

NO. 277011

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

DELBERT WILLIAMS, APPELLANT

v.

LEONE & KEEBLE, INC., RESPONDENT

OBJECTION TO FACTUAL REPRESENTATIONS
IN RESPONDENT'S 2011 BRIEF

AND

SECOND OBJECTION TO FACTUAL REPRESENTATIONS
IN RESPONDENT'S 2011 BRIEF

By: Richard McKinney, WSBA No. 4895
201 W. North River Drive, Suite 520
Spokane, Washington 99201
509/327-2539; Fax: 509/327-2504

LAW OFFICES OF RICHARD McKINNEY

FILED

NOV 23 2011

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DIVISION III
STATE OF WASHINGTON
By _____

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v.

LEONE & KEEBLE, INC., RESPONDENT

**OBJECTION TO FACTUAL REPRESENTATIONS
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1. Pages 2, 30 of 2011 brief of L&K states that L&K did 30% to 40% of its work in Idaho. The CPs cited by L&K are CP 105 and 121. CP 105 is simply counsel's statement, unsupported by the appellate record, repeating in a trial court brief the 30-40% figure. CP 121 is not related to the 30-40% figure. However, CP 48 is an estimate from Paul Keeble, an owner of Leone & Keeble, that L&K did 25% of its work in Idaho.

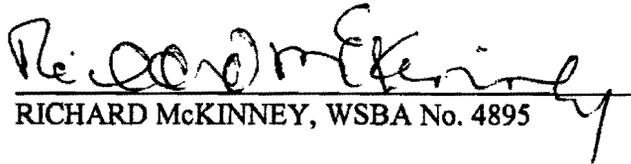
2. Page 4 of 2011 brief of L&K states that Paycheck Connection was required to file proof of workers compensation naming Pro-Set and L&K as additional insureds. L&K cites CP 206-212 to support this factual representation. Williams defies any reader to find support for this factual representation at CP 206-212.

3. Without citation to any CP, L&K states on p. 14 of its 2011 brief that it "pays Idaho worker compensation premiums for work site injuries on the project." This is belied by CP 188-89 which confirms that Paycheck Connection paid the workers compensation premiums for Williams.

4. Page 30 of 2011 L&K brief asserts [L&K's] "expectation that [Idaho] laws will govern all claims." Yet, the sworn testimony of James Hctor (L&K's safety inspector for the job at issue) states at CP 62-63 that the Washington WISHA standards

were applied on the Idaho job where Williams was injured. Paul Keeble (an owner of Leone & Keeble) states at CP 58-59 that safety issues relating to "fall protection" are handled the same by his company in both Washington and Idaho. Finally, Keeble stated at CP 51-53 that L&K's insurance company makes no inquiries relating to whether L&K's jobs are in one state or another state.

RESPECTFULLY SUBMITTED THIS 22nd day of November, 2011.


RICHARD MCKINNEY, WSBA No. 4895

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

DELBERT WILLIAMS,

Appellant,

v.

LEONE & KEEBLE, INC.,

Respondent.

COURT OF APPEALS NO. 277011

DECLARATION PURSUANT TO
GR17 RE: FAX

Mary Rua makes the following Declaration under penalty of perjury under the laws of the State of Washington.

I am over the age of eighteen years and competent to testify to the matters stated herein, which are based on personal knowledge.

My place of business is the Law Office of Richard McKinney, 201 W. North River Drive, Suite 520, Spokane, Washington 99201; 509/327-2539; fax: 509/327-2504.

I have examined the signature page of Objection to Factual Representations in Respondent's 2011 Brief which is page 3 of this document totaling 5 pages including this Declaration, and determine it to be complete and legible and have confirmed the accuracy thereof telephonically.

EXECUTED in Spokane, Washington this 23rd day of November, 2011.



Mary A. Rua

CERTIFICATE OF SERVICE

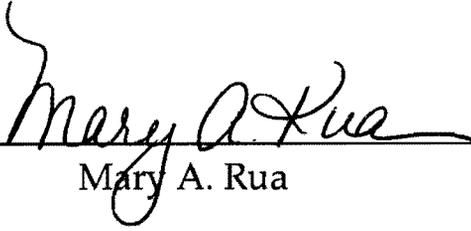
I hereby certify that on November 23rd 2011, the original and one (1) copy of the **Objection to Factual Representations in Respondent's 2011 Brief** were filed with the Court of Appeals of the State of Washington, Division III, at the following address:

COURT OF APPEALS, DIVISION III
Office of the Clerk
500 N. Cedar Street
Spokane, Washington 99201-1905

In addition, I served one (1) copy of the **Objection to Factual Representations in Respondent's 2011 Brief**, via 1st class postage paid U.S. mail, to the following:

Andrew C. Bohrsen
505 West Riverside, Suite 400
Spokane, Washington 99201

I certify under penalty of perjury, according to the laws of the State of Washington, that the foregoing is true and correct.



Mary A. Rua

FILED

NOV 30 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

NO. 277011

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

DELBERT WILLIAMS, APPELLANT

v.

LEONE & KEEBLE, INC., RESPONDENT

**SECOND OBJECTION TO FACTUAL REPRESENTATIONS
IN RESPONDENT'S 2011 BRIEF**

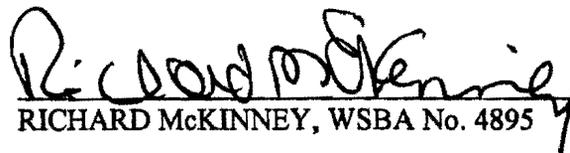
LAW OFFICES OF RICHARD McKINNEY

By: Richard McKinney, WSBA No. 4895
201 W. North River Drive, Suite 520
Spokane, Washington 99201
509/327-2539; Fax: 509/327-2504

1. Williams objects to the language on pp. 16-17 of 2011 brief of L&K which states that L&K expected that Idaho law would govern L&K's conduct relating to the issues in this case.

Paul Keeble, owner of L&K, states in his deposition that L&K uses an internal company safety manual which is equally applicable to jobs in both Washington and Idaho. CP 55-59. Keeble also states that L&K did not change its standards in Idaho because of potential statutory immunity granted to it in Idaho. CP 59. L&K's inspector, James Hocter, states that L&K applied WACs on Washington and Idaho jobs. CP 62-63. Hocter also states that the fall protection standards relating to the accident of Williams were essentially the same in both Washington and Idaho. CP 72-87.

RESPECTFULLY SUBMITTED this 30th day of November, 2011.


RICHARD MCKINNEY, WSBA No. 4895

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

DELBERT WILLIAMS,

Appellant,

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Respondent.

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DECLARATION PURSUANT TO
GR17 RE: FAX

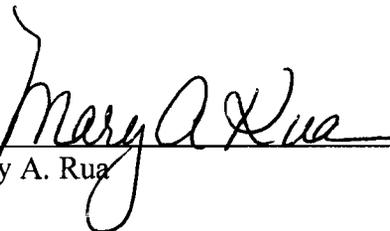
Mary Rua makes the following Declaration under penalty of perjury under the laws of the State of Washington.

I am over the age of eighteen years and competent to testify to the matters stated herein, which are based on personal knowledge.

My place of business is the Law Office of Richard McKinney, 201 W. North River Drive, Suite 520, Spokane, Washington 99201; 509/327-2539; fax: 509/327-2504.

I have examined the signature page of Objection to Factual Representations in Respondent's 2011 Brief which is page 2 of this document totaling 4 pages including this Declaration, and determine it to be complete and legible and have confirmed the accuracy thereof telephonically.

EXECUTED in Spokane, Washington this 30th day of November, 2011.



Mary A. Rua

CERTIFICATE OF SERVICE

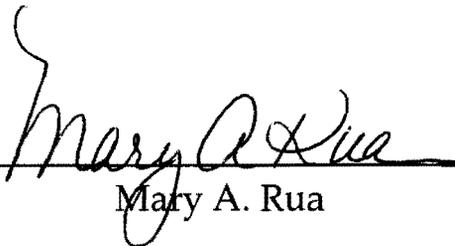
I hereby certify that on November 30th, 2011, the original and one (6) copies of the **Second Objection to Factual Representations in Respondent's 2011 Brief** were filed with the Court of Appeals of the State of Washington, Division III, at the following address:

COURT OF APPEALS, DIVISION III
Office of the Clerk
500 N. Cedar Street
Spokane, Washington 99201-1905

In addition, I served one (1) copy of the **Second Objection to Factual Representations in Respondent's 2011 Brief**, via 1st class postage paid U.S. mail, to the following:

Andrew C. Bohrsen
505 West Riverside, Suite 400
Spokane, Washington 99201

I certify under penalty of perjury, according to the laws of the State of Washington, that the foregoing is true and correct.



Mary A. Rua