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No. 53248-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CHRISTOPHER W. SARTIN and ROSE M. RYKER,
Individually and as a marital community,
Appellants

v.

THE ESTATE OF ALONZO MCPIKE;
PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA
CORPORATION, a/k/a PIERCE TRANSIT, MULTICARE HEALTH
SYSTEM, a Washington Corporation d/b/a TACOMA GENERAL
HOSPITAL; MULTICARE OCCUPATIONAL MEDICINE; and
RICHARD GILBERT, M.D. individually,
Respondents

REPLY BRIEF OF APPELLANT

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I. REPLY

When the proper standard of review is applied to the facts found in the extensive record of the case at hand, plain and genuine issues of material fact abound. The facts and law applicable to this case clearly establish the liability of Defendants Pierce Transit, Alonzo McPike, and Dr. Gilbert for the injuries sustained by Mr. Sartin when Mr. McPike was allowed to operate a city bus, despite being a danger to the motoring public.

The common thread running amongst all three Defendants is that each denies that it has a duty to protect the public from the harm that drivers of commercial vehicles may cause. This is simply not true. The applicable federal regulations mandate duties for commercial drivers, their employers, and commercial driver's license (CDL) certifiers. This is for the protection of the public, and any other interpretation as asserted by the Defendants is contrary to the intent of this detailed regulatory scheme.

A. Proper application of the summary judgment standard establishes that genuine issues of material fact exist.

In its de novo review of summary judgment, this court must accept the non-moving party's evidence as true, and must consider all reasonable inferences drawn from the evidence in the light most favorable to the non-moving party. *Fairbanks v. J.B. McLoughlin Co., Inc.*, 131 Wn.2d 96, 101, 929 P.2d 433 (1997). "An inference is 'a process of reasoning by which a

fact or proposition sought to be established is deduced as a *logical consequence* from other facts, or a state of facts, already proved or admitted.” *Id.* (Emphasis added). “A court may grant a motion for summary judgment *only if*, on the basis of the facts submitted, ‘reasonable minds could reach but one conclusion.’” *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014). Moreover, the court may not make determinations on the credibility of evidence, such as are raised by reasonable contradictory evidence. *Fairbanks*, 131 Wn.2d at 102.

In its Appendix A to its response brief, Pierce Transit highlights what it calls “mischaracterizations” of the record found in Mr. Sartin’s opening brief. Def. Pierce Transit’s Br. at Appx. A. Not only is this Appendix inaccurate and disingenuous, it actually highlights the reasonable differences in interpretations of the evidence submitted during the summary judgment proceedings. Pierce Transit has merely drawn inferences from the record in a light most favorable to Pierce Transit, which this court may not do under the summary judgment standard.

The record speaks for itself, and Mr. Sartin encourages the court to refer directly to the record during its review of the disputed facts at issue. However, to assist the court in reconciling these issues, attached as Appendix A is a response to Pierce Transit’s alleged mischaracterizations. When viewed in a light most favorable to Mr. Sartin, as the summary

judgment standard requires, the facts called into question by Pierce Transit are undeniably subject to more than one reasonable conclusion.

Because the evidence plainly set forth in the record is subject to multiple reasonable interpretations, and this court must resolve all such inferences in favor of the Mr. Sartin, the trial court's grant of summary judgment in favor of the Defendants must be reversed.

B. Dr. Gilbert misstates the law regarding claims against medical professionals by non-patients.

Mr. Sartin's claims against Dr. Gilbert are limited to general negligence and, alternatively, medical negligence. *See* CP at 989-92; 999-1002. Dr. Gilbert misstates the law in his briefing by contending that "Washington law does not recognize a cause of action absent a physician-patient relationship." Def. Dr. Gilbert's Br. at 16.

Dr. Gilbert relies on *Paetsch v. Spokane Dermatology Clinic, PS*, 182 Wn.2d 842, 850, 348 P.3d 389 (2015), to support his contention that the court has already determined that *negligence/medical malpractice claims* are not available to non-patient third parties who are injured as a result of a doctor's negligence. Def. Dr. Gilbert's Br. at 16. This is a misstatement of the law, and *Paetsch* is not instructive in this case.

First, *Paetsch* is not analogous because the plaintiff in that case brought a medical malpractice action as the recipient of medical care,

rather than a third party asserting a claim of medical negligence. 182 Wn.2d at 845-47. Second, the court in *Paetsch* specifically stated that the disposition of that case did not require it to resolve whether a physician-patient relationship is required in a medical malpractice action. *Id.* at 850.

The correct statement of law is found in *Eelbode v. Chec Medical Centers, Inc.*, 97 Wn. App. 462, 468-69, 984 P.2d 436 (1999), wherein the court expressly stated that “...no physician/patient relationship is needed to create liability for a claimed failure to follow the accepted standard of care.” *Id.* at 468-69. In fact, our courts have willingly expanded the duty of health care professionals beyond the traditional patient-physician relationship on several occasions.¹ The lack of a traditional patient-physician relationship between Mr. McPike and Dr. Gilbert is not dispositive on the issue of whether Dr. Gilbert can be held liable for his breach of the requisite standard of care in examining Mr. McPike. Whether Mr. Sartin can make a claim of *negligence* against Dr. Gilbert as a non-patient and foreseeable third party plaintiff is precisely the issue that this court must decide and is discussed below.

¹ See, e.g., *Reagan v. Newton*, 7 Wn. App. 2d 781, 796, 436 P.3d 411 (2019)(“[P]atient’ can have a generic meaning as someone who has an interaction with a health care provider without forming a traditional physician-patient relationship.”); *Eelbode v. Chec Medical Centers, Inc.*, 97 Wn. App. 462, 468-69, 984 P.2d 436 (1999)(holding that a limited pre-employment exam created a sufficient relationship to support a claim of medical negligence); *Branom v. State*, 94 Wn. App. 964, 971, 974 P.2d 335 (1999)(citing *Daly v. United States*, 946 F.2d 167, 1469 (9th Cir. 1991)(affirming that the plaintiff in a medical negligence action need not be a patient).

C. CDL examiners owe a duty of care to third parties who are foreseeably injured by their negligence in examining commercial drivers.

Dr. Gilbert contends that the “Washington Supreme Court has unequivocally held that there is no duty to third parties in the absence of a special relationship,” defined as definite, established, and continuing. Def. Dr. Gilbert’s Br. at 28. Dr. Gilbert’s bright line assertion regarding when a duty of care can be extended to a third party ignores the Washington State Supreme Court’s clear instruction in *Volk v. DeMeerleer*, 187 Wn.2d 241, 263, 386 P.3d 254 (2016), that courts must weigh “considerations of logic, common sense, justice, policy, and precedent” when determining the existence, scope, and measure of a duty to third parties.² *Id.* Moreover, Dr. Gilbert’s assertion ignores the fact that the court has established a duty to foreseeable third parties in circumstances outside of the physician/patient context. *See Mortensen v. Moravec*, 1 Wn. App. 2d 608, 614-15, 406 P.3d 1176 (2017).

As an example, it is well-established in Washington that a person who sells alcohol to any person apparently under the influence of alcohol is liable in a civil action to third parties injured in a motor vehicle accident caused by the intoxicated driver. *Id.* In these cases, a duty is extended

² The policy considerations that support the existence of a Dr. Gilbert’s duty to third parties like Mr. Sartin are discussed at length in Mr. Sartin’s opening brief. Pl.’s Br. at 39-47.

from sellers of alcohol to third parties injured by drunk drivers because “[d]river error is a commonly understood and foreseeable consequence of serving intoxicant to an already obviously intoxicated person.” *Id.* at 617 (quoting *Christen v. Lee*, 113 Wn.2d 479, 495-96, 780 P.2d 1307 (1989)).

If, as Dr. Gilbert claims, CDL examiners do not provide “medical care” to examinees, are not comparable to a treating provider, and do not establish any notable relationship with their examinees that would otherwise warrant the creation of a duty, then the examiners are mere service providers, and drivers are mere customers – much like a bartender who serves alcohol to a bar patron. *See* Def. Dr. Gilbert’s Br. at 21-22.

If it is the case that CDL examiners are mere service providers, then a duty applies because the foreseeable consequence of negligently allowing a dangerous driver to operate a commercial vehicle is injury to other motorists. If CDL certification examinations are comprised of no more than a passing interaction between driver and doctor, then the protections against liability afforded to health care providers do not apply to CDL examiners, and examiners are subject to liability to third parties absent a special relationship.

Liability for injuries to third parties is extended to sellers of alcohol because injury to third parties on the public roadway is an obvious consequence of a negligent service of alcohol; here, the same logic

applies. Injury to third parties is an obvious consequence of the negligent examination and certification of commercial drivers. If a CDL examiner is relieved of *any duty* to those motorists that he or she is meant to protect through his certification of drivers who operate commercial vehicles, then the question becomes: **What is the point of requiring an examination at all?**

If a CDL examiner can sign off on medical certifications without being held accountable to even minimal standards of competency, the purpose of the regulations set forth by the Federal Motor Carrier Safety Administration (FMSCA) in creating safer roadways for the motoring public is vastly undermined. The absence of a special relationship is not a full-stop bar to establishing a duty to third parties when public policy, common sense, and precedent support a CDL examiner's duty to third parties who may be injured as a result of their negligent certification of drivers.

D. Genuine issues of fact remain as to whether Mr. McPike's incapacitation was sudden and reasonably foreseeable.

The trial court erroneously ruled that Dr. Fletcher's deposition testimony established that Mr. McPike's incapacitation was unforeseeable

as a matter of law³. The Defendants rely on the same argument here, which takes Dr. Fletcher's testimony and other evidence out of context.

Pierce Transit asserts that Mr. McPike's loss of consciousness was unforeseeable as a matter of law and that it is entitled to a complete defense of liability under a theory of sudden loss of consciousness. Def. Pierce Transit's Br. at 12-20. It is true that under Washington law, a driver is not chargeable with negligence if he loses control of his vehicle due to a *sudden and unforeseeable* loss of consciousness. *Kaiser v. Suburban Transp. Sys.*, 65 Wn.2d 461, 466, 398 P.2d 14 (1965)(emphasis added). However, application of this defense at summary judgment was improper because genuine issues of material fact exist as to whether Mr. McPike's was both sudden and unforeseeable.

Similarly, Dr. Gilbert maintains that Mr. McPike's incapacitation was unforeseeable as a matter of law because: "Experts for both sides consistently testified that the first indication of any problem was Mr. McPike's cardiac arrest on the day of the accident." Def. Gilbert's Br. at 29. This is a misstatement of Dr. Fletcher's testimony, and summary judgment was improper on this basis as there are genuine issue of material fact as to whether Mr. McPike's loss of consciousness was foreseeable.

³ For the court's convenience, Dr. Fletcher's full declaration is attached at Appendix B since it is referenced very often in this brief. Dr. Fletcher's full declaration is also found at CP 335-59.

1. Sudden

Despite Pierce Transit's assertion to the contrary, the record before the court does not clearly establish that Mr. McPike's loss of consciousness was sudden. Def. Pierce Transit's Br. at 14. While all parties may agree that Mr. McPike lost consciousness while driving, there is a genuine issue of fact as to whether the incapacitation was "sudden." *See, e.g.*, CP at 90-99; 380-384. As recounted in Mr. Sartin's opening brief, accounts from passengers on the Pierce Transit bus driven by Mr. McPike on the morning of the accident vary. CP at 90-99; 380-84. Pierce Transit attempts to conceal the fact that two witnesses submitted declarations in which they observed Mr. McPike driving erratically in the 30 minutes leading up to his eventual incapacitation. CP at 380-84.

This evidence (which must be taken as true under the summary judgment standard), coupled with the inference that the on-board video destroyed by Pierce Transit was harmful to Pierce Transit's theory that the incapacitation was "sudden," create unmistakable issues of fact as to whether Mr. McPike became aware of his impending incapacity to drive and should have stopped the bus. Taken in the light most favorable to Mr. Sartin, genuine issues of material fact exist as to the "suddenness" of Mr. McPike's loss of consciousness.

2. Reasonably Foreseeable

a. Mr. McPike's incapacitation was reasonably foreseeable and within the general field of danger created by a medically unfit driver operating a commercial vehicle.

Foreseeability is a question of fact for the jury and should only be determined as a matter of law when reasonable minds *could not differ*. *Lee v. Willis Enterprises, Inc.*, 194 Wn.App. 394, 401-02, 377 P.3d 244 (2016)(emphasis added). The trial court stated on the record that it granted Pierce Transit's motion for summary judgment because Mr. McPike's loss of consciousness was unforeseeable as a matter of law. CP at 1432. However, a de novo review of the record reveals genuine issues of material fact that the trial court failed to consider when it considered only cherry-picked excerpts from Dr. Fletcher's deposition presented out of context by the Defendants. *See* CP at 1012-22; 1309-1402.

Dr. Fletcher's opinion that it was foreseeable that Mr. McPike would suffer incapacitation and cause injuries to others as a result of his comorbidities is sufficient to establish liability under Washington law. *See Lee*, 194 Wn. App. at 402. In *Lee*, the court stated

'[F]oreseeability is a flexible concept, and a defendant will not be relieved of responsibility simply because the exact manner in which the injury occurred could not be anticipated.' Rather, the test of foreseeability is whether the result of the act is within the general field of danger which should have been anticipated.

187 Wn. App at 402. (internal citations omitted).

In *Lee*, an employee of the defendant injured the plaintiff when the employee attempted to knock loose a fan component that had become stuck in a disabled piece of mill equipment. *Id.* at 397-98. In striking the fan, the employee caused an electrical arc blast that caused the plaintiff permanent hearing damage. *Id.* Despite even the *plaintiff* testifying that he did not expect an electrical arc blast to occur, the court determined that a reasonable person would foresee that serious injury could result from careless behavior in working with high voltage equipment. *Id.* at 402-03. (emphasis added). Although a reasonable person may not have anticipated that the resultant injury would specifically come from a blast that caused irreparable hearing loss, the injury was within the general field of danger that could be created under those circumstances. *See id.* at 402-03.

The present case exhibits a similar situation to *Lee*, and the court's description of foreseeability in *Lee* is instructive here. In his declaration, Dr. Fletcher relied on credible sources to define the field of danger created by Mr. McPike driving while medically unfit:

Mr. McPike had several medical conditions, when unmanaged, individually and collectively contributed to his sudden incapacitation that was foreseeable.

CP at 343; Appx. B at 9 (Fletcher Decl).

According to research published in the Journal of Occupational and Environmental Medicine having three concomitant medical conditions

may be a statistically significant risk factor for preventable and any cause DOT-reportable crashes and crashes with injuries. In McPike's case he had 8 out of 13 concomitant medical conditions identified in this research that showed his risk of crash was significantly elevated.

CP at 345; Appx. B at 11 (Fletcher Decl.).

This event was hardly unforeseen, as it was predictable based on McPike's medical history, cardiac history, examination findings, and comorbidities.

CP at 346; Appx. B at 12 (Fletcher Decl.)(emphasis added).

On a more probable than not basis, **due to these combined medical conditions**, Mr. McPike was not fit to operate a commercial vehicle.

CP at 355; Appx. B at 21 (Fletcher Decl.)(emphasis added).

Both Pierce Transit and Dr. Gilbert make much ado about Dr.

Fletcher's "concession" that coronary artery disease first manifests itself as loss of consciousness in 20 percent of cases of coronary artery disease.

Def. Gilbert's Br. at 31; Def. Pierce Transit's Br. at 30. However, this is *not the crux of Dr. Fletcher's opinion*.

While it is true that Dr. Fletcher agrees that Mr. McPike's loss of consciousness was due to coronary artery disease, Dr. Fletcher does not agree that his loss of consciousness, as a product of the predictable onset of coronary artery disease, was unforeseeable. CP at 342; Appx. B at 8.

Despite Dr. Gilbert and Pierce Transit's attempts to misconstrue Dr. Fletcher's deposition testimony, when considered as a whole and in proper context, Dr. Fletcher's testimony further supports his opinion that Mr.

McPike's incapacitation was foreseeable. In support of his opinions, Dr. Fletcher testified at deposition:

Q: Is the finding of PAC's a disqualifying factor?

A (Dr. Fletcher): In itself it it's not disqualifying. But in the context of what does it mean in regards to the total picture and medical fitness for a driver, that's the concern.

CP at 1212 ¶ 8-13 (Fletcher Dep.).

Dr. Fletcher: I believe that a competent medical examiner that followed the DOT FMCSA physical requirements, as well as the advisory [sic] guidelines, and followed common medical practices would have disqualified Mr. McPike from driving until he had a very thorough vetting, that he did not have underlying coronary artery disease. **That with the constellation of complaints of his obstructive sleep apnea, his insulin dependent diabetes, his weight, his hypertension, his hyperlipidemia, his past smoking history, wouldn't have been significant risk for immediate incapacitation.**

CP at 1229 ¶ 11-23 (Fletcher Dep.)(emphasis added).

Q: Is reporting fatigue to your primary care provider and your endocrinologist a trigger for any medical provider to say you are at risk of sudden collapse due to cardiovascular condition?

A (Dr. Fletcher): **If you look at the total picture and put all his risk factors together, that makes sense.**

CP at 1234 ¶ 2-7 (Fletcher Dep.)(emphasis added).

Drawing the reasonable inferences from this evidence in a light most favorable to Mr. Sartin, this testimony further supports Dr. Fletcher's

expert opinion that the aggregate of Mr. McPike's medical conditions created a foreseeable and preventable risk of Mr. McPike becoming incapacitated while driving his bus. Whether a further cardiac work-up would have revealed coronary artery disease is immaterial when, as according to Dr. Fletcher, *the existence of Mr. McPike's extensive comorbidities were enough to disqualify Mr. McPike from driving because the "total picture" of his health put him at a significant and foreseeable risk of becoming incapacitated.* See CP at 343-55; Appx. B, 9-12. Mr. McPike's cardiac arrest as the first manifestation of coronary artery disease was precisely the type of foreseeable occurrence that created the general field of danger to motorists like Mr. Sartin.

Although Pierce Transit and Dr. Gilbert both present expert opinions stating that Mr. McPike's cardiac arrest was unforeseeable, these opinions are in direct conflict with Dr. Fletcher's own well-substantiated expert opinion. See CP at 120-24; CP at 1505-10. Therefore, it is for the jury to decide which expert opinion they find more credible.

Both defendants have turned the focus of this case to the issue of whether Mr. McPike had manifestations of coronary artery disease prior to his incapacitation, but the real issue is whether Mr. McPike was disqualified from driving because the whole picture of his declining health put him at foreseeable risk of harming passengers and motorists as a result

of driving while medically unfit. Under *Lee*, it is immaterial that Dr. Fletcher agrees that Mr. McPike's eventual incapacitation came in the specific form of cardiac arrest because loss of consciousness fell within the general field of danger created by the high-risk concomitant conditions experienced by Mr. McPike at the time of the accident.

Foreseeability is an issue of fact, and the record demonstrates that there are genuine issues of fact as to whether Mr. McPike's loss of consciousness should have been reasonably foreseen by each Defendant.

b. Each Defendant knew or should have known that Mr. McPike carried a foreseeable risk of becoming incapacitated while driving.

Each defendant claims that there was no way for them to know that Mr. McPike would become incapacitated while driving. However, genuine issues of material fact remain as to whether each defendant was on notice of the danger that Mr. McPike posed to the motoring public.

Pierce Transit claims that they are absolved from liability because neither Pierce Transit nor Mr. McPike had any way of knowing that he might become incapacitated while driving.⁴ *See* Def. Pierce Transit's Br. at 16-19. As legal authority for this argument, Pierce Transit cites the RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 11

⁴ As stated in Mr. Sartin's opening brief, Mr. McPike's negligence is imputed to Pierce Transit under the theory of respondeat superior. Pl.'s Br. at 22 n. 4. Pierce Transit does not appear to argue otherwise in its response, thereby conceding that the doctrine applies.

(2010) and out-of-state cases involving *non-commercial drivers* who lost consciousness while driving.⁵ Def. Pierce Transit's Br. at 16-17.

The correct statement of Washington law regarding a driver who has become incapacitated while driving is found in *Presleigh v. Lewis*, 13 Wn. App. 212, 214, 534 P.2d 606 (1975), which states that a driver breaches his duty as a matter of law when he undertakes to drive his automobile knowing his ability to drive in a reasonable manner might be affected. That the driver does not know the precise manner in which his driving will be affected does not relieve him from a breach of this duty. *Id.*

Even if this court finds the RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 11 (2010) to be persuasive (despite not being adopted by Washington courts), the application of the restatement resolves in Mr. Sartin's favor. Comment d of the restatement states that the foreseeability of a driver's incapacitation depends on the information

⁵ Pierce Transit quotes comment d the RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 11 (2010) that describes factors to be considered in determining if a driver's incapacitation was reasonably foreseeable. The RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 11 (2010) does not appear to be adopted by the Washington courts, and Pierce Transit has not cited any Washington cases that apply the restatement. Further, notably missing from Pierce Transit's examination of comment d are the author's statements that 1) the party claiming sudden incapacitation has the burden of production to prove sudden incapacitation *and* the absence of reasonable foreseeability, and 2) the question of whether the incapacitation was foreseeable is commonly a question for the jury. RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 11 (2010), cmt. d. Thus, under the restatement, assuming for purposes of argument only, that it reflects Washington law, Pierce Transit is attempting to shift its burden to prove both sudden incapacitation and unforeseeability in relation to Mr. Sartin.

available to the driver which would indicate that at some uncertain point in the future the driver might suffer incapacitation while driving.

Here, the facts support that Mr. McPike knew or should have known that he was at risk of becoming incapacitated in some way while driving based on the multitude of information available to him. First, Mr. McPike was notified via a letter from Dr. Harmon in November 2014 that, at 150/72, his blood pressure was too high to be recertified for a one-year qualification. CP at 1105. The letter explicitly stated that McPike's blood pressure needed to normalize to *less than 140/90* before he could be recertified for a year. CP at 1105. Yet, Mr. McPike continued to drive a commercial vehicle even after his blood pressure registered at 148/75 on January 29, 2015 and 162/64 on January 30, 2015. CP at 925; 116. The reasonable inference to be drawn from this evidence is that Mr. McPike knew that his high blood pressure created a foreseeable danger and disqualified him from driving a bus, but he continued to drive anyway.

Second, Mr. McPike made misrepresentations to various doctors regarding his medical conditions – particularly those that were potentially disqualifying. CP at 349-51; Appx. B at 15-17. The only logical inference that can be drawn from this fact is that Mr. McPike knew he was not fit to drive, and he lied to his doctors in order to get re-certified.

Third, despite Pierce Transit's assertion that Mr. McPike's wife never witnessed Mr. McPike suffer from any symptoms associated with high blood pressure, the record indicates that Mr. McPike was experiencing symptoms of worsening health conditions in the time leading up to the accident. *See* Def. Pierce Transit's Br. at 18; *but see* CP at 539.

Referencing Mr. McPike's cardiac arrest, Mrs. McPike told a social worker that she feared that Mr. McPike's self-inflicted health conditions would eventually lead to "something like this" and "it would all land on [her]." CP at 539. When viewed in the light most favorable to Mr. Sartin, this evidence shows that Mr. McPike was exhibiting recognizable physical symptoms of disqualifying health conditions, and both he and his wife knew that his health was failing. *See* CP at 351-52; CP at 539.

Drawing all reasonable inferences from this evidence in the light most favorable to Mr. Sartin, there are genuine issues of material fact as to whether Mr. McPike knew he might become incapacitated while driving.

Pierce Transit also cites to several out-of-state cases in support of its assertion that Mr. McPike and Pierce Transit are entitled to the defense of sudden incapacitation because Mr. McPike could not have foreseen that he was in danger of becoming incapacitated while driving. Def. Pierce Transit's Br. at 16-17. These cases are not instructive; none of the cases

cited by Pierce Transit indicate that the driver held a CDL or held the requisite knowledge and training necessary to obtain a CDL.

As Lew Grill, an expert in commercial vehicle operation and training, states in his declaration, a driver who holds a CDL must have the knowledge and skills necessary to operate a commercial vehicle, including knowledge of the effects of their general health on their ability to safely operate a vehicle. CP at 365-66. Commercial drivers are required by regulation to be more aware of the risks associated with incapacitation while driving than non-commercial drivers, and foreseeability should be considered in light of the special training and information provided to them in the course of their licensure. CP at 365-66 (citing 49 C.F.R. § 383.110-111).

Pierce Transit contends that it was entitled to entirely rely on Mr. McPike's 2015 CDL recertification and that it did not have access to Mr. McPike's medical records or DOT "long forms." Def. Pierce Transit's Br. at 24-26. Pierce Transit bases its assertion on the declarations of human resource and operations executives of local transit agencies, which merely state how those transit agencies determine whether a driver is medically fit to drive. Def. Pierce Transit's Br. at 25-26. But, Mr. Sartin's expert, Lew Grill, opines that Pierce Transit violated industry standards by failing to obtain publicly available licensing records from the Department of

Licensing, which would have alerted Pierce Transit to Mr. McPike's dangerous medical conditions. CP at 375-76.

Although the declarations submitted by Pierce Transit's witnesses all state that they do not collect the DOT "long forms" completed by drivers, none of the witnesses expressly claim that they are unable to obtain the forms. *See* CP at 1025-39; CP at 1114-16. In fact, Lew Grill states that the long forms are available, and FMCSA regulations indicate that employers can easily access long forms by obtaining a release from employees. *See* CP 374; *see also* <https://www.fmcsa.dot.gov/faq/will-my-employer-have-access-my-medical-evaluation>. Simply because similar motor carriers operate in the same manner as Pierce Transit hardly proves that each is operating prudently when an expert on federal standards opines otherwise.

Additionally, Pierce Transit's human resources department had information about Mr. McPike's health that should have triggered an investigation into his fitness as a driver. *See* CP 467-69. According to Lew Grill, *any* department within Pierce Transit that receives information about a driver's medical conditions that raises a red flag as to his or her fitness to operate its vehicles should alert the proper authorities within the agency so that the driver's fitness can be fully investigated. *See* CP at 1181-82.

Mr. McPike was approved for excused absences by Dr. Brooks through the Family Medical Leave Act (FMLA) for comorbid conditions

and unpredictable uncontrolled diabetes as recently as April 2014. CP 467-69. In fact, Mr. McPike utilized these FMLA absences in March and August of 2014, as evidenced by Pierce Transit Absence Slips approved and signed by Pierce Transit supervisor, Hazel Whitish. CP 472-73. The application for excused FMLA time-off was completed on Pierce Transit letterhead and explicitly contained the reason for Mr. McPike's FMLA absences. CP at 467-68.

Pierce Transit's human resources department had access to these records and the information in them, as evidenced by the "RECEIVED" stamp on the record and an internal memo which references the conditions for which Mr. McPike was eligible to use FMLA absences in years prior. CP at 467; CP at 911. Despite having access to this information, Pierce Transit's human resources department apparently took no action to notify those in charge of driver safety of Mr. McPike's conditions.

According to Lew Grill, through its non-action, violation of regulatory authority and disregard for industry standards, "...Pierce Transit created a management system that that prevents the relevant departments from cross-communicating about the operator's relevant medical conditions. Supervisors, HR, Risk Management, and Dispatch each hold different information about an operator's medical and mental health conditions, but [Pierce Transit] does not encourage open sharing of the information." CP

374 (Grill Decl.). This evidence establishes that Pierce Transit should have known of Mr. McPike's disqualifying medical conditions, and it failed to act as a prudent motor carrier when it relied solely on third-party medical certifications to ensure their drivers were fit to drive its vehicles.

Finally, Dr. Gilbert also contends that he could not have known that Mr. McPike would become incapacitated while driving based on his limited examination of Mr. McPike. Def. Dr. Gilbert's Br. at 29-30. In actuality, Dr. Gilbert was in a uniquely advantageous position to recognize the risk Mr. McPike posed to the public because he had access to Mr. McPike's medical history, which included evidence of the many high-risk co-morbidities Mr. McPike was experiencing at the time of his January 30, 2015 CDL exam. *See* Def. Dr. Gilbert's Br. at 6-7. Yet, Dr. Gilbert chose to ignore these glaring warning signs, rely solely on representations made by Mr. McPike regarding a recent cardiac work-up, and certify Mr. McPike to drive for another full year. *Id.*

Had Dr. Gilbert honored the examination standards set forth by FMCSA, he would have recognized the high risk of incapacitation created by Mr. McPike's health conditions and refused to re-certify him to drive.

As the record demonstrates, the issue of foreseeability is rife with genuine issues of material fact, and the trial court's grant of summary judgment on these grounds was improper.

E. The UCCLA supports Pierce Transit’s liability because Mr. McPike continued to operate a commercial vehicle despite his disqualification.

Pierce Transit contends that the regulations set forth by the FMCSA are inapplicable to an intrastate operator such as Pierce Transit, and the Uniform Commercial Driver’s License Act (UCCLA) absolves it of liability; however, a review of the UCCLA establishes that Mr. McPike and Pierce Transit violated their duties under the regulations.

Under the UCCLA, “[a] driver...who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.” RCW 46.25.030(2). Disqualification is defined as “...a prohibition against driving a commercial motor vehicle.” RCW 46.25.010(8). Since a person is prohibited from operating a commercial vehicle when they are not physically qualified to do so under RCW 46.25.055 (regardless of whether the driver holds a medical certification or waiver⁶), an employee like Mr. McPike is statutorily barred from driving a commercial vehicle while he is physically unfit to do so.

As discussed at length in previous sections, there are genuine issues of fact

⁶ RCW 46.25.055 states “A person may not drive a commercial motor vehicle unless he or she is physically qualified to do so *and*, except as provided in 49 C.F.R. sec. 391.67, has...a medical examiner’s certificate that he or she is physically qualified to drive a commercial vehicle.” (emphasis added).

as to whether Mr. McPike knew he was medically disqualified from operating a commercial vehicle on the day of the accident.

RCW 46.25.040, which Pierce Transit concedes applies here, states

(2) No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:
(a) In which the driver has a driver's license suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, **or has been disqualified from driving a commercial motor vehicle....**

(Emphasis added).

In its recitation of RCW 46.25.040, Pierce Transit conveniently omitted the bolded phrasing that establishes its liability under the UCCLA. Def. Pierce Transit's Br. at 11. Pierce Transit has a statutory duty to keep disqualified drivers from driving its vehicles. *Id.* As discussed above, there are genuine issues of fact as to whether Pierce Transit knew that Mr. McPike was disqualified from driving its vehicles.

Pierce Transit's assertion that it is not subject to the regulations and standards set forth by FMCSA is similarly incorrect. 49 C.F.R. § 383, which sets forth licensing standards, requirements, and penalties related to commercial drivers, applies to all motor carriers, whether interstate or intrastate. 49 C.F.R. § 390.3. 49 C.F.R. § 383.51 uses the exact language found in RCW 46.25.040 that prohibits an employer from knowingly allowing a disqualified driver to operate a commercial vehicle.

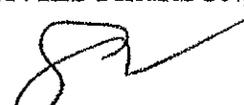
Furthermore, FMCSA mandates that states may not enact laws which would prevent full compliance with the laws set forth by FMCSA, except as specifically provided. 49 C.F.R. § 390.9. As such, FMCSA sets forth the *minimum standards* that must be followed by state laws which regulate commercial vehicle drivers, and the standards expressed by Mr. Sartin's expert witnesses as to the proper standard of care apply to Pierce Transit.

II. CONCLUSION

For purposes of summary judgment, all evidence and reasonable inferences are to be viewed in the light most favorable to Mr. Sartin. Viewing the evidence in Mr. Sartin's favor, genuine factual and legal disputes abound, and the trial court erred in summarily dismissing Mr. Sartin's complaint.

RESPECTFULLY SUBMITTED on this 26th day of September, 2019.

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These portions copied directly from Appendix A to Pierce Transit's Response Brief

Appellants' Claim	App. Brf. Pg.	Citation/Source	Respondent's Attempted "Correction" of Appellants' Characterization	Appellants' Response
<p>There are varying accounts from bus passengers as to Mr. McPike's behavior prior to the collision.</p>	5	<p>Citation: See CP at 90-99 Source: Declarations of Holly Lang, Michelle Gu, and Markell Charles</p>	<p>This statement mischaracterizes these declarations which consistently state that there was nothing unusual about the driver's behavior until the accident. See CP 91 (Charles Decl. ¶ 5); CP 94 (Gu Decl. ¶ 3); CP 98 (Lang Decl. ¶ 3).</p>	<p>In fact, each account offered by witnesses Charles, Gu, and Lang are unique. Each witness noted differing personal observations in the time leading up to the accident. Further, Respondents ignore the <i>very next sentence of Appellants' Opening Brief</i>, which admits that some witnesses did not observe Mr. McPike exhibiting any unusual behavior, and details the accounts of other witnesses who did observe Mr. McPike acting unusually at CP 380-84. App. Op. Br. 5-6. There is no mischaracterization of the record here.</p>
<p>In order to qualify for a CDL license in Washington, Mr. McPike was required to undergo testing that required him to demonstrate a basic working knowledge of the medical conditions that can disqualify a driver from operating a commercial motor vehicle.</p>	6	<p>Citation: CP at 351-54. Source: Fletcher Declaration</p>	<p>This statement mischaracterizes Dr. Fletcher's declaration which merely states that "As part of his initial licensing, Mr. McPike was required to learn the physical requirement to be fit for duty." CP 352. Moreover, Dr. Fletcher provides no support for this requirement nor is there support for it found in local or state law.</p>	<p>Respondents base this assertion on cherry-picked and incomplete recitation of the record cited in the Appellant's Opening Brief.</p> <p>The Fletcher declaration states on CP 352 that:</p> <p>"As part of his initial licensing, Mr. McPike was required to learn the physical requirements to be fit for duty. At each DOT exam, Mr. McPike would be reminded of these requirements as they were written on the <u>Form MCSA 5875.</u>"</p> <p>As an expert in DOT qualifications and licensure, Dr. Fletcher is qualified to express the requirements regarding the education of drivers as to the risks and prohibitions regarding driving while experiencing certain medical conditions. The logical inference drawn from this statement is that Mr. McPike was required to know of the disqualifying medical conditions; if Mr. McPike did not know of these risks and disqualifying conditions, then Pierce Transit was imprudent in ensuring its drivers were properly educated. There is no mischaracterization of the record here.</p>
<p>Throughout 2014, Mr. McPike's diabetes caused him to miss eight days of work, and his doctors noted six episodes of non-compliance with physician</p>	7	<p>Citation: CP 237-43 Source: McPike's FLMA leave requests</p>	<p>The records cited contain no support for the assertion that doctors noted any episodes of non-compliance by Mr. McPike.</p>	<p>Respondents are correct that the Appellants' citation to the record erroneously left out the reference to the specific episodes of non-compliance (which are denoted in Dr. Fletcher's declaration at CP 347). However, even given only the information found at CP 237-243, the Appellants can certainly draw the logical inference from the record that Mr. McPike was non-compliant with his diabetes</p>

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<p>recommendations for controlling his diabetes.</p>				<p>treatment since he was experiencing complications that required him to abstain from working. Although Appellants inadvertently omitted a citation to one pertinent section of the record, there is no mischaracterization of the record here.</p>
<p>Mr. McPike concealed his significant medical, psychological, and substance abuse history from his employer and his CDL medical providers, thwarting their ability to accurately address his fitness to operate a commercial vehicle.</p>	<p>8</p>	<p>Citation: CP at 349-51, 1214-15, 1239-40. Source: Fletcher Decl., Fletcher Dep.</p>	<p>This statement is a mischaracterization in that Mr. McPike did not have a significant medical, psychological, or substance abuse history. Further, it depends solely on the speculation of Dr. Fletcher who states, without support, that Mr. McPike falsified information.</p>	<p>Respondents, as they have many times in the course of this briefing, attempt to undermine the well-supported opinions of the Appellants' expert witness.</p> <p>The portions of Dr. Fletcher's declaration and deposition testimony cited here are supported by his review of an extensive amount of medical records and other materials related to Mr. McPike's medical history. This support is well-documented in Dr. Fletcher's declaration and is the basis of his well-founded opinions. As noted in Dr. Fletcher's declaration, Mr. McPike's self-reporting regarding his medical issues were inconsistent, which leads to the logical inference that he was falsifying information.</p> <p>Whether Mr. McPike's medical history revealed significant medical, psychological, or substance abuse issues, and whether Mr. McPike's inconsistencies evidence that Mr. McPike falsified information is a question of fact to be determined by a jury. There is no mischaracterization of the record here, and Appellants have merely drawn logical inferences in a light most favorable to them.</p>
<p>Indeed, he obtained his CDL repeatedly under misleading circumstances, then chose to operate the passenger bus, despite his significant medical and psychological history and his declining health.</p>	<p>8</p>	<p>Citation: CP at 341-59, 360-76. Sources: Fletcher Decl., Lew Grill Decl.</p>	<p>This statement is a mischaracterization in that Mr. McPike did not have a significant medical, psychological, or substance abuse history. Further, it depends solely on the speculation of Dr. Fletcher and Mr. Grill who state, without support, that Mr. McPike falsified information.</p>	<p>This is an identical argument to that found directly above. As such, the same response applies. There is no mischaracterization of the record here, and Appellants have merely drawn logical inferences in a light most favorable to them.</p>
<p>Mr. McPike's supervisor at Pierce Transit, Marvino Gilliam, testified that if Mr. McPike had disclosed the sleep apnea, hypertension, irregular heart rhythm, and obesity, he would have approached Human Resources</p>	<p>8</p>	<p>Citation: CP 333-34 Source: Gilliam Dep.</p>	<p>This statement reflects a mischaracterization of Mr. Gilliam's deposition testimony. Mr. Gilliam was asked a hypothetical in which driver was diagnosed with all the conditions at the same time; he was not discussing Mr. McPike.</p>	<p>Mr. Gilliam was asked about a hypothetical driver who was identical in medical condition to Mr. McPike. The logical inference to be drawn from this statement is that Mr. Gilliam would have required Mr. McPike to submit to a fit for duty examination. There is no mischaracterization of the record here, and Appellants have merely drawn logical inferences in a light most favorable to them.</p>

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about requiring an extra fit for duty examination.				
Additionally, if known, Mr. McPike's history of substance abuse would have triggered an evaluation by a substance abuse professional.	8	Citation: CP 1234-40 Source: Fletcher Dep.	This statement is not supported by the record. Appellants' cite to Dr. Fletcher's opinion, not to Pierce Transit policy and provide no documentary support of a substance abuse issue.	Dr. Fletcher is an expert in DOT certification. In the expert opinion offered by Dr. Fletcher in his deposition testimony cited here, Mr. McPike's medical history should have triggered a substance abuse evaluation. CP 1234-40. The logical inference to draw from this testimony is that a prudent examiner/motor carrier <i>would have</i> ordered a professional substance abuse examination in light of Mr. McPike's history and self-reported behaviors. There is no mischaracterization of the record here, and Appellants have merely drawn logical inferences in a light most favorable to them.
This would have included information from the employment file that he had been previously terminated for cannabis use and never got tested again.	8	Citation: CP 1241-44 Source: Fletcher Dep	This statement mischaracterizes Dr. Fletcher's deposition testimony in which he admitted that "there's no suggestion in the records that there is another violation [of marijuana use after 2007]." CP 1242.	This statement represents the logical inference drawn from Dr. Fletcher's testimony that the lack of evidence of further testing for cannabis indicates that Mr. McPike was never tested for cannabis use again after being rehired. There is no mischaracterization of the record here, and Appellants have merely drawn logical inferences in a light most favorable to them.
The July 13, 2007 Medical Examiner's certificate contains a list of nine medications that Mr. McPike was taking. The form also includes detailed educational material with definitions of disqualifying medical conditions. 49 CFR 391.41.	9	Citation: CP 183 Source: McPike medication list	This statement is not supported by the record. CP 183 contains no "detailed education material."	In fact, CP 183 contains a list of the nine medications that Mr. McPike was taking. Additionally, 49 C.F.R. 931.41, which is cited here, details disqualifying conditions which are further printed on Mr. McPike's medical examination certificate found at CP 185. There is no mischaracterization of the record here.
Mr. McPike also reported additional absences due to out-of-control diabetes on March 26, 2014; March 27, 2014; August 29, 2014; and August 30, 2014.	11	Citation: CP 245-46 Source: McPike Absence Slip	This statement mischaracterizes the record. CP 245 contains no reason for Mr. McPike's absence. CP 246 then states that "diabetes was out of control, due to being sick" reflecting Mr. McPike's self-regulation in which he removed himself from work while ill.	As stated in Appellants' Opening Brief at page 10-11 (citing CP 242), Dr. Brooks signed-off on FMLA absences for Mr. McPike due to uncontrolled diabetes. On the absence slips found at CP 245-46, Mr. McPike's absences are categorized as FMLA-related. The logical inference to draw from this evidence is that the absences were related to symptoms related to uncontrolled diabetes. This is not a mischaracterization of the record, but merely an inference drawn in Appellants' favor.

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				<p>Respondents' statement that Mr. McPike was exhibiting self-regulation is argument and should be addressed in its brief.</p>
<p>In addition to a review of its own records, if Pierce Transit had requested the medical examination records publicly available through the Department of Licensing</p>	11	No citation to evidence or law.	<p>Appellants provide no support for the assertion that Pierce Transit could access medical records through the Department of Licensing. In fact, medical reports are protected by HIPAA and a release is needed to obtain these records. <i>See</i> https://www.fmcsa.dot.gov/faq/will-my-employer-have-access-my-medicevaluation.</p>	<p>Appellant's statement references the records related to "medical examinations," not general medical records. RCW 46.25.088 requires that drivers submit the CDL renewal application and required certifications to the Department in person. RCW 46.25.085. After their certifications are submitted in person, drivers are able to request copies of their medical certifications through the Department. <i>See</i> https://www.dol.wa.gov/driverslicense/cdlmedicalcertificates.html</p> <p>The logical inference drawn from these sources is that medical examination records are available to commercial carriers upon request either to the Department directly, or through a request made to the employee. <i>See</i> RCW 46.25.085.</p> <p>Furthermore, the website cited by Respondents does not state that employers are prohibited from obtaining drivers' long forms. Respondents have mischaracterized their own evidence by conveniently omitting a material part of the information on the website. The site actually states:</p> <p>Although the FMCSRs do not require the Medical Examiner to give a copy of the Medical Examination Report to the employer, the FMCSA does not prohibit employers from obtaining copies of the medical examination form (long form). Medical Examiners should have a release form signed by the driver if the employer wishes to obtain a copy of the medical examination form (long form).</p> <p>https://www.fmcsa.dot.gov/faq/will-my-employer-have-access-my-medicevaluation</p> <p>Respondents are correct that the website also states that any medical information obtained by the employer is subject to HIPAA requirements. However, Respondents have not cited to any section of HIPAA that would prevent them from obtaining this information, and none of the declarations cited by Respondents in support of their argument unequivocally state that HIPAA prohibits motor carriers from obtaining medical examination forms. <i>See</i> CP 1115, CP 1030, CP 1034, CP 1038.</p>
A February 14, 2011,	11	Citation: CP at 272-74	This statement mischaracterizes the record. At CP 272, both the	

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<p>Medical Examination Report that details Mr. McPike's health history including diabetes, frequent alcohol use, and narcotic use.</p>		<p>Source: Medical Examination report</p>	<p>yes and no boxes are checked with circling and arrows, demonstrating a correction to the record.</p>	<p>Respondents' claim is a classic example of how evidence can be subject to multiple reasonable interpretations. In Appellants' view, the markings on this page indicate that the "yes" boxes are checked, and the words "frequent alcohol use" and "narcotics" are circled in affirmation. This is not a mischaracterization of the record, but merely a glaring issue of fact with a logical inference drawn in Appellants' favor.</p>
<p>Despite the severity of Mr. McPike's medical condition, Pierce Transit ignored these multiple red flags and failed to use the authorizations, already signed by Mr. McPike, to release the information it had in its workers compensation files to conduct any investigation into Mr. McPike's fitness to operate one of its buses.</p>	<p>12</p>	<p>Citation: CP 290 Source: criminal background authorization</p>	<p>This statement mischaracterizes the release signed by Mr. McPike. CP 290 is a criminal background check release. The release does not authorize Pierce Transit to obtain its employee's medical records.</p>	<p>Appellants admit that the form found at CP 290 is a criminal background release authorization. Appellants' argument in this section includes the fact that part of Mr. McPike's overall unfitness was his past criminal arrest for DUI in 2002, yet Pierce Transit did not utilize this release to uncover this information. This was only one avenue not dutifully investigated by Pierce Transit.</p> <p>In the sentence immediately following the one referenced by Respondents here, Appellants contend that Pierce Transit also failed to dutifully investigate Mr. McPike's medical fitness by not requesting a medical release. App. Op. Br. 12-13. This is not a mischaracterization of the record.</p>
<p>Further, if it had wanted to conduct any additional scrutiny of Mr. McPike's fitness to drive, it also could have simply requested Mr. McPike sign a medical release.</p>	<p>12</p>	<p>Citation: CP 293 Source: Dupille dep.</p>	<p>This statement mischaracterizes the deposition testimony. Ms. Dupille was responding to a hypothetical question about receiving the results of a fit for duty examination. CP 293.</p>	<p>In her deposition statement cited at CP 293, Ms. Dupille does not speak in hypothetical terms, but instead clearly states:</p> <p style="padding-left: 40px;">If we are sending an employee for an examination OR are requesting information from their own provider, the employee must sign a release so that provider can legally, per HIPAA, respond to our questions directly.</p> <p>CP 293 (emphasis added).</p> <p>Ms. Dupille's testimony is a description of the process by which Pierce Transit obtains medical records of drivers. This statement does not appear to be limited to instances in which a driver is sent for an examination. Drawing the inference in favor of Appellants, this is a process that it done in the course of Pierce Transit's business for reasons beyond fit-for-duty examinations. This is not a mischaracterization of the record.</p>
<p>But there was no other culture within the corporation to</p>	<p>13</p>	<p>Citation: CP 302 Source: Hovde Dep.</p>	<p>This statement mischaracterizes the deposition testimony. Mr. Hovde did not state that there was no culture to encourage operation health and wellness. Moreover, Mr. Hovde stated that</p>	<p>This statement is merely a logical conclusion drawn from the testimony of Jason Hovde, who directly testified that he</p>

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encourage operator health and wellness.			Pierce Transit has a written safety culture statement. CP303.	<p>does not encourage or educate vehicle operators about being medically fit to operate commercial vehicles. CP 302. This is not a mischaracterization of the record, but merely an inference drawn in Appellants' favor.</p> <p>Moreover, on CP 303, Jason Hovde states only that he "believes" that Pierce Transit has a written safety culture statement. Mr. Hovde, Pierce Transit's Safety Officer, further testified that he did not know where such statement would be found in Pierce Transit operations materials. CP 303. Respondents' characterization of Mr. Hovde's testimony is disingenuous.</p>
Thus, Pierce Transit did not expect or encourage its operators to be honest with their examining physicians for purposes of getting their medical card.	14	Citation: CP 329-30 Source: Marvino Dep.	This statement mischaracterizes the deposition testimony. Mr. Gilliam merely stated that Pierce Transit did not have an official or written policy.	<p>The fact that Pierce Transit had no official policy to "encourage" driver's to be truthful to their physicians leads to the logical inference that the drivers were not instructed to be truthful by Pierce Transit. This is not a mischaracterization of the record, but merely an inference drawn in Appellants' favor.</p> <p>Further, Mr. Gilliam testified that he "did not know the answer" to the question of whether Pierce Transit "expected" their drivers to be honest about their medical conditions with their physician. CP 329. Respondents' characterization of Mr. Gilliam's testimony is disingenuous.</p>
For example, Pierce Transit did not assign anyone to be in charge of operator health.	14	Citation: CP 332 Source: Marvino Dep.	This statement mischaracterizes the deposition testimony in which Mr. Gilliam noted that the doctor providing the CDL is responsible for the driver's health.	<p>This is simply a fact supported directly by the deposition testimony at CP 332, which states:</p> <p style="padding-left: 40px;">Q: To the best of your knowledge, then, there was nobody specific here at Pierce Transit who took on that obligation [to make sure drivers were medically safe to operate a vehicle]?</p> <p style="padding-left: 40px;">A: Not that I am aware of.</p> <p>This statement is found within a section of Appellants' Opening Brief in which the lack of safety culture at Pierce Transit is discussed; whether an outside doctor certifies a driver is immaterial in this context. See App. Op. Br. 14. This statement is an appropriate restatement of this evidence in the record, and there is no mischaracterization of the record here.</p>
But, by comparison, Mr. McPike had five disqualifying blood pressures taken by other Multicare providers and	16	Citation: CP 349, 1728 Fletcher Decl., Harmon Dep.	Appellants provide no support for the assertion that these blood pressure readings are disqualifying per CDL regulations. Additionally, the December 18, 2014 and January 29, 2015 readings, see CP 1728, were not included in the record on Pierce Transit' motions --they were only included in the record on MultiCare and Dr. Gilbert's motion.	<p>As a preliminary matter, CP 349 is not cited anywhere on page 16 of Appellants' brief as Respondents claim here.</p> <p>Respondents may be referring to CP 346, which is cited on page 16 of Appellants' Opening Brief, and clearly sets out</p>

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<p>documented in chart notes between November 7, 2014 and March 3, 2015.</p> <ul style="list-style-type: none"> • November 7, 2014: 150/72 (Dr. Harmon). CP at 346. • December 18, 2014: 146/78 (ARNP Bailey). CP at 1728. • January 29, 2015: 148/75 (ARNP Bailey). CP at 1728. • January 30, 2015: 162/64 (Dr. Gilbert). CP at 346. • March 3, 2015: 140/78 (Dr. Wang). CP at 346, 351-52. 				<p>several instances in which Mr. McPike's blood pressure readings registered above 140 systolic. CP 346. These readings are found in Dr. Fletcher's declaration, which identifies them as "disqualifying." CP 346. On page 15 of their opening brief, Appellants' cited to a letter in which Dr. Harmon stated that Mr. McPike's blood pressure was too high to drive at 150/72, and that his blood pressure could be no higher than 140/90 per DOT standards. See CP 1105. Appellants have not mischaracterized the record and have provided ample support for the assertion that Mr. McPike had disqualifying blood pressure readings.</p> <p>Furthermore, the January 29, 2015 reading is included in the evidence for Plaintiffs' Opposition to Defendant [Pierce Transit's] Motion to Strike Evidence, which is incorporated into this record as the Motion to Strike was based on evidence submitted in the summary judgment proceedings. CP 925. The December 18, 2014 reading was also included in the record on Pierce Transit's motion. This reading was included in Plaintiff Sartin's Opposition to Defendants' Renewed Motion for Summary Judgment at page 12. CP 1129.</p>
<p>An individual diagnosed with Stage 2 Hypertension (blood pressure is 160/100 to 179/109) should be treated, and can only be issued a one-time certificate for three months.</p>	17	49 CFR 391.43(f)	<p>Appellants provide no support for this assertion. The regulation cited does not contain this requirement.</p>	<p>Appellant quotes directly from Appendix A to 49 C.F.R. § 391 here. Admittedly, Appellants inadvertently omitted the precise citation to Appendix A of this regulation. Appellants ask the court to take notice that the quoted language found on page 17 of Appellants' Opening Brief can be found at Appendix A to 49 C.F.R. § 391 – Medical Advisory Criteria.</p> <p>When examined fully, the regulation cited by Appellants does, in fact, contain this requirement in Appendix A to Part 391.</p>
<p>He was chastised by Dr. Wang for, contrary to doctor's instructions, not regularly checking his blood gas levels, again failing to not bring in his log books, and allowing his weight to balloon to its highest level ever at 305 pounds.</p>	18	<p>Citation: CP 532-33 Source: Wang Chart Notes</p>	<p>This record provides no support for the assertion that Dr. Wang chastised Mr. McPike or that he acted contrary to doctor's instruction.</p>	<p>The medical record found at CP 532-33 states, in part:</p> <p>...</p> <p>[Mr. McPike] reduced BG checking to only 1 time per day and again did not bring in log or meter today. He also started to eat sweets and candies which increased his BGs. His A1c is up to 8.1%. He gained weight.</p> <p>...</p> <p>I have personally reviewed the recent test results with the patient and answered his questions....[Mr. McPike] agreed to make more efforts to stay be back on track.</p>

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				<p>The phrasing and tone of Dr. Wang's chart notes in this record infer that Mr. McPike's health had worsened, and that Dr. Wang expressed his concern to (i.e., chastised) Mr. McPike. This is not a mischaracterization of the record, and Appellants merely draws inferences in their favor.</p>
<p>Mr. McPike had been warned by his medical providers of the serious implications of his medical conditions.</p>	18	<p>Citation: CP 351-52, 373-75 Source: Fletcher Decl., Grill Decl.</p>	<p>Appellants provide no support for this assertion. Neither Dr. Fletcher nor Mr. Grill alleged that Mr. McPike had been warned about serious implication of his medical conditions. Further, Dr. Fletcher admitted that there was no evidence that Pierce Transit or Mr. McPike was put on notice that Mr. McPike was not fit to drive after he received his 2015 CDL. CP 1056-70 (Fletcher Dep. at 122:9-123:3, 136:11-18, 137:1-14, 140:8-22, 143:24-144:21).</p>	<p>The evidence cited at CP 373-51 notes that Mr. McPike was warned of disqualifying medical conditions on the medical certification forms (MCSA-5875), which is required to be given to drivers. At CP 351-52, Dr. Fletcher, after reviewing Mr. McPike's medical records, notes several instances in which Mr. McPike would have been warned of conditions that would have caused implications regarding his ability to safely drive. Drawing the logical inferences in favor of Appellants, Mr. McPike was well aware of the problems his medical conditions could create while driving. This is not a mischaracterization of the record.</p> <p>The cherry-picked segments of Dr. Fletcher's deposition testimony cited here by Pierce Transit do not support its assertion. Moreover, this assertion is pure argument and is inappropriately addressed in Respondents' Appendix A; Respondents should be required to raise this issue in the body of their brief in order for the court to consider it. This issue has been addressed at length in the briefing submitted by the parties, and Appellants direct the court to pages 9-20 of Appellant's Reply Brief.</p>
<p>In order to obtain a CDL, Mr. McPike had to submit to testing and demonstrate a working knowledge of disqualifying medical conditions for commercial drivers. Thus, Mr. McPike was aware that his long-term health issues of diabetes, heart arrhythmia, and obesity had been compounded with disqualifying hypertension and</p>	26	<p>Citation: CP 335-59 Source: Fletcher Decl.</p>	<p>Appellants' source provides no support for the assertion that Mr. McPike had any knowledge that his medical conditions disqualified him from driving. Further, Dr. Fletcher admitted that Mr. McPike was, in fact, not put on notice that he was not fit to drive. CP 1056-70 (Fletcher Dep. at 122:9-123:3, 136:11-18, 137:1-14, 140:8-22, 143:24-144:21)</p>	<p>The cherry-picked segments of Dr. Fletcher's deposition testimony cited here by Pierce Transit do not support its assertion. Moreover, this assertion is pure argument and is inappropriately addressed in Respondents' Appendix A; Respondents should be required to raise this issue in the body of their brief in order for the court to consider it. This issue has been addressed at length in the briefing submitted by the parties, and Appellants direct the court to pages 9-20 of Appellant's Reply Brief.</p>

APPENDIX A

obstructive sleep apnea in the year before the accident such that his health status at the time of the accident disqualified him from driving.				

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CHRISTOPHER W. SARTIN and ROSE M.
RYKER, individually and as a marital
community; and JILL SACKSTEDER and
CHARLES SACKSTEDER, individually and as
a marital community,

Plaintiffs,

v.

THE ESTATE OF ALONZO MCPIKE; PIERCE
COUNTY PUBLIC TRANSPORTATION
BENEFIT AREA CORPORATION, a/k/a
PIERCE TRANSIT,

Defendants.

NO. 16-2-10601-9

**DECLARATION OF DAVID
FLETCHER, MD**

DAVID FLETCHER, MD declares as follows:

EDUCATION, TRAINING AND EXPERIENCE

I am a physician licensed to practice medicine in the state of Illinois through July 2020. I am a medical doctor with dual board certification in occupational and environmental medicine, and I am a Certified Medical Review Officer (MRO) and Substance Abuse Professional (SAP).

All of the opinions stated herein are on a more probable than not basis.

A copy of my current curriculum vitae is attached hereto, and made part of my report as Exhibit A.

I am the Medical Director and Chief Executive Officer of SafeWorks Illinois Occupational Health Services, Ltd. SafeWorks Illinois provides comprehensive occupational health services and return to work programs in order to create safe, drug-free businesses and industries.

One of my areas of daily clinical practice involves medical certification for commercial motor vehicle drivers, known in the industry as DOT medical examinations.

My private practice performs an average of 1000 DOT physicals per year. This includes governmental transit bus operators.

I am intimately familiar with the regulatory requirements for medical certification for commercial motor vehicle drivers under the Federal motor carrier safety regulations, as well as FMCSA guidelines for determining fitness for driving.

In April 1995, I conceived and proctored the first national training program ever for physicians regarding DOT medical certification on issues related to commercial truck drivers, through the development of a day-long training seminar initiated by the American College of Occupational and Environmental Medicine (ACOEM), a training course that continues and is now chaired by Natalie Hartenbaum, MD.

In 1995, I initiated a proposal outlining and mandating DOT medical certification examiner competency benchmarks. Some of the stipulations highlighted in my proposal subsequently garnered national acceptance and went into effect May 21, 2014, with the advent of the National Registry of Certified Medical Examiners (NRCME).

In 1996, I was chosen as a physician representative to serve on a national advisory panel for the DOT Federal Highway Administration (FHWA) with the overarching goal of developing new regulations, as well as merging the commercial driver's license (CDL) procedures with the physical qualifications necessary to obtain a CDL.

In 1997, I authored the foreword to Dr. Natalie Hartenbaum's book **DOT Medical Examination**, April 1997, OEM Press (First Edition), which is now in its Sixth Edition.

In 2014 I became certified as a national registry certified medical examiner for DOT medical examinations, a requirement for any provider performing DOT medical examinations after May 21, 2014. My National Registry Number: 298-717-2716; certification date: April 2, 2014.

On May 15, 2017, I was retained by counsel for the Plaintiff, Christopher Sartin, to render opinions concerning the medical CDL qualifications of Alonzo McPike and the foreseeability of his cardiac arrest of May 26, 2015.

I have testified in litigation matters in Federal and State courts where I have qualified as an expert concerning fitness for operating a commercial motor vehicle, and foreseeability of a CMV operator's sudden loss of consciousness.

All factual statements herein are true and correct to the best of my knowledge, information and belief. All opinions stated herein are on a more probable than not basis and based upon my knowledge, skill, experience, training, and education, and my review of materials produced in this litigation. Experts such as myself commonly rely upon information of this type.

DOCUMENTS AND INFORMATION REVIEWED

I have reviewed the following documents and information:

- o Video camera surveillance from inside and out of the transit bus shortly before, during, and after the collision.
- o Alonzo McPike medical records predating the collision
 1. Multicare Health Systems
 2. Franciscan Medical Group
 3. Veteran's Administration
- o Alonzo McPike medical records after the collision
 1. Tacoma EMS
 2. Multicare Tacoma General Hospital
- o Alonzo McPike Workers Compensation Record
- o Washington State Department of Licensing and CDL records including medical examination certificates, reports, waivers, applications, licenses and cards.
- o Alonzo McPike Life Insurance Application
- o Alonzo McPike Personnel and Employment File Records
 1. FMLA applications and related documents.
 2. Accident and Injury Reports
 3. ASRB Accident Rulings
 4. Incident reports
 5. Customer Comments
 6. Evaluations and Reviews
 7. Training Records
 8. Driver's application for employment

9. Hiring records
 10. Termination records
 11. Rehiring records
 12. Disciplinary records
 13. Dispatch Logs
 14. Hours and Payroll Information
- o Defense Expert Witness Report of William Stump, MD and Robert Thompson, MD dated July 2015.
 - o Alonzo McPike death certificate
 - o Itemization of Mr. McPike's medical treatment and employment events from 1994 – 2015.
 - o Declarations of Robert Bennett and Pamela Corba, passengers, who describe some erratic behavior on the part of the driver before the May 26, 2015, crash.
 - o Declaration of Lew Grill
 - o Pierce Transit Motion for Summary Judgment and attached materials including affidavits of:
 1. Dr Robert G Thompson, a cardiologist, who has reviewed the case
 2. Dr. Gilbert, who performed McPike's DOT medical exam on 1/30/15
 3. Katie Marcelia, Pierce County Public Safety Records Supervisor
 4. Laurel Curry, Pierce County, Dispatch Assistant Manager,
 5. Caryn Geraghty, attorney, certifying copies of the Washington State Patrol Police Traffic Collision Report and Tacoma Police Department Traffic Collision
 6. Dr. Zhiyu Wang, MD, PhD, Endocrinologist who signed McPike's intrastate waiver
 7. Dr. Mark Brooks, McPike's primary care physician.
 8. Witness statements from Holly Ann Lang, Michelle Nicole Gu, Markell Tyree Charles, Steven Alexander
 9. Memorandum in Support of Motion for Summary Judgment

In conjunction with providing my opinions in this case, I reviewed and relied upon the following regulations that are consistent with industry standards:

- o Federal motor carrier safety regulations §391.41, §391.45, §392.3, §383.111
- o USDOT Interpretations of the regulations.
- o FMCSA medical examiner instructions
- o Washington State uniform commercial driver's license act

I also reviewed scientific and regulatory policy research/references:

- o Evidence Report 2010 Update: Diabetes and Commercial Motor Vehicle FMCSA
- o The DOT Medical Examination: A Guide to Commercial Drivers Medical Certification (2010, Fifth Edition as well as the earlier editions, including the first edition that included the foreword authorized by this specialist and the latest sixth edition that came out in July 2017).
- o FMCSA Medical Examiner Handbook (2013).

- o Fletcher, DJ. Fitness For Duty Examinations Fitness For Duty Exams-- A Powerful Tool to Offer Employers, Visions the Periodical of the National Association of Occupational Health Professionals Volume 27 No 4 Summer 2017:8-96.
- o Kales, SN, Straubel MG. Obstructive Sleep Apnea in North American Commercial Drivers. Industrial Health. 2014; 52:13 – 24.
- o Talmage JB Et Al. Consensus Criteria for Screening Commercial Drivers for Obstructive Sleep Apnea: Evidence Of Efficacy. J. Occup Environ Med 2008; 50:324-329
- o Evidence Report 2010 Update: Diabetes and Commercial Motor Vehicle Driver Safety, Federal Motor Carrier Safety Administration, May 27, 2011.
- o Sleep Apnea and Commercial Motor Vehicle Operators. 2006 Joint Task Force: ACOEM, NSF, ACCP; Sleep Apnea, Hartenbaum, N., Collop, N., Rosen, I., Et Al. Sleep Apnea And Commercial Motor Vehicle Operators: Statement From The American College Of Occupational And Environmental Medicine., National Sleep Foundation And Joint Task Force Of The American College Of Chest Physicians. Journal of Occupational And Environmental Medicine. 2006; 48: S4 – S 37.
- o 2008 FMCSA Medical Expert Panel; Sleep Apnea.
- o 2008 FMCSA Medical Review Board Recommendations; Sleep Apnea
- o Cardiovascular Advisory Panel Guidelines for the Medical Examination Of Commercial Motor Vehicle Drivers, FMCSA 2002.
- o Expert Panel Recommendations Cardiovascular Disease and Commercial Motor Vehicle Driver Safety FMCSA 2007.

STANDARDS AND REGULATIONS

Motor Carrier Industry Standards, The Washington Uniform Commercial Drivers License Act and relevant Federal Motor Carrier Safety Act regulations apply to Pierce Transit as an intra-state Washington motor carriers both as an Industry Standard and legally because the State of Washington has adopted the FMCSA Regulations as their own. See 49 CFR 383.3 and definitions of employer and employee contained in part 383.5 that specifically include political subdivisions of States, and RCW 46.25.005.

The purpose of part 383 is to "help reduce or prevent truck and bus accidents, fatalities and injuries... and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner." See 49 CFR 383.1 Similarly, the UCDLA, has a defined purpose to "reduce or prevent commercial motor vehicle accidents, fatalities, and injuries."

By incorporation and references within 49 CFR 383, driver related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 also apply to Pierce Transit.

There is a published interpretation from the FMCSA on this subject:

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a State or a political subdivision of the State?
Guidance: §390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383.

Under 49 CFR part, 383, ***all*** drivers of CMVs must have the knowledge and skills necessary to operate a CMV safely as contained in this part 383.110.

Specifically, all CMV operators must have knowledge of 20 general areas including:

- (1) Safe operations regulations. Driver-related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 of this subchapter, such as:
 - (i) Motor vehicle inspection, repair, and maintenance requirements;
 - (ii) Procedures for safe vehicle operations;
 - (iii) The effects of fatigue, poor vision, hearing impairment, and general health upon safe commercial motor vehicle operation;
 - (iv) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this subchapter; and
 - (v) The effects of alcohol and drug use upon safe commercial motor vehicle operations.

(20) Fatigue and awareness. Practices that are important to staying alert and safe while driving, including;

- (i) Being prepared to drive;
- (ii) What to do when driving to avoid fatigue;
- (iii) What to do when sleepy while driving; and
- (iv) What to do when becoming ill while driving.

The UCCLA prohibits an operator from driving a commercial motor vehicle unless physically qualified to do so. RCW 46.25.055. "(1) If the medical examiner or physician finds any physical condition listed in Title 49 C.F.R. 391.41 (b)(1) through (13) that is likely to interfere with the driver's ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the driver's medical examination to the Department of Licensing" for further review WAC 446-65-020. If a Washington commercial motor vehicle operator is not physically qualified to drive a CMV under 49 CFR 391.41, may apply to the Department of Licensing for an Intrastate waiver. WAC 308-100-100.

The physical qualification section of §391.41 provides,

- (3) A person is physically qualified to drive a commercial motor vehicle if:
- (i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirements in §391.43; or
 - (ii) That person obtained from FMCSA a medical variance from the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirement in §391.43

The section §391.41 "Physical qualifications for drivers" contains the word and meaning "both." Thus, the motor carrier has to ensure that the driver is physically qualified (there is a list of 12 physical requirements and passed a valid medical exam.

The Washington State Commercial Vehicle Guide 2016–2017 is intended for the professional commercial vehicle operator and others who are concerned about safe truck operations. It has been compiled by Commercial Vehicle Services within the Washington State Department of Transportation (WSDOT) in cooperation with the Commercial Vehicle Enforcement Division of the Washington State Patrol (WSP/CVD), Washington State Department of Licensing (WSDOL) Driver and Vehicle Services Divisions, the Washington Utilities and Transportation Commission, and the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), in an effort to provide a starting point for information for commercial vehicle operators driving within the State of Washington.

Effective April 25, 1994, Washington State Patrol adopted Parts 382-383, 390-393, and 395-397 of Chapter 49 Code of Federal Regulation (CFR) for commercial motor vehicles.

OPINIONS

On May 26, 2015, Mr. McPike sustained an acute cardiac arrest around 8:32 AM while operating a Pierce Transit bus. He lost consciousness and the bus collided with multiple vehicles. Mr. McPike never regained consciousness and passed away on June 30, 2015, with the cause of death listed on the death certificate as: (a) anoxic brain injury, (b) cardiac arrest, (c) diabetes and hypertension, (d) obesity. Other conditions contributing to death were listed as obstructive sleep apnea, untreated.

IT IS MY OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY THE SUDDEN CARDIAC ARREST AND LOSS OF CONSCIOUSNESS THAT OCCURRED ON MAY 26, 2015 WAS FORSEEABLE.

The cause of Mr. McPike's death was due to cardiac arrest due to his underlying cardiovascular disease that had not been properly evaluated before he drove on the morning of May 26, 2015. I agree with Dr. Robert Thompson's opinion expressed in his July 2015 reporting, that Mr. McPike "*suffered cardiac arrhythmia which caused his sudden demise. Indeed, sudden death in this matter is a common manifestation of heart disease.*" I also agree with Dr. Thompson's opinions expressed July 2015,

On a more probable than not basis, he had a cardiac arrhythmia, that is, a type of heart attack which triggered his loss of consciousness, and this was entirely due to preexisting coronary heart disease caused by hypertension, diabetes, high blood cholesterol, smoking, sleep apnea, and obesity.¹

This fatal cardiac event was foreseeable and the prevention of such an episode is why commercial vehicle safety regulations are in place to prevent these high risk drivers from being on the road.

I disagree with Dr. Thompson's characterization of Mr. McPike's medical history and his reliance upon Dr. Gilbert's January 30, 2015 reporting. Dr. Thompson, who never examined Mr. McPike, is not a registered Commercial Vehicle medical examiner and lacks the qualifications, experience, training, or education, to render any opinions on Mr. McPike's fitness to operate a commercial vehicle or render opinions on the validity of Dr. Gilbert's January 30, 2015 fit for duty determination.

¹ PT2 001005.

I also disagree with the statements of Drs. Wang and Gilbert in their recent declarations that Mr. McPike's cardiovascular conditions would not disqualify him from operating a commercial vehicle. Mr. McPike had several medical conditions, when unmanaged, individually and collectively contributed to his sudden incapacitation that was foreseeable.

Mr. McPike's medical records show multiple entries regarding cardiac arrhythmia for more than 10 years, yet he was never adequately evaluated and/or treated for this condition.

Records include:

- o 5/6/1998 Mark Brooks, MD – palpitations.
- o 2/20/04 VA Clinic
- o 01/05/05 VA Clinic
- o 01/24/05 Mark Brooks, MD
- o 1/24/05 Franciscan Medical Group – Holter Report (rare PVC)
- o 01/09/07 Mark Brooks, MD - EKG with isolated PVC.
- o 7/2/08 VA Clinic
- o 2/12/09 VA Clinic Pharmacy Telephone encounter note.
- o 6/13/11 St. Francis Emergency Department – ECG Sinus rhythm with premature atrial contractions (PAC's) with aberrant conduction.
- o 10/4/2012 Zhiyu Wang, MD
- o 11/3/12 Timothy Larson, MD Transthoracic Echocardiogram (TTE).
- o 11/20/12 Timothy Larson, MD Holter Monitor – Abnormal for premature ventricular contractions.
- o 7/25/13 Zhiyu Wang, MD
- o 10/25/13 Zhiyu Wang, MD
- o 1/31/14 Zhiyu Wang, MD
- o 1/30/2015 Richard Gilbert, MD – assesses premature atrial contractions (PAC's)
- o 3/3/2015 Zhiyu Wang, MD

Premature ventricular contractions (PVC's) are extra, abnormal heartbeats that begin in one of the heart's two lower pumping chambers. These extra beats disrupt the regular heart rhythm. Premature atrial contractions (PAC's) are abnormal heartbeats that originate in the atria, (one of the two upper pumping chambers). These extra beats disrupt the regular heart rhythm and is a cardiovascular disease known to cause syncope, collapse, or cardiac failure. This means that before the cardiac arrest of May 26, 2015, Mr. McPike had arrhythmia, the same condition that caused his cardiac arrest of May 26, 2015, diagnosed in both the upper and lower chambers of his heart.

A person with a current clinical diagnosis of a cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure is not physically qualified to drive a commercial motor vehicle according to industry standards and regulations cited in 4 CFR 391.41(b)(4).

Before the May 26, 2015, Mr. McPike was at substantial risk for sudden death due to cardiac disease, based on his cardiac risk profile of the late middle age male, a former smoker/tobacco user who had allegedly quit in 2012, and had a history of hypertension, hyperlipidemia, diabetes, obstructive sleep apnea along with his morbid obesity.

According to the Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers, FMCSA 2002:

There are two major considerations for the medical examiner when certifying a CMV driver who has a history of an arrhythmia. First, CMV drivers with arrhythmias and those treated with anti-arrhythmia devices **should not be certified** if they are at risk for cerebral hypo-perfusion and impaired consciousness. In the worst circumstance, loss of consciousness is due to a fatal arrhythmia, such as ventricular fibrillation or hypotensive ventricular tachycardia. Secondly, the examiner should search for any underlying heart disease that could be disqualifying.

According to the 2015 FMCSA Medical Examiner's Handbook:

Detection of an undiagnosed heart or vascular finding during a physical examination may indicate the need for further testing and examination to adequately assess medical fitness for duty. Diagnostic-specific testing may be required to detect the presence and/or severity of cardiovascular diseases. The additional testing may be ordered by the medical examiner, primary care physician, cardiologist, or cardiovascular surgeon.

Mr. McPike's medical records, including his last DOT medical examination in January 2015, revealed multiple instances where he had significant cardiac findings on exam with elevated blood pressure at 160 systolic on January 30, 2015 and 150 systolic on November 7, 2014 and irregular heart rhythm on multiple prior occasions, but did not have a proper workup to detect and treat his underlying condition.

At the January 30, 2015 examination Mr. McPike told Dr. Gilbert that he had a cardiac workup. Likely relying upon this (mis)information, Dr. Gilbert did not order any additional testing.

Mr. McPike was at substantial risk for sudden death due to cardiac disease based on his cardiac risk profile as a late middle age male, a former smoker who had allegedly quit in 2012, and had a history of hypertension, hyperlipidemia, diabetes, obstructive sleep apnea (OSA), along with his morbid obesity.

He also reported erectile dysfunction to Dr Brooks, which would indicate issues related to his diabetes and his under-lying systemic wide atherogenic-induced cardiovascular condition. In other words, if the penis does not work, one must check out the heart because the erectile dysfunction is often the first tell-tale sign that a patient also has a coronary artery disease.

Mr. McPike's medical records, including his last DOT Medical Exam in January 2015, reveal multiple instances where he had significant cardiovascular findings on exam with elevated blood pressure at 162 systole on January 30, 2015 and 180 systole on November 7, 2014 and irregular heart rhythm but did not have a proper work-up to detect and treat his underlying cardiovascular condition (s).

Following the collision, a transthoracic echocardiogram identified a mild biatrial enlargement, pericardial effusion and a chest CT revealed cardiomegaly.

According to research published in the Journal of Occupational and Environmental Medicine having three concomitant medical conditions may be a statistically significant risk factor for preventable and any cause DOT-reportable crashes and crashes with injuries. In McPike's case he had eight out of 13 concomitant medical conditions identified in this research that showed his risk of crash was significantly elevated.

He had the following eight medical conditions out of a list of 13 possible conditions:

1. Diabetes
2. Obstructive Sleep Apnea (OSA)
3. Musculoskeletal Disease
4. Major psychiatric illness
5. Hypertension
6. BMI greater than 35
7. Cardiovascular Disease or Dysrhythmias
8. Benzodiazepam use

The authors of the study² emphasized that drivers with 3 or more conditions merit additional scrutiny during medical certification exams. This event was hardly unforeseen, as it was predictable based on McPike's medical history, cardiac history, examination findings, and comorbidities.

On more probable than not basis, this collision was preventable.

Mr. McPike's noncompliance with his medical treatment, multiple incidents of falsifying medical examinations, and concealing of information from his employer was a significant contributing cause of this collision.

Mr. McPike's comorbidities were not well controlled. In addition to hypertension, blood pressure, and diabetes, Mr. McPike had other co-morbidities known to increase the risk of developing coronary artery disease including sleep apnea and obesity which were in poor control.

McPike did not report his uncontrolled hypertension to Pierce Transit. Disqualifying blood pressure measurements were documented in the following records:

- 6/13/11 St. Francis Emergency Department (160/92)
- 10/4/12 Zhiyu Wang, MD (150/80)
- 11/30/12 Multicare Urgent Care (159/89)
- 11/30/13 St. Francis Hospital Emergency Room (149/88, 178/82)
- 11/7/14 Kirk Harmon, MD (150/72)
- 1/30/2015 Richard Gilbert, MD (162/64)
- 3/3/2015 Zhiyu Wang, MD (140/78).

² Multiple Conditions Increase Preventable Crash Risks Among Truck Drivers in a Cohort Study
Thiese, Matthew S. PhD; Hanowski, Richard J. PhD; Kafes, Stefanos N. MD; Porter, Richard J. PhD; Moffitt, Gary MD; Hu, Nan PhD; Hegmann, Kurt T. MD *Journal of Occupational and Environmental Medicine*: February 2017 - Volume 59 - Issue 2 - p 205-211

McPike's diabetes control was in decline prior to the collision. The following records document the diabetes being in suboptimal control.

- o 10/4/07 VA Clinic Emergency/Urgent Care
- o 2/27/09 VA Clinic
- o 8/27/12 Mark Brooks, MD – noted poor control of diabetes with episodes of hypoglycemia and prompting a referral for endocrinology consult.
- o 10/4/12 Zhiyu Wang, MD
- o 10/30/12 Absence from work due to
- o 1/20/2014 – 1/23/2014 McPike had a four day absence due to "diabetes problems"
- o 3/26/14 - 3/27/14 McPike was absent due to "diabetes was out of control."
- o 8/28/14 – 8/29/14 Absence from work due to FML (diabetes)
- o 3/3/2015 Zhiyu Wang, MD

McPike had a history of noncompliance with his diabetes treatment. The following records document Mr. McPike being noncompliant with physician recommendations:

- o 1/8/08 Mark Brooks, MD
- o 10/4/12 Zhiyu Wang, MD
- o 1/4/13 Zhiyu Wang, MD
- o 7/25/13 Zhiyu Wang, MD
- o 12/19/13 Mark Brooks, MD
- o 1/31/14 Zhiyu Wang, MD
- o 3/19/14 Mark Brooks, MD
- o 6/19/14 Mark Brooks, MD
- o 9/18/14 Mark Brooks, MD
- o 10/16/14 Zhiyu Wang, MD
- o 3/3/2015 Zhiyu Wang, MD

After the collision, Mr. McPike's wife met with a hospital social worker, Lisa Ryan. Ms. Ryan documented Mrs. McPike reporting that McPike "refused to go walking, hiking...He refuses to eat the beautiful diabetic meals I make for him and just eats garbage." She "always feared that his self inflicted health problems would cause something like this..."

McPike's sleep apnea was not under control. McPike was experiencing daytime fatigue prior to the collision that is documented in the following records:

- o 4/5/13 Zhiyu Wang, MD
- o 11/13/14 Multicare Sleep Medicine Center

- o 12/18/14 Suzette Gagnon Bailey, ARNP
- o 1/30/2015 Richard Gilbert, MD
- o 3/3/2015 Zhiyu Wang, MD
- o 3/27/15 Mark Brooks, MD

Even though McPike had started CPAP treatment for his OSA in December 2014, it was ineffective as he told Dr. Gilbert on January 30, 2015, Dr. Wang on March 3, 2015, and Dr. Brooks on March 27, 2015 that he felt fatigued.

McPike resumed alcohol and drug consumption despite having been terminated for a positive drug test in 2007. Alcohol and drug consumption is documented at the following medical appointments:

- o 8/20/07 VA Clinic – Cannabis abuse
- o 9/1/07 VA Clinic
- o 9/6/07 VA Clinic
- o 7/16/08 VA Clinic
- o 2/11/2014 DOT Examination – McPike checks yes to “frequent alcohol use and narcotic or habit-forming drug use.”
- o 10/4/12 Zhiyu Wang, MD
- o 11/30/13 St. Francis Hospital Emergency Room
- o 11/13/14 DOT Medical Examination Report – McPike checks yes to “frequent alcohol use and narcotic or habit-forming drug use.”
- o 11/7/14 Kirk Harmon, MD

McPike did not report disqualifying myoclonus to Pierce Transit. Myoclonus (involuntary muscle twitching) was documented at the following medical appointments:

- o 2/11/09 VA Clinic
- o 3/6/09 Veteran's Administration Clinic
- o 10/4/12 Zhiyu Wang, MD
- o 11/2/12 Zhiyu Wang, MD
- o 7/10/13 Mark Brooks, MD
- o 12/21/13 Collin Iosso, MD, Franciscan Medical Group

McPike's general health was deteriorating in the months prior to the collision as was documented by Dr. Brooks on March 19, 2014 and Dr. Wang on March 3, 2015. Mr. McPike was gaining weight, complaining of muscle aches, fatigue, heartburn, diarrhea. CDL Compliance Officer Marvin Gilliam testified that he had noticed McPike gaining weight in the months before the collision. P. 118, l. 7-21.

Mr. McPike's noncompliance in regards to treatment for his various medical conditions was a significant contributing factor in causing his sudden incapacitation on May 26, 2015.

MR. MCPIKE WITHHELD INFORMATION FROM HIS EMPLOYER AND FALSIFIED MULTIPLE DOT AND MEDICAL EXAMS hindering the examiner's ability to render a valid opinion on his ability to safely operate a commercial vehicle or make well informed treatment decisions.

As part of the DOT exam, the operator is required to fill out a medical history giving specific yes or no questions about relevant medical conditions.

McPike never disclosed his prior psychiatric history to any of his DOT examiners, or Pierce Transit. VA records document the initial diagnosis of PTSD in the 1970's arising out of a fall from a telephone pole while in the military. March 11, 1998, McPike reports experiencing depression and anxiety to Dr. Brooks. December 17, 2003, McPike returns to the VA clinic for evaluation and treatment of his PTSD. On March 18, 2004, Mr. McPike tells his VA provider that he had had a flashback while operating the bus the day before, and as a result, hit a tree branch. Mr. McPike did not tell Pierce Transit that the accident occurred as a result of his PTSD. He continued to treat for the PTSD for three months. Though being under regular care for the PTSD at this time, when completing a Life Insurance Application on April 14, 2004, McPike omits the PTSD diagnosis and treatment noting only a history of anxiety for which he indicates he had only one treatment.

McPike returned for PTSD treatment in March 2007 and again in August 2007 reporting his PTSD was triggered after seeing a telephone pole.

Mr. McPike misrepresented a two week absence from January 31, 2007 to February 14, 2007 as FML absence when it was actually disability related to osteoarthritis, not his diabetes.³

³ PT 292

At the July 13, 2007 DOT exam, McPike denied alcohol and drug usage, though he tested positive for Cannabis usage one month later⁴.

At the February 14, 2011 DOT exam, in completing his medical history, Mr. McPike denied prior injuries despite having had two industrial injuries in the previous five years. He also denied psychiatric disorders, cardiac conditions, or high blood pressure despite a significant and well documented prior psychiatric history, prior arrhythmias, and hypertension.

On January 31, 2013, McPike again denied recent injury (despite having a 2012 industrial injury involving the low back and PTSD), and again denied psychiatric history, and prior cardiovascular condition, even though he had just had a Holter Monitor 2 months prior with a finding of premature ventricular contractions.

At the November 2014 examination with Dr. Harmon, McPike denied injury in the past five years (though he had a March 2012 industrial injury), and denied a cardiovascular condition.

On January 29, 2015 McPike denied symptoms of sleepiness to his sleep apnea provider; however, the next day, he reported to Dr. Gilbert that he was experiencing fatigue.

On January 30, 2015, Mr. McPike denied significant past psychiatric history to Dr. Gilbert, and denied a cardiac condition. He also did not disclose his current usage of Tramadol, a controlled substance, or Flexeril, a muscle relaxer that can impair driving. He also did not disclose his chronic low back pain that had been reported to Dr. Harmon three months prior.

More likely than not, had Mr. McPike accurately disclosed his medical history to the providers, he would ultimately have been disqualified from operating a commercial vehicle.

McPike failed to tell his employer that he felt fatigued in 2015 as he reported to his physicians in the months prior to the May 26, 2015 accident. This was in violation of apparent

⁴ See 8/15/07 positive drug test and 8/20/07 VA Clinic records.

employer policy. Mr. McPike's supervisor at Pierce Transit, Hazel Whitish, stated in her 4/4/17 deposition:

"If he was having a health condition per policy of the agency, he would come to his assistant manager to get appropriate instruction on what to do." (Note no HR policy has been furnished to review).

Mr. McPike's former supervisor, then later CDL compliance officer, Marvin Gilliam, would have approached HR to request a fit for duty examination had he known about all of the undisclosed medical conditions.

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23 By Ms. Potvin) If you had a driver and you become
24 aware that that driver had all of those conditions
25 diagnosed at the same time -- sleep apnea,

83

1 hypertension -- I'm going to forget some of these --
2 insulin-dependent diabetes, irregular heart rhythm,
3 and obesity -- If you became aware of those facts, is
4 that the type of scenario under which you would make
5 a recommendation to HR that this person undergo an
6 extra fit-for-duty examination?

7 A And what role?

8 Q In either your role as assistant manager or in your
9 role in safety and quality service.

10 A I would say, yes, I would approach HR.

More likely than not, had Mr. McPike been forthright about his medical history, he would have been subjected to a fit for duty examination. Given the breadth of his previously undisclosed conditions more likely than not, he would have been disqualified from operating a commercial vehicle.

**MR. MCPIKE'S KNEW OR SHOULD HAVE KNOWN NOT TO OPERATE A
COMMERCIAL VEHICLE DUE TO THE RISK OF CARDIAC ARREST.**

Alonzo McPike was employed for more than two decades as a commercial bus driver for Pierce Transit. This includes the period of time between August 15, 2007, when he was

terminated due to a positive drug test and March 23, 2009 when he was reinstated under the second chance program.

As part of his initial licensing, Mr. McPike was required to learn the physical requirements to be fit for duty. At each DOT exam, Mr. McPike would be reminded of these requirements as they are written on the Form MCSA-5875.

Although this would not necessarily have informed Mr. McPike about the specific risk of cardiac arrest, Mr. McPike knew or should have known that operating a commercial vehicle while suffering from these dangerous medical conditions, would put himself, his passengers, and the general public at risk.

McPike was educated by his sleep apnea provider that his severe obstructive sleep apnea can be a risk factor for developing hypertension, cardiovascular disease, cardiac arrhythmia, stroke, and hyperglycemia/diabetes mellitus. (11/13/14 Multicare Sleep Medicine Center).

McPike was re-educated that his blood pressure must be no higher than 140/90 to qualify to operate a commercial motor vehicle. (2/13/09 VA Clinic; 11/7/14 Kirk Harmon, MD (Multicare)).

Despite having this information, McPike repeatedly elected to operate a commercial vehicle despite being diagnosed with multiple disqualifying conditions.

MR. MCPIKE WAS NOT MEDICALLY FIT TO DRIVE COMMERCIALLY AT THE TIME OF THE CRASH DUE TO HIS OBSTRUCTIVE SLEEP APNEA, HYPERTENSION, UNADDRESSED ARRHYTHMIAS, UNDISCLOSED PSYCHIATRIC CONDITIONS, AND DRUG AND ALCOHOL USE.

Dr. Kirk Harmon performed a DOT medical examination on November 7, 2014 and only gives Mr. McPike a three-month ("short") card because of suspected obstructive sleep apnea (OSA) and elevated blood pressure. His systolic blood pressure was 150. Dr. Harmon ordered sleep apnea and blood pressure monitoring to occur before the card expired.

The mandated sleep study indicated McPike had severe obstructive sleep apnea. He was prescribed CPAP treatment. Even though McPike had started CPAP treatment in December 2014, it was ineffective as he told Dr. Gilbert on January 30, 2015, Dr. Wang on March 3, 2015, and Dr. Brooks on March 27, 2015, that he felt fatigued.

He should have been further evaluated by his sleep apnea provider, Gagnon Bally, ARNP, to address why he was not getting restful sleep on CPAP and should have had a maintenance of wakefulness test (MWT) to determine his fitness to drive. Likely, Nurse Bally was relying upon McPike's January 29, 2015 false assurances that he was not experiencing sleepiness.

The risk of accidents by commercial drivers with undertreated obstructive sleep apnea including those arising from loss of consciousness is well known and documented in the commercial vehicle industry. In fact, at the time of Mr. McPike's last DOT examination in January 2015, prior to the May 2015 accident, various proposals and guidelines for mandatory OSA screening and compliance of drivers with OSA had been proposed and widely circulated for industry comment and reaction, including the 2006 Joint Task Force American College Of Occupational and Environmental Medicine (ACOEM), National Sleep Foundation (NSF) and American College Of Chest Physicians (ACCP); 2008 FMCSA Medical Expert Panel; and 2008 FMCSA Medical Review Board Recommendations.

With complete disregard for public safety, Pierce Transit allowed a driver with a clinical diagnosis of a severe respiratory dysfunction (OSA) to drive in violation of 49 CFR 391.41(b)(5)

Prior to the expiration of the three month card issued by Dr. Harmon, Mr. McPike was seen by Richard Gilbert, MD for recertification on January 30, 2015. At that exam, Dr. Gilbert indicated Mr. McPike was 72 inches tall, weighed 296 with a BMI of 40 and a blood pressure of 162/64. He also noted an irregular heart rhythm "probably PVC's" .

(As noted earlier, Mr. McPike's heart rhythm abnormalities had been noted on multiple prior medical examinations.) Mr. McPike falsely reassured Dr. Gilbert that he had a cardiology workup "last year." Dr. Gilbert was not able to find the workup in the Care Everywhere system. Medical records have failed to confirm this workup occurred. This is another possible example of Mr. McPike providing inaccurate information to his medical examiner.

McPike had a significant past psychiatric history that included a DOT drug and alcohol violation for cannabis (MJ) on August 15, 2007, that required him to undergo a substance abuse professional (SAP) evaluation and random observed return to work DOT drug screens. He has a documented past history of alcohol abuse, including DUI in 2002; and a long history of PTSD, depression, and anxiety where he received various psychotropic medications, including the Xanax.

A person with a mental, nervous, organic, or functional disease or psychiatric disorder that is likely to interfere with his ability to drive a commercial motor vehicle safely is not physically qualified to drive a commercial motor vehicle according to industry standards and FMCSA regulations 49 CFR 391.41(b)(9).

As mentioned earlier, in 2004, Mr. McPike had already demonstrated his PTSD had the propensity to interfere with his ability to drive a commercial motor vehicle, causing him to lose control and strike a tree branch.

On a more probable than not basis, due to these combined medical conditions, Mr. McPike was not fit to operate a commercial vehicle. Mr. McPike's falsification of examinations and noncompliance was a substantial contributing cause to the May 26, 2015 collision.

PIERCE TRANSIT HAS A DUTY TO THE PUBLIC TO MONITOR THEIR OPERATORS' MEDICAL CONDITIONS AND INVESTIGATE HEALTH CONCERNS

Pierce Transit's duties to the public in this case are not only limited to making sure he has a valid CDL and medical waiver but they an obligation to monitor their drivers' health conditions, especially a driver with serious health conditions that they have been put on notice about for multiple years about McPike's health with the necessity for an intra-state medical waiver for his insulin-dependent diabetes and the use of FMLA for a serious health condition.

The defendants argue that their driver was medically qualified on the day of the accident despite his predictable high risk of sudden incapacitation because he was in possession of a current medical certificate.

The Defendants maintain that 49 C.F.R §391.41 establishes a driver need only be 'physically qualified to operate a commercial motor vehicle' at the time of a medical examination. Thereafter, it was the apparent position of Pierce Transit that the driver's physical well-being is not material until the expiration date displayed on the medical certificate.

The spirit and letter of the FMCS Regulations. 49 C.F.R §391.45c imposes a continued obligation upon commercial motor vehicle drivers to seek medical examination and certification:

"The following persons must be medically examined and certified... as physically qualified to operate a commercial motor vehicle:

- (a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;
- (b)(1) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months.
- (c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease; AND**
- (d) Beginning June 22, 2018, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle... 49 C.F.R §391.45

It is clear by the regulations that the twenty-four-month period in which a medical examiner's certificate is typically valid (in this case only a one-year certification) does not defeat or limit a drivers' continuing obligation to be physically qualified to operate a commercial motor vehicle and the on-going responsibility of Pierce Transit to only place medically qualified drivers on the road.

Pierce Transit inadequately monitored and supervised Mr. McPike's medical conditions. Deposition testimony failed to identify any management system for monitoring or supervising its Operator's medical conditions.

Pierce Transit knew he was a diabetic with an insulin intrastate medical waiver, but Pierce transit failed to monitor his diabetes and its potential effect on driving and its contribution to the advancement of cardiovascular disease.

Pierce Transit was also well aware that McPike had a very checkered past during the time he drove a bus—a Federal Department of Transportation drug and alcohol violation, history of psychological problems, taking controlled substances, and using FMLA leave for his diabetes.

Mr. McPike completed FMLA paperwork that he had a serious health condition but the employer failed to act and utilize the provisions of §391.45c to conduct a detailed fitness for driving (FFD) evaluation.

Dr. Brooks provided FMLA certifications that McPike's diabetes would cause unpredictable occurrences of incapacitation, but Pierce Transit took no action to further investigate.

McPike had a 4-day absence in January 2014 ("due to diabetes problems") and absence on March 28, 2014 for "diabetes was out of control" but Pierce Transit failed to order a FFD exam to ensure he was safe to drive.

Motor carriers such as Pierce transit, though they do not practice medicine, are ultimately responsible for ensuring that they only place physically qualified drivers on the road

and must be familiar with DOT regulations, industry standards, and guidance on the physical qualifications of drivers, including FMCSA guidance on fatigue management.

Pierce Transit's lack of knowledge and insight into the dangers of uncontrolled sleep apnea, significant cardiovascular risk factors, and other medical conditions is well below what is expected of a reasonably prudent motor carrier or employer of commercial drivers. The risks and dangers associated with sleep apnea and driving have been common knowledge and frequently discussed within the commercial motor vehicle industry for more than a decade. A motor carrier who claims to not be cognizant of these risks are either willfully ignoring the issue or not taking even the most basic measures to be informed of industry standards and updates.

Mr. McPike's inadequately treated OSA, diabetes, and cardiovascular conditions rendered him unqualified to drive, yet Pierce Transit failed to inquire about his compliance for these various conditions and failed to obtain a fitness for duty examination (FFD). Even a cursory review of Mr. McPike's November 7, 2014 and January 30, 2015 DOT long form by his employer should've prompted a more thorough investigation into Mr. McPike's medical fitness to operate a bus, especially since he has multiple issues maintaining his Washington CDL license due to medical issues since 2008.

The series of DOT exams performed by Dr. Brooks prior to the National Registry requirements of May 2014 are riddled with errors and issues that the employer failed to investigate. For example, on July 13, 2007, Dr. Brooks given insulin-dependent diabetic a two-year card and did not mark qualified by waiver/exemption or qualified by operation of the diabetes waiver program. Various forms were not filled out completely. There were several times that Dr. Brooks inappropriately gave a 2 year certification.

Also, a review of the January 30, 2015 DOT long form would show that a blood pressure of 162 systole is unacceptable.

A review of the January 30, 2015 medical certificate would have also uncovered issues that needed investigation.

Though Dr Gilbert attempts to rehabilitate this error on his part:

"Although the medical certificate includes a check mark for "intrastate only," the medical certificate inadvertently omits a check mark for the field, "accompanied by intrastate waiver/exemption." The inadvertent omission of this check did not invalidate my assessment supporting the issuance of the medical certificate as Mr. McPike had the required medical support for his intrastate waiver application from Dr. Wang."⁵

Actually, McPike did not a valid intrastate medical waiver until February 5, 2015 after the time Dr. Gilbert had certified McPike. There is no explanation why Pierce Transit did not have someone question McPike's medical certificate when they clearly knew in the past that McPike required an intrastate medical waiver.

An employer in the public safety business should have determined that this January 30, 2015 medical certificate was not valid because: 1) Dr. Gilbert failed to check Intrastate medical waiver box 2) the intra-state medical waiver medical waiver was not granted until after Dr. Gilbert had certified McPike.

The industry standards dictated that Pierce Transit, who had known for years that this driver was required a limited intra-state medical waiver for insulin diabetes, should have investigated this issue.

Pierce Transit, prior to and at the time of the accident, was derelict in its hiring, training, and supervision of driver McPike in that it entrusted a commercial bus to Mr. McPike with information in their possession, or reasonably available to them that he was a medically unfit driver and was likely to operate a motor vehicle in a negligent and reckless manner due to foreseeable medical issues.

The FMCSA Regulations remain the basis for the "industry standard" for bus operators.

⁵ Gilbert affidavit paragraph #10

By not investigating McPike's various serious medical conditions more thoroughly Pierce Transit knowingly placed the motoring public and Pierce Transit's passengers at an unacceptable risk of a crash.

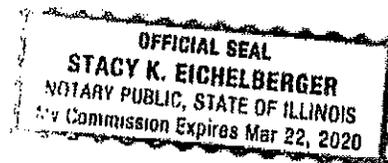
Pierce Transit and Alonzo McPike's failure to comply with these laws and standards was a significant contributing cause of this collision. But for the unreasonable behavior of Mr. McPike and Pierce Transit, this collision would not have occurred.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5 day of January, 2018, at Champaign, Illinois



DAVID FLETCHER, MD



DAVIES PEARSON, P.C.

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