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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 290158

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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JAYME R. CROW and  
WILLIAM D. BLAINE and MICHELLE A. BLAINE,

Appellants,

v.

BENTON COUNTY,

Respondent.

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Appeal from Superior Court of Benton County  
The Honorable Craig J. Matheson  
Benton County Superior Court  
Case No. 08-2-00666-0

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APPELLANT CROW'S REPLY BRIEF

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## I. INTRODUCTION

Defendant Benton County's Brief rests on two arguments, both of which lack merit and miss the mark. First, the County argues that it did not have notice of the hazardously icy condition on the Clodfelter Bridge on the morning of December 24<sup>th</sup>. The County makes this argument even though Ms. Crow introduced uncontroverted evidence showing that County employees had *actual* notice of the icy condition on the deck of the Clodfelter Bridge 15 hours before Ms. Crow's vehicle slid on the ice and collided with Mr. Blaine's parked pickup truck. Unable to rebut this evidence, the County disingenuously claims that the ice on the Clodfelter Bridge on the evening of December 23rd might not have been the same ice that caused multiple vehicles to spin out on that very same bridge deck on the morning of December 24<sup>th</sup>,<sup>1</sup> even though it had not sanded the bridge in between the two events.

Of course, viewing this evidence in a light most favorable to Ms. Crow as the nonmoving party,<sup>2</sup> this merely presents an issue of fact that must be determined by the jury, rather than by the court as happened

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<sup>1</sup> See Brief of Respondent at 3.

<sup>2</sup> See, e.g., *Safeco Ins. Co. of America v. Butler*, 118 Wn.2d 383, 394-395, 823 P.2d 499 (1992).

here.<sup>3</sup> Likewise, the question of whether or not the known icy condition of the bridge on the evening of December 23<sup>rd</sup> put the County on notice is also one of fact that was improperly decided by the trial judge.<sup>4</sup>

Second, Defendant County argues that this case is the same as *Laguna v. State*, 146 Wn. App. 260, 192 P.3d 374 (2008) and *LeRoy v. State*, 124 Wn. App. 65, 98 P.3d 819 (2004), and that under these cases it does not have a duty to predict or prevent the formation of ice on its roadways. As explained in more detail below, this argument is a red herring that grossly misrepresents the Plaintiff's claim in this case. Plaintiff Jayme Crow is not arguing such a duty. Plaintiff's claim has always been that the County had *actual* notice of the icy hazard on its bridge, but failed to remedy this *known* hazard in a reasonable time.

In fact, there was nothing for the County to predict in this case. The Tri-Cities was hit by 1 to 1½ inches of snow and ice on December 23<sup>rd</sup>. In response to this snow fall, Benton County road crews were out sanding and plowing its roadways that day. The County simply dropped the ball as to the roadway surface of the Clodfelter Bridge – sanding the approach roads, but not the known iciest threat: the bridge deck.

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<sup>3</sup> See *Holland v. City of Auburn*, 161 Wash. 594, 599, 297 P. 769 (1931) (question of whether the City of Auburn had notice of an icy obstruction on a sidewalk was one of fact for the jury).

<sup>4</sup> *Wright v. City of Kennewick*, 62 Wn.2d 163, 165, 381 P.2d 620 (1963) (it is not the court's function to weigh the evidence).

The County's reliance on the *Laguna* and *LeRoy* cases is completely misplaced. Neither *Laguna* nor *LeRoy* has anything to do with this case, either factually or legally. Lacking any application in this case, the County's argument concerning them is wholly without merit, and should simply be ignored by this Court.

In deciding a summary judgment motion, the trial court is required to view all evidence in a light most favorable to the nonmoving party. Based on the Plaintiff's evidence in this case, at a minimum genuine issues of fact exist as to whether or not the County had actual notice of the hazard on the deck of the Clodfelter Bridge, and as to whether or not the County had adequate time to respond to this known hazard. The existence of these factual issues clearly should have precluded the trial court from granting the County's summary judgment motion as a matter of law under CR 56(c). Because the trial court invaded the province of the jury in deciding these factual issues, and upon this basis erroneously and improperly granted Defendant County's motion, it committed reversible error, and this case should be remanded for the requisite jury trial.

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## II. REBUTTAL STATEMENT OF FACTS

- A. Defendant Benton County had actual notice of the icy and slick conditions on the Clodfelter Bridge, and had a full 15-hour opportunity to sand the bridge deck, but failed to do anything to remedy this hazard.**

Defendant County claims that it did not have adequate notice of the icy conditions on the Clodfelter Bridge or a reasonable amount of time to remedy the icy condition that caused the Crow-Blaine collision. *See, e.g.,* Brief of Respondent at 27-35. But the uncontroverted facts in this case belie the County's claim. The facts show that Defendant County had actual notice of the icy conditions present on the Clodfelter Bridge 15 hours before the Crow-Blaine collision. The County obviously had ample time to respond to and remedy the known hazard existing on the Clodfelter Bridge well in advance of the Crow-Blaine collision.

The uncontroverted facts establish that on Saturday, December 23, 2006, from 4:00 a.m. to 7:00 a.m., 1 to 1½ inches of snow fell in the Kennewick area. CP 492-493. In response to this snow fall, Benton County Road Department Supervisor Patrick McGuire directed Jack Pickard and three other employees to plow and sand the County roads. CP 473-474. Mr. Pickard plowed snow and sanded the County roads in Zone 7, which includes Clodfelter Road. CP 481-484. But Mr. Pickard did not sand the Clodfelter Bridge because his truck carried a salt-sand mixture,

and he had been instructed that salt was never to be applied to bridges. CP 485; 489-490. So, while Clodfelter Road was reasonably safe for the traveling public because the County had sanded it, the Clodfelter Bridge was quite unsafe for ordinary travel because Defendant County failed to address the icy hazard existing on the Bridge on December 23<sup>rd</sup> and December 24<sup>th</sup>.

Although County road crews had previously applied anti-icer on the Clodfelter Bridge on December 21<sup>st</sup>,<sup>5</sup> the snow that accumulated on the Bridge on December 23, 2006 melted upon contact with the anti-icer, thereby diluting it and rendering it ineffective in preventing ice from forming. CP 465-466. Freezing temperatures were recorded throughout the evening of December 23<sup>rd</sup>. CP 493.

On the evening of December 23<sup>rd</sup>, at approximately 7:57 p.m., Erwin Laureano was involved in a single car spin-out collision at the Clodfelter Bridge. CP 759. According to Mr. Laureano, he lost control of his Land Rover on the ice on the bridge and slid the length of the bridge, finally coming to rest after his vehicle broke through a guardrail. *Ibid.*<sup>6</sup>

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<sup>5</sup> CP 473-474.

<sup>6</sup> Defendant County argues that the trial judge did not abuse his discretion in denying Plaintiffs' motion for reconsideration. See Brief of Respondent at 40-42. Specifically, the County argues that the trial judge rejected the Plaintiffs' evidence of the Laureano collision. *Ibid.* As pointed out in Appellant Crow's Opening Brief, although he signed the County's Proposed Order Granting Defendant Benton County's Motion to Strike Plaintiff's Motion for Reconsideration, Judge Matheson made it clear at the December

The Deputy Sheriff who responded to Mr. Laureano's 911 call, Deputy Lane Blanchard, attributed this collision to "the icy road." CP 764.<sup>7</sup> Deputy Blanchard then reported this ice-caused incident to the County dispatcher. CP 764; CP 759.

The next morning, December 24<sup>th</sup>, Michael Bauer's 4-wheel drive Subaru entered onto the Clodfelter Bridge, encountered the black ice, and spun 180 degrees, striking the guardrail. CP 766 -767. After the Subaru slid off the roadway, Mr. Bauer's mother, Geri Bauer, called 911 and told the person on the line that the Clodfelter Bridge was icy, and that they needed to get a sand truck out there. *Ibid.*

Later, Michelle Blaine's Ford Windstar entered onto the Clodfelter Bridge, encountered the ice, violently fishtailed and then slid off the road. *Ibid.*

Thereafter, at approximately 11:21 a.m., Jayme Crow's Lexus entered onto the Clodfelter Bridge, encountered the ice, spun out, and collided with a pickup truck that had been parked by Michelle Blaine's husband just beyond the bridge. CP 510-511; 767; 810.

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18, 2009 hearing on the Plaintiff's Motion that he was reconsidering his October 23, 2009 Order Granting Third-Party Benton County's Motion for Summary Judgment and evidence of the Laureano collision. RP 12/8/2009 at 18.

<sup>7</sup> In his traffic collision report, Deputy Blanchard stated that "E. Laureano was heading eastbound on Clodfelter, about .5 miles from the Leslie rd. intersection. *E. Laureano's vehicle started to slide sideways due to the icy road in the area*, slid off the roadway hitting a guardrail with the passenger side of the vehicle." CP 764 (emphasis added).

Contrary to the claims made by Defendant Benton County in its brief, these uncontroverted facts establish that there was ice on the bridge 15 hours prior to the Crow-Blaine collision, and that the County *did* have notice of the icy condition of the Clodfelter Bridge, as well as a reasonable time to respond and correct this hazardous condition. The Benton County Sheriff's Department *knew* about this condition on December 23rd, the County 911 Dispatcher *knew* about it on the 23rd, and the next morning Geri Bauer *again* notified the County that the bridge was icy and told its agents that they needed to get a sanding truck out there immediately. Despite its actual knowledge of this hazard, the County failed to take any action until after Ms. Crow was seriously injured in the subject collision. Only then did it apply the sand that had been needed for 15 hours.

The uncontroverted evidence establishes that Defendant Benton County had actual notice of the hazardously icy condition of the Clodfelter Bridge deck. Because it had *actual* notice of the dangerous and unsafe icy conditions on the roadway surface of the Clodfelter Bridge 15 hours prior to Ms. Crow's encounter with the untreated ice, it is obvious that the County had more than a reasonable opportunity to respond to this dangerous condition. Although it responded to the snow and ice that it *knew* had formed on the roadway on both sides of the bridge on these dates by deploying sanding crews, Defendant County has been *forced to*

*admit* that it failed to treat its bridge decks, including the Clodfelter Bridge, for snow and ice. CP 485; CP 487-490. Based on its failure to treat the bridge deck of the Clodfelter Bridge, the uncontroverted evidence in this case is that Defendant County breached its duty to provide a reasonably safe roadway across this bridge for the traveling public on December 24, 2006.

**B. Contrary to Defendant County's allegations, Plaintiff is not claiming that the County had a duty to predict the formation of ice on the Clodfelter Bridge.**

Like a mantra, Defendant Benton County repeatedly asserts in its Brief that it "is not required to predict and prevent the formation of ice through the use of chemical anti-icers or other means." *See* Brief of Respondent at 18. This assertion blatantly misrepresents Plaintiff Jayme Crow's position in this case.

Ms. Crow is not claiming that Defendant County should have anticipated or predicted freezing conditions. Nowhere in any of her briefing or in her Complaint does Ms. Crow allege that the County is "required to predict and prevent the formation of ice through the use of chemical anti-icers or other means." *Ibid.* Ms. Crow's allegation has always been that the County had actual notice of the icy and hazardous condition on the Clodfelter Bridge, and that it had a reasonable period of

time within which to respond to this hazard and remedy it. Ms. Crow's allegations against the County are set forth in her Complaint as follows:

6.3.1 At the time of the subject incident, Benton County was responsible for the Clodfelter Road overpass that spans Interstate 82.

6.3.2 Benton County has a duty to exercise ordinary care in providing travelers with reasonably safe roads and bridges.

6.3.3 Benton County failed to provide a reasonably safe roadway for travelers using the Clodfelter Road overpass on the morning of December 24, 2006.

6.3.4 On December 23, 2006, in response to snow fall in the region, Defendant Benton County sanded the roads, including Clodfelter Road, but did not apply salt, sand or anti-icer to the Clodfelter Road overpass.

6.3.5 As a result, the Clodfelter Road overpass bridge deck was icy and untreated on December 23 and 24, 2006, and was unsafe for the traveling public on the morning of December 24, 2006.

6.3.6 As a direct and proximate result of Third-Party Defendant Benton County's negligent conduct as described above, the roadway surface was unsafe and presented a risk of loss of control and injury to travelers who traveled on the Clodfelter Road overpass on the morning of December 24, 2006, including Jayme Crow who, as a result, sustained severe and disabling injuries, as well as losses, for which Third-Party Defendant Benton County is liable.

CP 22-23.

Contrary to Defendant Benton County's creative effort to rewrite Ms. Crow's Complaint, this is not a case of trying to anticipate or predict

whether freezing conditions will occur; it is a case of simple negligence in deploying sanding crews for its roads while completely ignoring its bridge decks. It is not a matter of whether hazardous roadway conditions are likely to occur based on weather forecasts; the plain fact is that hazardous conditions were already known to exist and were being addressed by Benton County on its roadway surfaces on December 23, 2006. It simply failed to address the very same hazardous conditions on its bridge decks, including the Clodfelter Bridge.

Rather than address this issue in its brief, Defendant County tries to create a red herring for this Court by attempting to portray this case as somehow being the same as *Laguna v. State*, 146 Wn. App. 260, 192 P.3d 374 (2008) and *LeRoy v. State*, 124 Wn. App. 65, 98 P.3d 819 (2004). But, as discussed in more detail in Section III A below, both of those cases are readily distinguishable. At issue in both of those cases was whether or not the State had a duty to anticipate freezing weather conditions and then respond in order to prevent the formation of ice and snow on its roadways and bridges. Again, that is not the situation in this case. Ms. Crow is not alleging that Defendant County should have anticipated the formation of ice on Clodfelter Road and the Clodfelter Bridge because the evidence clearly establishes that *Defendant County not only had actual notice of snow, but that it also responded once the snow started falling.*

The bottom line is that the disingenuous effort by Defendant County to re-write Ms. Crow's claims and allegations is improper. It should be evident to the Court that this is a case of two ships passing in the night, with Defendant County completely ignoring and failing to respond to Ms. Crow's *actual* allegations of negligence.

**C. Counsel for Plaintiff Jayme Crow did not sign the stipulated Order of Dismissal.**

Defendant County's fourth issue pertaining to the assignment of errors states "Did the trial court err when it entered a Stipulated Order of Dismissal of all claims, with prejudice, when it was signed by counsel for both the Blaine's and Crows?" See Brief of Respondent at 7. As with its misrepresentations of Ms. Crow's claims against it, Defendant County also misrepresents to the Court that counsel for Ms. Crow signed off on the stipulated order when in fact this is simply not true. See CP 1151-1153. Ms. Crow's counsel did not sign the stipulated order. Nor did Ms. Crow's counsel have any part in getting the stipulated order entered. Needless to say, a stipulation is not binding on anyone who was not a party to the stipulation or who did not agree to the stipulation.

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### III. ARGUMENT IN REPLY

- A. **Whether or not the Laureano collision put Defendant County on notice of the icy hazardous condition on the Clodfelter Bridge is an issue of fact for the jury that the trial judge erred in deciding.**

Throughout its brief, Defendant County argues that it lacked notice of the icy hazard on the Clodfelter Bridge because conditions changed on the Clodfelter Bridge between 10 a.m. and 11 a.m. on the morning of December 24<sup>th</sup>. For example, the County states:

The ice present at the time of the Blaine/Crow accident was not the same condition that caused the Laureano accident. The ice present at the time of the Blaine/Crow accident didn't form until minutes before the accident itself.

Brief of Respondent at 3.

The County tries to bolster its argument by claiming that it did not have notice of the specific condition of melting ice on top of ice because motorists had driven across the Clodfelter Bridge prior to 11 a.m. without any reported problems or incidents. Brief of Respondent at 3.

The County's argument misses the mark. The hazardous condition on the Clodfelter Bridge was ice. The evidence shows that this condition existed for a 15-hour period leading up to the Crow collision. *See* CP 764. There had been no sanding during that 15-hour period; this was nothing more than an icy condition becoming icier. The ice existed here from the 23<sup>rd</sup> through Ms. Crow's encounter with the ice on the 24<sup>th</sup> because the

County failed to address the icy bridge after having been directly told that the bridge was icy. Degrees of iciness do not change the fact that this is an icy condition that can obviously get worse if the County fails to deal with it. Here, the uncontroverted evidence is that the icy condition of the bridge deck on December 24<sup>th</sup> was due to the failure of the Benton County Road Department to address snow and ice on the *bridge* on December 23<sup>rd</sup>, notwithstanding the County's *actual knowledge* of snow and freezing conditions on its *roads*.

In order to maintain an action for the failure to remove ice and snow, the law requires a person injured due to an icy roadway condition to show that the governmental entity had notice of the dangerous condition, and had a reasonable opportunity to correct it before the incident occurred. *Bird v. Walton*, 69 Wn. App. 366, 848 P.2d 1298 (1993); *Wright v. City of Kennewick*, 62 Wn.2d 163, 381 P.2d 620 (1963). As set forth in the Washington Pattern Jury Instructions, a governmental entity is deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents:

In order to find a county liable for an unsafe condition of a road that was not created by its employees, you must find that the county had notice of the condition and that it had a reasonable opportunity to correct the condition.

A county is deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents, or the condition existed for a sufficient length of time and under such circumstances that its employees or agents should have discovered the condition in the exercise of ordinary care.

WPI 140.02.

In this case, Ms. Crow established a *prima facie* case of Defendant County's negligence under the standards of *Bird* and *Wright*. The undisputed and uncontroverted evidence clearly shows that Defendant County had actual notice of the dangerous conditions existing on its roads and bridges prior to the subject collisions on December 24, 2006. The County's own records show that it earlier dispatched crews to sand its roads, including Clodfelter Road. This same evidence has also clearly established that Defendant County had the opportunity to correct the dangerous condition, again because its crews were in fact out sanding Clodfelter Road itself. In addition, as explained above, the uncontroverted evidence is that the Benton County Sheriff's Department *knew* about this condition on December 23rd, the County 911 Dispatcher *knew* about it on the 23rd, and the next morning Geri Bauer *again* notified the County that the bridge was icy and told its agents that they needed to get a sanding truck out there immediately.

Interestingly, Defendant County did belatedly apply sand to the Clodfelter Bridge deck *after* Ms. Crow was seriously injured, making clear the fact that it could and should have been sanded earlier, when all of the other road surfaces were being sanded.

Contrary to the picture that Defendant County is trying to portray in its brief, the hazardous condition on the Clodfelter Bridge was the same on both the evening of December 23<sup>rd</sup> and the morning of December 24<sup>th</sup> – *ice*. Under the standard advocated by the County in its brief, a plaintiff would never be able to prove that a governmental entity had notice of snow and ice on its roadways and bridges. The governmental entity would always be able to claim, as the County does here, that the snowy or icy conditions at a given place and time are not the same as the snowy or icy conditions that it had actual notice of because of changes in temperature, the passage of time or the mere fact that some motorists were able to traverse snowy or icy conditions despite the hazard.

Defendant County's negligence in this case does not lie in the failure to anticipate the formation of ice on the Clodfelter Bridge. Instead, its negligence rests in its failure to take any corrective action at all to address the known ice on its bridges, including the Clodfelter Bridge, when it was out sanding its roads, including, in fact, Clodfelter Road.

Appellate courts review summary judgment dismissals *de novo*, performing the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). In deciding a summary judgment motion, the court is required to view all evidence in a light most favorable to the nonmoving party -- in this case Plaintiff Jayme Crow. *See Safeco Ins. Co. of America v. Butler*, 118 Wn.2d 383, 394-395, 823 P.2d 499 (1992). Viewing this evidence in a light most favorable to the Plaintiff as the court must, reasonable minds could obviously differ as to whether the icy conditions on the Clodfelter Bridge were the same during the evening of December 23<sup>rd</sup> as on the morning of December 24<sup>th</sup> when the Crow-Blaine collision occurred, particularly given the absence of any sanding or other corrective action. *See Owen v. Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 790, 108 P.3d 1220 (2005) ((if reasonable minds may differ as to whether the roadway was reasonably safe for ordinary travel and whether appropriate corrective action has been taken, questions of material fact exist and summary judgment is inappropriate). Under these circumstances, the question of whether there was adequate notice to the County and an opportunity for it to correct the hazard is at best a jury question, and the trial judge clearly erred in granting the County's motion for summary judgment.

**B. This case is neither the *Laguna* case nor the *LeRoy* case.**

Ms. Crow contends that Defendant County breached its duty to provide reasonably safe roads and bridges for the traveling public when it sanded Clodfelter Road but failed to take any action on the Clodfelter Bridge. The County fails to address this issue either legally or factually. Instead, the County attempts to take this Court on a wild goose chase by falsely claiming that the Plaintiff's position in this case is that the County had a duty to predict the formation of ice.

Defendant County's motive for trying to reframe the Plaintiffs' issue in terms of predicting the formation of ice is transparent. The County wants to claim that it was taken by surprise with sudden snow and ice in the hope of invoking the shield of two anti-icing cases, *Laguna v. State*, 146 Wn. App. 260, 192 P.3d 374 (2008) and *LeRoy v. State*, 124 Wn. App. 65, 98 P.3d 819 (2004). But *Laguna* and *LeRoy* have nothing to do with this case and are factually and legally distinguishable.

In *Laguna*, a passenger in a vehicle was injured in a car accident that occurred in a dense fog on a road covered with ice. In order to recover for her injuries, the passenger sued the Washington state Department of Transportation (WSDOT), alleging that it was negligent because it failed to predict and prevent the formation of ice on the roadway through the use of

anti-icers. WSDOT moved for summary judgment, and the trial court denied the motion. It then appealed.

In reversing the trial court, the appellate court rejected the plaintiff's argument that the State had a duty to predict and prevent the formation of ice on the roadway.

Unlike *Laguna*, Plaintiff Crow is not alleging that the County should have predicted the formation of ice on the Clodfelter Bridge. Instead, Ms. Crow alleges that the County negligently failed to address the ice that had long before formed on the Clodfelter Bridge. The evidence is that ice began melting on top of its ice base. *Laguna* and the concept of anticipating fog are irrelevant.

Likewise, in *LeRoy*, the court rejected the plaintiff's argument that the State in that case had actual notice of the icy condition on the subject bridge due to weather forecasts and the WSDOT's knowledge that bridges are "among the first areas to develop ice." The court also rejected the plaintiff's claim that even if the State had lacked actual notice, it had a duty to "exercise ordinary care in the maintenance of its public roads to see to it that they are reasonably safe for ordinary travel," and that it had negligently failed to anticipate the formation of ice at the time and place of the accident. *LeRoy*, 124 Wn. App. at 67.

And unlike *LeRoy*, the evidence in this case shows that the County

did have actual notice of ice on the Clodfelter Bridge prior to the Crow-Blaine collision. Based on this evidence, a genuine issue of material fact exists for the jury as whether or not the County breached its duty to provide a reasonably safe bridge for the motoring public. *See Owen v. Burlington Northern and Santa Fe R.R. Co., supra.* This evidence should have precluded the entry of summary judgment as a matter of law under CR 56(c).

**C. The stipulated Order of Dismissal does not apply to Jayme Crow because neither she nor her counsel signed it.**

Defendant County claims that Plaintiff Jayme Crow is bound by the stipulation that dismissed this case with prejudice. As explained above, Defendant County asserts that the stipulation was signed by counsel for Ms. Crow. This is false. A perusal of the stipulation shows that it was not signed by either Ms. Crow or her counsel. Under Washington law, a stipulation is unenforceable if it is not in writing signed by party against whom enforcement is sought:

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A.

An attorney and counselor has authority:

(1) To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or entered \*738 upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney[.]

RCW 2.44.010 (1); see also *Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 179, 858 P.2d 1110 (1992) (“In light of the underlying purpose of CR 2A and RCW 2.44.010, we hold that the alleged settlement agreement is unenforceable because it was not stipulated to on the record in open court or memorialized by a writing signed by the party to be bound.”).

In any event, the stipulation does not prejudice the County in any way and the County can hardly complain about a stipulation that dismisses a lawsuit against it. The stipulation was merely employed by counsel as a procedural means to finalize this case so that the parties could proceed with this appeal.

#### IV. CONCLUSION

The primary issue in this case is whether or not Defendant County had notice of the hazardous, icy condition on the Clodfelter Bridge prior to the subject collision. Under Washington law, a governmental entity is

deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents. WPI 140.02. In the trial court, Plaintiff Jayme Crow presented evidence showing that Defendant County had actual notice of icy conditions on its Clodfelter Bridge 15 hours prior to her loss of traction on the icy bridge deck and the resulting collision with the Blaine vehicle.

Defendant County itself raises a factual issue to try to negate the Plaintiff's evidence by claiming that the icy condition on the bridge during the evening of December 23<sup>rd</sup> may have been different than the condition on the bridge on the morning of December 24<sup>th</sup>. This is obviously a question of fact for the jury that should never have been decided by a trial judge.

Defendant County also tries to negate this evidence by attempting to knock down a straw man that it set up in the first place. As explained above, this case has nothing to do with predicting the formation of ice. The issue is simply whether or not the County had notice of the icy hazard on the Clodfelter Bridge and whether it adequately addressed that hazard. These are issues of fact.

The trial court clearly should have denied Defendant County's summary judgment motion.

DATED: January 13, 2011.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on January 13, 2011, today's date, I mailed a true and correct copy of **Appellant Crow's Reply Brief**, properly addressed with proper postage, to:

### SERVICE LIST:

Court of Appeals, Division III  
Clerk of the Court  
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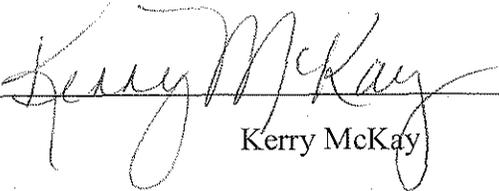
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