

**FILED**

DEC 07 2012

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

No. 310426

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

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ROBIN and CRAIG JOHNSON, wife and husband, and the marital  
community composed thereof,

Appellants,

v.

SPOKANE TO SANDPOINT, LLC, a Washington corporation,

Respondent.

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RESPONDENT'S BRIEF

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ROCKEY STRATTON, P.S.  
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Sandpoint, LLC

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Seattle, WA 98119-3994  
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**A. Issues in Response**

Did the trial court correctly dismiss plaintiffs Robin and Craig Johnson's claims against defendant Spokane to Sandpoint, LLC on summary judgment when it is undisputed that plaintiff Robin Johnson agreed to a valid and conspicuous preinjury waiver and release and also lacked evidence of gross negligence required to avoid the release?

**B. Statement of the Case**

**1. Procedural Background**

Robin and Craig Johnson sued defendants Spokane to Sandpoint, LLC, Madilyn Young, and her parents Darren Young and Tanya Young. CP 1-7. Plaintiffs dismissed their claims against Madilyn Young and her parents after the court granted Spokane to Sandpoint, LLC's summary judgment motion. CP 455-56.

Spokane to Sandpoint sought summary judgment by motion filed March 22, 2012, asserting (1) that the preinjury waiver and release agreed to by plaintiff Robin Johnson was conspicuous and not against public policy and (2) that plaintiff Robin Johnson lacked the evidence of gross negligence necessary to overcome the release. CP 76-95. On April 10, 2012, plaintiffs Robin and Craig Johnson filed a countermotion arguing that the release was inconspicuous and was against public policy and that

there was an issue of fact on the issue of gross negligence. CP 407-08, CP 423-35.

On April 20, 2012, Judge Sypolt granted Spokane to Sandpoint's motion and dismissed plaintiffs Robin and Craig Johnson's claims against it. CP 452-53. Robin and Craig Johnson then appealed. CP 457-62.

## **2. Fact Background**

### **a. Spokane to Sandpoint, LLC**

Spokane to Sandpoint, LLC was first established in 2008 by Ben Orth and his wife and brother. CP 104 (lines 7-23). The purpose of the organization was to bring a long-distance relay race to the Spokane area. CP 106 (lines 2-14). Orth has taught eighth grade science at Royal Middle School for the last 13 years. CP 102 (lines 21-25). He also coaches high school cross-country and middle school track and field. CP 103 (lines 1-6). He has participated in cross-country, adventure racing, marathons, and relay races. CP 106 (lines 2-14). Prior to organizing the Spokane to Sandpoint race, he had organized cross-country races. CP 106 (lines 15-23).

The first Spokane to Sandpoint running relay race occurred in August 2008. CP 105 (lines 17-19). Prior to the first race, Orth spent 16 months planning the details of the race. CP 107 (lines 15-20). He spoke to race directors for other racing series and attended racing expos.

CP 108 (line 1) to CP 110 (line 25). He contacted police and fire districts and also submitted the race route to the Washington State Department of Transportation. CP 111 (line 1) to CP 112 (line 4), CP 115 (lines 9-19), CP 116 (lines 15-24), CP 121 (lines 16-25). The Department of Transportation approved the route. CP 121 (lines 16-25). Orth drove, biked, and ran all sections of the proposed course. CP 130 (line 21) to CP 132 (line 3).

The Spokane to Sandpoint race involves teams of 12 persons running an 185-mile relay race that starts at Bear Creek Lodge atop Mount Spokane and finishes at City Beach Park in Sandpoint, Idaho. CP 146 (lines 5-12) & CP 171. It takes place over two days, with the team members running both day and night. CP 146 (lines 5-12) & CP 170, CP 190. Each member of the 12-person team completes three legs of the race. CP 146 (lines 5-12) and CP 188. The course is open, which means that it is not closed to public traffic. CP 123 (line 11) to CP 124 (line 1). A closed course is closed to public traffic. CP 123 (lines 11-22).

A race handbook was provided which explained all facets of the race, including the crossing of public highways and train tracks. CP 146 (lines 5-12) & CP 179-82, CP 197. Signs were also posted along the race route directing the runners, warning about crossing highways, and telling vehicle drivers that runners were running along the race route roads with

narrow shoulders. CP 113 (line 25) to CP 114 (line 25), CP 127 (lines 7-23). These types of races do not have signs on cross streets. CP 365-66 (¶ 3).

**b. Highway 2-Colbert Road Intersection Safe for Runners To Cross**

The fourth leg of the race crossed Highway 2 at its intersection with Colbert Road. CP 146 (lines 5-12), CP 197. At that location, Highway 2 is a divided highway that runs north and south. CP 352 (¶ 4). It has two lanes in each direction, separated by a median strip. The median strip is 32.8 feet wide. The two lanes of southbound Highway 2 are, taken together, 24.7 feet wide (“fog line” to “fog line”). Colbert Road is a two-lane country road running east-west that intersects Highway 2 at a 90-degree angle. Colbert Road has a shoulder along each of its sides. *Id.* A sign was posted on Colbert Road telling the runners “caution crossing highway.” CP 127 (lines 7-23).

Orth had driven, biked, and run the race route at this location on many occasions. CP 130 (line 21) to CP 132 (line 3). He determined that this was a good location to cross Highway 2 because a pedestrian can easily see traffic in both directions and there was also a large center median. CP 117 (lines 7-16), CP 120 (line 16) to CP 121 (line 15). (Indeed, there is a quarter mile of visibility looking north towards

southbound traffic from the median strip. CP 353 (§ 6.) Orth did not want to have the runners cross at a stop light more than one mile from this location because it would entail the runners running on the shoulder of Highway 2 for a long distance. CP 122 (lines 8-20).

The race had gone through the same location in 2008 and 2009. CP 131 (lines 7-12). There had been no incidents, and no one had complained that they considered the crossing to be dangerous. CP 125 (line 21) to CP 126 (line 23). In sum, Orth felt that the location was safe if the runners exercised normal caution. CP 128 (line 20) to CP 129 (line 4).

**c. Plaintiff Robin Johnson Arranges To Participate in the Spokane to Sandpoint Race and Agrees to Release**

Plaintiff Robin Johnson was 44 years old at the time of this accident. She had been an attorney since 1994. CP 136 (lines 21-22), CP 137 (lines 3-7). Prior to the Spokane to Sandpoint race, she had registered on-line for another race and had agreed to the required release. CP 140 (line 21) to CP 141 (line 2). As she testified in her deposition:

Q. Did you understand the point of those releases would be to release the entities for any personal injury that might occur to you during the activity?

A. Yes, I understand that from a legal perspective completely.

CP 138 (line 23) to CP 139 (line 2).

Plaintiff Robin Johnson believes that she learned about the Spokane to Sandpoint race on line or possibly from a periodical. CP 142 (line 22) to CP 143 (line 1). She had never before participated in a long relay race. CP 143 (lines 2-3). Plaintiff Robin Johnson told her friends about the race, and eventually a 12-member team was put together. CP 252 (lines 10-16).

Plaintiff Robin Johnson reviewed the Spokane to Sandpoint team handbook on line as well as in its printed form. CP 146 (lines 5-23) & CP 170-244. As a result, plaintiff Robin Johnson knew that the race was 185 miles, that it would pass through cities and towns, that the event did not close roads to traffic, that vehicles and cars would be on the roads, that the race would cross major highways, and that there would be running on roads at night. CP 144 (line 8) to CP 145 (line 22), CP 147 (line 25) to CP 148 (line 2). Plaintiff Robin Johnson also knew that that the speed limit on Highway 2 at the intersection with Colbert Road was 60 miles per hour. CP 159 (line 22) to CP 160 (line 8).

The handbook advised the runners to study their legs of the race. CP 148 (lines 8-18) & CP 176, CP 180, CP 183. The handbook went on

to specifically explain that plaintiff Robin Johnson's first leg involved crossing Highway 2 and stated: "Use extreme CAUTION. Safety first!" CP 149 (lines 1-11) & CP 197. However, plaintiff Robin Johnson did not bother to study the legs she would be running. CP 149 (lines 1-11).

Plaintiff Robin Johnson used her computer to register for the race on-line. CP 150 (lines 17-23). She has her computer set so that the print is typical or normal size. CP 151 (lines 4-12). As a result, she was required to scroll down to view a single page. CP 151 (lines 10-23).

Plaintiff Robin Johnson does not recall the details regarding the registration process. CP 152 (lines 6-9). She simply "did whatever the web page told [her] to do . . . ." *Id.* As she explained:

Q. So you don't recall the steps that you took to register. You just filled in the blanks and clicked as you went through; is that correct?

A. Yes. I just completed whatever was in front of me.

CP 152 (lines 10-13). Plaintiff Robin Johnson admits that she registered for the race on July 1, 2010 at 6:50 p.m. CP 153 (line 24) to CP 154 (line 11) & CP 246-48. She acknowledges providing all of the registration information. CP 154 (line 12) to CP 155 (line 22). She does not specifically recall reviewing the waiver or release, but states:

Q. Do you recall whether you clicked yes to the waiver language at all on the registration process?

- A. On the registration process I assume I must have clicked because all that information is there and I did it. Nobody else did it for me.

CP 156 (lines 4-8).

There is no issue that plaintiff Robin Johnson agreed to the waiver. The electronic registration process required plaintiff Robin Johnson to accept and agree to the waiver before being allowed to register for the race. *See* CP 343-45 (¶¶ 3-7); CP 118 (line 6) to CP 119 (line 1). By agreeing to the waiver and release, plaintiff Robin Johnson states:

#### WAIVERS

I understand that by registering I have accepted and agreed to the waiver and release agreement(s) presented to me during registration and that these documents include a release of liability and waiver of legal rights and deprive me of the right to sue certain parties. By agreeing electronically, I have acknowledged that I have both read and understood any waiver and release agreement(s) presented to me as part of the registration process and accept the inherent dangers and risks which may or may not be readily foreseeable, including without limitation personal injury, property damage or death that arise from participation in the event.

*I understand that running or walking in a road race is a potentially dangerous activity. I should not participate unless I am medically able and properly trained. I assume all risks associated with participating in Spokane to Sandpoint, including but not limited to illness, traveling to or from the event, falls, contact with other participants or spectators, the effects of weather, surface conditions of the road/trail, all such risk being known and appreciated by*

*me. Having read the waiver and knowing these facts and in consideration of acceptance of my entry, I, for myself and anyone entitled to act on my behalf, waive and release Spokane to Sandpoint coordinators, City of Spokane, City of Sandpoint and all locations in between, volunteers and any and all sponsors, suppliers, agent, independent contractors, employees and any other personnel in any way assisting or connected with this event from any and all claims or liability of any kind arising out of my participation in this event, even though that liability may arise out negligence or carelessness on the part of persons on this waiver. I hereby authorize Spokane to Sandpoint to use my image or likeness for race promotional purposes.*

**WARNING: READ CAREFULLY, THIS AGREEMENT INCLUDES A RELEASE OF LIABILITY AND WAIVER OF LEGAL RIGHTS AND DEPRIVES YOU OF THE RIGHT TO SUE USA TRIATHLON AND OTHER PARTIES. DO NOT SIGN THIS AGREEMENT UNLESS YOU HAVE READ IT IN ITS ENTIRETY. SEEK THE ADVICE OF LEGAL COUNSEL IF YOU ARE UNSURE OF ITS EFFECT.**

.....

*I hereby warrant that I have read this Agreement carefully, understand its terms and conditions, acknowledge that I will be giving up substantial legal rights by signing it (including the rights of the minor, my spouse, children, parents, guardians, heirs and next of kin, and any legal and personal representatives, executors, administrators, successors and assigns), acknowledge that I have signed this Agreement freely and voluntarily, without any inducement, assurance or guarantee, and intend for my signature to serve as confirmation of my complete and unconditional acceptance of the terms, conditions and provisions of this Agreement. This Agreement represents the complete understanding between the parties regarding these issues and no oral representations, statements or inducements have been made apart from this Agreement. If any provision of this*

*Agreement is held to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.*

....

CP 153 (line 24) to CP 154 (line 5) & CP 246-48, CP 365 (¶ 2) & CP 369-71. The Waiver and Release of Liability contains additional release language and at the end states:

*BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND WAIVER, YOU ARE AFFIRMING THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND WAIVER AND FULLY UNDERSTAND ITS TERMS. YOU UNDERSTAND THAT YOU ARE GIVING UP SUBSTANTIAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT YOU ARE SIGNING THE AGREEMENT AND WAIVER FREELY AND VOLUNTARILY, AND INTEND BY YOUR ACCEPTANCE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.*

CP 248, CP 371. Plaintiff Robin Johnson then entered her name. CP 344-45 (¶ 6). The document contained the titles “**Waivers**” and “**WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT.**” CP 153 (line 24) to CP 154 (line 5) & CP 246-48. The release is worded in plain and understandable English. Plaintiff Robin Johnson acknowledges that she never contacted anyone at Spokane to Sandpoint, LLC regarding the

registration process. CP 157 (line 22) to CP 158 (line 1), CP 158 (line 22) to CP 159 (line 2).

**d. The Incident**

The 2010 Spokane to Sandpoint race was scheduled for August 13 and 14. CP 146 (lines 5-12) & CP 170. Plaintiff Robin Johnson gathered with her other team members and went to the race start at Bear Creek Lodge on Mount Spokane. CP 161 (line 13) to CP 162 (line 23), CP 253 (line 25) to CP 254 (line 5). The race was a staggered start race and plaintiff Robin Johnson's teammate Nina Roecks was in the first group of 10-15 runners. CP 163 (lines 2-15), CP 164 (lines 17-19), CP 255 (lines 14-15). Plaintiff Robin Johnson and the other teammates in her van passed Roecks on the road and met her at the first exchange point. CP 164 (lines 9-11), CP 164 (line 25) to CP 165 (line 2). At that point, plaintiff Robin Johnson's teammate Shannon Oakley took over. CP 165 (lines 5-7). Another teammate, Diane Gingrich, took over at the second exchange point. CP 166 (lines 14-17).

Plaintiff Robin Johnson was the fourth runner and began her run at the Colbert Elementary School. CP 167 (lines 7-9). Plaintiff Robin Johnson had still not reviewed her route, so she did not realize that she would be crossing Highway 2. CP 149 (lines 22-25). The sun was out, the skies were clear, and visibility was good. CP 257 (lines 6-10).

Plaintiff Robin Johnson had her Ipod and put earbuds in her ears. CP 256 (lines 12-16).

Plaintiff Robin Johnson took off running. The Colbert Road intersection with Highway 2 was 1.8 miles into her route. CP 146 (lines 5-11) & CP 197. Plaintiff Robin Johnson's teammates in the van caught up with her and gave her water about one-half mile before the intersection with Highway 2. CP 258 (lines 12-18). The team van then proceeded to the intersection with Highway 2. CP 258 (lines 19-24). The driver of the van waited for three or four cars on Highway 2 and then drove completely across the two northbound lanes, median, and two southbound lanes to the other side. CP 264 (line 25) to CP 265 (line 13). At the other side, the team van pulled to the shoulder and teammates got out to give Plaintiff Robin Johnson water and to watch her cross the highway. CP 266 (lines 6-16). By this time, the runners participating in the event were very spread out. Plaintiff Robin Johnson's teammates do not recall seeing any other runners on the road or crossing the intersection with Highway 2. CP 259 (lines 12-16), CP 272 (lines 19-25), CP 282 (lines 17-22), CP 287 (lines 16-17), CP 288 (lines 1-4), CP 301 (lines 18-21). During this time, plaintiff Robin Johnson's teammates Dana Peltram and Nina Roecks were walking to the intersection to greet plaintiff Robin Johnson once she got across. CP 273 (lines 8-15), CP 289 (line 14) to

CP 290 (line 1). The teammates do not recall any other cars passing through the intersection during this time. CP 267 (lines 5-6), CP 274 (lines 5-8), CP 291 (lines 3-4).

Codefendant Madilyn Young was driving southbound in the slow outside lane on Highway 2 approaching the Colbert Road intersection. CP 320 (lines 1-8). She does not recall seeing any other cars on the highway. CP 319 (lines 6-8). Her speed was about 63 miles per hour. CP 320 (lines 18-21). According to her statement to the police, she saw plaintiff Robin Johnson crossing the northbound lanes of Highway 2. CP 318 (lines 16-20) & CP 321 (lines 7-15). Young maintains that plaintiff Robin Johnson continued to run through the median and entered the southbound lanes without looking for any cars. CP 322 (lines 4-17) & CP 326-41. (Plaintiff Robin Johnson's van driver Kristy Ervin alleges that plaintiff Robin Johnson appeared to be looking for cars before crossing, and for the purpose of the summary judgment motion, this was accepted as true.) When Young saw that plaintiff had entered the left or fast lane of the southbound lanes, Young immediately put on her brakes. CP 323 (lines 4-11) & CP 326-41. She has testified that she engaged her brakes as hard as she could safely do so without swerving and rolling her car. CP 323 (lines 16-18).

Plaintiff Robin Johnson's teammates were yelling words of encouragement, such as "Good job, Robin," as plaintiff Robin Johnson entered the fast southbound lane. CP 293 (line 9) to CP 294 (line 1), CP 274 (lines 11-14). Plaintiff Robin Johnson locked eyes with teammate Dana Peltram as she crossed the southbound lanes. CP 291 (line 20) to CP 292 (line 4). Plaintiff Robin Johnson crossed the road at an easy jog and did not give any indication that she saw the approaching car until she was halfway across the slow or right-hand southbound lane. CP 294 (lines 9-19), CP 295 (line 20) to CP 296 (line 22), CP 275 (lines 5-10), CP 276 (line 24) to CP 277 (line 14).

Photos taken by the Washington State Patrol document that the car driven by Madilyn Young hit plaintiff Robin Johnson very near the right shoulder of the southbound lanes. CP 302 (lines 5-14) & CP 308, CP 302 (line 19) to CP 303 (line 8) & CP 310, CP 303 (lines 12-20) & CP 312, CP 303 (line 24) to CP 304 (line 13) & CP 314, CP 305 (lines 14-19).

e. **Plaintiff Robin Johnson Would Have Seen the Car if She Had Looked**

Spokane to Sandpoint, LLC engaged expert witness Charles Lewis to investigate the accident scene. Lewis has extensive credentials in accident reconstruction. CP 351-52 (¶ 2). Lewis has determined that if

plaintiff Robin Johnson had looked to her right, she would have been able to see a vehicle coming toward her in the southbound lanes up to 1,320 feet or 440 yards away. CP 353 (¶ 6). A vehicle traveling at 63 miles per hour would have covered this distance in 14.3 seconds. CP 353 (¶ 7). At plaintiff Robin Johnson's normal running speed, she would have crossed the two southbound lanes of Highway 2 in 2.6 seconds. CP 353-54 (¶¶ 8 & 9). Based on the assumption that codefendant Young's car was traveling at 63 miles per hour, her car would have only been 240 feet away from plaintiff Robin Johnson when Ms. Johnson stepped from the median into the southbound lanes of the highway. CP 354 (¶ 10). If codefendant Young braked, as she testified she did, the car would have been even closer. *Id.* Lewis has determined that Ms. Young's car was well within plaintiff Robin Johnson's ability to see it when she stepped into the southbound lanes wearing ear buds and encouraged by her teammates.

### **C. Argument**

#### **1. The Release Is Valid and Enforceable**

Washington courts accept the general rule that a voluntarily executed release is valid and should be enforced. *See, e.g., Shorter v. Drury*, 103 Wn.2d 645, 652, 695 P.2d 116 (1985). This rule has been consistently applied by the Washington courts to adult hazardous sports.

*Wagenblast v. Odessa School Dist. No. 105-157-166J*, 110 Wn.2d 845, 849, 758 P.2d 968 (1988) (citing cases).

In the published cases involving releases for adult hazardous sports, the Washington courts have upheld the release and dismissed the claim. These cases involve:

- Basketball, *Stokes v. Bally's Pacwest Inc.*, 113 Wn. App. 442, 450, 54 P.3d 161 (2002);
- Skiing, *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wn. App. 334, 389, 35 P.3d 383 (2001); *also see Lunt v. Mount Spokane Skiing Corp.*, 62 Wn. App. 353, 362-63, 814 P.2d 1189, *rev. denied*, 118 Wn.2d 1007, 822 P.2d 288 (1991);
- Weight lifting, *Shields v. Sta-Fit, Inc.*, 79 Wn. App. 584, 591, 903 P.2d 525 (1995), *rev. denied*, 129 Wn.2d 1002, 914 P.2d 66 (1996);
- Scuba diving, *Boyce v. West*, 71 Wn. App. 657, 662-63, 862 P.2d 592 (1993); *also see Hewitt v. Miller*, 11 Wn. App. 72, 80, 521 P.2d 244, *rev. denied*, 84 Wn.2d 1007 (1974);
- Auto demolition races, *Conrad v. Four Star Promotions, Inc.*, 45 Wn. App. 847, 848, 728 P.2d 617 (1986);
- Mountain climbing, *Blide v. Rainier Mountaineering, Inc.*, 30 Wn. App. 571, 574, 636 P.2d 492 (1981);

- Ski jumping, *Garretson v. U.S.*, 456 F.2d 1017, 1021 (C.A.9 1972); and
- Tobogganing, *Broderson v. Rainier Nat. Park Co.*, 187 Wash. 399, 406, 60 P.2d 234 (1936), *overruled to extent release is inconspicuous by Baker v. City of Seattle*, 79 Wn.2d 198, 484 P.2d 405 (1971).

## 2. The Release Was Conspicuous

The release executed by plaintiff Robin Johnson was conspicuous, so much so that it is impossible for plaintiff Robin Johnson to credibly argue that she unwittingly agreed to the release. Also, as a matter of law, plaintiff Robin Johnson cannot argue that she was unable to read and understand the document she signed. Specifically, the Washington Supreme Court has held:

It is a general rule that a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents. . . . Appellant had ample opportunity to examine the contract in as great a detail as he cared, and he failed to do so for his own personal reasons. Under these circumstances, he cannot be heard to deny that he executed the contract, and he is bound by it.

*Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37 (1987), quoting *National Bank of Washington v. Equity Investors*, 81 Wn.2d 886, 912-13, 506 P.2d 20 (1973).

Similarly, the Washington Court of Appeals has held that “[c]ontracts against liability for negligence are valid unless releasing language is **so inconspicuous** reasonable persons could reach different conclusions as to whether the document was unwittingly signed.” *Conradt*, 45 Wn. App. at 849 (emphasis added), quoting *Baker*, 79 Wn.2d at 200. Over the plaintiff’s protests, the *Conradt* court found that the release was knowingly signed. 45 Wn. App. at 850.

Here, the release executed by plaintiff was exceedingly conspicuous. The document stated that it was a “**WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT.**” The document also provided above the signature line, in capital letters:

*BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND WAIVER, YOU ARE AFFIRMING THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND WAIVER AND FULLY UNDERSTAND ITS TERMS. YOU UNDERSTAND THAT YOU ARE GIVING UP SUBSTANTIAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT YOU ARE SIGNING THE AGREEMENT AND WAIVER FREELY AND VOLUNTARILY, AND INTEND BY YOUR ACCEPTANCE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.*

CP 153 (line 24) to CP 154 (line 11) & CP 246-48. The waiver and release also disclosed that the release applied even if “negligence” caused

injury to plaintiff Robin Johnson. This surpasses the requirements of the law. Unlike more ordinary situations, Washington courts have held that a release for adult hazardous activities does not have to disclose that it also covers negligence. See *Blide*, 30 Wn. App. at 574; *Hewitt*, 11 Wn. App. at 79; compare *Shorter*, 103 Wn.2d at 650-51 (physician's negligence not released where the releasing document did not refer to negligence). The fact that the waiver specifically says that it applies to negligence underscores the conspicuousness of the release.

Although plaintiff Robin Johnson does not have a clear recollection of the registration process, she acknowledges that she “completed whatever was in front of [her].” CP 152 (lines 10-13). It is undisputed that she could not have completed the registration process without agreeing to the waiver and release. CP 118 (line 6) to CP 119 (line 1), CP 343-345 (¶¶ 3-7). Reasonable minds cannot differ: the document agreed to by plaintiff Robin Johnson was obviously a release and could not have been seen otherwise.<sup>1</sup> This release was certainly as clear and conspicuous as those at issue in *Blide* and *Hewitt*, and the releases in both of those cases were upheld without hesitation by the

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<sup>1</sup> Plaintiffs Johnson's reliance on *Johnson v. Rapid City Softball Ass'n*, 514 N.W.2d 693 (S.D., 1994), was misplaced. In contrast to the present situation, the release in that case was contained in a roster and was below the signature line. *Id.* at 698. Moreover, the plaintiff was told that the document was a roster, not a release. *Id.*

respective courts. *See Blide*, 30 Wn. App. at 573-74; *Hewitt*, 11 Wn. App. at 78-79.

### 3. The Release Language Is Not Ambiguous

The electronic release is a single document that incorporates the titles “Waivers” and “Waiver and Release of Liability, Assumption of Risk and Indemnity Agreement.” CP 365 (¶ 2) & CP 369-71. It specifically provided that plaintiff Robin Johnson was releasing all claims for **negligence**, stating:

*I, for myself and anyone entitled to act on my behalf, waive and release Spokane to Sandpoint . . . from any and all claims or liability . . . even though that liability may arise out **negligence** . . . .*

CP 369 (first ¶ 4) (emphasis added). The release language regarding negligence is repeated elsewhere in the release. CP 370 (first ¶ 4). This exceeds the requirements of Washington law since the Washington courts have held that a release for an adult hazardous activity does not have to disclose that it is covering negligence. *See Scott By and Through Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 490, 834 P.2d 6 (1992); *Blide*, 30 Wn. App. at 574; *Hewitt*, 11 Wn. App. at 79.

Although plaintiffs could not cite a case where any court has found a similar release to be ambiguous, they argued that this release was ambiguous because (1) it also releases USA Triathlon, (2) the electronic

release agreed to by plaintiff Robin Johnson contains more release language than the mail-in version, and (3) the release does not specifically refer to motor vehicle and pedestrian accidents.

The fact that the release also releases claims against USA Triathlon does not in any way reduce the effect of the release on claims against Spokane to Sandpoint. In fact, plaintiffs did not offer any explanation for how it would do so. The section of the release referring to USA Triathlon also releases claims against Spokane to Sandpoint by explicitly releasing and covenanting not to sue “the event organizers and promoters, race directors.” CP 370 (first ¶ 4).

The mail-in version of the release is also sufficient to eliminate plaintiff Robin Johnson’s claims even if she had signed such a release as opposed to putting her name on and agreeing to the electronic release. The mailed version provided that the signer was waiving and releasing “Spokane to Sandpoint . . . for any and all claims or liability . . . even though that liability may arise out of negligence . . . .” CP 413 (pages 42:18-43:15) & CP 415.

Of course, plaintiff Robin Johnson did not claim that she signed the mailed version but instead testified:

Q. Do you recall whether you clicked yes to the waiver language at all on the registration process?

A. On the registration process I assume I must have clicked because all that information is there and I did it. Nobody else did it for me.

CP 156 (lines 4-8). The Senior Product Manager for the electronic release process has confirmed that plaintiff Robin Johnson typed her name in the signature box of the release and then clicked on the “agree and continue” box. CP 344-45 (¶ 6).

Plaintiffs simply ignored the release language referencing “negligence” and a “complete and unconditional release of **all** liability to the greatest extent allowed by law” (emphasis added) when they argued that the release did not apply to motor vehicle and pedestrian accidents. The Washington courts have consistently concluded that less detailed releases were valid and dismissed all negligence claims. *See Stokes*, 113 Wn. App. 442.<sup>2</sup> In any event, there is no case law that requires a release to identify **every** manner in which a person can be injured.

Although there is no need for this Court to seek guidance beyond the case law in Washington, the court in the California case relied upon by plaintiffs, *Cohen v. Five Brooks Stable*, 159 Cal. App. 4<sup>th</sup> 1476, 1484,

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<sup>2</sup> Also see *Chawlier*, 109 Wn. App. at 389; *Lunt*, 62 Wn. App. at 362-363; *Shields*, 79 Wn. App. at 591; *Boyce*, 71 Wn. App. at 662-63; *Hewitt*, 11 Wn. App. at 80; *Conradt*, 45 Wn. App. at 848; *Blide*, 30 Wn. App. at 574; *Garretson*, 456 F.2d. at 1021; and *Broderson*, 187 Wash. at 406.

72 Cal. Rptr. 3d 471 (Cal. App. 1 Dist., 2008), explicitly explained that the release would have been upheld if the “release unambiguously exempted respondent from liability for its own negligence . . . .” In the instant case, the release does so. It is not clear why plaintiffs cited to *Finch v. Carlton*, 84 Wn.2d 140, 524 P.2d 898 (1974), since the case does not concern a preinjury release in adult sports but instead concerns whether a post-accident release obtained by an adjuster released medical claims. *Id.* at 141. In addition, the other out-of-jurisdiction cases cited by plaintiffs actually supported dismissal of the claim. The court in *Reed v. University of North Dakota*, 589 N.W.2d 880 (N.D., 1999), upheld the release in a case involving a 10-kilometer race. *Id.* at 882, 887. Similarly, in *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920 (Minn., 1982), the court upheld the release when a patron injured herself lifting weights at a spa. *Id.* at 922, 926.

4. **185-Mile Relay Races Do Not Involve the Public Interest**

In cases involving adult hazardous sports, courts have consistently refused to find that the public interest or public policy is at stake. *See Garretson*, 456 F.2d at 1020-21. In *Garretson*, the court summarily dismissed plaintiff’s assertion of a public interest in ski jumping. *Id.* Likewise, in *Hewitt*, the court upheld the release, stating: “Extended

discussion is not required to conclude that instruction in scuba diving does not involve a public duty . . . .” *Hewitt*, 11 Wn. App. at 74. Similarly, no public interest has been found in mountain climbing, *Blide*, 30 Wn. App. at 574, tobogganing, *Broderson*, 187 Wash. at 406, or auto demolition car racing, *Conradt*, 45 Wn. App. at 853.

Courts simply have not found a public interest in recreational activity without something more. For example, the court did find that school children’s participation in recreational sports affected the public interest and refused to sanction a school district’s wholesale use of releases. *Wagenblast*, 110 Wn.2d at 848. But the *Wagenblast* court expressly distinguished the school district case before it from private adult hazardous activities: in the school district case, there was an “intimate relationship between interscholastic sports and other aspects of public education . . . .” which was absent from the adult hazardous sports cases. *Id.* at 854 n.21.

The seminal case invoking public policy to invalidate a release stands in sharp contrast to the cases involving adult hazardous sports. *See McCutcheon v. United Homes Corp.*, 79 Wn.2d 443, 486 P.2d 1093 (1971). That case dealt with an apartment lease that contained exculpatory language stating:

[N]either the Lessor, nor his Agent, shall be liable for any injury to Lessee, his family, guests or employees or any other person entering the premises or the building of which the demised premises are a part.

*McCutcheon*, 79 Wn.2d at 444-45. The plaintiffs had fallen down negligently maintained stairs in the common areas of the apartment complex. The landlord relied on the exculpatory language as a “technique of immunizing” itself from liability or responsibility for any duties to protect the tenants. *Id.* at 450. The *McCutcheon* court understandably found that such language in a residential lease “offends the public policy of the state.” *Id.* In particular, the court noted that the apartment business was “a major commercial enterprise directly touching the lives of hundreds of thousands of people.” *Id.* at 449. Similarly, in *Vodopest*, the court held that the release violated public policy concerns only because a medical researcher was not allowed to have medical research participants sign a pre-injury release. *Vodopest v. MacGregor*, 128 Wn.2d 840, 862, 913 P.2d 779 (1996). The court specifically stated:

Consistent with prior Washington law, we reiterate that releases are enforceable in the setting of adult high-risk sports activities.

*Id.* at 849.

The cases mistakenly relied upon by plaintiffs did not involve adult hazardous sports. As noted above, *Wagenblast*, 110 Wn.2d 845,

involved school children and the court explained there was an “intimate relationship between interscholastic sports and other aspects of public education” which is absent in adult hazardous sports. *Tunkl v. Regents of University of Cal.*, 60 Cal. 2d 92, 383 P.2d 441, 32 Cal. Rptr. 33 (1963), involved a patient signing a release as a condition for admission to a charitable research hospital for treatment. *Id.* at 94. The court also noted that California Civil Code section 1668 prohibited contracts exempting anyone from responsibility for their negligent acts. *Id.* at 95. The other cases relied on by plaintiffs also involved minors. In *Scott*, the court upheld the release with respect to the parents’ claims although it concluded that the parents could not release a minor’s claims. 119 Wn.2d at 495. In *Hojnowski v. Vans Skate Park*, 187 N.J. 323, 901 A.2d 381 (2006), the court likewise held that a parent cannot release a minor’s claims. *Id.* at 338.

Plaintiffs argued that the release for this 185-mile race should be invalidated on public policy grounds because the race is suitable for regulation since there may be vehicle-pedestrian accidents. However, there are no statutes regulating relay races. Even if there were, the Washington courts have refused to find that a release is unenforceable simply because the Washington state legislature has regulated an activity. As explained by the court in *Chauvlier*, 109 Wn. App. 334, “we note that

since the Washington state legislature has chosen to regulate recreational skiing by statute, it is for the legislature, and not the courts, to declare that liability releases in the recreational skiing context violate public policy.” *Id.* at 344 n.28. As in *Chauvlier*, the *Wagenblast* factors do not support a finding of a public interest here. (1) 185-mile relay races are not regulated; (2) Spokane to Sandpoint is not performing an important public service such as a school; (3) not all members of the public participate in relay races, unlike schools; (4) Spokane to Sandpoint had no control over how plaintiff Robin Johnson ran or when she decided to cross Highway 2; and (5) there was no inequality of bargaining since Ms. Johnson could have easily chosen not to participate and could have selected a different event. There simply is not a single case where the Washington courts have refused to enforce a release in the adult hazardous sports setting on public policy grounds.

5. **Plaintiffs Lack *Prima Facie* Evidence of Gross Negligence**

Since the waiver and release bar the negligence claims asserted by plaintiffs against Spokane to Sandpoint, LLC, the trial court dismissed them with prejudice. At minimum, plaintiffs were required to show gross

negligence to overcome the release.<sup>3</sup> *Conradt*, 45 Wn. App. at 852. Gross negligence is the “failure to exercise slight care” or, alternatively, “care that is substantially or appreciably less than the quantum of care inhering in ordinary negligence.” *Spencer v. King County*, 39 Wn. App. 201, 206, 692 P.2d 874 (1984), *overruled on other grounds by Frost v. City of Walla Walla*, 106 Wn.2d 669, 673-74, 724 P.2d 1017 (1986); WPI 10.07. There is no evidence to support a claim for gross negligence.

Here, Spokane to Sandpoint, LLC’s representative, Ben Orth, spent over 16 months planning the route. He personally drove, biked and ran this particular section of the event. The same route had been used in 2008 and 2009 with no incidents and with no complaints. He selected the location for its good visibility and large median. The Washington State Department of Transportation had approved the route. Spokane to Sandpoint, LLC also created an extensive team handbook which explained that this 185-mile relay race involved running on open public

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<sup>3</sup> There are strong reasons to believe that plaintiff must prove an even higher degree of wrongdoing—willful or wanton misconduct (*i.e.*, recklessness)—rather than negligence, to overcome the releases. *Compare* WPI 14.01 with WPI 10.07. However, the summary judgment motion did not ask the trial court to decide the issue of whether plaintiffs were required to prove recklessness to overcome the release because this defendant believed that plaintiffs lacked evidence sufficient to satisfy even the lesser standard of gross negligence. But this defendant did note that this issue exists and that it would require resolution if the summary judgment motion were not granted. In Washington, “gross negligence” has been an ambiguous term in the case law. *See Nist v. Tudor*, 67 Wn.2d 322, 329-30, 407 P.2d 798 (1965) (surveying cases). Those Washington cases that involve adult hazardous sports and releases, however, appear to use the terms “willful and wanton” and “gross negligence” synonymously.

roads and crossing major highways without anyone stopping traffic. Indeed, the description for plaintiff Robin Johnson's route specifically cautioned her to be careful as she crossed Highway 2. A sign was posted warning about crossing the highway. As Charles Lewis has opined:

The intersection of Colbert Road with SR 2 was not an unsafe location for pedestrians to cross SR 2. Given the long range of visibility, the presence of the median strip between the northbound and southbound lanes, and the relatively narrow distance to cross the two lanes — 25 feet — a walker, runner or jogger would have an excellent ability to see oncoming traffic and to determine whether there was sufficient time to cross the two lanes of the highway with sufficient clearance not to have any oncoming vehicle come close to, much less strike, the pedestrian.

CP 355-56 (¶ 13.B).

Indeed, plaintiffs themselves argued in a summary judgment motion that plaintiff Robin Johnson lacked comparative negligence and that the crossing constituted an unmarked crosswalk. CP 72-73. Defendant Spokane to Sandpoint, LLC agrees that the simple fact of crossing in this area is not comparative negligence if a person uses due caution. However, plaintiff Robin Johnson did not use due caution because she either failed to look or, if looking, failed to see a car that was well within her range of visibility. Moreover, plaintiff Robin Johnson was wearing earbuds and listening to music as she crossed this highway.

In this case, plaintiff Robin Johnson could have seen a car when it was at least 14.3 seconds or 1,320 feet away, and she could have crossed the highway in 2.6 seconds at an easy jog. Plaintiff Robin Johnson's van driver Kristy Ervin alleges that plaintiff Robin Johnson looked to her right before entering the southbound lanes. For the purpose of the summary judgment motion, that was accepted as true. However, that simply documents that plaintiff Robin Johnson was careless because a car that was 240 feet away and likely much closer was visible from her position and she still chose to enter the southbound lanes.

Plaintiffs Johnson did not even attempt to distinguish on-point Division III cases *Boyce* and *Conradt* with respect to their gross negligence claims. In these cases, the court rejected the plaintiffs' claims that the wrongful conduct rose to the level of gross negligence even though the plaintiffs had presented expert testimony. (Plaintiffs Johnson lacked such expert testimony here.)

In *Boyce*, a scuba diving student died during a dive with an instructor. The estate filed a wrongful death claim against the instructor and Gonzaga. 71 Wn. App. at 661. The instructor and Gonzaga moved for summary judgment on the basis of the release signed by the student. *Id.* at 659, 661. The estate resisted the motion and submitted testimony from a divemaster who expressed the opinion that the instructor had been

negligent in his instruction and supervision of the student. *Id.* at 661.

The trial court granted summary judgment. *Id.* at 658.

The estate appealed the dismissal, contending that there were genuine issues of material fact as to whether the instructor was grossly negligent. *Id.* at 659, 665. The court upheld the dismissal, stating:

Evidence of negligence is not evidence of gross negligence; to raise an issue of gross negligence, there must be substantial evidence of serious negligence.

*Id.* at 665. The court concluded that the expert testimony was not sufficient to provide “the court with any evidence supporting an allegation of gross negligence.” *Id.* at 665-66. The court explained:

Mrs. Boyce’s allegation, supported by nothing more substantial than argument, is insufficient to defeat a motion for summary judgment. Because there was no material issue of fact as to the existence of gross negligence, an essential element for avoidance of the release of liability, summary judgment was proper.

*Id.* at 666 (cites omitted).

The same conclusion was reached in *Conradt*. Conradt was hurt in an auto race. 45 Wn. App. at 848. He signed a release prior to being told that there would be a change in the direction of the race. *Id.* Conradt argued that the risk had been materially altered by the change in direction after he signed the release form. *Id.* at 850. He explained that he could not corner as well and that he had not understood the additional risk. *Id.*

The race promoter moved for summary judgment based on the release. *Id.* at 848. Conradt argued that the release was invalid because the promoter had committed gross negligence. *Id.* at 852. Conradt presented the testimony of another race promoter who had stopped running races clockwise for safety reasons. *Id.* at 851. The trial court still dismissed Conradt's claims on summary judgment. *Id.* at 848.

The appellate court also rejected Conradt's claim that the promoter had committed gross negligence, holding that "[g]ross negligence is negligence **substantially and appreciably greater** than ordinary negligence." *Id.* at 852 (emphasis added). The court explained that the promoter's "conduct was not so substantially and appreciably substandard that it rendered the release invalid." *Id.* at 852.

Plaintiffs Johnson have no evidence that Spokane to Sandpoint, LLC committed gross negligence or failed to exercise slight care.<sup>4</sup> In fact, plaintiffs Johnson have offered no explanation for how they can in one breath argue that plaintiff Robin Johnson was not negligent in crossing but in the next breath argue that Spokane to Sandpoint was grossly negligent.

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<sup>4</sup> The Washington courts have held that when a standard of proof is higher than ordinary negligence, the nonmoving parties must show that they can support their claim with *prima facie* proof supporting the higher level of proof such as when a claim must be proved by clear, cogent and convincing evidence. *See Woody v. Stapp*, 146 Wn. App. 16, 22, 189 P.3d 807 (2008).

Plaintiffs Johnson did not produce any traffic expert to testify that this intersection was unsafe for a pedestrian or runner to cross. Instead, they simply asserted without any evidence that it was negligent not to conduct a traffic study. They did not present facts of what such a study would reveal. Notably, all of the witnesses say there was only Ms. Young's car at this location when plaintiff Robin Johnson crossed. CP 267 (lines 5-6), CP 274 (lines 5-8), CP 291 (lines 3-4), CP 319 (lines 6-8).<sup>5</sup> Plaintiffs also argued (without support) that there should have been signs telling drivers that runners were crossing. It is undisputed that this type of relay race does not post such signs. CP 365-66 (¶ 3).<sup>6</sup> Plaintiffs also acknowledged that Orth explained that he utilized this intersection rather than have the runners run along Highway 2 because he determined it was safer than having the runners exposed to the Highway 2 traffic for a longer period of time. CP 122 (lines 8-20). Plaintiffs produced no evidence that Orth's determination was incorrect. In contrast, Spokane to Sandpoint produced traffic reconstruction expert Lewis, who concluded

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<sup>5</sup> Plaintiffs acknowledged the same in their brief on summary judgment. CP 425 (lines 4-5).

<sup>6</sup> There is no evidence that such a sign on Highway 2 would have prevented this accident. The facts document that Ms. Young saw plaintiff step from the median. It was not Ms. Young's failure to see plaintiff Robin Johnson that caused the accident. It was plaintiff Robin Johnson's decision to step into the roadway when Ms. Young was only 240 feet away. *See* CP 387-88 (¶¶ 11 & 13), CP 354 (¶ 10).

that Orth's determination regarding the safety of crossing at this location was correct because of the large median and good visibility. CP 355-56 (¶ 13.B).

In a last-ditch effort to avoid summary judgment, plaintiffs alleged that plaintiff Robin Johnson's injury showed that it was unsafe to have runners cross at this intersection. However, this assertion ignores the fact that all runners crossed without incident in 2008 and 2009 and no other runner in 2010 had an issue at this location. Moreover, the Washington courts have held that the mere fact that there has been an injury does not establish a dangerous condition. *See Hansen v. Washington Natural Gas Co.*, 95 Wn.2d 773, 778, 632 P.2d 504 (1981).

The Washington courts have promptly dismissed gross negligence claims in similar situations even with expert witness testimony, which plaintiffs Johnson lacked here. Plaintiffs Johnson cannot offer any explanation for why this Court should seek guidance from outside jurisdictions. In any event, the out-of-state cases cited by the Johnsons in an effort to establish an issue of fact on gross negligence are easily distinguished since in each case the plaintiff produced expert testimony.

In *Pearce v. Utah Athletic Foundation*, 179 P.3d 760, 764, 597 Utah Adv. Rep. 13, 2008 UT 13, the case involved an injury to a bobsled rider. *Id.* at 762. The court held the release was valid with respect to the

negligence claims. *Id.* at 767. It concluded that there was an issue of fact with respect to gross negligence when the injured person presented the testimony of an expert who opined that the way the injured person had been positioned in the bobsled had increased the risk of injury. *Id.* at 763. In addition, the evidence established that (1) there had not been any warning of the danger; (2) three prior riders had suffered similar spinal injuries; and (3) the promoters had never explored the cause of the prior injuries. *Id.* at 764.

In the instant case, (a) plaintiffs Johnson did not produce any expert; (b) plaintiff Robin Johnson was specifically warned that she was crossing the highway; and (c) there had never been any prior incidents or complaints involving this intersection.

In *Berry v. Greater Park City Co.*, 171 P.3d 442, 444, 449, 590 Utah Adv. Rep. 3, 2007 UT 87, a participant was injured in a ski cross event. *Id.* at 444. The injured person presented the testimony of two experts (a ski racer, coach and jumper and a ski race course designer) who opined that the jump in question had design flaws involving the landing and angle of the jump. *Id.* at 444, 449. The court upheld the release but concluded that there was an issue of fact regarding gross negligence based on the experts' testimony. *Id.* at 448-49.

The remaining cases cited by plaintiffs do not concern gross negligence in the context of release law. *See Wycalis v. Guardian Title of Utah*, 780 P.2d 821, 823 (Utah App., 1989) (case involved action on deed of trust); *Wilson v. Steinbach*, 98 Wn.2d 434, 436, 656 P.2d 1030 (1982) (action involving wrongful death and survival action arising out of auto accident); *Morris v. McNicol*, 83 Wn.2d 491, 492, 519 P.2d 7 (1974) (case involved damage to real property); *U.S. v. Logan Co.*, 147 F. Supp. 330, 332 (D.C. Pa. 1957) (action involving alleged violations of Sherman Anti-Trust Act); *Felsman v. Kessler*, 2 Wn. App. 493, 494, 468 P.2d 691 (1970) (wrongful death action where defendant asserted Fifth Amendment); *Subin v. Goldsmith*, 224 F.2d 753, 755 (C.A.2 1955) (shareholder derivative action).

Plaintiffs Johnson did not produce any expert testimony supporting their assertion that this intersection was inappropriate for runners who exercised caution. Mere assertions are not sufficient to defeat summary judgment. Washington courts firmly hold that “ultimate of facts, conclusions of fact, or conclusory statements of fact are insufficient to raise a question of fact.” *Curran v. City of Marysville*, 53 Wn. App. 358, 367, 766 P.2d 1141 (1989), citing *Grimwood v. University of Puget Sound, Inc.*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988). Rather, a plaintiff is required to prove “specific facts” to support her

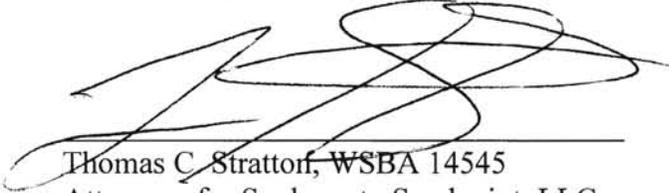
claim. CR 56(e); *see also* *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989); *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); *Layne v. Hyde*, 54 Wn. App. 125, 130, 773 P.2d 83 (1989) (holding that plaintiff “may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on affidavits considered at face value”). Plaintiffs have not presented “specific facts” in the present case.

### **CONCLUSION**

The trial court was correct to grant summary judgment to Spokane to Sandpoint, LLC and dismiss all plaintiffs Johnson’s claims with prejudice. Plaintiff Robin Johnson executed a valid and conspicuous preinjury waiver and release. Plaintiffs Johnson also failed to present *prima facie* evidence of gross negligence to overcome the release. This Court should uphold the trial court’s decision and confirm the dismissal of Spokane to Sandpoint, LLC.

RESPECTFULLY SUBMITTED this 5 day of December,  
2012.

ROCKEY STRATTON, P.S.



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NO. 310426

**FILED**

DEC 07 2012

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

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

ROBIN JOHNSON and CRAIG  
JOHNSON, wife and husband, and the  
marital community composed thereof,

Appellants,

v.

SPOKANE TO SANDPOINT, LLC, a  
Washington corporation,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Wednesday, December 5, 2012, he caused true and complete copies of

1. Respondent's Brief; and
2. this Certificate of Service

to be served by having the same deposited in the United States mails, postage prepaid, addressed to the following parties and attorneys of record:

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DATED this 5 day of December, 2012.

ROCKEY STRATTON, P.S.

A handwritten signature in black ink, appearing to read 'T. Stratton', written over a horizontal line.

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