *Levandoski v. Cone,* 267 Conn. 651, 841 A.2d 208 (2004); *Gray v. Russell,* 853 S.W.2d 928, 930 (Mo. 1993) (en banc); *Nowicki v. Pigue*, 2013 Ark. 499, 430 S.W.3d 765 (2013); and *Harris-Fields v. Syze*, 461 Mich. 188, 617 n.11, 600 N.W.2d 611 (1999). In short, none of the states Loiland cites have abandoned the doctrine as he advocates.

Moreover, numerous state courts have considered the doctrine and decided not to reject it. Loiland cites to a Michigan statute to support his

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[5] Reliance on *Christensen v. Murphy*, 296 Or. 610, 678 P.2d 1210, 1214 (1984), is also misplaced because the Oregon Supreme Court only concluded that the fireman's rule no longer existed in that state, based on the Oregon Legislature's abrogation of implied primary assumption of the risk. *Christensen at* 1214. Loiland's reliance on *Wills v. Bath Excavating*, 829 P.2d 405, 409 (Colo. App. 1991, is equally misplaced since two years later the Colorado Supreme Court noted that previous case law had neither rejected or adopted a no-duty fireman's rule. *Bath Excavating & Constr. Co. v. Wills*, 847 P.2d 1141 (Colo. Sup. Ct. 1993).

position that the professional rescuer doctrine should be abandoned but the very statute Loiland cites for this proposition proves the opposite to be true. While the term "abolish" was used in the preamble of the statute, "the remaining sections of the statute create a set of principles very much like the common-law doctrine" *Harris-Fields v. Syze*, 461 Mich. 188, 617 n.11, 600 N.W.2d 611 (1999). Thus, Michigan's version of the doctrine was legislatively endorsed in Michigan. Other legislatures have endorsed the doctrine as well. As recently as 2010, New Hampshire codified the rule. See, *e.g.,* N.H. Rev. Stat. Ann. § 507:8–h (2010).

The California Supreme Court noted the same. It found that "the courts in this and other jurisdictions have answered the attacks, pointing out the rule is premised on sound public policy and is in accord with if not compelled by modern tort liability principles." *Walters v. Sloan*, 20 Cal.3d 199, 203, 571 P.2d 609, 611 (1977).

Finally, there is no showing that the professional rescuer doctrine as applied in this state is based on poor public policy. The essence of Loiland's theory is patently result oriented. He suggests that any time a professional rescuer has to respond to a scene where the actions of a government agency is a cause of why the professional rescuer is at the scene, the government entity can be sued for any injury incurred by the professional rescuer. This ignores the public policy that it is the firefighter's business to deal with

hazards, and "cannot complain of the negligence in the creation of the very occasion for his engagement." *Black Industries, Inc. v. Emco Helicopters Inc.*, 19 Wn. App. 697, 577 P.2d 610 (1978) (quoting *Krauth v. Geller*, 157 A.2d 129, 131 (N.J. 1960)). It also ignores the compensation firefighters receive to perform their job and the additional rights they have been given by the Legislature in recognition of assuming the role of a person who responds to hazardous situations for a living. A prime example is firefighters, unlike most workers, have the right to sue their employer when injured on the job.[6]

The Alaskan Supreme court summed it up well when it stated the rule "reflects sound public policy" because "[t]he public pays for emergency responses of public safety officials in the form of salaries and enhanced benefits. Requiring members of the public to pay for injuries incurred by officers in such responses asks an individual to pay again for services the community has collectively purchased." *Moody v. Delta Western, Inc.*, 38 P.3d 1139, 1142 (Alaska 2002).

In short, Loiland offers no sound legal or policy basis on which this Court should overrule its decision in *Maltman*. As such, his argument does

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[6] "The Washington Law Enforcement Officers' and Fire Fighters' Retirement Systems Act (LEOFF), chapter 41.26 RCW, specifically grants officers the 'right to sue' their employers for negligence *in addition to recovering* workers' compensation. *See* RCW 41.26.281 ('right to sue' provision)." *Beaupre v. Pierce County*, 161 Wn.2d 568, 574, 166 P.3d 712 (2007).

not turn this ordinary case involving application of established law into a matter that warrants discretionary review.

V. CONCLUSION

The Court should decline review.

RESPECTFULLY SUBMITTED this 19th day of March, 2018.

ROBERT W. FERGUSON
Attorney General

GARTH A. AHEARN
WSBA #29840; OID #91105
Assistant Attorney General
Attorney for Respondent
1250 Pacific Avenue, Suite 105
Tacoma, WA 98401-2317
253-593-5243
gartha@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on this 19th day of March, 2018, I caused a true and correct copy of the State of Washington's Answer to Appellant's Statement of Grounds For Direct Review to be served on the following in the manner indicated below:

Counsel for Loilands:	( ) U.S. Mail
Name: Philip A. Talmadge	( ) Hand Delivery
Talmadge/Fitzpatrick/Tribe	(X) E-Mail
Address: 2775 Harbor Ave SW	(X) U.S. Mail
Third Floor, Suite C	
Seattle, WA 98126	

Counsel for Loilands:	( ) U.S. Mail
Name: Francisco Duarte	( ) Hand Delivery
Scott David Smith	(X) E-Mail
Fury Duarte PS	(X) U.S. Mail
Address: 710 10th Ave E	
P.O. Box 20397	
Seattle, WA 98102	

By: Sharon Jaramillo
Sharon Jaramillo, Legal Assistant

AGO TORTS TACOMA

March 19, 2018 - 10:47 AM

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