

No. 36384-4-II-4-0

**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

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JOSEPH CURTIN, an individual

Appellant,

v.

KING COUNTY, a political subdivision of the State of Washington

Respondents.

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APPELLANT'S BRIEF

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR .....	2
III. STATEMENT OF THE CASE .....	3
III. LEGAL ARGUMENT .....	6
1. King County owed a duty under the circumstances presented to take corrective action to protect the traveling public from a known road hazard and its failure to take any meaningful steps to address the inherently dangerous and misleading condition of the roadway gives rise to a question of fact whether King County breached its duty .....	6
2. The standard on summary judgment mandated that the trial court deny Respondent’s motion to dismiss Appellant’s claims where there is ample evidence that the road at issue is inherently dangerous and misleading; where the configuration of the road violated King County’s own road standards and where the County took inadequate action to eliminate the hazard, all of which are questions of fact. ....	12
3. The corrective action taken by Respondent was inadequate and Appellant has presented expert testimony that Respondent’s attempt to eliminate the hazard was unreasonable, thereby giving rise to a question of fact. ....	21
V. CONCLUSION .....	22

## TABLE OF AUTHORITIES

	<u>Page</u>
<u>Court Rules</u>	
CR 56(c)	
WAC 468-95-010	7
<u>Washington State Cases</u>	
<i>Barrie v. Hosts of Am., Inc.</i> , 94 Wn.2d 640, 642, 618 P.2d 96 (1980)	9
<i>Bartlett v. N. Pac. Ry. Co.</i> , 74 Wn.2d 881, 882-83, 447 P.2d 735 (1968)	8, 14
<i>Bauman v. Crawford</i> , 104 Wn.2d 241, 244-45, 704 P.2d 1181 (1985).	7
<i>Clements v. Travelers Indem. Co.</i> , 121 Wn.2d 243, 249, 850 P.2d 1298 (1993).	13
<i>Gilbert H. Moen Co. v. Island Steel Erectors, Inc.</i> , 128 Wn.2d 745, 759, 912 P.2d 472 (1996)	8
8	
<i>Goodner v. Chicago, Milwaukee, St. Paul &amp; Pac. R.R Co.</i> , 61 Wn.2d 12, 17-18, 377 P.2d 231 (1962)	9
<i>Hansen v. Washington Natural Gas Co.</i> , 95 Wn2d 773, 776 632 P2d 504 (1981)	14

<i>Hartley v. State</i> , 103 Wn.2d at 775, 698 P.2d 77	8
<i>Hewitt v. Spokane, Portland &amp; Seattle Ry. Co.</i> , 66 Wn.2d 285, 291-92, 402 P.2d 334 (1965)	8
<i>Hisle v. Todd Pac. Shipyards</i> , 151 Wn.2d at 853, 93 P.3d 108	8
<i>Keller v. City of Spokane</i> , 146 Wn. 2d 237, 249, 44 P.3d 845 (2002).	6,7,17,18 19,20,23
<i>Kitt v. Yakima County</i> , 93 Wn.2d 670, 611 P.2d 1234 (1980).	7
<i>Korshund v. DynCorp Tri-Cities Servs., Inc.</i> , 156 Wn.2d 168, 177, 125 P.3d 119 (2005)	12
<i>LaPlante v. State</i> , 85 Wn.2d 154, 159, 531 P.2d 299 (1975)	8
<i>Leber v. King County</i> , 69 Wash. 134, 124 P. 397 (1912)	8,14
<i>Livingston v. City of Everett</i> , 50 Wn. App. 655, 658, 751 P.2d 1199 (1988)	8
<i>Lucas v. Phillips</i> , 34 Wn.2d 591, 595, 209 P.2d 279 (1949)	14
<i>Owen v. Burlington Northern and Santa Fe R.R. Co.</i> , 153 Wn.2d 780, 108 P.3d 1220 (2005).	6,7,10,11 12,17,19, 20,21,22
<i>Provins v. Bevis</i> , 70 Wn.2d 131, 422 P.2d 505 (1967)	8

<i>Ruff v. King County</i> , 125 Wn.2d at 703, 887 P.2d 886	8,13,14 15,16,17 19,20
<i>Tanguma v. Yakima County</i> , 18 Wn. App. 555, 563, 569 P.2d 1225 (1977)	8,14
<i>Ulve v. City of Raymond</i> , 51 Wn.2d 241, 246, 317 P.2d 908	7
<i>Wessels v. Stevens Cy.</i> , 110 Wash.196, 188 P. 490(1920)	14

**Other Authorities**

6A <i>Washington Practice; Washington Pattern Jury Instructions</i> , Civil Sec. 140.01 (3d ed. Supp. 1994 (WPI)	19
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## I. INTRODUCTION

This case involves a motorcycle accident, which occurred during the hours of darkness on or about May 14, 2004. Appellant was riding his motorcycle in a northerly direction on 138<sup>th</sup> Avenue SE in Renton, Washington. At the time of the accident, King County owned the road in question.

The road where the accident occurred contains a sight obstructing hill just prior to the site of the accident. As Appellant rode his motorcycle over the hill, Jinhua Li was pulling out of a driveway located on the other side of the hill. Neither Appellant, nor Ms. Li, had enough time to react in order to avoid the collision given the inadequate sight lines caused by the configuration of King County's roadway.

As a result of the accident, Appellant suffered severe, debilitating injuries.

In 2001, King County conducted a study of the roadway at issue. The King County report concluded that the sight lines in the roadway were inadequate and advised the then owner of the property, Richard Stuth, to abandon his use of the driveway at issue. Mr. Stuth subsequently sold his property prior to the accident at issue.

Respondent took no other action to remedy the unsafe sight line condition.

Respondent contends that it violated no duty to maintain its roadways in a reasonable safe condition; and that the accident was solely caused by either the negligence of Appellant, Ms. Li, or by the configuration of the driveway as installed by Mr. Stuth. The trial court granted Respondent's motion for summary judgment and dismissed Appellant's claims.

## **II. ASSIGNMENT OF ERROR**

1. The trial court erred in granting summary judgment to Respondent when material questions of fact exist regarding breach of the Respondent's duty to maintain its roadways in a condition reasonably safe for ordinary travel by eliminating misleading and/or inherently dangerous conditions within the roadway.

### **ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Did the trial court err in granting summary judgment to Respondent when a municipality owes a duty to all travelers, whether negligent, or fault free, to maintain its roadways in a condition that is reasonably safe for ordinary travel?

2. Did the trial court err in granting summary judgment to Respondent when the evidence shows that Respondent conducted a study of the roadway in 2001, prior to the accident in question, which study concluded that the sight lines at the crest of the hill were unsafe?

3. Did the trial court err in granting summary judgment to Respondent when plaintiff submitted qualified expert testimony showing that the safe approach speed at the crest of the hill where the accident occurred was 18.4 miles per hour, and where Respondent failed to modify the roadway to allow for safe sight lines under Respondents own regulations, and where Respondent failed to change the speed limit on the roadway or post any warning signs?

### **III. STATEMENT OF THE CASE**

The accident at issue occurred on or about May 14, 2004. Appellant was riding his motorcycle in a northerly direction on 138<sup>th</sup> Avenue SE in Renton, Washington. (CP 57). At the time of the accident, King County owned the road in question. (CP 2, CP 9).

The road where the accident occurred contains a sight obstructing hill just prior to the site of the accident. (CP 56 – 89, CP 38 – 43). Just as Appellant rode his motorcycle over the hill, Jinhua Li, was pulling out of a

driveway located on the other side of the hill. (CP 56 – 89). Neither Appellant, nor Ms. Li, saw the other in time to avoid the collision given the inadequate sight lines caused by the configuration of King County's roadway. (CP 82, CP 38-43).

In 2001, King County conducted a study of the roadway at issue. The King County report concluded that the sight lines in the roadway were inadequate. The County sent an advisory letter to the then owner of the property, Richard Stuth, advising him that he should to abandon his use of the southerly driveway on the property (accident driveway). (CP 39, 52). Mr. Stuth subsequently sold his property before the accident in question occurred.

Following the County's 2001 study, Respondent did not modify the roadway to allow for a safe stopping distance; nor did Respondent modify the speed limit on the approach to the hill; nor did Respondent post any other warning signs which would have alerted oncoming traffic to the limited sight line problem on the road at issue. (CP 38 – 43).

Appellant was seriously injured in the incident at issue. (CP 75, CP 82). Given the severe nature of the accident, it was thoroughly

investigated by the King County Major Accident Investigating Team (MAIT). (CP 56 -89).

The officer who investigated the accident concluded as follows: “The hill is positioned so that it did obstruct Li’s vision looking south.” (CP 82).

Plaintiffs expert, Edward Stevens conducted a detailed analysis of the accident at issue and examined the roadway. It is uncontested that the posted speed limit on 138<sup>th</sup> Avenue SE is 25 Miles Per Hour. King County Road Standards require adequate stopping sight distances. (CP 38-43).

Stopping sight distance is a function of the distance required to safely stop at a given speed from the point where an object in the roadway can first be seen. Mr. Stevens utilized King County Road Standards to calculate the safe stopping sight distance from the crest of the hillock at issue to the driveway. His calculation reveals a safe approach speed leading up to the hill at issue of 18.4 MPH. (CP 38 – 43).

#### IV. LEGAL ARGUMENT

1. **King County owed a duty under the circumstances presented to take corrective action to protect the traveling public from a known road hazard and its failure to take any meaningful steps to address the inherently dangerous and misleading condition of the roadway gives rise to a question of fact whether King County breached its duty.**

It is well recognized that a municipality owes a duty to all travelers, whether negligent or fault free, to maintain its roadways in a condition that is reasonably safe for ordinary travel. *Keller v. City of Spokane*, 146 Wn. 2d 237, 249, 44 P.3d 845 (2002).

The aforementioned duty includes the obligation to eliminate an inherently dangerous or misleading condition

The latest case to address the issues raised in this matter is *Owen v. Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 108 P.3d 1220 (2005).

In *Owen*, the plaintiffs alleged that the city of Tukwila failed to maintain the approach street to the railroad crossing where the accident occurred in a reasonable safe condition by failing to provide adequate warning of the dangers posed by the railroad crossings and failing to adjust traffic control devices to prevent the dangers posed by the railroad crossing.

The City of Tukwila successfully moved for summary judgment. The Court of Appeals reversed the trial court. The Supreme Court affirmed the Court of Appeals finding that plaintiffs had presented evidence sufficient to withstand summary judgment.

In *Owen* at 787, the Supreme Court stated:

We first examine the duty, if any, of the city. Today, governmental entities are held to the same negligence standards as private individuals. See *Keller*, 146 Wn.2d at 242-43, 44 P.3d 845. Liability for negligence does not require a direct statutory violation, though a statute, regulation, or other positive enactment may help define the scope of a duty or the standard of care. Cf. *Bauman v. Crawford*, 104 Wn.2d 241, 244-45, 704 P.2d 1181 (1985). The MUTCD provides at least some evidence of the appropriate duty. See RCW 47.36.030; WAC 468-95-010; see also *Kitt v. Yakima County*, 93 Wn.2d 670, 611 P.2d 1234 (1980).

Tukwila acknowledges that it has a duty to provide reasonably safe roads and this duty includes the duty to safeguard against an inherently dangerous or [788] misleading condition. A city's duty to eliminate an inherently dangerous or misleading condition is part of the overarching duty to provide reasonably safe roads for the people of this state to drive upon. See *Keller*, 146 Wn.2d at 249, 44 P.3d 845. The inherently dangerous formulation recognizes that "[a]s the danger becomes greater, the actor is required to exercise caution commensurate with it." *Ulve v. City of Raymond*, 51 Wn.2d 241, 246, 317 P.2d 908 (1957). Simply stated, the existence of an unusual hazard may require a city to exercise greater care than would be sufficient in other settings. *Id.* at 246, 251-52, 317 P.2d

908. See also *Bartlett v. N. Pac. Ry. Co.*, 74 Wn.2d 881, 882-83, 447 P.2d 735 (1968).

Whether the roadway was reasonably safe for ordinary travel is, in this case, a material question of fact. Questions of fact may be determined as a matter of law "when reasonable minds could reach but one conclusion." *Hartley*, 103 Wn.2d at 775, 698 P.2d 77. If reasonable minds can differ, the question of fact is one for the trier of fact, and summary judgment is not appropriate. We have noted before that "issues of negligence and proximate cause are generally not susceptible to summary judgment." *Ruff*, 125 Wn.2d at 703, 887 P.2d 886 (citing *LaPlante v. State*, 85 Wn.2d 154, 159, 531 P.2d 299 (1975)); accord *Gilbert H. Moen Co. v. Island Steel Erectors, Inc.*, 128 Wn.2d 745, 759, 912 P.2d 472 (1996) (noting negligence is ordinarily a question of fact).

Similarly, whether a condition is inherently dangerous or misleading is generally a question of fact. See *Leber v. King County*, 69 Wash. 134, 124 P. 397 (1912); *Provins v. Bevis*, 70 Wn.2d 131, 422 P.2d 505 (1967); *Tanguma v. Yakima County*, 18 Wn. App. 555, 563, 569 P.2d 1225 (1977); cf. 4 *Hewitt v. Spokane, Portland & Seattle Ry. Co.*, 66 Wn.2d 285, 291-92, 402 P.2d 334 (1965) (noting unusual circumstances at railroad crossing may allow trier of fact to find crossing "exceptionally dangerous" and "extrahazardous"). Likewise, the adequacy of the government's attempt to take corrective action is generally a question of fact. E.g., *Livingston v. City of Everett*, 50 Wn. App. 655, 658, 751 P.2d 1199 (1988).

[789] We turn now to whether there are any genuine issues as to any material facts. A material fact is one that affects the outcome of the litigation. *Hisle*, 151 Wn.2d at 861, 93 P.3d 108 (quoting *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980)).

According to Owen's expert and the Tukwila public works director there is a high volume of both vehicle and train traffic at the crossing. The train traffic includes high-speed trains. There are three sets of active railroad tracks and two sets of crossing signals together in close proximity. There are nearby traffic signals which, according to lay witnesses and Owen's expert, frequently cause queuing of vehicles over the tracks. Additionally, there is an incline in the road as westbound travelers approach the crossings that, according to the lay witness and Owen's expert, limits drivers' ability to see the traffic signals or approaching trains.

If the roadway is inherently dangerous or misleading, then the trier of fact must determine the adequacy of the corrective actions under all of the circumstances. E.g., [790] *Goodner v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 61 Wn.2d 12, 17-18, 377 P.2d 231 (1962). If the corrective actions are adequate, then the city has satisfied its duty to provide reasonably safe roads. According to evidence presented by Owen, an array of remedial measures existed ranging from installing a stop sign before the crossings, posting additional signage to give warnings at each approach, extending the detection period to give vehicles more than 20 seconds advanced warning of an approaching train, and upgrading signals, to separating the railway and vehicle grades. The absence of any of these available remedial measures in combination with the particular conditions at this crossing, including the volume of vehicle and high-speed train traffic, the presence of traffic signals that cause vehicles to halt on multiple sets of tracks, and the alleged limited visibility of westbound drivers, provides evidence from which a reasonable jury could conclude the roadway was not maintained in a condition reasonably safe for ordinary travel or was inherently dangerous or misleading, requiring warnings or elimination of the particular dangers present.

Because reasonable minds may differ as to whether the roadway was reasonably safe for ordinary travel, inherently dangerous, or misleading, and whether appropriate corrective action has been taken, questions of material fact exist and summary judgment is inappropriate.

Whether the roadway at issue was reasonably safe for ordinary travel is a question of fact to be decided by the trier of fact. *Owen* at 788.

A municipality's duty to maintain its roads in a reasonably safe condition requires the elimination of inherently dangerous or misleading conditions. *Owen* at 787-788. Whether a condition of a roadway is inherently unsafe or misleading also presents a question of fact. *Owen* at 788.

The road was not reasonably safe given the inherently dangerous or misleading condition created by the inadequate sight lines caused by the crest of the hill: 1) Plaintiff's expert, Ed Steven's analyzed the accident and the roadway and concluded that the safe approach speed on the crest of the hill, given the obstructed sight lines, is 18.4 MPH in accordance with Respondent's Road Standards, not the posted speed limit of 25 MPH (CP 38 – 43); 2) Following the accident, both Appellant and Jinhua Li stated that they didn't see each other due to the crest in the hill (CP 82); 3) The investigating officer concluded that the slope in the road obstructed

Li's view (CP 82); and 4) Respondent conducted a study of the roadway in 2001, prior to the accident at issue, and concluded that the sight lines were inadequate. (CP 52)

The *Owen* court also held where the roadway is inherently dangerous or misleading, then the trier of fact must determine the adequacy of the corrective actions under all of the circumstances. *Owen* at 789.

The only action Respondent ever took to remedy the sight line issue was to write a letter to Richard Stuth advising him that he should abandon his use of driveway. There is no evidence that King County even bothered to follow up to determine whether Mr. Stuth complied with the County's request.

King County took no action to modify the road; King County took no action to reduce the posted speed limit on the road to the safe approach speed of 18 MPH, nor did the County post any warning signs to alert oncoming drivers to the dangerous condition. The foregoing were measures the County should have taken to eliminate the in inherently dangerous and misleading condition of the road in the opinion of plaintiffs' expert. (CP 38 – 43).

Whether the writing of one advisory letter to a property owner is sufficient corrective action on the part of Respondent is a question of fact according to the *Owen* court. *Id.* at 789. In the opinion of plaintiff's expert, the County's remedial actions were unreasonable given the condition of the road (CP 38 – 43).

2. **The standard on summary judgment mandated that the trial court deny Respondent's motion to dismiss Appellant's claims where there is ample evidence that the road at issue is inherently dangerous and misleading; where the configuration of the road violated King County's own road standards and where the County took inadequate action to eliminate the hazard, all of which are questions of fact.**

The appellate court reviews orders of summary judgment dismissal *de novo*, engaging in the same inquiry as the trial court. *Korlund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005); RAP 9.12. Summary judgment is appropriate only 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 judgment as a matter of law." CR 56(c). The court must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the

nonmoving party. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993).

The Respondent in this matter relied exclusively on the case of *Ruff v. King County*, 125, Wn.2d 697, 887 P.2d 886 (1995), which the trial court found persuasive in granting its summary judgment order dismissing plaintiff's claims.

*Ruff* concerned the plaintiff's allegation that a guardrail was required at the site of the accident to prevent plaintiff's vehicle from leaving the roadway. Plaintiffs' experts conceded that the roadway at issue was safe in all other respects and that a car traveling as fast as 60 MPH could safely negotiate the curve where the accident occurred. The evidence established that plaintiff was traveling at 50 MPH at the time of the accident.

In upholding the trial court's summary judgment order of dismissal, the *Ruff* Court stated at Page 705:

Accordingly, King County has a duty to maintain 154th Place S.E. in a reasonably safe condition for ordinary travel. The record shows that at the time of the accident the asphalt was in excellent condition. The striping along the roadway was clearly visible. The speed limit was clearly posted. The width of the road, including the shoulder, was normal for this type of roadway and the experts agreed that the signing was appropriate for the roadway.

Notwithstanding, Ruff argues that his experts establish the need for a guardrail at the accident site, thus creating an issue of fact as to King County's negligence.

**We recognize that the duty to maintain a roadway in a reasonably safe condition may require a county to post warning signs or erect barriers if the condition along the roadway makes it inherently dangerous or of such character as to mislead a traveler exercising reasonable care**, or where the maintenance of signs or barriers is prescribed by law. *Hansen*, at 778; *Lucas v. Phillips*, 34 Wn.2d 591, 595, 209 P.2d 279 (1949); *Tanguma v. Yakima Cy.*, 18 Wn. App. 555, 558-59, 569 P.2d 1225 (1977); see also *Bartlett v. Northern Pac. Ry.*, 74 Wn.2d 881, 447 P.2d 735 (1968); *Wessels v. Stevens Cy.*, 110 Wash. 196, 188 P. 490 (1920); *Leber v. King Cy.*, 69 Wash. 134, 124 P. 397 (1912). . . (emphasis added).

Ruff cites no ordinance or statute requiring the installation of barriers. However, he contends that since the lateral recovery area at the accident site was less than 10 feet wide, the American Association of State Highway and Transportation Officials (AASHTO) standards required installation of a guardrail. AASHTO standards have not, however, been officially adopted by King County.

**The record shows that King County has promulgated its own standards and neither Ruff nor his experts assert that King County violated those standards.** (emphasis added) *Ruff* at 705.

The *Ruff* court, finding that there was no evidence that King County violated its own standards, next analyzed the question of whether the roadway at issue in that case was inherently dangerous or misleading.

The undisputed evidence establishes that at the time of the accident the surface of 154th Place S.E. was in excellent condition, the markings and signing were appropriate, and the width of the road including the shoulder was standard. None of the experts testified that the roadway was inherently dangerous or deceptive. *Ruff* at 706

The *Ruff* holding is entirely distinguishable from the facts of this case. First, in *Ruff* there was no evidence that King County violated any of its own standards. In contrast, Appellant's expert in this matter analyzed the stopping site distance requirements under the King County Road Standards and found that the configuration of the road violated those standards. Safe stopping site distance under the King County standards required an approach speed of 18.4 MPH. It is uncontested that the posted speed limit on 138<sup>th</sup> Ave SE was 25 MPH. (CP 38-43).

*Ruff* is therefore distinguishable on the first basis upon which a municipality may be found liable because, in this case, there is evidence of an actual violation of King County Road Standards. (CP 38 – 43).

*Ruff* is also distinguishable on the second basis upon which a municipality may be found liable, because, in addition to the violation of King County regulatory standards, Appellant's expert has opined that the configuration of the roadway is misleading and inherently dangerous; King County's own pre-accident 2001 study found the sight lines on the

road to be unsafe; the officer investigating the accident found the hill obstructed Jinhua Li's view to the south; both Appellant and Ms. Li stated they couldn't see each in time to avoid the collision given the limited sight line caused by the crest in the hill.

The plaintiffs in *Ruff* merely contended that had a guardrail been erected it could have prevented plaintiff's vehicle from leaving the roadway. Under the facts of *Ruff*, there was no dangerous or misleading condition within the roadway itself. The *Ruff* plaintiffs sought to impose liability by asserting that an extra safe-guard in the form of guardrails should have been erected which might have prevented plaintiff's vehicle from leaving the roadway.

The facts of this case aren't premised upon a theory that King County should have endeavored to add an additional safeguard (i.e. a guardrail) to a road which was already safe to travel as configured. Rather, the evidence in this case shows that the stopping sight distance on the road, given the posted speed limit of 25 MPH, violated King County Road Standards. Further, SE 138<sup>th</sup> Street was inherently dangerous and misleading given that the inadequate sight lines, as shown by the report of the investigating officer; the statements of Appellant and Jinhua Li; the

analysis and opinions of Ed Steven's, plaintiff's expert; and Respondent's own 2001 pre-accident investigation of the road which acknowledged inadequate sight lines. The foregoing evidence gives rise to a question of fact under the holdings of *Owen* and *Keller* as to whether the County complied with its duty as enunciated in *Keller* to maintain its roadways in a condition that is reasonably safe for ordinary travel. *Keller*, 146 Wn.2d at 249.

The *Ruff* decision was handed down in 1995. Since that time, The Supreme Court decided *Keller v. City of Spokane*, 146 Wn.2d 237, 249 P.3d 845 (2002) and *Owen v. Burlington Northern and Santa Fe R. R. Co.*, 153 Wn.2d 780, 108 P.3d 1220 (2005).

Both of those decisions expanded and further clarified the duty owed by a municipality to the traveling public to maintain its roads in a reasonably safe condition and to eliminate inherently dangerous or misleading conditions.

In *Keller*, the issue before the court was a jury instruction regarding the city of Spokane's duty to maintain its roadways. *Keller*, 146 Wn.2d at 239. Keller crashed into a car with his motorcycle as the car drove through an intersection. *Keller*, 146 Wn.2d at 240. He sued both the

driver of the car and the city of Spokane for negligence. *Keller*, 146 Wn.2d at 240. At trial, Keller argued that the national guidelines found in the Manual on Uniform Traffic Control Devices (MUTCD) and the city's internal standards suggested the need for a four-way stop at the intersection. *Keller*, 146 Wn.2d at 240-41. The city argued that (1) the MUTCD guidelines were permissive; (2) the intersection was safe for ordinary travel; (3) the intersection had adequate to excellent visibility; and (4) that traffic was light at the time of Keller's accident. *Keller*, 146 Wn.2d at 241. The trial court gave the following instruction:

A city has a duty to exercise ordinary care in the signing and maintaining of its public streets to keep them in a condition that is reasonably safe for ordinary travel by persons using them in a proper manner and exercising ordinary care for their own safety.

It is the duty of the city to eliminate an inherently dangerous condition, if one exists, and its existence is known, or should have been known to the city in the exercise of reasonable care.

Inherently dangerous, as used herein, means a danger existing at all times so as to require special precautions to prevent injury.

*Keller*, 146 Wn.2d at 241 (jury instruction 13) (footnote omitted).

The first paragraph of jury instruction 13 in *Keller* was taken directly from 6A Washington Practice: Washington Pattern Jury Instructions: Civil sec. 140.01 (3d ed. Supp. 1994) (WPI). *Keller*, 146 Wn.2d at 241. The jury found the city not negligent and Keller appealed. *Keller*, 146 Wn.2d at 242. Division Three reversed, finding that jury instruction 13 was erroneous. *Keller*, 146 Wn.2d at 242.

On review, the Supreme Court agreed holding 'that a municipality owes a duty to all persons, whether negligent or fault-free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel.' *Keller*, 146 Wn.2d at 249. The court found that WPI 140.01 and jury instruction 13 were misleading and, to the extent they allowed a jury to premise a municipality's duty on the absence of negligence by the plaintiff, they were legally erroneous. *Keller*, 146 Wn.2d at 251.

The Supreme Court, in *Keller* expanded the *Ruff* holding by finding that a municipality owes a duty to all persons, whether negligent or fault free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel. *Keller*, 146 Wn.2d at 249.

The *Owen* holding handed down by the Supreme Court three years after the *Keller* decision reiterated the principals enunciated in *Keller*. In

*Owen*, the court reiterated the duty that municipalities owe to travelers as stated in *Keller*; that is a municipality has a duty to eliminate any inherently dangerous or misleading condition on a road as part of its overarching duty to provide reasonably safe roads for the citizens of Washington. *Owen*, 152 Wn.2d at 786-88 (citing *Keller*, 146 Wn.2d at 249).

The trial court in this matter erred when it chose to apply *Ruff* and ignore the holdings of *Keller* and *Owen* in rendering its decision in this case to dismiss Appellants claims as a matter of law.

The *Ruff* decision did not concern any issue of whether the road in question presented a misleading or inherently dangerous condition. All parties in *Ruff* agreed that the road as constructed and maintained by the municipality was safe. The contention in *Ruff* went beyond the question of whether the defendant allowed an inherently dangerous and misleading condition to exist, rather, the plaintiff in *Ruff* asserted that the County was under a duty to provide an additional safeguard in the form of guardrails to prevent the damage which followed when plaintiff lost control of her vehicle. All parties agreed that the curve where the accident occurred

could have been safely negotiated by the plaintiff, and that there was no inherently dangerous or misleading condition within the road itself.

In contrast, in the matter before this Court, the inherently dangerous and misleading configuration of SE 138<sup>th</sup> forms the basis for liability. Both Appellant and Jinhua Li stated they couldn't see each other before the accident due to the obstruction of sight lines created by the crest in the roadway; the investigating officer stated that Ms. Li's view to the south was obstructed given the slope in the roadway; the Respondent conducted a study of the road three years before the accident occurred, which study concluded that the sight lines on the road were unsafe; and plaintiff's expert, Ed Stevens, conducted a thorough investigation of the accident and his analysis reveals that the configuration of the roadway violated King County Road Standards, and that the sight lines created a misleading and inherently dangerous condition.

**3. The corrective action taken by Respondent was inadequate and Appellant has presented expert testimony that Respondent's attempt to eliminate the hazard was unreasonable, thereby giving rise to a question of fact.**

As set forth in the *Owen* case, if the roadway is inherently dangerous or misleading (a question of fact), then the trier of fact must

determine the adequacy of the corrective actions under all of the circumstances. *Owen* at 789

King County did nothing to eliminate the hazard, other than to write an advisory letter to the then property owner, Richard Stuth, suggesting that he should abandon his use of the driveway at issue. (CP 52, CP 38- 43).

As set forth by plaintiff's expert, it is his well reasoned opinion that the County acted unreasonably in its corrective action. Respondent could have eliminated the hazard by modifying the roadway; placing adequate signage to warn of the deceptive and dangerous condition caused by the inadequate sight lines, etc. as set forth by Mr. Stevens. (CP 38 – 43).

As mandated by the *Owen* holding, whether the County's alleged corrective action was adequate is a question of fact, not one to be decided on summary judgment by the trial court.

## V. CONCLUSION

The trial court in this matter erred when it entered its order on summary judgment dismissing Appellant's claims.

A municipality owes a duty to all travelers, whether negligent or fault free, to maintain its roadways in a condition that is reasonably safe for ordinary travel. *Keller v. City of Spokane*, 146 Wn. 2d 237, 249, 44 P.3d 845 (2002).

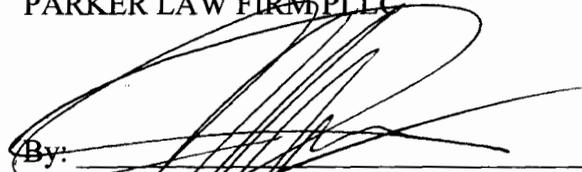
The liability of a municipality may be premised upon a violation of applicable road standards, or where the condition of the roadway presents an inherently dangerous or misleading condition. Appellant satisfies both tests. He has presented evidence that King County did not comply with its own Road Standards and that the configuration of the roadway was inherently dangerous and misleading. The foregoing create questions of fact and are not susceptible to dismissal on summary judgment.

Likewise, the question of whether the County took appropriate remedial action is also a question of fact, given the opinion of plaintiff's expert that the Respondent acted unreasonably in failing to eliminate the hazard.

For the foregoing reasons, this Court should reverse the trial court's summary judgment order of dismissal of Appellant's claims.

DATED THIS 19<sup>th</sup> day of September, 2007.

PARKER LAW FIRM PLLC

By:   
Jeffrey P. Parker  
WSBA No. 22944

**CERTIFICATE OF SERVICE**

Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury of the laws of the State of Washington that a true and correct copy of the foregoing *Appellant's Brief* was sent via legal messenger this 20<sup>th</sup> day of September, 2007, to:

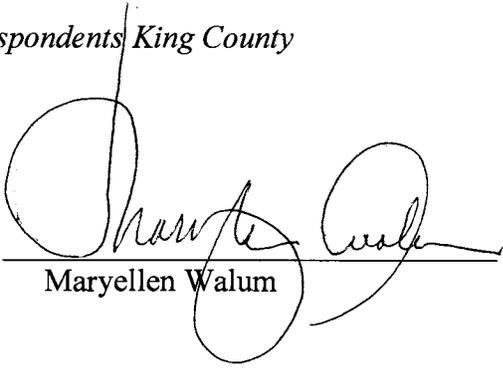
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