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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

No. 316688

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

JOHN JENSEN, a single person,

Appellant,

v.

LINCOLN COUNTY, a political subdivision of
the State of Washington,

Respondent.

APPEALED FROM SPOKANE COUNTY SUPERIOR COURT
CAUSE NO. 12-2-02275-0

APPELLANT JOHN JENSEN'S BRIEF

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I. INTRODUCTION

Lincoln County willfully and unlawfully failed to pay John Jensen wages he is owed pursuant to the Washington Minimum Wage Act for the time he spends driving to and from County work sites on behalf of Lincoln County. John Jensen is a hard working and dedicated member of the Lincoln County rock crushing crew. For the last fifteen years, John Jensen has arrived at the Lincoln County shop prior to each rock-crushing crew shift. To fulfill his job duties, John Jensen looks around the shop for tools or equipment necessary to take to the crushing site. He then loads any necessary tools in the Lincoln County owned Suburban and awaits the arrival of the rest of the rock-crushing crewmembers. When all members arrive at the shop, John Jensen travels in the Lincoln County Suburban to the rock-crushing site. And, at the end of each shift, John Jensen is required to return the Suburban to the County shop.

During the course of Mr. Jensen's employment with the County the location of the rock-crushing site has changed numerous times. The time John Jensen spends driving from

the County shop to the crushing site varies depending on where the crusher is located. The drive time ranges from five minutes to three hours. Lincoln County is fortunate to own its own rock crusher and on occasion crushes rock for Douglas County. When the rock crushing crew works in Douglas County, the crew is required to leave Lincoln County on the Sunday night prior to the beginning of their shift and drive the approximately three hours to the Douglas County crushing site. When the week is over, the crew then drives back to Lincoln County.

The County provides the Suburban because the collective bargaining agreement between the rock-crushing crew and the County requires it. The Suburban is owned by Lincoln County and the County requires John Jensen to ensure the vehicle is fueled, the oil is changed, to anticipate necessary repairs and special maintenance, and to keep the vehicle clean. Moreover, the County imposes numerous restrictions on John Jensen's use of the Suburban. The County requires that only County employees use the vehicle for travel

to and from the County shop and the rock-crushing site. In addition, while operating the Suburban John Jensen must wear his seatbelt, follow the rules of the road, and drive in a safe and cautious manner.

In order to compensate Mr. Jensen for the hours each week he spends driving the Suburban to and from the County shop and the current crushing site, the County pays Mr. Jensen \$150.00 each month. This drive time compensation is the only compensation Mr. Jensen receives for the time he spends driving the County Suburban in addition to the forty hours he spends on the rock-crushing site each week. John Jensen is only compensated with his hourly wage for the forty hours he physically spends working on the crushing site each week.

This drive time compensation is woefully insufficient as Mr. Jensen is indisputably on the job when he leaves the County shop in the County Suburban prior to and after each shift. The County compensates Mr. Jensen far less than minimum wage and no where close to the overtime wages he is

entitled to for the time he is required to work in addition to the forty hours he works on the rock-crushing site each week. The Trial Court erroneously ruled in favor of Lincoln County, condoning the County's willful failure to pay wages and overtime as required by the Washington Minimum Wage Act ("MWA"). Therefore, the Trial Court's order granting Lincoln County's motion for summary judgment and denying Mr. Jensen's motion for partial summary judgment should be reversed and this matter remanded for a determination of damages.

II. ASSIGNMENTS OF ERROR

A. Assignments Of Error.

1. The Trial Court erred by granting Lincoln County's Motion for Summary Judgment.
2. The Trial Court erred by denying John Jensen's Motion for Partial Summary Judgment.

B. Issues Presented.

1. When an employee is required to pick up an employer's vehicle at the employer's shop, sometimes load employer owned equipment into the employer's vehicle, and drive that vehicle to the work site, is that drive time compensable?

2. Is a Collective Bargaining Agreement provision that requires employees to perform work for less than minimum wage void?
3. Is the decision of a trial court regarding drive time correct when the trial court fails to consider the Stevens v. Brink's Home Security, Inc., 162 Wn.2d 42 (2007), factors?
4. Is John Jensen entitled to attorney fees and costs incurred on appeal and at the trial court level?

III. STATEMENT OF THE CASE

A. Factual Background.

John Jensen has worked for Lincoln County for the last fifteen years. (CP 49). Currently, John Jensen holds the title of assistant foreman on the rock-crushing crew. (CP 49). Prior to each shift, members of the rock-crushing crew must personally travel to the County shop, pick up any necessary parts to operate the rock crushing equipment, pick up the County owned, maintained, and mandatorily provided Suburban, and drive the County Suburban to the rock-crushing site. (CP 49; 135; 195-196; 202).

The rock-crushing site changes throughout the year and the length of travel from the County shop to the crushing site varies accordingly. (CP 49-50; 108). Lincoln County owns its

own rock crusher and is able to contract with neighboring counties, such as Douglas County, to crush rock. (CP 108). Thus, at certain times during the year the crushing crew is required to travel up to three hours to Douglas County from the County shop to reach the crushing site. (CP 49-50; 108).

The provision of a County vehicle for travel to and from the County shop and the rock-crushing site is required by the collective bargaining agreement governing the relationship between Lincoln County and the rock-crushing crew. (CP 135). Mr. Jensen is a member of the Local #1254 and Washington State Council of County and City Employees of the American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1254"). (CP 177). Local 1254 negotiated the collective bargaining agreement ("CBA") governing the employment relationship between Lincoln County and John Jensen. (CP 108; 216). According to the CBA:

Daily working hours shall be from 7:00 a.m. to 3:30 p.m. with one half (1/2) hour lunch time for the Crusher Crew. This eight (8) hour period does not include travel time to and from the work site, but *transportation shall be furnished by the County to and from the work site.*

(CP 135). (emphasis added).

Lincoln County imposes numerous restrictions on Mr. Jensen's use of the County Suburban. (CP 218-220). Specifically, Mr. Jensen is required to anticipate any repairs or special maintenance the vehicle may need, fuel the vehicle, obtain oil changes, and keep the vehicle in a reasonably clean condition. (CP 218). While operating the County vehicle, Mr. Jensen is required to wear a seat belt, abide by traffic laws, and perform only County business as only employees are allowed to ride in or operate the County vehicle. (CP 219). Furthermore, the County Suburban is used strictly for travel to and from the County shop and the variable rock-crushing sites. (CP 219).

Despite requiring employees to arrive at the County shop before each shift and requiring travel in a contractually provided for County vehicle, Lincoln County does not begin to compensate the rock-crushing crew with their hourly wage until they reach the rock-crushing site. (CP 35-36; 135). "Appendix A – Wages" to the CBA provides, "[c]rusher

classification and Crusher Foremen shall receive an additional \$150.00 per month travel allowance.” (CP 148). Lincoln County provides John Jensen with a monthly stipend of only \$150.00 to compensate him for the time he spends driving to and from the rock-crushing site and the County shop in County Suburban. (CP 50). This stipend is grossly inadequate and does not comport with the wage and hour laws set forth in the MWA because it does not compensate Mr. Jensen with minimum wage or overtime pay for his drive time. (CP 50).

B. Procedural History.

On June 12, 2012, John Jensen filed a Complaint against Lincoln County on behalf of himself and all others similarly situated for failure to pay drive and work time in violation of RCW 49.52 et seq., and for failing to compensate John Jensen and others similarly situated for work in excess of forty (40) hours per week in violation of RCW 49.46 et seq. (CP 3-8). On July 11, 2012, Lincoln County filed its Answer and Affirmative Defenses. (CP 29-32). On March 14, 2013,

John Jensen was granted leave to amend his complaint to remove the class allegations made therein. (CP 92-93). On March 19, 2013, John Jensen filed an Amended Complaint for Damages asserting claims against Lincoln County on his own behalf. (CP 101-105).

Shortly thereafter, both parties filed competing motions for summary judgment. (CP 149-163; 179). On April 4, 2013, Lincoln County asserted Plaintiff was not entitled to wages for the time he spends traveling to and from the rock-crushing site and the County shop arguing that Mr. Jensen is not on duty or at a prescribed work place when he is using the County Suburban for work purposes. (CP 149-163; 179). Lincoln County then filed an Amended Answer and Affirmative Defenses to Plaintiff's Amended Complaint on April 12, 2013. (CP 238-241). That same day, John Jensen filed a Motion for Partial Summary Judgment Re: Liability asserting Lincoln County is liable for violation of the MWA and overtime laws, requesting dismissal of Lincoln County's affirmative defenses. (CP 221-237; 243-244).

The Trial Court erred in granting Lincoln County's Motion for Summary Judgment and denying John Jensen's Motion for Partial Summary Judgment. (CP 299-300). The Trial Court erroneously ruled in favor of Lincoln County at the May 3, 2013 hearing, ruling Lincoln County was not in violation of the MWA for failing to adequately pay an employee for hours worked over forty hours each week. (CP 299-300). All of John Jensen's claims against Lincoln County were dismissed with prejudice. (CP 299-300). John Jensen appealed the Trial Court's order by filing a Notice of Appeal on May 14, 2013. (CP 296-98).

IV. ARGUMENT

A. Standard Of Review.

A trial court's granting of a motion for summary judgment is reviewed de novo. Castro v. Stanwood School Dist. No. 401, 151 Wn.2d 221, 224 (2004). The appellate court engages in the same inquiry as the trial court. In re Parentage of J.M.K., 155 Wn.2d 374, 386 (2005). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.

Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225 (1989). Summary judgment should be granted only if reasonable persons could reach but one conclusion from the evidence presented. Korslund v. Dyncorp Tri-Cities Sevs. Inc., 156 Wn.2d 168, 177 (2005).

B. The Trial Court Erred By Ruling That Mr. Jensen's Drive Time Does Not Constitute Hours Worked Wherein Mr. Jensen Is On Duty At A Prescribed Work Place.

This Court should reverse the Trial Court's granting of summary judgment because there is no genuine issue of material fact. Mr. Jensen must be compensated for hours worked because he is on duty, at a prescribed workplace when he travels from the County shop, in the County owned and maintained vehicle, to the ever-changing rock crushing site and back to the County shop. Consequently, the Trial Court's decision should be reversed.

1. "Hours Worked" Includes All Hours Worked Wherein The Employee Is Authorized Or Required By The Employer To Be On Duty At A Prescribed Work Place.

According to the MWA "*employees have the right to overtime when they work more than 40 hours per week.*"

Schneider v. Snyder's Foods, Inc. (Schneider I), 95 Wn. App. 399, 402 (1999) review denied, 139 Wn.2d 1003 (1999), cert. denied, 529 U.S. 1062 (2000). Specifically, the MWA provides, “...no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives [overtime] compensation.” RCW 49.46.130(1). The term “employ” includes “to permit to work.” RCW 49.46.010(3). “Hours worked” is defined by the regulations as “all hours during which the employee is authorized or required by the employer to be on duty on the employers premises or at a prescribed work place.” WAC 296-128-002(8). Overtime wages are to be paid at a rate of one and one-half times the employee’s regular rate of pay. RCW 49.46.130(1); Fiore v. PPG Indus., Inc., 169 Wn. App. 325, 348 (2012) (holding an employee’s drive between employer locations is compensable under the MWA). The regular rate is the hourly rate at which the employee is being paid. Id. at 344.

In determining whether the time an employee spends driving is compensable the Court considers whether the

employee is “on duty” at the “employer’s premises” or “prescribed work place.” Stevens v. Brink’s Home Security, Inc., 162 Wn.2d 42, 47 (2007) (quoting WAC 296-126-002(8)). These terms are not defined in the regulations but have been defined by case law interpreting the regulations, as well administrative policy promulgated by the Department of Labor and Industries. According to the Department of Labor and Industries, hours worked means:

all hours when an employee is authorized or required by the employer to be on duty on the employer’s premises or at a prescribed workplace. WAC 296-126-002(8). There are three elements to the definition of hours worked: 1- An employee is authorized or required by the employer, 2- to be on duty, 3- On the employer’s premises or at a prescribed workplace...Time spent driving a company-provided vehicle from the employer's place of business to the job site is considered hours worked...Time spent driving or riding as a passenger from job site to job site is considered hours worked.

Wash. Dep't of Labor & Indus., Employment Stds., Admin. Policy ES.C.2, at 2 (September 2, 2008).

“The fact that a[n] [employee] personally benefits does not preclude the conclusion that travel ... is compensable time. Rather, the inquiry is one of mutual benefit vis-a-vis the

job.” Stevens, 162 Wn.2d. at 55 (J. Madsen’s concurrence). Courts look to the amount of control the employer exerts over the employee’s travel time and the extent employees engage in personal activities while travelling to work. Id. at 48. Specifically, **“if [an employee] picks up a[n] [employer’s vehicle] at the [employer’s] office and drives it to the first job assignment of the day, no one would dispute that this travel time constitutes ‘hours worked’ for which the [employee] must be compensated.”** Stevens, 162 Wn.2d at 53 (J. Madsen’s concurrence)(emphasis added). The court looks to whether the employer restricts employee’s personal activities and controls the employee’s time. Id. at 48.

In Stevens, home security company employees sued their employer because their employer compensated the drive time of employees who chose to drive from the employer’s shop to the job site in an employer owned vehicle, but did not compensate the drive time of employees who chose to drive the employer vehicle from home directly

to the job site. Id. at 44-45. There, the employer imposed numerous restrictions on use of the company vehicles, such as: the company vehicles must be used for company business only, employees must not carry nonemployees as passengers, employees must wear seat belts, obey traffic laws, not park haphazardly, lock the vehicle at all times, keep the vehicle clean, organized, safe, and serviced, and never carry alcohol. Id. at 48-49. In addition, the employer prohibited the employees from engaging in any personal activities while utilizing the company vehicle. Id. In that case, use of the vehicles was an integral part of the work performed by the employees as the job required employees to drive to different job sites. Id. at 49-50. Consequently, in Stevens, the Supreme Court of Washington concluded that the employees were on duty at a prescribed work place during the time the employees drove to the job sites in the company vehicles because the employer significantly controlled the employees' conduct while the employee utilized the company vehicle

and the vehicle constituted a prescribed work place. Id. at 49-50.

Conversely, where an employer exerts no control over an employee's travel to work, the employees perform no work while traveling, and the employees are free to engage in any personal activities, travel time is not compensable under the MWA. Anderson v. Dept. of Social and Health Services, 115 Wn. App. 452, 459 (2003) review denied 149 Wn.2d 1036. In Anderson, DSHS employees working on McNeil Island brought suit against the State asserting that the time employees spend riding a ferry to and from work was compensable travel time under the MWA. Id. at 453. While riding the ferry, the employees were free to engage in any activities they pleased as the employees were simply passengers aboard a ferry. Id. at 454. For example, the employees engaged in activities such as "*reading, conversing, knitting, playing cards, playing hand-held video games, listening to CD players and radios, and*

napping.” Id. In addition, the employees performed “no work during the passage.” Id.

The Anderson Court agreed that the Legislature chose not to integrate the federal Portal to Portal Act into the MWA but found that even if by making this choice, the Legislature intended pre-Portal to Portal case law to apply, the Anderson employees ferry boat ride did not constitute hours worked while on an employer’s premises or a prescribed work place because the employees were able to engage in any personal activities while riding the ferry to work. Id. at 454-56.

The case law interpreting WAC 296-126-002(8) is clear. Employees who drive employer owned vehicles, perform tasks benefiting the employer while operating the vehicle, and are required to abide by the employer’s rules regarding the vehicle’s use and operation, are entitled to compensation for their drive time. See Stevens, 162 Wn.2d at 49-53; See also Anderson 115 Wn. App. at 459.

The present case is very similar to Stevens, where the Supreme Court of Washington agreed; employees must be

paid for drive time when driving an employer owned vehicle from an employer's shop to a job site while the employer exerts sufficient control over the employee. The undisputed facts establish Mr. Jensen is "on duty" during the drive time for purposes of WAC 296-126-002(8). Mr. Jensen performs County business during the drive time because the County strictly controls drive time by preventing nonemployees from riding in the vehicle, providing the vehicle solely for drive time to and from the County shop and rock-crushing site, requiring Mr. Jensen to take necessary parts to the crusher site, and by imposing numerous restriction on the vehicle's use. (CP 35-36; 174-175; 218-219). Furthermore the County exerts additional control, as it requires Mr. Jensen to maintain the vehicle. (CP 218-219). For example, Mr. Jensen must ensure that the vehicle is fueled, that the oil is changed, and that other ordinary maintenance is performed. (CP 218-219). While operating the County vehicle, Lincoln County prohibits Mr. Jensen from consuming alcohol, from towing or hauling personal vehicles or trailers behind the

Suburban, and requires Mr. Jensen to wear his seat belt and abide by the rules of the road. (CP 175; 218-219). In addition, Mr. Jensen and the rock-crushing crew use the County vehicle to take essential rock-crushing equipment from the County shop to the rock-crushing site. (CP 174-175).

The drive Mr. Jensen must make after arriving at the County shop in the County vehicle to the rock-crushing site and back to the County shop at the end of each shift undoubtedly constitutes hours worked at a prescribed workplace or employer's premises due to the amount of control exerted by Lincoln County and John Jensen's lack of ability to engage in personal activities while utilizing the County Suburban. Consequently, the Trial Court erred in ruling against Mr. Jensen as the facts unequivocally show that Mr. Jensen's drive time is compensable.

The Trial Court erred by failing to properly analyze the Stevens factors, which determine whether an employee is considered on duty at the employer's premises or at a prescribed work place. The Stevens factors make it clear,

when an employer exerts the requisite amount of control over an employee's drive time, that drive time is compensable. Stevens, 162 Wn.2d 42. For example, the Stevens Court weighed the amount of control exerted by the employer including the requirements that while operating the company vehicle employees must: (1) obey traffic laws, (2) keep the vehicle clean, organized, and safe, (3) service the vehicle; (4) not carry non-employee passengers in the vehicle, and (5) carry tools necessary to perform the job. Stevens, 162 Wn.2d at 48-49. There, the Court reasoned that Brink's asserted the requisite amount of control over the employees for the Brink's employees drive time to constitute "hours worked" at a "prescribed work place" or the "employer's premises." Id. at 49.

Here, the Trial Court ignored the Stevens factors and focused on whether Mr. Jensen was required to go to the County shop prior to arriving at the rock-crushing site, whether Mr. Jensen could take his personal vehicle to the crushing site, whether the monthly \$150.00 drive time

compensation was a benefit that could be taken away, and the distance Mr. Jensen lives from the crushing site. (RP 7, 10-11, 18, 29). These are simply not the proper inquiries. The undisputed facts are strikingly similar to the Stevens factors.

Had the Trial Court properly applied the Stevens factors it indisputably would have seen, Lincoln County requires John Jensen to: (1) keep the vehicle clean, (2) fuel the vehicle, (3) anticipate future vehicle maintenance, (4) not carry non-employee passengers in the vehicle, (5) carry rock crushing equipment to the rock crushing site when necessary, and (6) obey traffic laws. Clearly, the proper application of the Stevens factors reveals that Lincoln County exerts the requisite amount of control over Mr. Jensen's drive time for that time to constitute hours worked under the MWA. Thus, the Trial Court should be reversed.

2. Lincoln County's Failure To Pay Mr. Jensen Wages Was Willful.

An employer who pays an employee less than minimum wage or fails to compensate overtime is liable for the full amount of such wage rate, less any amount actually

paid to such employee, and for costs and such reasonable attorney's fees. RCW 49.46.090. When an employer willfully withholds wages from an employee with intent to deprive the employee of any part of the employee's wages or pays to the employee a lower wage than the employee is entitled, the employer is liable to the employee for twice the amount of the wages unlawfully withheld. RCW 49.52.050(2). The test for whether the failure to pay was willful is merely that the failure to pay was volitional. Fiore, 169 Wn. App at 348. "*Willful means... [that the employer] knows what he is doing, intends to do what he is doing, and is a free agent.*" Id.

Here, it is clear that Lincoln County knew it was paying its rock crushing employees, including Mr. Jensen, less than minimum wage and was not paying overtime as it appropriately compensates other County employees for their drive time as evidenced by the CBA. (CP 134-135). The CBA provides:

Daily working hours shall be from 7:00 a.m. to 3:30 p.m. with one half (1/2) hour lunch time for

all working agreement personnel except as detailed in 12.3 [crusher crew]... This eight (8) hour period shall include travel time to and from work site from regular assigned home base with transportation furnished by the County.

(CP. 134).

In addition, Lincoln County admits that it paid \$150.00 per month because that is what the CBA provided. (CP 212-213). Mr. Jensen objected to this meager stipend, and Lincoln County refused to abide by its obligations under the law. (CP 197-201). The Trial Court erred by characterizing the \$150.00 stipend, not as compensation for drive time but as a favor or benefit to John Jensen provided by the County. (RP 7, ll. 14-22). The Trial Court erroneously asserted, in reference to the \$150.00 monthly compensation for travel time, that:

If it were compensation, I would think you would have to do the time card, but this is like a flat sum pursuant to the CBA.

(RP p. 7, ll. 20-22).

Therefore, the Trial Court erred in ruling in favor of Lincoln County because it is clear that Lincoln County

blatantly and willfully violated the MWA. The Trial Court should be reversed.

3. The Rights Provided Under the MWA Cannot Be Waived By A Collective Bargaining Agreement.

Lincoln County must compensate Mr. Jensen at his regular rate of pay and overtime pay for his drive time regardless of the CBA's clause to the contrary because the rights provided under the MWA may not be waived by a collective bargaining agreement. Schneider, 95 Wn. App. at 402; See also RCW 49.46.090(1). The MWA explicitly and unequivocally states, “[a]ny agreement between such employee and the employer to work for less than such wage rate shall be no defense” to an action brought under the MWA. RCW 49.46.090(1). The rights set forth by the MWA are the basic, nonnegotiable rights all employers must afford their employees. Schneider, 95 Wn. App. at 402; See also RCW 49.46.090(1). Employers and employees may not contract around these rights in an employment agreement or a collective bargaining agreement. Id. Furthermore, the

rights provided to employees under the MWA may not be waived. Id.

Lincoln County's argument and the Trial Court's apparent belief that the CBA provides a benefit to the rock crushing crew in the form of a complimentary vehicle and an additional \$150.00 per month for travel compensation contradicts the MWA and the CBA. (RP 7, ll. 14-22). The CBA requires Lincoln County to provide the vehicle and the MWA provides that an employee may not waive its right to minimum wage and compensation for hours worked. (CP 135); RCW 49.46 et seq. Lincoln County negotiated an illegal provision in its contract with Local 1254 to strip Mr. Jensen of his rights under Washington law. In fact, this illegal practice has persisted and when Mr. Jensen objected to it, Lincoln County refused to remedy the situation. (CP 197-201). The Trial Court erred by failing to recognize that the CBA provision providing \$150.00 each month for drive time compensation does not comport with the MWA and is prohibited by it. (RP 7). Therefore, the Trial Court erred in

ruling in favor of Lincoln County and its ruling should be reversed.

C. John Jensen's Motion for Partial Summary Judgment Re: Liability Should Have Been Granted.

As set forth above, there exists no genuine issues of material and Mr. Jensen is entitled to judgment as a matter of law. The undisputed facts clearly show that Lincoln County intentionally and willfully violated the MWA. Thus, the Trial Court erred when it denied Mr. Jensen's motion for partial summary judgment and granted Lincoln County's motion for summary judgment. Therefore, this Court should reverse the decision of the Trial Court and remand for a determination of damages.

V. RAP 18.1 MOTION FOR ATTORNEY FEES AND COSTS

“Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee for the full amount of such wage rate... and for costs and such reasonable attorney's fees as may be allowed by the court.”

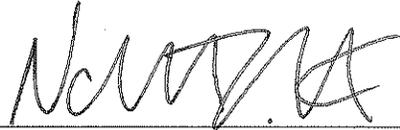
RCW 49.46.090. Therefore, pursuant to RAP 18.1 and pursuant to RCW 49.46.090, John Jensen respectfully requests an award of reasonable attorney fees and costs incurred below and on Appeal.

VI. CONCLUSION

Pursuant to the foregoing, John Jensen requests that this Court reverse the Trial Court's grant of summary judgment to Lincoln County and denial of John Jensen's partial summary judgment. In addition, John Jensen requests that this Court rule in favor of John Jensen and remand this case back to the Trial Court for a determination of damages.

DATED this 18th day of September, 2013.

PISKEL YAHNE KOVARIK, PLLC



NICHOLAS D. KOVARIK, WSBA #35462
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<u> X </u>	HAND DELIVERY	Michael E. McFarland, Jr.
<u> </u>	U.S. MAIL	Evans, Craven & Lackie, P.S.
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