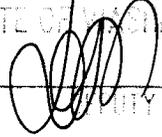


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DIVISION TWO

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STATE OF WASHINGTON

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No. 40802-3-II

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

RICHARD DAVIS, *Appellant*

vs.

DARIN MILLIKAN and HIRE SOURCE, INC., a corporation; and, JOBS
4 U, INC., dba Hire Source Staffing, *Respondents*

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

The fundamental flaw of *Brown v. Labor Ready Northwest*, 113 Wn. App. 643, 54 P.3d 166 (Div. 1, 2002), is that it fails to explain why a lending employer should be immune from liability for the negligent acts of its employee, when the lent employee is doing the very work the lending employer sent him out to do. In this case, Darin Millikan was fully within the course and scope of his employment with Hire Source when he injured Richard Davis. But because the details of the press operation were controlled by Cadet, *Brown* holds that only Cadet can be his employer for purposes of vicarious liability.

A better approach to the issue, found in the cases discussed in Appellant's opening brief¹, discards a simplistic "one or the other" test in favor of a rule that takes into account the realities of the workplace- that a loaned worker can be within the course and scope of his employment with more than one employer at the same time, and more than one employer can be responsible for his actions. Acknowledging that *Brown*, while narrowing the field of responsible employers without rational basis, is the

¹ *Bright v. Cargill, Inc., and Labor Source, Inc.*, 251 Kan. 387, 837 P.2d 348 (1992); *Kastner v. Toombs*, 611 P.2d 62 (Ak., 1980); *Morgan v. ABC Manufacturer, et al*, 710 So.2d 1077 (La., 1998).

Washington case on point, Mr. Davis argues in good faith, based upon logic (not emotion) and the carefully considered decisions of other state courts, for a change in Washington law. No public policy is furthered by relieving Hire Source of liability when Hire Source made a profit sending its employees into often dangerous industrial environments, while not forcing it to accept the risk of liability that accompanies such an enterprise.²

DATED this 14 day of October, 2010.



SCOTT A. STAPLES, WSBA 39325
of Attorneys for Appellant Richard Davis



CRAIG F. SCHAUERMANN, WSBA 7396
of Attorneys for Appellant Richard Davis

² Additionally, it is incongruous that a loaned employee in Mr. Millikan's position retains the right to sue a borrowing employer for his own injuries caused by the borrowing employer's negligence (so long as he has not consented to an employment relationship with the borrowing employer), but an employee in Mr. Davis' position is left without a tort remedy against the loaned employee (regardless of whether the loaned employee consented to an employment relationship with the borrowing employer) or the lending employer. Mr. Davis consented to no relationship with Mr. Millikan nor Hire Source.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I hereby declare that I caused to be served a true copy of the within and foregoing document APPELLANT'S REPLY BRIEF upon the following attorney(s) of record at the address(es) shown on the 14th day of October, 2010:

Stephen G. Skinner Johnson Andrews & Skinner, P.S. 200 W. Thomas Street, Suite 500 Seattle, WA 98119-4296	<input checked="" type="checkbox"/> U.S. Mail, First Class, Postage Paid <input type="checkbox"/> Vancouver Legal Messengers <input type="checkbox"/> Hand Delivered by _____ <input type="checkbox"/> FAX
Clerk Court of Appeals, Division II 950 Broadway Suite 300 MS TB 06 Tacoma, WA 98402-4427	<input checked="" type="checkbox"/> U.S. Mail, First Class, Postage Paid <input type="checkbox"/> Vancouver Legal Messengers <input type="checkbox"/> Hand Delivered by _____ <input type="checkbox"/> FAX

Linda Malattia
Date signed: 10-14-10
Place signed: 1700 East Fourth Plain Blvd.
Vancouver, Washington

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