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WASHINGTON STATE
SUPREME COURT

No. 97028-9

SUPREME COURT OF THE STATE OF WASHINGTON

Eugene Burke

Appellant

v.

Joseph Frickey, Andrew Day

BNSF Railway Co., Old

Republic Ins. Co.

Respondents

APPEAL FROM TRIAL COURT DECISION

RESPONSE BRIEF OF APPELLANT

EUGENE BURKE
151 CARSON DEPOT RD.
CARSON, WASHINGTON 98610
360-624-2384
APPELLANT

RESPONSE TO RESPONDENT'S CLAIMS

1. No duty owed.
2. The argument of 'threat'.
3. The complaint is not re-viewable.

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32 VII. THE COMPLAINT IS NOT EVIDENCE

33

34 **I. INTRODUCTION**

35 **JOIN LIEBERGESELL WITH UNLAWFUL PRACTICE OF LAW**

36 The defendants did not plead a defense to RCW9A.82.100. The plaintiff did
37 not plead contract law.

38 Certainly it warrants a thorough investigation into the activity for further
39 evidence of wrongdoing.

40 This is a very serious matter with very high stakes for being allowed or
41 prevented, caught or exonerated. It is inconceivable that the trial court would not
42 exercise its full discretion to eliminate the possibility of damage on a national
43 scale by a company historically and con temporarily known for making its own
44 laws.

45 This appeal is based on several valid grounds. Not the least of which is lack of
46 discretion. The appellant is showing evidence in his appeal that the trial court's
47 discretion was not applied to. The trial court had the same evidence as the
48 appellate court, but did not exercise its discretion on substantial evidence of
49 wrongdoing.

50 The excuse made by Andrew Day for his illegal activity is not what you
51 would expect from a professional conducting the business of handling million
52 dollar claims for damages. In fact it is derisory. Furthermore, Mr. Day's excuse for
53 taking the settlement release to the December 11, 2017 meeting to obtain the first
54 estimate for damages to Mr. Burke's truck supports Mr. Burke's account of Mr.
55 Day seeming to represent Mr. Burke's interests while failing to disclose his
56 conflict of interests, a serious omission in this case.

57 This appeal is made on the trial court's decision to dismiss Mr. Burke's
58 [supplemental] complaint under RCW 9A.82.100. The court's decision is based on
59 its finding for a civil matter the defendants didn't even bring up. The trial court
60 suggested to the defendants their filings should be based on contract law, a civil
61 matter, not a supplemental matter. The plaintiff was ill prepared and did not plead
62 contract law. That was another substantial prejudice to the appellant's case. The

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63 absence of trial court discretion means the trial court did not exercise any of the
64 court's business in relation to RCW 9A.82.100. Under RCW 9A.82.100 it is the
65 business of the court among other things to make orders for the production of
66 records and documents in the discovery of evidence, evidence controlled by the
67 respondents. Without the Court's exercise of its supreme authority to take charge
68 of the case the appellant is not even a slight inconvenience to Old Republic,
69 BNSF, and Andrew Day. The respondents were able and still are arguing the
70 appellant has no evidence while they control and are withholding business records
71 involving the use of the exhibit A document in all transactions and the insurance
72 contract MWTB310659 that establishes the relationship between the parties,
73 among other things. Mr. Burke is demonstrating on appeal, what the trial court
74 should have found under RCW 9A.82.100. The trial court is still looking for the
75 prosecutor before examining the evidence for wrongdoing as described by
76 Washington State Law in the Criminal Profiteering Act. The trial court erred by
77 failing to exercise its discretion within the scope of the pleadings. The trial court
78 overturned the entire history of unlawful practice of law cases single handedly
79 without debate. The appellant should be entitled to argue the accuracy and the
80 propriety of the pleadings. Consequently, the appellant has brought up the records
81 of the trial court that charge Old Republic, Andrew Day, and BNSF with criminal
82 conduct under RCW 9A.82.100. The appellant intended to provide the appellate
83 court with the entire trial court record including the entire trial court transcript for
84 examination.

85 At some point the Remedies and Procedures under RCW 9A.82.100 should be
86 applied to this case. Mr. Day's activity surrounding the contract severely damaged
87 Mr. Burke. Mr. Day's inexcusable legal work [caused] this reaction to it. RCW
88 9A.82.100 (1)(2)(3) very appropriately applies prior to the finding of liability. The
89 legislature graciously and wisely made provisions for the innocent persons clearly
90 knowing these large corporations take advantage of their insurmountable strength
91 to abuse the public and individuals collectively. The actionable activity in this case
92 is outrageous but even more so when liability is so reasonably clear. The
93 legislature put provisions for the innocent persons affected by the violation first,

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94 ahead of anything else, for a very good reason. Don't you find it appalling that
95 Andrew Day would take meticulous care of all the paperwork involved in the
96 BNSF claims process by completing them, arrange a meeting to obtain the final
97 paper, the estimate, but never mention the release agreement until he reaches the
98 point of offering the check (he never mentioned either), in the amount of recovery
99 he determined Mr. Burke would be willing to accept? The BNSF claims process is
100 replete with all the necessary paperwork identified, explained, and completed by
101 Andrew Day, but the legally binding work of the check and the settlement release
102 are not identified or explained even when they were being handed to Mr. Burke
103 for their completion. The intentional deception and the ongoing scheme is
104 substantially apparent. RCW 9A.82.100(1)(2)(3) should be [appropriately] applied
105 to make [appropriate] provisions for [all] the [appropriate] rights of the [innocent]
106 person, Mr. Burke, including his right to be made whole from this cause of action
107 and the cause of Mr. Burke's damages at the center of the mishandled legal
108 settlement release, Mr. Burke's Property Damage and personal injury claims.
109 Mr. Day's failure to delete the language related to personal injury claims
110 combined with other deceptions, false impressions, omissions, non-disclosures,
111 affirmative misrepresentation, and enticement obtained control over Mr. Burke's
112 Property Damage and extensive related losses and attempted to obtain control
113 over Mr. Burke's personal injury claims and their liability. The attempt to obtain
114 control of Mr. Burke's personal injury claims was caught but respondents obtained
115 control over liabilities for Mr. Burke's personal injury claims. Those liabilities
116 have a separate and distinct value capable of assessment without speculation or
117 conjecture.
118 RCW 9A.56.010(5) "Deception occurs when an actor knowingly: (a) creates
119 or confirms another's false impression which the actor knows to be false; or (b)
120 Fails to correct another's impression which the actor previously created or
121 confirmed; or (c) Prevents another from acquiring information material to the
122 disposition of the property involved; or (e) Promises performance which the actor
123 does not intend to perform or knows will not be performed"
124 RCW 9A.56/010(4) "By the color or aid of deception" means that the

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125 deception operated to bring about the obtaining of the property or services; it is
126 not necessary that the deception be the sole means of obtaining the property or
127 services."
128 RCW 9A.04.010 (14) "Omission" means a failure to act. Mr. Day's omissions
129 are numerous and each one is a separate violation under RCW 81.04.110 in
130 combination with RCW 81.04.380, 440, and 405. These violations as "omissions"
131 are also substantial steps taken toward the commission of the class B felony theft
132 and attempted theft making them class C felonies according to Washington State
133 Law.
134 Of the many omissions: Failure to mention BNSF self insures. Failure to
135 mention the existence of insurance coverage. Failure to disclose the citation issued
136 to his BNSF driver for causing the accident. These omissions are material and
137 relevant and caused Mr. Burke damages. Mr. Burke misunderstood Mr. Day's
138 reason for being helpful and gave in to Mr. Day as though Mr. Day had been a
139 helpful friend. The other material and relevant omissions are pleaded on page **48,**
140 **line 14 thru page 50, line 19 in CCC Complaint for Criminal Conduct.**
141 RCW 9A.56.010(10) "Obtain control over" in addition to its common
142 meaning, means:
143 (a) In relation to property, to bring about a transfer or **purported transfer** to
144 the obtainer or another of a legally recognized interest in the property; or
145 (23) "Wrongfully obtains" or "exerts unauthorized control" means:
146 (a) To take the property or services of another;
147 (b) Having any property or services **in one's possession**, custody **or control**
148 as bailee, factor, lessee, pledgee, renter, servant, **attorney, agent, employee**,
149 trustee, executor, administrator, guardian, **or officer** of any person, estate,
150 association, or corporation, or as a public officer, or person authorized by
151 agreement or **competent authority** to take or **hold such possession**, custody, or
152 control, to secrete, withhold, or appropriate the same to his or her own use or to
153 the use of any person other than the true owner or person entitled thereto; or
154 (21) (a) "Value" means the market value of the property or services at the time
155 and in the approximate area of the criminal act.

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156 (b) Whether or not they have been issued or delivered, written instruments,
157 except those having a readily ascertained market value, shall be evaluated as
158 follows:
159 (iii) The value of any other instrument that creates, **releases**, discharges, or
160 otherwise affects any **valuable legal right**, privilege, **or obligation** shall be
161 deemed the greatest amount of economic loss which the owner of the instrument
162 might reasonably suffer by virtue of the loss of the instrument. State v. Skorpen
163 57 Wn. App. 144 | 787 P.2d 54 | 1990 Wash. App. LEXIS 88
164 Theft by deception means "[b]y color or aid of deception to obtain control
165 over the property or services of another or the value thereof, with intent to deprive
166 him or her of such property or services." RCW 9A.56.020(1)(b). Theft in the first
167 degree is defined as theft of "[p]roperty or services which exceed(s) one thousand
168 five hundred dollars in value." RCW 9A.56.030(1)(a). Theft in the second degree
169 is defined as theft of property with a value less than $1,500 but more than $250.
170 RCW 9A.56.040(1)(a). "Property," as used in RCW 9A.56.030(1)(a), refers to the
171 "property or services of another" that a defendant has stolen. RCW
172 9A.56.020(1)(c). "Value" is defined as "the market value of the property or
173 services at the time and in the approximate area of the criminal act."

174 The Court of Appeals correctly observed:

175 theft by color or aid of deception means that "the deception operated
176 to bring about the obtaining of property or services; it is not necessary
177 that deception be the sole means of obtaining the property or
178 services." In drawing the line between criminal conduct and sharp
179 business practices, the legislature clearly contemplated that something
180 in addition to pure deception will be involved. Indeed, in many acts of
181 theft by deception, something falsely described is given in exchange to
182 induce the transaction. State v. George161 Wn.2d 203 | 164 P.3d 506 |
183 2007 Wash. LEXIS 562

184 The unauthorized practice of law is unprofessional conduct according to
185 Washington State Law RCW 2.48.180 (6). The unauthorized practice of law is

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186 also a per se violation of the Consumer Protection Act. The unauthorized practice
187 of law is also negligence.
188 The trial court has left the appellant with no finding of facts or conclusions
189 of law under RCW 9A.82100. Under RCW 9A.82.100 the [facts] of this case, as
190 they relate to offenses identified by RCW 9A.82.010(4) are capable of producing
191 [evidence] through discovery, court ordered answers to interrogatories and
192 admissions, and court ordered investigation made optional by RCW 9A.82.100.
193 Under RCW 9A.82.100 Remedies and Procedures the evidence should be capable
194 of collection until the determination of liability is made and the charges are
195 concluded. Is the Court trying to find evidence of liability prior to its
196 determination contrary to RCW 9A.82.100 fatally prejudicing the appellant's case?
197 The wisdom of the legislature may have known criminals do not give up
198 evidence of their offenses easily when authorizing the court to make appropriate
199 orders prior to the determination of liability and suggests [some] orders that are
200 necessary herein. RCW 9A.82.100(2) and (3).
201 The evidence in this case shows theft by release agreement clearly written in
202 the documentary evidence, exhibit A. While faking the release of Property
203 Damage Mr. Day intended to gain the release of the much higher valued personal
204 injury claims. (In this case over a million dollars) The documentary evidence,
205 exhibit A, fakes the release of Property Damage while intentionally releasing the
206 much higher valued personal injury claims. (In this case over a million dollars)
207 The witness and victim, Mr. Burke is complaining the simple meeting arranged for
208 the purpose of obtaining a simple estimate for repairs to his Property Damage took
209 a 360 degree turn when the settlement [release] for Property Damage was handed
210 to him also [releasing] personal injury claims. The evidence is clear, cogent, and
211 convincing of a routine use of the settlement agreement by BNSF for the [release]
212 of personal injury liabilities while faking the single [release] of Property Damage.
213 Mr. Day admitted failing to delete the 'optional language' related to personal injury
214 claims. That should alarm you to the fact the 'optional language' is always [in] the
215 settlement agreement that fakes the [release] of Property Damage. [Optional]
216 language should always be [added] if it's [optional], not deleted.

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217 Are respondents liable for omissions, false impressions, non-disclosures, and
218 misrepresentations that lead to attempted theft, theft, and leading organized crime?
219 Under RCW 9A.82.100 the evidence certainly warrants an investigation prior to
220 the determination of liability.

221 The description of deception, omissions, false impressions, and non-
222 disclosures, and affirmative misrepresentation are such that it is difficult to explain
223 how this activity is conducted by unscrupulous claims handlers. The trial court
224 mistakenly took this difficulty of trying to explain deceptive activity as the
225 plaintiff's lack of legal education. That is simply not the case. It is simply hard to
226 describe how a deception works to control the appellant's frame of mind;
227 deceptions creating false impressions that leave one to their own limited resource
228 of knowledge and experience.

229 The respondent RR, Old Republic, and Andrew Day are caught; they are
230 withholding evidence, blaming each other, blaming the appellant, making strange
231 excuses, and acting guilty.

232 Mr. Day, the defendant, has already admitted to violations of law alleged by
233 the plaintiff in his pleadings. The appellant's pleadings under RCW 9A.82.100 are
234 accurate. Mr. Day has admitted practicing law without a license for the purpose of
235 taking Mr. Burke's property. This cannot be seriously disputed. It can only be
236 disputed according to law. RCW 2.48.180 (7).

237 Looked at as an ambiguous document meant to mislead any party not
238 previously familiar with it [exhibit A] is meant to take any claimant's property by
239 deception by declaring (conspicuously) the [release] of one lessor valued property
240 (PROPERTY DAMAGE) while shadowing the [release] of the much higher
241 valued property, "the ... language related to (personal injury) claims". Mr. Burke
242 was [and is] damaged in his person, business, and property by Mr. Day's failure to
243 "delete the … language related to personal injury claims" by feeling cheated,
244 threatened, and giving up property damage, business loss, vehicle taxes, and
245 miscellaneous costs, etc.

246 Proximate [cause] is established. [But for] Mr. Day's failure to delete the
247 language related to personal injury claims there would be no [cause] of action

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248 resulting in the filing of appellant's complaint including costs and attorney fees.
249 There would be no feeling of victimization by Mr. Burke; fear, humiliation,
250 anguish, distress, anger, embarrassment, chagrin, nausea, head aches, nightmares,
251 sleeplessness, and dread. There would be no stretch of the term 'Property Damage'
252 to include extrinsic losses. Mr. Burke would not have given up his property
253 damage, business loss, vehicle taxes, misc. costs, etc.

254 **II.**

255 **QUESTION OF FACT**

256 There is no issue of disputed of fact.

257 1. Mr. Day left the release of personal injury claims and their liability in the
258 settlement release for Property Damage.

259 2. Mr. Day had knowledge ahead of time the release of personal injury claims
260 and their liabilities is in the settlement release agreement.

261 3. Mr. Day surprisingly offered to write a check for Property Damage prior to
262 handing the settlement release to Mr. Burke and affirmatively misrepresented the
263 legal release as a release for Property Damage only. (In evidence is Mr. Day's
264 flimsy excuse that he deleted personal injury claims leaving him with the frame of
265 mind that Property Damage was the only property left in the release. This is
266 combined with the conspicuous text PROPERTY DAMAGE).

267 4. Mr. Day surprisingly handed the settlement release for Property Damage to
268 Mr. Burke for signing with the personal injury claims and their liability in it.

269 5. Mr. Day continued to exercise the settlement release with the language
270 related to personal injury claims in it while negotiating to the conclusion of the
271 settlement.

272 6. The language related to personal injury claims helped Mr. Day gain the
273 release of additional property belonging to Mr. Burke.

274 7. Mr. Day admitted it is his work related duty to delete the language related
275 to personal injury claims and their liabilities before using it for Property Damage
276 negotiation and settlement.

277 8. Mr. Day failed to disclose to Mr. Burke [omitted] he intended to induce
278 settlement at their first meeting for the first estimate of repairs.

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279 9. Mr. Day failed to disclose to Mr. Burke [omitted] Mr. Day is authorized to
280 make payment on the spot on the estimate for damages to Mr. Burke's property by
281 writing a check..
282 10. Mr. Day failed to disclose to Mr. Burke [omitted] his driver was cited at
283 the scene by the Washington State Police for causing the accident. In so omitting,
284 Mr. Day failed to disclose to Mr. Burke [omitted] that BNSF liability is reasonably
285 clear.
286 11. Mr. Day failed to disclose the material fact [omitted] BNSF is self
287 insured.
288 12. Mr. Day omitted to disclose insurance coverage is provided by Republic
289 Ins. Co. under policy # MWTB310659.
290 13. As a result of the above 1-12, Mr. Day gained $24,785 dollars in value of
291 accumulative losses equaling 4 counts of first degree theft and 15 counts of
292 attempted theft. Complaint for Criminal Conduct. **CCC page 51, line 14 thru**
293 **page 56, line 2.** These omissions, non-disclosures, false impressions,
294 misrepresentations, are facts Mr. Day knows may justifiably induce Mr. Burke to
295 act or refrain from acting in the business transaction. The appellant has provided
296 the disciplinary authorities including the superior court of Washington for Clark
297 County, overwhelming evidence of wrongdoing and fowl play. These omissions,
298 non-disclosures, false impressions, misrepresentations, are deception constituting
299 substantial steps taken toward the specific crime of theft and attempted theft of
300 Mr. Burke's property. **Pleaded in appellant's Motion for Partial Summary**
301 **Judgment (MPSJ) page 16, line 1-24. Complaint for Criminal Conduct**
302 **(CCC) page 44, line 16 thru page 45, line 10.** [Liability] abounds in every
303 aspect of the complaint. [Liability] for failure to disclose is set out in Restatement
304 (Second) of Torts 551. **(MPSJ) PAGE 26, LINE 9 -27.**
305
306 This is the Court's case now. If the Court wants to prevent an injustice that
307 mars our society the Remedies and Procedures are before it to take the reigns by
308 demanding compliance by orders. The appellant has struggled every inch of the
309 way to give society a chance to apply its most powerful law to the very sour

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310 subject of being cheated by the more powerful and influential of our country.
311 In corporate America where it is well known by the public that cash is king
312 the evidence of corporate scandal after corporate scandal and the evidence on
313 record in this case is substantial toward identifying conduct the public is well
314 aware of and used to seeing and immediately understanding the criminal activity
315 for financial gain being conducted here by BNSF and Old Republic Ins. Co..
316 BNSF is running a corporate scheme to [take] away injured party's rights to claims
317 for personal injuries against BNSF liabilities 'by hook or by crook' or a scam
318 prepared ahead of time to take the injured parties off guard quickly. The public
319 knows Mr. Day's negligence is intentional and not a mistake. This is outrageous
320 behavior from a 14-17 billion dollar a year company who could easily care for the
321 parties their gigantic mechanized organization causes damage and injury to.
322 The citizens of this country are allowed to press charges for violations of law
323 committed against them. RCW 9A.82.100 places the citizen's complaint in the
324 court room as the charging document. The practice of law is charged as several
325 counts in this case according to law RCW 2.48.180(3)(b).Each count should be
326 ruled on by the Court for findings of facts and conclusions of law. Obtaining a
327 signature by deception is charged as a violation of RCW 9A.60 Fraud. RCW
328 9A.60.030 is not on the felony list of the criminal profiteering act but is charged as
329 a substantial step toward theft by taking unauthorized control over Mr. Burke's
330 property and by the color or aid of deception with the intent to deprive. Obtaining
331 a signature by deception as a substantial step is a class C felony. The procedures
332 followed by the appellant are accurate according to RCW 9A.82.100. The
333 appellant stands properly before the Court damaged and injured in his person,
334 property, and business by an act of criminal profiteering that is part of a pattern of
335 criminal profiteering activity according to law. The unauthorized practice of law is
336 a per se violation of RCW 19.86.020 of the Consumer Protection Act. Mr. Day's
337 conduct is an unfair or deceptive act or practice in the conduct of any trade or
338 commerce. As a separate matter some easily proven violations are irrelevant here.
339 Old Republic is denying claims on BNSF orders and benefiting from Andrew
340 Day's successes in taking personal injury claims away from his victims. There is

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341 evidence of collusion between BNSF and Old Republic Ins. Co.

342 **III.**

343 **APPELLANT'S RESPONSE**

344 **FACT**

345 At no time was Mr. Burke a willing participant to the property release
346 agreement after the check was offered to settle the damages to Mr. Burke's truck,
347 as the settlement agreement was sprung unannounced or explained, language
348 related to personal injury claims was found by Mr. Burke in the settlement release
349 catching Mr. Day in the act of wrongdoing, the term 'Property Damage' was
350 expressed as an ambiguous term by Mr. Day creating Mr. Burke's false impression
351 the ambiguous term 'Property damage' meant more then the actual and tangible
352 property damaged, Mr. Burke's truck, being bewildered by Mr. Day
353 misrepresenting the terms of the [property] [released] by the settlement release
354 agreement as "It's only for property damage," Mr. Day continuing to exploit the
355 'optional language related to personal injury claims' to expand the ambiguous
356 meaning of Property Damage, Mr. Day failing to replace the wrong document
357 with the right one, and Mr. Day taking Mr. Burke's property during all the above.

358 The appellant has cited Jones v. Allstate again in response to respondent's
359 Brief. "Also, when 'one determines for the parties the kinds of legal documents
360 they should execute to effect their purposes, such is the practice of law.' " Id. At
361 802 (quoting Hecomovich v. Nielson, 10 Wn. App 563, 571, 518 P.2d 1081
362 (1974). quoted in Jones v. Allstate 146 Wn.2d 291, 45 P.3d 1068 (2002) Lexis 317

363 Relevant Fact. Mr. Day and BNSF made the lone determination for the
364 parties the kinds of legal documents they should execute to effect their own
365 purpose ahead of time and [they always do].

366 **IV.**

367 **DUTY OWED.**

368 **RESPONSE** to Respondent's Brief page 21 (middle paragraph.)

369 "Duty owed' is a new argument from respondents. The appellant has argued
370 the unlawful practice of law and the exercise of care of a practicing attorney as
371 owed by Andrew Day, citing case law in support of that claim. The appellant has

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372 cited Washington State Law (as below) demonstrating a 'duty owed' by Andrew
373 Day and BNSF. Furthermore, the appellant's complaint is based on intentional
374 wrongful conduct. There is no requirement for 'duty owed' in an intentional tort
375 claim. Also, contracting parties have a duty not to deceive one another. As a public
376 service company duty to act and refrain from acting is detailed in
377 The appellant has cited Batten v. Abrams 28 Wn. App.737, 739, 626 P2d 984
378 (1981) "(non lawyer who undertakes role of lawyer assumes the duties and
379 responsibilities [of a lawyer] and is accountable to the same standards of ethics
380 and legal knowledge." Quoted in Jones v Allstate.
381 Also cited RPC 1.8(g). Furthermore, a lawyer "shall explain a matter to the
382 extent reasonably necessary to permit the client to make informed decisions
383 regarding the representation." Followed by RPC 1.4(b).Mr. Day simply said, "I
384 have a [paper] you need to sign" and stood silently while Mr. Burke tried to make
385 sense out of it.
386 Also, cited Bowers v. Tranamerican Title Ins. Co. 100 Wn. 2d 581 675 P.2d
387 193 (1983) "This court has held that a layman who attempts to practice law is
388 liable for negligence." Mattieligh v. Poe, 57 Wn. 2d 203, 204, 356 P.2d 328, 94
389 A.L.R. 2D 464 (1960) The [duties] of an attorney practicing law are also the
390 [duties] of one who without a license attempts to practice law. Burien Motors, Inc.
391 v. Balch, 9 Wn. App. 573, 513 P.2d 582 (1973). Emphasis added.
392 "It is the duty of the court to protect the public from the activity of those who,
393 because of lack of professional skills, may cause injury whether they are members
394 of the bar or persons never qualified for or admitted to the bar." Washington State
395 Bar Ass'n. v. Great W. Union Fed. Sav. & Loan Ass'n 91 Wn 2d 48, 60, 586 P.2d
396 870, (1978)
397 Mr. Day's activity caused injury to Mr. Burke while practicing law while
398 never qualified for or admitted to the bar.
399 "Therefore, to safeguard the public interest, we hold that insurance claims
400 adjusters, when [preparing and completing documents] which effect the legal
401 rights of [third party claimants] and when advising third party claimants to [sign
402 such documents], must comply with the standard of care of a practicing attorney."

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403 Perkins v. CTX Mortgage Co., 137 Wn.2d 93, 104-06, 969 P.2d 93 (1999) Cited in
404 Jones v. Allstate 146 Wn.2d 291, 45P.3d 1068. (Emphasis added).
405 "While there was no fiduciary relationship, the law requires that [contracting
406 parties] act in [good faith] and not deceive one another." Kammerer v. W. Gear
407 Corp. 27 Wn. App. 512 | 618 P.2d 1330 | 1980 Wash. App. LEXIS 2358 | 211
408 U.S.P.Q. (BNA) 646 (Emphasis added).
409 "The law of contracts reflects an evolving trend towards an interpretation of
410 "freedom of contract" acknowledging the parties' [duty] to [deal in good faith]
411 with one another. Seventy years ago, this court noted that "the tendency of the
412 more recent cases has been to [restrict] rather than extend the doctrine of [caveat
413 emptor.]" Wooddy v. Benton Water Co., 54 Wash. 124, 127, 102 P. 1054 (1909).
414 That continuing trend is reflected in several areas of the law of contract.
415 For instance, this requirement of contractual fair dealing is found in section 1-203
416 of the Uniform Commercial Code, RCW 62A.1-203:

417 Obligation of good faith. Every contract or duty within this Title
418 imposes an obligation of [good faith] in its performance or
419 enforcement." (Emphasis added).

420 Liebergesell v. Evans 93 Wn.2d 881 | 613 P.2d 1170 | 1980 Wash. LEXIS
421 1333
422 **DUTY OWED**
423 Furthermore, BNSF Railway is identified by Washington State Law as a
424 (public service company). RCW 81.04.010. BNSF trucking is a common carrier
425 which is identified by Washington State Law as a (public service company).
426 BNSF is under a duty to act in **good faith** with the public they practice their
427 business with times two, as a railroad and as a common carrier. This cannot be
428 seriously disputed. Furthermore, there is no issue of 'duty owed' in an intentional
429 tort case. RCW 9A.82.100 is a claim of intentional conduct.
430 **V.**
431 **SETTLEMENT AGREEMENT FOR PROPERTY DAMAGE**
432

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433 **There is no need of a settlement agreement for property damage.** It cannot
434 be stressed enough or often enough. A settlement release is not necessary for a
435 **vehicle** settlement. Mr. Day should have deleted the entire document. The entire
436 document is only optional language related to personal injury claims. The whole
437 BNSF claims department is a scheme. Mr. Day is lying to the Court under oath of
438 perjury when stating affirmatively he "deleted the optional language related to
439 personal injury claims". But by some mysterious negligent act the 'optional
440 language' was still in the document to be found by Mr. Burke. "When I presented
441 the release to plaintiff, he read it and pointed out that two of the paragraphs
442 included language related to personal injury." **There are only two paragraphs**
443 **that describe what the document releases.** The two paragraphs the plaintiff
444 pointed out. The BNSF lawyers wrote the settlement agreement as a scheme.
445 BNSF self insures acting like an insurer for the purpose of defeating liabilities by
446 unprofessional conduct, criminal conduct, and unlawful practice of law. Old
447 Republic Ins. Co. cannot defeat BNSF liabilities without violating insurance
448 regulations. The insurance regulations are violated by Old Republic anyway by
449 improperly denying claims on behalf of BNSF.
450 Old Republic Ins. Co. **1-800-747-5256**
451 Call them up yourselves with an inquiry how to file your claim against Policy
452 # MWTB310659. for damages caused by a BNSF truck. Old Republic Ins. Co.
453 will deny your claim for coverage by deferring your claim to BNSF. Old Republic
454 represents BNSF by denying claims on the stated grounds "BNSF hires their own
455 claims people." Yes! Old Republic defers their active coverage under policy
456 number MWTB310659 to BNSF in violation of settlement practices regulations,
457 WAC 284-30 and defers claimants to Andrew Day and his contemporaries. BNSF
458 represents Old Republic by accepting claims as though BNSF employees are
459 agents of Old Republic in violation of several insurance laws. This is valid
460 information based on first hand knowledge discovered by private investigation
461 and a valid claim to file against the Old Republic liability contract. It cannot be
462 reasonably disputed.
463 **VI.**

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464 **THE IMPLICATION OF THREAT**

465 **to Mr. Burke's Financial Condition**

466 The case charging a violation of RCW 9A.82.100, while pending, the Court
467 has broad authority. In the absence of the prosecutor, the appellant and the Court
468 are left to enforce the laws violated by the offenders. The appellant can't enforce
469 the laws by himself. That leaves the Court in the prosecutorial role. The Court can
470 gather evidence, take testimony, and conduct an investigation to its complete
471 satisfaction, but to do nothing is an abuse of process.

472 The application of the legal definition of 'threat' should not be thrown out for
473 any reason while charging a violation of RCW 9A.82.100 is pending resolution.
474 The appellant did his best in his affidavit and complaint to describe what it feels
475 like to be victimized by the personal discovery of language related to personal
476 injury claims while being surprised by the sudden offer of the settlement check,
477 trapped, on the spot, forced to make a quick decision, ill prepared, overwhelmed,
478 confused, enticed, The Court should reasonably know the victim may not be able
479 to explain his feelings in the moment of the violation. The net impression of the
480 victim's description of what the violation made him feel like is consistent with
481 being threatened. The failure of Andrew Day to delete the language related to
482 personal injury claims is a financial matter directly threatening Mr. Burke in his
483 person, in his business, and in his property financially. Under RCW 9A.82.100 the
484 Court, as disciplinary authority, is certainly authorized to take evidence and issue
485 orders related to discovery.

486 The appellant has given the trial court overwhelmingly substantial pleadings
487 proving multiple violations and summarized in appellant's Motion for [Partial]
488 Summary Judgment. Summary Judgment is inappropriate for RCW 9A.82.100.
489 The evidence [once] taken in a light most favorable to the state be[cause] of the
490 State's laws violated is only what the offender is entitled to. The laws in this state
491 are fast and hard. Applying them to criminal conduct does not allow offenders to
492 take evidence in a light most favorable to themselves as in Summary Judgment.
493 Crimes with a victim cannot be enforced and are therefore immune to prosecution
494 of law if the evidence is taken in a light most favorable to the offender. It goes

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495 against the status quo. The trial court [ordered] Summary Judgment to be heard. It
496 was heard on the day set for the mandatory scheduling conference. The prejudice
497 to the plaintiff's case there was not having discovery completed. The defendants
498 there were ushered in to the court's favorable ruling. The trial court erred by
499 ordering Summary Judgment.

500 This appellant has come forward against recognizable insurmountable odds
501 that deter even the biggest law firms due to the threat of the extremely high cost of
502 litigation, the legal battle. The appellant has come forward attempting to put into
503 legal terms the respondent's unacceptable activity that requires the Court's
504 attention before any form of reasonable discovery will take place in evidence
505 gathering. This is especially true in dealing with the RR. The RR has a historic
506 reputation as being the most insidious company in America relating to claims for
507 damages made by employees and the public alike. The RR has the historic
508 reputation as making their own laws and conducting themselves to suit themselves
509 as they have done in this case. In this case the respondents are withholding
510 discovery and at the same time making claims the appellant has no evidence to
511 support his theories. Evidence is accumulated by discovery. This is a fact. This is
512 extremely prejudicial to the appellant's case and should be corrected by court
513 order under RCW 9A.82.100.

514 VII.

515 **RESPONDENT'S BRIEF**

516 **ISSUE.**

517 **THE COMPLAINT IS NOT EVIDENCE**

518 Under RCW 9A.82.100, guilt or innocence is relevant to Remedies and
519 Procedures being applicable. The appellant is the Court's witness to the crime.

520 Under Remedies and Procedures of RCW 9A.82.100, prior to the
521 determination of liability:

522 1. The appellant should be entitled to orders prior to the determination of
523 liability that make him whole. RCW 9A.82.100(2)(3).

524 2. The Court has authority to call witnesses and take testimony.

525 3. The Court has authority to order the production of recorded documents as it

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526 deems appropriate.

527 4. The court has the authority to examine the records of this case in depth as it
528 deems appropriate including the initial complaint. The appellant considers his
529 complaint to be a thorough charging document covering nearly all infractions,
530 violations, omissions, etc. relevant to applicability of RCW 9A.82.100.

531 This is not a "who done it." Exhibit A is substantial documentary evidence
532 that stands alone as indication of fowl play. Exhibit A is corroborated by a witness
533 giving first hand testimony to the Court written as "information" provided by an
534 "informant" in the form of the complaint. The respondents are wrong stating that
535 the complaint is not evidence. The witness's first hand knowledge identifies the
536 offense, the offender, the victim, and the resulting aggrieved damages. The
537 witness's attempt to put the offender's conduct into legal terms is offered to the
538 Court for clarity of the legal terms that invoke the Court's authority. The Court is
539 strongly invited by RCW 9A.82.100 to exercise its full capacity of equity in
540 interpretation of law and orders, exhaustive analysis of the questionable conduct,
541 and make provisions for the innocent persons affected, aggrieved, and bringing the
542 actionable conduct to the attention of the Court.

543 The Remedies and Procedures under RCW 9A.82.100 are 'not limited to' the
544 suggestions provided in the law. The law makes it very clear by declaring twice,
545 once rior to the determination of liability RCW 9A.82.100(3) and once following
546 the determination of liability RCW 9A.82.100(4). The appellant interprets the
547 legislatures declaration to intend 'unlimited' orders. The appellant interprets the
548 legislature's declaration of 'unlimited' orders to intend for the Court to order
549 whatever the Court might need to find liability while applying the laws identified
550 in the complaint and bringing the Court's own interpretation of law.

551 "The legislature finds compelling state interest in compensating the victims of
552 crime and in preventing criminals from profiting from their crimes." RCW
553 7.68.310 through RCW 7.68.340 are [intended] to advance both of these interests.

554 "The plain language of the [theft by color or aid of deception] statute does
555 [not] require an express misrepresentation. The statute focuses on the false
556 impression created rather then the falsity of any particular statement." State v.

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557 Wellington, 34 Wn. App. 607,610, 663 P.2d 496 (1983)

558 Interpreting "All proceeds [traceable] to or derived from an offense included
559 in the pattern of criminal profiteering activity" should be interpreted to mean there
560 will be a [trace] of the activity [requiring] an investigation to [produce] [evidence]
561 for examination of the activity [and] prior to the disposal of the case or finding of
562 facts and conclusions of law. RCW 9A.82.100(4)(iii)& (5)(c). The appellant
563 should also be entitled to introduce all relevant [theories of recovery] related to
564 the value of exhibit A once the appellant's signature was placed on it.

565 The appellant has pleaded exhibit A as representing an instrument of theft. It
566 has been designed for theft. It is attempted theft on its face. Exhibit A is a legal
567 document with a very high value. It is a legal document representing the value of
568 any and all of Mr. Burke's damage claims. The charges for theft against the
569 respondents includes the theft of exhibit A. Obtaining Mr. Burke's signature on
570 exhibit A immediately establishes the document as a monitory instrument. This is
571 consistent with State v. George where the Georges were convicted of theft of the
572 cashiers check for $5500.00. The charges in this case include theft of exhibit A in
573 the same way the Georges were convicted of theft of the cashiers check.

574 "In deception cases, the statute looks only to the value of the property
575 obtained, not the net result of the exchange. See RCW 9A.56.020(1)(b). Here, the
576 property the Georges [attempted to obtain was a valid cashiers check for $5,500]."
577 State v. George 161 Wn. 2d 203, 164 P.2d 506 (2007) Lexis 562 In the present
578 case the respondents have been appropriately charged with theft of the exhibit A
579 instrument that determines its monitory value, as an instrument of value by the
580 appellant's signature deceptively affixed to it.

581 "We conclude that the higher the stakes of the transaction, the more severely
582 [our] legislature intends the deception to be punished. The statute criminalizes
583 deceptive practices compelling people to part with their property when they
584 otherwise would not. The magnitude of the crime is based, as with every other
585 theft, on the value of the property a victim loses. For purposes of a criminal
586 charge, there is no difference between a thief who, through [deception or fraud],
587 hands over something in exchange for the victim's property and a thief who

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588 surrenders nothing. The legislature could have defined value in the context of a
589 sale as the difference between what was obtained and what was given up, but it
590 has not. We affirm the Court of Appeals." State v. George In the present case the
591 instrument of value is the exhibit A document and any and all the value of the
592 property released by it being signed. This is similar to signing a check.
593 The appellant in this case should be entitled to a damages presentation
594 hearing as a separate matter upon the determination of liability. The appellant
595 should be entitled presently, [after] making provisions for the rights of all innocent
596 persons, (Mr. Burke) affected by the violation and after hearing or trial, as
597 appropriate, by issuing appropriate orders." RCW 9A.82.100(2). Orders to include
598 a pleading or hearing on damages.
599
600 Respectfully submitted,

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Supreme Court of Washington

Eugene Burke, Plaintiff, vs. Joseph Frickey. Andrew Day, Burlington Northern Sante Fe Railway Co. et al, Old Republic Ins. Co. Defendant	Case No. : 97028-9 Affidavit of Eugene Burke

I, Eugene Burke, declare under the penalty of perjury the following:

1) I make this statement based on personal knowledge, and I am competent to testify to the matters stated herein.

2) I am a resident of the State of Washington, employed by self means as an owner operator of a one truck construction business, continually in compliance with state and federal regulations or subject to stiff penalty for non compliance.

3) On December 6, 2017 I was traveling westbound on Washington State Highway 14 at Skamania Landing Road. A very large BNSF Railway truck driven by Joseph Frickey, pulled onto the highway from my left directly in the path of me and my 1974 Kenworth Dump Truck causing a serious injury collision. My truck was totaled and I was seriously injured by a concussion, severe soft tissue strain to my left arm, shoulder, back, and neck. I suffered memory loss, blurred vision, sharp pains, head aches, dizziness, sleeplessness, nightmares, diminished senses of

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taste, hearing, and scent, excess business losses, lost consortium, and severe mental anguish. I also struggled over and over in my thoughts about the needless, senseless, negligent act of a commercial driver, Joseph Frickey with special training in the avoidance of the heavy damage always caused by commercial vehicle accidents, thus requiring a special commercial license.(CDL).

I called the BNSF phone number posted near the scene of the accident. 1-800-832-5452. I was looking for driver information, name, driver license number, and insurance provider, I didn't get at the scene because I had to get medical attention. I received a return call the next day with the introduction. "Hello! This is Andrew Day. I'm the person that will be helping you with your damage claim against BNSF." During communications without contact or office visits with Mr. Day, Mr. Day provided me with a claim form, a questionnaire, and requested pictures of my damaged vehicle, estimates, and proof of ownership. Mr. Day led me through the process of filing my claim against BNSF.

I was doing everything Mr. Day instructed me to do. He was explicitly familiar with the claims process. I thought Mr. Day was an insurance agent from an insurance company. The only contact I had with Mr. Day was how to fill out forms and follow the steps of the claims process. I got the impression Mr. Day was acting on knowledge of liability and whoever he worked for was taking responsibility. I trusted Mr. Day as he was very friendly and cordial and acting like he was helping me. I was compelled to trust Mr. Day because he was the only person I knew on the other end of the phone and he was processing me through

my claim. There was no one else. I was at Mr. Day's mercy and he was being kind to me. I got the impression he was representing my claim to BNSF.

I followed Mr. Day's instructions to the letter. He only instructed me what to do what was necessary to fulfill the claim requirements like any other vehicle accident. Information only went one direction; from me to Mr. Day. Mr. Day didn't volunteer any other information, especially anything that would help me understand what was going on. I trusted Mr. Day like a friend and relied on him because he was doing the things I was familiar with involving accidents and insurance claims that lead to recovery.

I expressed to Mr. Day the situation the accident placed me in. My truck was out of commission. My truck was my business. I suffered injuries from the accident. I was in the initial stages of a lucrative business arrangement with Mark Wueben. Mr. Wueben unearthed boulders regularly in the excavation phase of his developments. The arrangement was made for my truck to be loaded by Mr. Wueben's loader from a very large pile of boulders every time I returned with an empty truck. Mr. Wueben just needed the boulders to be taken away. It was literally a deal of a lifetime as I have inquired of many development companies over my lifetime asking what would happen to the boulders they unearth. The arrangement with Mr. Wueben was the first time in my long lifetime that the boulders were not already spoken for and I could have all of them exclusively. I was in that process when the BNSF truck totaled my dump truck putting me out of commission and out of business. I was selling these boulders

right off my truck for $625.00 per load and stockpiling the rest. I was hauling three loads a day for Mr. Wueben.

My totaled truck put me out of business. My reputation for reliability was lost and out of my control. Mr. Wueben was sympathetic that I lost my truck, but he had to move the boulders off the development property. By the time I got another truck my lucrative connection with Mr. Wueben was lost.

I was frantically running around trying to find medical attention for the pains in my left arm, shoulder, neck, and head from December 6th on while complying with Mr. Day's instructions. The physician at Peace Health emergency room instructed me to follow up my examination with my Primary Care Physician. My medical coverage had changed which made it difficult to return to my previous Primary Care Physician. I was also communicating with Medicare, Medicaid, Apple Health, Molina Health, and several medical providers in a frantic effort to find medical attention for the pain that was making it impossible for me to sleep.

I was patiently waiting for the written estimate from Jeff Birch because I had two more estimates to get and Mr. Birch had given me a very reasonable explanation why it would take a little longer to write an estimate for my vehicle. I had not even located a source for the second and third estimates. I was concerned about completing the estimates requested by Mr. Day, but they were not my priority. Mr. Birch told me it would take him awhile to complete an estimate due to the fact I owned a classic truck and that was the end of it for me. Repair parts were not 'on the shelf' for my truck. It would take a special

effort by Jeff Birch to complete a written estimate. I was waiting until he could get to it or find unusual classic parts for prices necessary to complete an estimate.

Because I was still considering where to get the other estimates and the reasonable time it would take Mr. Birch to complete an estimate and because I needed medical attention I was in no hurry to settle with BNSF for the damages to my truck.

BNSF and Andrew Day would have you believe I was in such a hurry to settle for my truck I gave them a gift of $24,000 dollars of extra losses. They are lying to you. I didn't call for the meeting with Jeff Birch as BNSF and Andrew Day would have you believe. In all my 51 years of experience driving I never heard of anyone accepting a verbal estimate. That was Mr. Day's suggestion. He's the only one that could make that decision, agree to it, or think it up. If I suggested going in person to get a verbal estimate instead of waiting for the written one I would expect to be told a verbal estimate could be taken over the phone. Why would I drive 60 miles from Carson to Ridgefield to get a verbal estimate I could get over the phone?

I relied completely on Mr. Day. He was the only human being between me and getting my business, person, and property back. I didn't meet him. We only communicated indirectly. It was completely in character as being helpful but bending over backwards to be helpful when Mr. Day said he was willing to meet Jeff Birch in person and take his estimate verbally. I thought Mr. Day was going out of his way to help me. He said he needed me to be there to introduce him to Jeff Birch. Mr. Day had superior knowledge of the claims process as it is required by

BNSF according to him. Mr. Day had the only knowledge of the claims process and I relied on him for everything, my return to conducting business, my return to my income, my return to health, and my return to owning a 'road worth' commercial vehicle.

I did not have any need whatsoever to guard against deceit during the estimate gathering process for damages to my truck. There was no need of legal counsel to obtain an estimate. All that only changed when the release agreement was introduced. The release agreement was introduced at the same time as the settlement check was offered. (In evidence as dates on both). It did not 'dawn' on me that my attendance at the meeting was not necessary to introduce Mr. Day to Mr. Birch nor to obtain the verbal estimate nor to receive the settlement check. It did not dawn on me that I drove 60 miles for nothing.

I am in the position of bankruptcy now and living with no financial support unless BNSF pays for their liabilities toward my medical bills, injuries, business losses, and additional torts.

Mr. Day's declaration is preposterous as is his settlement practices. He used the same deviations and deception tactics to cheat me out of what he called Property Damage during my discovery of personal injury damage claims in the same document he defined Property Damage with to mix it all up. It was confusing, threatening, and surprising. I was unprepared, misled, given false impressions, uninformed, out of my element, nervous, and I didn't know what Property Damage meant except what Mr. Day told me but I thought it was just my totaled truck.

I found NW Injury & Rehab on December 27, 2017. They took me in on the same day and started giving me relief for the pain from my injuries.

I have not been able to return to work. I cannot sleep without medication. I cannot operate a commercial vehicle on Washington Highways while sleepless or on medication. From the brain injury I have suffered from lost equilibrium, diminished sight, scent, taste, and hearing. I have nightmares about the horrific accident because I almost killed three people in a little car. I have been diagnosed with PTSD and TBI. I have been receiving physical therapy for two years. I have had speech therapy and I have had occupational therapy. I have piles of medical records to verify injuries. I was in good health without injuries before December 6, 2017.

I called the owner of the truck, BNSF to get information on where to file my claim. I didn't call BNSF to file a claim against them. My inquiry was to the owner of the truck for insurance claim information. I left the scene of the accident to get medical attention without getting driver information. Mr. Day called me back and introduced himself as "the person that will be helping you with your claim against BNSF." I had no idea BNSF self insures. I had no idea Mr. Day was not an adjuster for an insurance company. There was no visit to an office where I could see the name on the posted business license or any evidence there is no BNSF insurance branch. The repeated use of the term 'claims department' does not help me to know who is leading the claims process. If BNSF has a claims department it

must be an insurance department or an insurance company branch of BNSF.

If I would have known BNSF was self insuring everything would have been different for me. I would have insisted on dealing with the regulated and licensed insurance company. I would not have been cheated. It has been my experience that someone self insuring knows you have the option to go to their insurance company or not to go to their insurance company. If you let them self insure you are doing them a favor by saving them the increase in premiums for reporting the accident to the insurance company and driving records for accidents for BNSF and their drivers. If you let them self insure you are saving them money as well as time reporting the incident, their humiliation, counts on their driver's license, and other things. It has been my experience that anyone self insuring is motivated to make sure you are satisfied by making sure you are paid in full for all damages and injuries. Had Mr. Day disclosed BNSF was self insuring I would have taken a much more financially beneficial bargaining position.

Had Mr. Day disclosed the terms and conditions of the [property] [release] agreement there would be no controversy over it now and no [property] [released] by it or the value thereof, by the color or aid of deception.

I had satisfied Mr. Day's request for estimates by informing him of the one estimate underway by Jeff Birch. I was finished with estimates for awhile after that. It was only two days after the accident. Estimates for vehicles with the parts on the shelf take longer then that. Mr. Day suggested the meeting of December

11, 2017 on December 8, 2017. Mr. Day said he was ready and able to attend on December 8, 2017. I was of no mind to rush the estimates. Mr. Day lied to you about who suggested the meeting in order to shade his intentions with the [property] [release] he anticipated getting signed by me to release the personal injury claims in a hurry.

Mr. Day's excuse for leaving the language related to personal injury claims in the [property] [release] legal form is a complete fabrication also. He handed that release to be and just stood there waiting to see if I would read it. When I said I would read it he shuttered a little bit, almost unnoticeable.

After my sickening experience with Mr. Day I contacted Old Republic Ins. Co. I presented the agent with policy number MWTB310659 to file my claim against it. The agents of Old Republic told me BNSF hires their own claims adjusters. They indicated the fact that BNSF hires its own claims adjusters somehow prevents them from processing my claim. Thereby they denied my claim according to conditions with BNSF. That is evidence that BNSF controls Old Republic ins. Co. and policy #MWTB310659 illegally.

Property Damage was the only concern for the meeting I attended with Mr. Day on December 11, 2017. No related expenses were ever discussed by me and Andrew Day prior to Mr. Day's surprising activity surrounding the [property] [release] agreement as respondent's counsel would have you believe. The only 'related expenses' were related as separate losses.

The respondents would have you believe there was a 'lump sum' kind of damage being considered by Mr. Burke. This idea, again

is a broad stretch of the fact of one estimate for Mr. Burke's damaged truck. The concern was never for Property Damage "and related expenses" as the respondent argue. Through the normal course of business for communicating your damages is to relate what your losses are. "Related expenses" are never included in an estimate for damages of a vehicle. The respondents are [coloring] Mr. Burke's presentation of his damages to them as though the full presentation for all damages mentioned by Mr. Burke were for Property Damage to Mr. Burke's truck. That argument is beyond reality or any historical business practice of settling for a damaged vehicle.

The respondents also claim Mr. Burke contacted the BNSF claims department following the December 6, 2017 accident. That is a fabrication.

MY MEDICAL CONDITION

Following multiple examinations and visits to [referred] physicians I have been diagnosed with TBI, PTSD,and severe soft tissue strain. I have been referred to specialists for hearing, speech, vision, and equilibrium examinations that show physical problems with each. I have lost memory, diminished taste, blurred vision, tinnitus, diminished scent, lost equilibrium (balance issues), head aches, poor sleep patterns, nightmares, nausea, increased sensitivity to bright lights and loud noises. Following the initial ER diagnosis on December 6, 2017, I have been undergoing physical therapy for the severe soft tissue strains to my neck, back, left shoulder, and left arm for two years. I have bills that range from $3500.00 to $10,000 for physical therapy for shoulder, head, neck, and back pain. I have

been undergoing physical therapy for my head injury for two years also. I am taking medication for sleeplessness, headaches, balance issues, memory loss, and depression. I am tired during the day, often nodding off while driving my car. I cannot operate a commercial vehicle on state highways safely or legally in this condition. I have not worked in any capacity since the December 6,2017 accident.

My credit has been ruined. Several medical bills have gone to collection. I receive multiple calls from billing offices for payment inquiries. I have no way to pay all the bills. I am on Medicare. I instructed the medical providers this is an MVA claim, but many have billed my Medicare. Medicare must be reimbursed. My medical bills stemming from the BNSF accident are nearing sixty thousand dollars.

I sent Old Republic two demand letters for my medical bills payment. They were ignored.

It is difficult for me to deal with the BNSF Claims Department because I felt cheated by them.

I felt severely threatened by discovering the out of place language in the settlement release. I gave up what has been categorized as Property Damage and 'related expenses' under duress and confusion. I returned the $22,500 dollars by check within 90 days of receiving it because I felt cheated.

Dated this _____ day of _____, 2018

Eugene Burke Pro Se
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APPENDIX

Appellant's Response Brief

No. 97028-9

SUPREME COURT OF THE STATE WASHINGTON

Eugene Burke, Petitioner, vs. Joseph Frickey. Andrew Day, Burlington Northern Sante Fe Railway Co. et al, Old Republic Ins. Co. Respondent.	)	APPENDIX

STATUTE

1. RCW 9A.82.100
2. 9A.82.100 (1)(2)(3)
3. RCW 9A.56.010(5)
4. RCW 9A.56/010(4)
5. RCW 9A.04.010 (14)
6. RCW 81.04.110
7. RCW 81.04.380, 440, and 405
8. RCW 9A.56.010(10)
9. RCW 9A.56.010(21)(a),(b), (b iii)
10. RCW 9A.56.010(23)
11. RCW 9A.56.020(1)(b).
12. RCW 9A.56.030(1)(a)
14. RCW 9A.56.020(1)(c)

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15.RCW 2.48.180 (6)

16. RCW 9A.82.010(4)

17. RCW 2.48.180 (7)

18. RCW 2.48.180(3)(b)

19. RCW 9A.60.030

20. RCW 19.86.020

21. RCW 9A.82.100(4)

22. RCW 9A.82.100(4)(iii)& (5)(c)

CASE LAW / PRECEDENCE IN BRIEF

1. State v. Skorpen 57 Wn. App. 144 | 787 P.2d 54 | 1990 Wash. App. LEXIS 88

2. State v. George161 Wn.2d 203 | 164 P.3d 506 | 2007 Wash. LEXIS 562

3. Jones v. Allstate 146 Wn.2d 291, 45 P.3d 1068 (2002) Lexis 317

4. Batten v. Abrams 28 Wn. App.737, 739, 626 P2d 984 (1981)

5. Bowers v. Tranamerican Title Ins. Co. 100 Wn. 2d 581 675 P.2d 193 (1983)

6.Burien Motors, Inc. v. Balch, 9 Wn. App. 573, 513 P.2d 582 (1973).

7.Washington State Bar Ass'n. v. Great W. Union Fed. Sav. & Loan Ass'n 91 Wn 2d 48, 60, 586 P.2d 870, (1978)

8. Perkins v. CTX Mortgage Co., 137 Wn.2d 93, 104-06, 969 P.2d 93 (1999) Cited in Jones v. Allstate 146 Wn.2d 291, 45P.3d 1068.

9. Kammerer v. W. Gear Corp. 27 Wn. App. 512 | 618 P.2d 1330 | 1980 Wash. App. LEXIS 2358 | 211 U.S.P.Q. (BNA) 646

10. Liebergesell v. Evans 93 Wn.2d 881 | 613 P.2d 1170 | 1980 Wash. LEXIS 1333

11.State v. Wellington, 34 Wn. App. 607,610, 663 P.2d 496 (1983)

12. State v. George 161 Wn. 2d 203, 164 P.2d 506 (2007) Lexis 562

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ERROR IN BRIEF

1. Page 13 Line 376 ...is detailed in RCW 81.04.380,440,405.

Respectfully submitted,

Eugene Burke

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Cc: Lisa CD. Minner
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Received 9-27-19.

From: Gene Burke [mailto:geno3350@yahoo.com]
Sent: Thursday, September 26, 2019 6:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Lisa CD. Minner <lminner@cosgravelaw.com>
Subject: Re: Electronic Filing - Document Upload for Case 970289 - Service

Enclosed please find Appendix to Appellant's Response Brief

On Thursday, September 26, 2019, 12:32:57 PM PDT, OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV> wrote:

Received via email 9-26-19.

From: Gene Burke [mailto:geno3350@yahoo.com]
Sent: Thursday, September 26, 2019 11:45 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Re: Electronic Filing - Document Upload for Case 970289 - Service

Enclosed please find Appellant's Response Brief and Appellant's Affidavit on Appeal.

Exact copies have been sent electronically to respondents.

I have experienced difficulty with electronically filing in the past. Can you respond notifying me the documents have been filed properly?

Thank you, Eugene Burke

On Wednesday, August 28, 2019, 04:39:32 PM PDT, supreme@courts.wa.gov <supreme@courts.wa.gov> wrote:

Court: Supreme Court
Case Number: 97028-9
Case Title: Eugene Burke v. Joseph Frickey, et al.
From: Wendy Margolis
Organization: Cosgrave Vergeer Kester LLP

This is to inform you that the file(s) listed below were electronically filed for the above mentioned case by Wendy Margolis from Cosgrave Vergeer Kester LLP.

Below is a link to each of the document(s) which have been filed with the court. Note: document(s) will be available online for 6 months.

970289_Briefs_20190828163809SC308279_2204.pdf

Attached is a copy of the Transmittal Letter sent to the court.

The court will treat this email as proof of service on you.

If you have technical questions, please contact Customer Suppport via the eService Center and reference Filing Id 20190828163809SC308279.

Questions about the uploaded document(s) should be sent to the person who filed, and questions regarding court procedures should be directed to the court.

The file(s) and transmittal letter were also sent to:
geno3350@yahoo.com
pberg@cosgravelaw.com

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 26, 2019 12:33 PM
To: 'Gene Burke'
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