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No. 36754-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FELIX W. SCHUCK, a single individual,

Appellant,

v.

TIM JACKSON and ROBERTA JACKSON, individually, as well
as the marital community thereof; IBEX CONSTRUCTION, INC., a
Washington corporation,

Respondents,

and

GORDON BECK and JANE DOE BECK, individually, as well as the
marital community thereof; INLAND NORTHWEST EQUIPMENT
AUCTION, INC., d/b/a REINLAND AUCTIONEERS, a Washington
corporation; REINLAND, INC., d/b/a/ REINLAND EQUIPMENT
AUCTION, an Idaho corporation; REINLAND PROPERTIES, L.L.C., an
Idaho limited liability company; THOMAS REINLAND and KUNY A
REINLAND, individually, as well as the marital community thereof;
ASHLEY REINLAND and JOHN DOE REINLAND, individually, as
well as the marital community thereof; and JOHN DOE 1-5, entities or
individuals,

Defendants.

BRIEF OF APPELLANT SCHUCK

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A. INTRODUCTION

The Jacksons d/b/a Ibex Construction, Inc. (“Jacksons”) have operated a junkyard on their property for years. They allowed virtually *anyone*, known or unknown to them, to dump materials there. They leased certain portions of their premises for disposal activities. Critically, they made no effort to inspect their premises as to materials, including hazardous materials, dumped there, even though they knew this dumping activity was going on; they simply didn’t care.

A cylinder containing deadly chlorine gas was present on the Jackson property for perhaps as long as 25 years. The Jacksons may even have had constructive notice that the cylinder was potentially hazardous from placards on the tank itself. Nevertheless, the Jacksons sold the right to take materials from their premises to a firm that in turn sold the cylinder and other materials to Pacific Steel & Recycling (“Pacific”) in Spokane.

In August 2015, when Pacific unwittingly crushed what were thought to be recyclable materials, plaintiff Felix Schuck was severely injured by exposure to a toxic cloud of chlorine gas released from the explosion of the cylinder. Schuck’s fellow Pacific employee died in the incident and others were severely injured as well.

The trial court here prematurely dismissed Schuck’s common law and statutory claims against the Jacksons, ruling that no duty was owed by

the Jacksons to Schuck. In so ruling, the trial court erred. A property owner is not entitled to use its property as a dumping ground for hazardous materials and to refuse to even take minimal precautions to know what is on its premises. Such a “whistling past the graveyard” obliviousness to the risk of harm such dumping represents is unacceptable under common law negligence and strict liability principles and the Hazardous Waste Management Act, RCW 70.105 (“HWMA”).

This Court should reverse the trial court’s erroneous rulings on summary judgment to give Felix Schuck his day in court for his severe injuries.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its February 1, 2019 order on summary judgment.

2. The trial court erred in entering its March 22, 2019 order granting reconsideration.

(2) Issues Pertaining to Assignments of Error

1. Where the Jacksons operated a junkyard with hazardous materials present on their premises, did they owe a common law negligence duty of care under the *Restatement (Second) of Torts* §§ 302 and/or 388, 392 to inspect their premises for hazardous chattels and warn others about them and for injuries to persons occasioned by hazardous materials maintained on those premises? (Assignments of Error Numbers 1-2)

2. Where the Jacksons tolerated hazardous materials on their premises, were they strictly liable under *Restatement (Second) of Torts* § 520 for abnormally dangerous activities on their premises that resulted in Schuck’s injuries? (Assignments of Error Numbers 1-2)

3. Where the Jacksons maintained dangerous or hazardous materials on their property, were they liable to Schuck for their failure to comply with the requirements of the HWMA for their safe maintenance and disposal? (Assignments of Error Numbers 1-2)

C. STATEMENT OF THE CASE

Felix Schuck was injured at work on August 12, 2015, when he was exposed to toxic chlorine gas released from a cylinder that exploded while at Pacific in Spokane. CP 53. As a result of the exposure, he suffered severe respiratory distress, and he has sustained serious and permanent lung damage and PTSD from the incident. CP 55.

The Jacksons owned, maintained, and controlled a 5-acre junk yard located on 8119 N. Regal in Spokane. CP 4, 5, 26, 27, 190. In the course of winding up their Ibex business, Tim and Roberta Jackson, Ibex’s owners, sold the right to take items from their premises to Reinland Auctioneers, Reinland Equipment Auction, Reinland Properties, L.L.C., Thomas Reinland, Kunya Reinland, and Ashley Reinland (“Reinland”) for the sum of \$32,000. CP 297, 567.¹ A chlorine gas tank was located on the Jacksons’

¹ The Jacksons asserted below that “they did not stand to profit from Reinland’s

property, although the Jacksons claimed that they had no prior knowledge of it. CP 187, 194, 213-14.

But Tim Jackson's own deposition testimony contradicted the assertion that the Jacksons had no knowledge that the gas cylinder was on their property. CP 218-22. First, he testified to an extraordinarily cavalier attitude toward the dumping of materials on his property. Tenants routinely left equipment onsite after the end of their leases. CP 463-65.

Q: Are you telling us that the tank you believe was, belonged to one of the tenants that you have had?

A: Not particularly. It could have been. And it could have been somebody just pulled in there in the middle of the night and dumped it because the gates were open a lot at night and a lot in the daytime. All the time in the daytime.

Q: Okay. So back to my question: Are you telling us that you believe the tank was owned by one of your tenants or are - -

A: I'm telling you I don't know. It could have been. And it could have been somebody dumped it. I have had things dumped there before - -

Q: People just - -

A: - - because they can't get rid of it. Now Pacific, if I drive in there they are going to throw me out big time. And so will American Recycle or DuMor because they will not handle them.

sale of scrap metal." CP 413. That is obviously not quite true, as Reinland did not pay such a sum for mere charitable purposes.

Q: Handle tanks of chlorine?

A: Any tanks.

Q: Right. That hasn't been de-valved?

A: Right, that hasn't been decontaminated.

Q: Right. So somebody could have brought it onto the yard and dropped it off?

A: Yeah.

CP 465-66. Unbelievably, Jackson doubled down on that cavalier attitude, testifying:

Q. So do people just come into your yard and drop stuff off, big old two ton tanks?

A. I let people do that, yeah

Q. Why?

A. Why not?

Q. Why not? Because you're running a business and leasing out and making money off of this piece of property.

A. Yeah. But I'm just easy goin'. That's the problem. You can't guess how many dollars I've lost by bein' easy going.

CP 800.

Next, he confirmed that in fact, tanks were present on his premises ("lying around in the yard") for 25 years, or for the entire 35 years he owned the property. CP 220, 228. He admitted as much to Captain K. Miller of the Spokane Fire Department who investigated the chlorine gas explosion

at Pacific. CP 271, 468. Roberta Jackson also confirmed that the Jacksons kept other types of potentially hazardous cylinders on their property, such as gas tanks. CP 564-65.

When the Jacksons decided to sell the right to take materials from their property to Reinland, no discussion took place between the Jacksons and Reinland regarding the potential presence of hazards on the premises. CP 567. Tim Jackson testified that there was “too much stuff” to recall what all was located on his property. CP 569. He simply entered into a business deal and did not do his due diligence in order to find out what that sale included; Jackson wanted to get this sale done and over with, as he “didn’t care” about what items were on his property anymore:

Q: Are you saying that you were not interested in know exactly what it was that you were selling?

...

A: No. I didn’t care. I didn’t need it anymore. I didn’t want it anymore.

CP 569.

Additionally, according to the testimony of Scott Sander, the owner of L&S Tires, a firm that leased a portion of the Jacksons’ premises for the disposal of old tires, CP 445-46, the tank came from those premises and *had been there for at least 18 years*. CP 571. Furthermore, the Jacksons

and Sander had walked out in the direction of the tank's location and had passed the scrap pile where the tank was located multiple times. *Id.*

Reinland hired Gordon Beck to transport certain materials it selected from the Jacksons' property to Pacific, agreeing to share any scrap metal profits with Beck. CP 126. On August 12, 2015, Beck loaded materials, including the tank at issue, on a Pacific truck that then transported the materials to Pacific's recycling site. *Id.* Beck testified:

6. I saw the cylinder on the Ibex site and put it in the Pacific Steel dump truck.

7. I did not know it was a pressurized container and did not know it contained chlorine gas. The cylinder looked very old and it was partially buried in the dirt. There were no warning labels or markings on it that indicated it contained hazardous materials.

8. I was not told that the cylinder contained hazardous materials. I did not agree to transport or dispose of hazardous materials.

9. The driver of the dump truck was on site and watched me load the cylinder. He did not object to the cylinder being loaded into the truck.

CP 126.

Kyle Miller, a friend of Beck's, walked the property on the morning before the incident occurred, and he testified that he saw the tank located on the Jacksons' property on the day of the incident. CP 342. He confirmed that the tank that exploded came from the Jacksons' property. CP 343. However, he contradicted Beck's testimony that the tank was buried. *Id.*

Enrique Medina, a well-qualified environmental and occupational health and safety professional,² testified that the Jacksons, as the landowners, in the exercise of reasonable care, were responsible for investigating the contents of their business yard prior to selling their possessions, and should have thoroughly investigated all items left in their yard prior to closing their business. CP 597. They were on notice, both actual and constructive, of the chlorine cylinder, constructive notice of this potential hazard given the testimony of Scott Sander, Gordon Beck, and Kyle Miller. CP 596. He noted that a reasonable person should have known, through even a minimal investigation, that there was potentially hazardous material in this cylinder, given the photographs of the cylinder with its legible label on one end of the cylinder that clearly mentions the word “chemical,” and the valves on its one end. CP 597. Even the most basic investigation, paying special attention to hazardous items such as the chlorine cylinder, could have prevented Schuck from being injured. *Id.*

When Pacific began crushing the tank in a shear, it exploded and released chlorine gas. CP 170-71. That chlorine gas injured Schuck, killed another Pacific employee, and hurt others, as the fire department

² Medina had an educational background in biology and a certified industrial hygienist, a certified safety professional, a lead verifier for greenhouse gas emission reports on behalf of the California Air Resources Board, and an OSHA construction outreach trainer, who earned his hazardous materials management professional certificate from University of California San Diego. CP 595.

investigation report documented. *Id.* The event was so catastrophic that CNN reported on it nationally, noting that 30 people were exposed to the huge cloud of toxic gas the explosion created, and that 13 people were transported to 4 Spokane-area hospitals. <https://www.cnn.com/2015/08/12/us/washington-state-chlorine-sickness/index.html>.

Schuck sued Beck and the Jacksons in the Spokane County Superior Court on June 17, 2017, asserting common law negligence and strict liability claims as well as statutory claims under the HWMA. CP 1-14. Their amended complaint added Reinland. CP 47-64. The case was assigned to the Honorable John O. Cooney. The defendants answered the amended complaint. CP 72-96, 132-42.

Beck moved for summary judgment. CP 97-128. After initially continuing the motion, CP 129-31, Beck filed an amended motion, CP 143-87, in which the Jacksons joined. CP 188-274.³ Schuck opposed the Beck motion. CP 275-312. The trial court granted Beck's motion on October 2, 2018, dismissing him from the case. CP 402-05.

The Jacksons moved for summary judgment. CP 409-32. The court initially granted the motion as to Schuck's common law strict liability and statutory claims, but denied the motion as to his common negligence claims.

³ Schuck objected to that joinder. CP 370-74.

CP 645-50, 697-702. The Jacksons then moved for reconsideration, CP 651-64, and the trial court granted the motion, dismissing all of Schuck's claims against them. CP 695-96, 817-22. Schuck moved for reconsideration on the HWMA claim, CP 703-10, but the trial court denied that motion on March 22, 2019. CP 822. This timely appeal followed. CP 823-38.⁴

D. SUMMARY OF ARGUMENT

This case centers on duty questions. The trial court erred in determining that the Jacksons owed no duty, whether based on common law or statute, to Schuck.

As to the operators of a *de facto* junk yard that allowed virtually anyone to dump any materials there without restriction, the Jacksons had an obligation under *Restatement (Second) of Torts* §§ 388 or 392 to inspect their premises for hazardous chattels found there and to warn others regarding them. They failed to do so. The Jacksons also owed a duty in negligence under § 302 of the *Restatement* to anticipate harm to others like Schuck where they set in motion the risk of harm by their own affirmative

⁴ The trial court certified its order under CR 54(b) by an order entered on April 19, 2019. CP 834-37. It stayed further proceedings in the case as to Reinland. CP 837. Reinland has secured a lifting of the stay and has set its own summary judgment motion for September 13, 2019.

act of allowing the dumping of hazardous cylinders of chlorine gas on their premises and then sold such materials on those premises to others.

The Jacksons were strictly liable under the six factor test of *Restatement* § 520 for abnormally dangerous activities on their premises. Chlorine gas is an abnormally dangerous material under § 520.

Finally, the Jacksons were generators of hazardous waste within the meaning of the HWMA and Schuck stated a cause of action under RCW 70.105.097 against them for their violation of *numerous* rules pertaining to the safe treatment of hazardous materials.

E. ARGUMENT

(1) Standard of Review on Summary Judgment

Summary judgment is a drastic remedy “appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Kittitas County v. Allphin*, 190 Wn.2d 691, 700, 416 P.3d 1232 (2018); CR 56(c). It is appropriate only where a trial would truly be “useless.” *Wheeler v. Ronald Sewer Dist.*, 58 Wn.2d 444, 446, 364 P.2d 30 (1961). The Jacksons bore the burden of establishing their right to judgment as a matter of law.

In addressing whether a genuine issue of material fact is present, a court must construe the facts, and reasonable inferences from the facts in a light most favorable to Schuck as the non-moving party. *Ranger Ins. Co. v.*

Pierce Cty., 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Where there are significant witness credibility issues present in a case, it has long been the rule in Washington that summary judgment is inappropriate. *Amend v. Bell*, 89 Wn.2d 124, 129, 570 P.2d 138 (1977); *Powell v. Viking Ins. Co.*, 44 Wn. App. 495, 503, 722 P.2d 1343 (1986) (“Credibility issues involving more than collateral matters may preclude summary judgment.”). Here, there are *significant* credibility issues associated with the testimony of Tim Jackson.

When expert opinions come to differing conclusions on a key issue, that creates a plain issue of fact for the jury. In a case involving alleged insurer bad faith, Division I put the point succinctly:

At the summary judgment stage with which we are concerned, both appeared qualified to render opinions whether the accident caused Leahy’s DM. There was a clear conflict between two experts on a central question: causation. Could this insurer, on this record, claim that there was no genuine issue of material fact on the reasonableness of its action in solely relying on its expert? We think not.

Leahy v. State Farm Mut. Auto. Ins. Co., 3 Wn. App. 2d 613, 633, 418 P.3d 175 (2018).⁵

⁵ See also, *Chen v. City of Seattle*, 153 Wn. App. 890, 900, 223 P.3d 1230 (2009), *review denied*, 169 Wn.2d 1003 (2010); *Bowers v. Marzano*, 170 Wn. App. 498, 290 P.3d 134 (2012) (experts in disagreement on cause of auto crash); *Advanced Health Care, Inc. v. Guscott*, 173 Wn. App. 857, 295 P.3d 816 (2013) (differing opinions in medical negligence action as to cause of patient’s injury); *C.L. v. State Dep’t of Soc. & Health Servs.*, 200 Wn. App. 189, 200, 402 P.3d 346 (2017), *review denied*, 192 Wn.2d 1023 (2019) (“In general, when experts offer competing, apparently competent evidence, summary judgment is inappropriate.”).

This Court reviews decisions on summary judgment *de novo*. *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011).

The present case pertains essentially to the question of whether Jacksons owed a duty of care to Schuck for the maintenance and disposition of materials in their junk yard. “The existence of a legal duty is a question of law for the court.” *McKown v. Simon Prop. Group, Inc.*, 182 Wn.2d 752, 762, 344 P.3d 661 (2015). By common law and under the HWMA, they owed Schuck a duty of care.

(2) The Jacksons Owed a Common Law Negligence Duty of Care to Schuck

(a) Duty under *Restatement (Second) of Torts* § 388

The *Restatement (Second) of Torts* § 388 defines the scope of the duty to warn owed by a supplier of chattel,⁶ requiring suppliers of chattels to be aware of the dangerous propensities of these chattels for others. That

⁶ § 388 states that a person who directly or indirectly supplies a chattel to another will be liable for the harm to those whom the supplier should expect to use the chattel if the supplier:

- (a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and
- (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and
- (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.

Restatement (Second) of Torts § 388 (emphasis added).

section is supplemented by § 392 of the *Restatement* when the provision of the chattel is for a business purpose.⁷

Initially, the trial court got it right, concluding that the Jacksons owed Schuck a duty under § 388 principles, finding the existence of a genuine issue of material fact on whether they knew the tank was on their property and was dangerous, and rejecting an intervening cause analysis. CP 648. On reconsideration, however, the court changed course, concluding that § 388 provided the exclusive basis for Schuck's common law negligence claims against the Jacksons and that Schuck failed to present "admissible evidence" to sustain a § 388 claim because the gas cylinder's hazard was obvious to subsequent business users like Reinland or Pacific. CP 695-96. The trial court erred.

⁷ § 392 states:

One who supplies to another, directly or through a third person, a chattel to be used for the supplier's business purposes is subject to liability to those for whose use the chattel is supplied, or to those whom he should expect to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by persons for whose use the chattel supplied

(a) if the supplier fails to exercise reasonable care to make the chattel safe for which it is supplied, or

(b) if he fails to exercise reasonable care to discover its dangerous condition or character, and to inform those whom he should expect to use it.

The case law arising under §§ 388, 392 in Washington is clear. The Jacksons had a duty to make a reasonable inspection of their premises with regard to the chattel at issue, the gas cylinder, and to either address its hazard or to warn others about it when they transferred possession and control of the chattel to others. *Fleming v. Stoddard Wendle Motor Co.*, 70 Wn.2d 465, 467-68, 423 P.2d 926 (1967) (adopting § 388); *Larner v. Torgerson Corp.*, 93 Wn.2d 801, 806-07, 613 P.2d 780 (1980) (applying §§ 388, 392 to lease of forklift); *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 348-49, 197 P.3d 127 (2008) (“suppliers” under § 388 include vendors, lessors, or donors of a chattel; suppliers must inspect chattel for hazards and abate them or warn others).

The trial court labored under the misconception that Schuck contended that the Jacksons owed him a separate duty under § 343. That is inaccurate. Rather, the Jacksons’ § 388 duty is consistent with their obligation, as the owners or possessors of land under the *Restatement (Second) of Torts* § 343. They owed a duty of reasonable care to invitees which requires the landowner to inspect for dangerous conditions, “followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee’s] protection under the circumstances.” *Tincani v. Inland Empire Zoological Soc’y*, 124 Wn.2d 121, 138-39, 875 P.2d 621, 631 (1994) (citing *Restatement (Second) of Torts* § 343 cmt. b); *Adamson*

v. Port of Bellingham, 193 Wn.2d 178, 187-88, 438 P.3d 522 (2019). The Jacksons had a duty to inspect their property for dangerous conditions, such as the presence of dangerous waste by way of a chlorine gas tank, and warn against such dangerous condition before inviting Reinland onto its property to purchase and/or dispose of various personal property items.

While the “suppliers” must be in the chain of distribution of the hazardous chattel, *id.* at 354, the duty extends not only to the person or entity that directly received the chattel, but anyone in the class that the supplier should expect to use the chattel. *Gall v. McDonald Industries*, 84 Wn. App. 194, 203-04, 926 P.2d 934 (1996), *review denied*, 131 Wn.2d 1013 (1997) (citing cmt. a to § 388, Division II found duty owed by truck lessor to lessee’s driver injured by defective brakes to inspect and repair them).⁸ *Accord, Cook v. RSC Equip. Rental*, 2010 WL 3211909 (W.D. Wash. 2010) at *3 (question of fact as to whether business breached its duty to inspect chattel).

⁸ Illustration 3 to *Restatement* § 388 is apt on the foreseeable scope of the duty:

A sells or gives to B a can of baking powder. A knows that several, though not all, of the lot of cans of which this can is a part have exploded when opened. He does not inform B of this fact. While C, B’s cook, is attempting to open the can, it explodes, causing harm to C’s eyes and also the eyes of D, B’s kitchen maid, who is standing nearby. A is subject to liability to C and D.

In certain circumstances a duty to warn under § 388, or § 402A of the *Restatement*, does not arise where the alleged dangerous condition of the chattel was obvious and known to the plaintiff. In *Mele v. Turner*, 106 Wn.2d 73, 79-80, 720 P.2d 787 (1986), the Supreme Court held that the dangerous condition of a lawnmower was obvious to a plaintiff who placed his hand under the running mower. *Accord, Baughn v. Honda Motor Co.*, 107 Wn.2d 127, 137, 727 P.2d 655 (1986) (mini trail bike).

However, the question of whether the hazard of the chattel was “known” or “obvious” to the plaintiff is a *question of fact*. *Ewer v. Goodyear Tire & Rubber Co.*, 4 Wn. App. 152, 162, 480 P.2d 260, *review denied*, 79 Wn.2d 1005 (1971) (Goodyear failed to warn of hazard of “bead breaking” in its tires during mounting). Whether Schuck had explicit knowledge of the cylinder’s hazard was for the jury. Comment k to *Restatement* § 388 states: “It is not necessary for the supplier to inform those whose use the chattel is supplied of a condition which a mere casual looking over will disclose, *unless the circumstances under which the chattel is supplied are such as to make it likely that even so casual an inspection will not be made.*” (emphasis added).

This concept finds its counterpart in § 343A where a premises owner has a duty to warn of known or obvious hazards on its premises that it should anticipate that others might not fully appreciate:

A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, *unless the possessor should anticipate the harm despite such knowledge or obviousness.*

Restatement (Second) of Torts § 343A (1965) (emphasis added).

Moreover, the Jacksons should have anticipated harm associated with cylinders of deadly chlorine gas from their premises despite any alleged “obviousness” of their danger because no person or entity involved, in fact, inspected the tank or discovered its danger. Reinland did not perform even a casual inspection of the tank and simply identified it as junk/scrap metal to dispose with Pacific. Nor was Reinland, as an auctioneer, familiar with selling or disposing hazardous or dangerous materials. The same is true for Pacific because it was processing a high volume of scrap metal and received a number of items from the Jacksons’ property. Pacific did not purchase just a single tank from Reinland or the Jacksons to recycle. It bought whatever was seemingly recyclable from Reinland. Pacific was not a facility permitted to dispose of or recycle dangerous or hazardous waste in any event. Reinland and Pacific were not in the business of addressing dangerous or hazardous wastes and did not have over 18 years to determine what the tank was *and* that it contained dangerous gas, as did the Jacksons.

Most pointedly, Felix Schuck, performing his work at Pacific, would not necessarily have been aware of the cylinder's hazard, even if warnings were present on the cylinder itself. The machine he operated crushed recyclable materials. CP 170-71.

Here, there is no question that the Jacksons did not inspect their premises for hazardous chlorine gas cylinders, nor did they warn anyone with regard to them.

The trial court's dismissal was premature where there was a dispute concerning the level of inspection or investigation would have revealed that the tank was dangerous and whether such dangerous nature was "obvious," and the Jacksons should have anticipated harm, even if the alleged hazard was "obvious." To the extent the open or obvious dangerousness nature of the chlorine gas tank was a viable defense against Schuck's common law negligence claims, this factual issue was for the jury to decide.

Ultimately, the Jacksons had a duty to be aware of what hazards lurked on their premises and take steps to either abate such hazards or warn others of them. *Restatement (Second) of Torts* § 388 cmt. k. When the Jacksons turned the chlorine gas tank over to Reinland to be sold or otherwise disposed of, then those involved in its transport, processing, and/or disposal of the dangerous waste were within the foreseeable class put

at risk by the Jacksons' delivery of the chattel to Reinland. Accordingly, the Jacksons owed Schuck a duty of care under *Restatement* §§ 388, 390.

(b) Duty under *Restatement (Second) of Torts* § 302

Schuck also argued below that the Jacksons owed him a common law negligence duty under the *Restatement (Second) of Torts* § 302. CP 552-53; RP 57-58.⁹ The trial court rejected a duty based on § 302, citing only to § 302B that relates to the setting in motion of actions that result in intentional or criminal conduct, and asserting that the Jacksons' actions in allowing a chlorine gas cylinder to be located on their property or removed from it were not actionable. CP 818. The trial court misapprehended the nature of the § 302 duty.

The *Restatement (Second) of Torts* § 302 confirms that a person owes a duty not to set in motion forces that result in another's harm or fail to deal with forces already in motion that result in harm to others.¹⁰ Comment c to that section notes:¹¹

⁹ Such a duty is also supported by *Restatement (Third) of Torts: Liability for Physical and Emotional Harm* § 7(a).

¹⁰ § 302 states:

A negligent act or omission may be one which involves an unreasonable risk of harm to another through either (a) the continuous operation of a force started or continued by the act or omission, or (b) the foreseeable action of the other, a third person, an animal, or a force of nature.

¹¹ The American Law Institute offered two illustrations for these principles:

The actor may be negligent in setting in motion a force the continuous operation of which, without the intervention of other forces or causes, results in harm to the other. He may likewise be negligent in failing to control a force already in operation from other causes, or to prevent harm to another resulting from it. Such continuous operation of a force set in motion by the actor, or of a force which he fails to control, is commonly called “direct causation” by the courts, and very often the question is considered as if it were one of the mechanism of the causal sequence. In many instances, at least, the same problem may be more effectively dealt with as a matter of the negligence of the actor in the light of the risk created.

Although the Court does not specifically cite to § 302, the duty analysis in *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 257 P.3d 532 (2011) is on point. There, the negligence of an engineering firm in its plans for a Spokane sewage treatment plant resulted in a catastrophic failure in the plant and the plaintiff’s death. The plaintiff literally drowned in sewage when the plant’s digester dome collapsed. Plainly, the defendant’s actions set in motion a force that resulted in harm to plaintiff who was a plant worker. This was not a traditional malpractice action as the plaintiff was

1. A sets a fire on his own land, with a strong wind blowing toward B’s house. Without any other negligence on the part of A, the fire escapes from A’s land and burns down B’s house. A may be found to be negligent toward B in setting the fire.

2. A discovers on his land a fire originating from some unknown source. Although there is a strong wind blowing toward B’s house, A makes no effort to control the fire. It spreads to B’s land and destroys B’s house. A may be found to be negligent toward B in failing to control the fire.

not the client of the engineering firm. The Court held a duty existed nonetheless. *Id.* at 609.

That duty is even more refined where the forces set in motion by the defendant result in harm to the plaintiff through the foreseeable negligent or reckless conduct of a third person, *Restatement (Second) of Torts* § 302A,¹² or through the foreseeable intentionally harmful or criminal conduct of a third person, *id.* at § 302B.

Washington courts have often addressed the duty under § 302B. For example, in *Kim v. Budget Rent Car Systems, Inc.*, 143 Wn.2d 190, 15 P.3d 1283 (2001), the Supreme Court found that Budget owed no duty to motorists injured after Budget left keys in the ignition of cars in its rental lot, a third party then stole a car, and ran into that motorist. *But see Parrilla*

¹² The American Law Institute offers 3 pertinent illustrations of this concept:

1. A leaves a hole in the street, which would be quite obvious to an attentive automobile driver, but might easily not be discovered by an inattentive driver. B, a driver who is not keeping a proper lookout, drives into the hole and is injured. A may be found to be negligent toward B.

2. The same facts as in Illustration 1, except that the person injured is C, a guest in B's automobile. A may be found to be negligent toward C.

...

6. A lends his car to B to drive on a pleasure trip. A knows that B is incompetent and habitually careless driver whose license to drive has been revoked for negligent driving. B negligently drives the car and injures C. A is negligent toward C.

Illustration 1 is *Tobin v. City of Seattle*, 127 Wash. 664, 221 Pac. 583 (1923). Illustration 6 is *Atkins v. Churchill*, 30 Wn.2d 859, 194 P.2d 364 (1948).

v. King County, 138 Wn. App. 427, 157 P.3d 879 (2007) (county owed a duty to motorists injured by a bus when the bus driver exited it, leaving keys in the ignition and it was commandeered by passenger high on PCP who ran the bus into the motorists). In *Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013), the city owed no duty to a shooting victim after its officers stopped the shooter on suspicion of burglary but failed to remove shotgun shells lying on the ground near the stop. The shooter retrieved them and used the shells to kill the victim. The Court limited the duty under § 302B to acts of commission, rather than acts of omission. But in *Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013), our Supreme Court concluded that the city owed a duty to a domestic violence victim when its officers served a domestic violence protection order on her abuser, knowing she was present in the house, and the officers did not remove the abuser from the house as the order directed; the abuser then killed the victim.

Properly analyzed, the Jacksons owed a § 302 duty of care to Schuck no different than the duty owed to the plaintiff in *Michaels*. By their negligent treatment of their premises, allowing dangerous materials to be deposited there and neglecting to inspect or assess the risk of such materials, they set in motion the events leading to Schuck's injuries and the death of

his fellow employee. The trial court erred in failing to find a duty under § 302.

(3) The Jacksons Were Strictly Liable to Schuck for the Abnormally Dangerous Activity on Their Property under Restatement (Second) of Torts §§ 519-520

The trial court here concluded that the Jacksons were not strictly liable to Schuck under the *Restatement (Second) of Torts* §§ 519, 520 because the maintenance of a chlorine gas cylinder on their premises did not constitute an abnormally dangerous activity within the meaning of that *Restatement* section. CP 649. But the analysis was severely truncated, and it did not consider all of the § 520 elements. It erred in dismissing Schuck’s claim.

A party may be strictly liable for abnormally dangerous activities that harm others. § 519 of the *Restatement* provides that any party carrying on an “abnormally dangerous activity” is strictly liable for ensuing damages. The test for what constitutes such an activity is stated in § 520 of the *Restatement*.¹³ Both *Restatement* sections have been adopted by our

¹³ § 520 of the *Restatement* lists six factors that are to be considered in determining whether an activity is “abnormally dangerous:”

- (a) existence of a high degree of risk of some harm to the person, land or chattels of others;
- (b) likelihood that the harm that results from it will be great;
- (c) inability to eliminate the risk by the exercise of reasonable care;
- (d) extent to which the activity is not a matter of common usage;
- (e) inappropriateness of the activity to be the place where it is carried on; and

Supreme Court, and determination of whether an activity is an “abnormally dangerous activity” is a question of law. *Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 6, 810 P.2d 917 (1991) (citations omitted). As recognized by our Supreme Court, the comments to § 520 explain how these factors should be evaluated:

Any one of them is not necessarily sufficient of itself in a particular case, and ordinarily several of them will be required for strict liability. On the other hand, it is not necessary that each of them be present, especially if others weigh heavily. Because of the interplay of these various factors, it is not possible to reduce abnormally dangerous activities to any definition. The essential question is whether the risk created is so unusual, either because of its magnitude or because of the circumstances surrounding it, as to justify the imposition of strict liability for the harm that results from it, even though it is carried on with all reasonable care.

Id. at 6-7 (citing *Restatement (Second) of Torts* § 520 cmt. f (1977)).

The *Klein* court found that fireworks displays are abnormally dangerous activities justifying the imposition of strict liability based on the presence of the factors stated in clauses (a), (b), (c), and (d) of the *Restatement*. *Id.* at 7. Specifically, the Court found that any time a person ignites aerial shells or rockets with the intention of sending them aloft to explode in the presence of large crowds of people, a high risk of serious

(f) extent to which its value to the community is outweighed by its dangerous attributes.

Restatement (Second) of Torts § 520 (1977).

personal injury or property damage is created, no matter how much care pyrotechnicians exercise, they cannot entirely eliminate the high risk inherent in setting off powerful explosives such as fireworks near crowds, the dangerousness of fireworks displays is evidenced by the elaborate scheme of administrative regulations with which pyrotechnicians must comply, and that presenting public fireworks displays was not a matter of common usage. *Id. Accord, Siegler v. Kuhlman*, 81 Wn.2d 448, 502 P.2d 1181 (1972), *cert. denied*, 411 U.S. 983 (1973) (transporting gasoline by truck); *Langan v. Valicopters, Inc.*, 88 Wn.2d 855, 567 P.2d 218 (1977) (aerial crop dusting or spraying is abnormally dangerous activity); *Vern J. Oja & Assoc. v. Wash. Park Towers, Inc.*, 89 Wn.2d 72, 569 P.2d 1141 (1977) (pile driving); *Erickson Paving Co. v. Yardley Drilling Co.*, 7 Wn. App. 681, 502 P.2d 334 (1972) (blasting); *In re Hanford Nuclear Reservation Litigation*, 350 F. Supp. 2d 871 (E.D. Wash. 2004) (production of plutonium for nuclear weapons); *Anderson v. Teck Metals, Ltd.*, 2015 WL 59100 (E.D. Wash. 2015) (open pit copper mining operation dumping millions of tons of a soup of toxic wastes from that operation, contaminating the local surface and ground water, and soil and air).

While the apprehension of a dangerous fugitive is not an ultrahazardous activity, *Stout v. Warren*, 176 Wn.2d 263, 290 P.3d 972 (2012), the Supreme Court reaffirmed that in determining if an activity is

ultrahazardous in nature no one factor among the six identified in § 520 is necessary or sufficient, but at least one factor in (a)-(c) and one in (d)-(f) must be present. *Id.* at 271. Here, that is true. There is little doubt that chlorine gas presents a high risk of harm to others. At least 30 people were exposed to a cloud of toxic gas; Schuck was severely injured, and his fellow employee, Edward Dumaw, was killed. Handling chlorine gas is clearly not a matter of common usage, nor should it be stored in forgotten canisters in junkyard.

Recently, the Montana Supreme Court upheld a trial court decision that concluded a 4.5 million gallon artificial fish pond maintained on an upland property that breached its banks and overflowed on downhill property constituted an abnormally dangerous condition under the § 520 factors. *Covey v. Brishka*, __ P.3d __, 2019 WL 3296820 (Mont. 2019). Unlike the trial court here, the Montana trial judge carefully analyzed all of the § 520 factors.

Moreover, American Law Institute has modified the §§ 519-520 analysis in the *Restatement (Third) of Torts: Liability for Physical and Emotional Harm* § 20, simplifying it.¹⁴ It has indicated that such

¹⁴ § 20 states:

- (a) An actor who carries on an abnormally dangerous activity is subject to strict liability for physical harm resulting from the activity.
- (b) An activity is abnormally dangerous if:

abnormally dangerous activities are more broadly present than under §§ 519-520.¹⁵

Here, the disposal of a dangerous waste tank containing chlorine gas meets the § 520 factors. The tank created a high risk of personal injury. No matter how much care handlers of such dangerous materials exercise, they cannot entirely eliminate the high risk inherent in disposing of chlorine gas. The dangerousness of disposing of such dangerous waste is certainly evidenced by the elaborate scheme of administrative regulations under the

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- (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and
 - (2) the activity is not one of common usage.

¹⁵ Illustration 2 provides:

The Malloy Company produces components for computers that are essential to the modern economy. Its manufacturing plant is located in a community almost all of which is residential. Its manufacturing process generates a toxic chemical as a byproduct. Malloy stores this chemical in storage bins pending shipment of the chemical to an off-site disposal facility. This storage arrangement complies with the requirements of reasonable care and likewise with applicable public regulations. Even during normal and proper operations, it is often necessary to open the lids on these bins for periods of time. Wind conditions may then arise that can disperse the chemical from the storage bins to the property of Malloy's neighbors; over time, such dispersion is quite likely but not certain. When and if it occurs, the toxic fumes emanating from the chemicals can easily induce serious illnesses in those living on the property. Malloy's activity of storing the chemicals is not in common usage, and a court may determine that the activity creates a highly significant risk of physical harm even when reasonable care is exercised. Accordingly, the court may conclude that the activity is abnormally dangerous.

HWMA (and the Model Toxic Control Act) as well as similar federal regulations, and disposing of dangerous waste is not a matter of common usage. Handling chlorine gas or cylinders containing it is not a matter of common usage. Further, the Jacksons' handling of such dangerous material was inappropriately carried on in a junkyard not permitted or qualified to handle such dangerous waste. Finally, the danger of chlorine gas disposal certainly outweighs any "value" to the community in its slipshod disposal in the Jacksons' property.

The trial court erred in concluding that the Jacksons' activities on their premises was not an "abnormally dangerous activity."

(4) The Jacksons Owed Schuck a Duty of Care under the HWMA

The trial court also dismissed Schuck's HWMA statutory claim against the Jacksons, concluding that the Jacksons owed Schuck no duty because they did not fit within the definition contained in WAC 173-303-020 for parties subject to the HWMA. CP 647-48, 818. In this determination, the trial court erred.

(a) Background to HWMA

In enacting the HWMA, the Legislature expressed a clear intent to *comprehensively* address hazardous wastes and their management. RCW 70.105.005; RCW 70.105.007. *See* Appendix. As HWMA's implementing

agency, the Department of Ecology (“DOE”),¹⁶ has phrased it, the HWMA is intended to regulate wastes from “cradle to grave.” CP 586.¹⁷ To facilitate those legislative purposes, the Legislature established both civil and criminal penalties for its violation, RCW 70.105.080-.085, and a statutory cause of action to advance private enforcement of those purposes:¹⁸

¹⁶ The Legislature authorized the DOE to promulgate regulations regarding extremely hazardous wastes, RCW 70.105.020, and it did so in chapter 173-303 WAC. DOE’s regulatory intent is broad. WAC 173-303-010.

¹⁷ DOE’s technical guidance stated:

It’s the law: You are responsible for the dangerous waste your business generates from cradle to grave – you’re responsible even after you send it for disposal. If you have a chemical spill that gets into the storm drain, for example, you are responsible for the legal and financial consequences. If you send your waste to a disposal facility that doesn’t manage the waste properly, you are responsible.

CP 586.

¹⁸ In interpreting the HWMA, this Court is guided by clear-cut principles of statutory interpretation. The primary goal of statutory interpretation is to carry out legislative intent. *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington, this analysis begins by looking at the words of the statute. In the absence of a statutory definition, courts give words their common and ordinary meaning. *Zachman v. Whirlpool Financial Corp.*, 123 Wn.2d 667, 671, 869 P.2d 1078 (1994). “If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself. *Id.* Courts look to the statute as a whole, giving effect to all of its language. *Dot Foods, Inc. v. Wash. Dep’t of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). Courts must look to what the Legislature said in the statute and related statutes to determine if the Legislature’s intent is plain. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language is plain, that ends the courts’ role. *Cerillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006). If, however, the language of the statute is ambiguous, courts must then construe the statutory language. A statute is ambiguous if it is subject to two or more reasonable interpretations. *State v. McGee*, 122 Wn.2d 783, 864 P.2d 912 (1993). In construing an ambiguous statute, a court may consider its legislative history and the circumstances surrounding its enactment to arrive at the Legislature’s intent. *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003); *City of Seattle v. Fuller*, 177 Wn.2d 263, 269-70, 300 P.3d 340

A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section.

RCW 70.105.097. The Supreme Court applied that private enforcement statute in *Hickle v. Whitney Farms, Inc.*, 148 Wn.2d 911, 64 P.3d 1244 (2003).

At its core, the HWMA requires persons or entities maintaining, generating or disposing of dangerous or hazardous wastes to follow prescribed statutory/regulatory procedures. The failure of such persons or entities to comply with the prescribed statutory procedures may establish a basis for a claim under RCW 70.105.097. *Hickle*, 148 Wn.2d at 919-24.¹⁹ Because there is no question that the Jacksons did *nothing* to safely store or dispose of deadly chlorine gas that was on their premises, the real issues

(2013). See generally, Philip A. Talmadge, "A New Approach to Statutory Interpretation in Washington," 25 Seattle U. L. Rev. 1 (2001).

Here, Schuck's interpretation of the HWMA, not the trial court's, is more consistent with the statutory language, the Legislature's intent as to the HWMA, and DOE's regulations.

¹⁹ In *Hickle*, the Court also recognized that a plaintiff may have a common law negligence claim under *Restatement (Second) of Torts* § 390 where the defendant negligently entrusts wastes to an entity incapable of handling them safely. 148 Wn.2d at 925-26.

here relate to whether the Jacksons were covered under HWMA and whether the chlorine gas cylinders met the requisite definition of covered “waste.” The trial court erred in ruling as a matter of law that the Jacksons were not covered under HWMA.

(b) The Jacksons Were Covered under HWMA

The HWMA is *broad* in its scope, befitting a statute regulating wastes from “cradle to grave.” In WAC 173-303-020, DOE defined those subject to its regulatory authority as:

all persons who handle dangerous wastes and solid wastes...including, but not limited to:

- (1) Generators;
- (2) Transporters;
- (3) Owners and operators of dangerous waste recycling, transfer, storage, treatment, and disposal facilities; and
- (4) The operator of the state’s extremely hazardous waste management facility.

WAC 173-303-020. The statute defines a “person” as “any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever...” RCW 70.105.010(14).

It further defines a “facility” subject to its terms as “all contiguous land and structures, other appurtenances, and improvements on the land *used for recycling, storing, treating, incinerating or disposing of hazardous wastes.*” RCW 70.105.010(8) (emphasis added). Arguably, under the broad statutory definition of a facility, the Jacksons’ junkyard qualified

under WAC 173-303-020(3). They took in dangerous wastes, and did not adequately address their storage or disposal. In fact, WAC 173-303-630 makes it clear when it addresses the “Use and management of containers” and subsection (1) notes that the regulations “apply to owners and operators of all dangerous waste facilities that store containers of dangerous waste.”

More explicitly, waste generators are subject to the Act. Under the HWMA, “ ‘[g]enerator’ means any person, by site, whose act of process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.” WAC 173-303-040. An entity producing even small quantities of waste is still subject to the HWMA.²⁰ The Jacksons generated waste by letting people dump their refuse, like the chlorine gas cylinder, on their premises.

In *K.P. McNamara Nw., Inc. v. Washington Dep’t of Ecology*, 173 Wn. App. 104, 124, 292 P.3d 812, *review denied*, 177 Wn.2d 1023 (2013),

²⁰ A small quantity generator (“SQG”) is defined as *any* person or business that generates less than 220 pounds of dangerous waste per month and who does not accumulate more than 2200 pounds at any given time. WAC 173-303-070(8). There is no minimum threshold to qualify as an SQG. This is consistent with the DOE’s technical guidance for SQCs which recognizes that “[m]ost businesses in Washington generate some type of dangerous waste – waste that’s potentially harmful to our health and environment.” CP 584. While SQGs are subject to far less regulation and oversight, they are still required to determine if their waste is dangerous, and if so, manage dangerous waste safely, WAC 173-303-200; WAC 173-303-395, and recycle or dispose of dangerous waste safely. WAC 173-303-141. Accordingly, once the Jacksons generated or accumulated dangerous waste on their business property, they were an SQG for purposes and subject to the HWMA regulations imposed on SQGs.

for example, this Court stated that “WAC 173-303-070 requires any person who *generates* solid waste to determine whether their solid waste is designated as dangerous waste and, upon determining that it is, that person is subject to the dangerous waste regulations set forth in chapter 173-303 WAC.” (emphasis added).²¹ *See also, United States Dep’t of Energy and CH2M Hill Plateau Management Remediation Co. v. Dep’t of Ecology*, 2018 WL 7349329 (Wash. Pollution Control Bd. 2018) (DOE and its contractor for plutonium processing plant were generators as to white powder created by chemical breakdown of sodium hydroxide, even though neither did anything to create it). The Jacksons made *no effort* to determine if they were storing waste subject to HWMA.

The trial court here erred in concluding as a matter of law that the Jacksons were not “generators” within the regulation’s meaning when they discarded or abandoned the chlorine gas, a dangerous waste. The Jacksons’ “generated” waste on their premises or theirs was the act that first caused

²¹ Below, the Jacksons relied on *State ex rel. Iowa Dep’t of Water, Air & Waste Mgmt. v. Presto-X Co.*, 417 N.W.2d 199, 202 (Iowa 1987), CP 424, but that reliance is misplaced. The trial court was obviously not bound to follow a decision arising under Iowa state law. The Jacksons erroneously focused on the aspect of the decision arising under the relevant Iowa statute regarding those who own or operate a dangerous waste “facility.” But Schuck’s claims against the Jacksons under the HWMA are focused on their status as “generators.” Moreover, *Presto-X* was distinguished in later Iowa case law. In *State ex rel. Miller v. DeCoster*, 596 N.W.2d 898 (Iowa 1999), the Iowa Supreme Court had little difficulty in concluding that the owner of a hog confinement facility that sprayed irrigation causing putrid concentrations of hog manure to pollute neighboring waters was strictly liable for that discharge of pollutants as a “generator.”

the waste to be subject to regulation, either of which would subject them to the HWMA. After the Jacksons made the decision to discard/abandon the gas cylinder and send it for disposal, the waste became subject to the HWMA. This is consistent with the purpose of the HWMA in that some person or business must be responsible for the proper disposal of hazardous waste.

At a minimum, the trial court erred in deciding as a matter of law that the Jacksons were not a generator under the DOE definition.

(c) The Chlorine Gas Cylinders Were Covered under the HWMA

The trial court did not explicitly address the issue, but it is clear that the chlorine gas cylinders were the type of waste HWMA addresses. The Act defines “dangerous wastes” as

any discarded, useless, unwanted, or abandoned substances²² ... which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health ... because such wastes or constituents or combinations of such wastes:

- (a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
- (b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

²² WAC 173-303-081 specifically addressed discarded chemical substances.

RCW 70.105.010(1). *See also*, WAC 173-303-040 (Dangerous wastes are “the full universe of wastes regulated by this chapter.”). Hazardous wastes are defined as “all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.” RCW 70.105.010(11). Extremely dangerous wastes are those dangerous wastes who will present long-term toxic risk to humans and wildlife. RCW 70.105.010(7). Such extremely hazardous wastes may only be disposed of at appropriate sites. RCW 70.105.050.²³

DOE has promulgated a four step procedure that generators of solid wastes must follow to determine if their solid waste is a designated dangerous waste. WAC 173-303-070(3)(a)-(b). The first two steps require generators of solid wastes to consult two lists and determine if their wastes are specifically listed as dangerous. WAC 173-303-070(3)(a)(i), (ii). If the waste is not a specifically listed dangerous waste, then the generator must move to step three and determine if the waste exhibits any dangerous waste characteristics. WAC 173-303-070(3)(a)(iii). Finally, if the waste does not exhibit any dangerous waste characteristics, the generator must move to

²³ Disposal is defined as “the discarding or abandoning of hazardous wastes or the treatment, decontamination or recycling of such wastes once they have been discarded or abandoned.” RCW 70.105.010(6).

step four and determine if the waste meets any dangerous waste criteria. WAC 173-303-070(3)(a)(iv). *See Hickle*, 148 Wn.2d at 920-21.

Here, chlorine gas contained in a storage tank clearly qualifies as a “dangerous,” or “hazardous,” or even “extremely hazardous” waste under the above definitions because it posed a substantial present or potential hazard to human health. Chlorine is a hazardous material. 49 C.F.R. § 172.101. Chlorine is so hazardous that extensive federal regulations govern its safe shipment. 49 C.F.R. §§ 171-79. Indeed, case law makes that clear. *See Lundberg v. All-Pure Chemical Co.*, 55 Wn. App. 181, 777 P.2d 15, *review denied*, 113 Wn.2d 1010 (1989) (upholding verdict in plaintiff’s favor against manufacturer of pool chlorinating products for explosion that injured her). *See also, United States v. Fries*, 781 F.3d 1137, 1149 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 583 (2015) (court upholds defendant’s conviction under Chemical Weapons Convention Implementation Act; chlorine could be used to create a “chlorine bomb” dangerous to life and health); *People v. Inman*, 950 P.2d 640 (Colo. App. 1997), *cert. denied*, ___ P.2d ___ (Colo. 1998) (upholding conviction for improper disposing of three cylinders of liquid chlorine without a permit under hazardous waste statute).

The Jacksons never contested below the danger or hazard of chlorine gas. They never claimed that Reinland or Pacific was a proper recipient of such dangerous or hazardous materials, nor could they.

“A person may offer a designated dangerous waste only to a ... facility which is operating ... [u]nder a permit issued pursuant to the requirements of this chapter[.]” WAC 173-303-141(1). As the DOE technical guidance makes clear, even if a business hires a contractor to handle its waste, the business is responsible for ensuring of its proper disposal. CP 586. Thus, hiring Reinland to facilitate disposing of the items on their property, including dangerous or hazardous waste, did not relieve the Jacksons of their responsibility to ensure the proper disposal of a cylinder containing such toxic chlorine gas.

In sum, the trial court acted prematurely in dismissing Schuck’s HWCA claim. There was, at a minimum, a question of fact as to whether the Jacksons were waste generators. There is no question that chlorine is a dangerous or hazardous waste under the Act and the Jacksons illicitly disposed of it, to Felix Schuck’s harm.

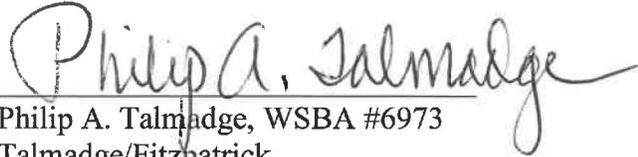
F. CONCLUSION

The Jacksons exhibited a remarkably cavalier attitude toward any and all hazardous materials on their property. They exhibited no responsibility toward the public generally or Felix Schuck specifically as to the toxic materials they allowed to be dumped there. Such irresponsibility should not be rewarded by the dismissal of the claims of people injured or killed by such disregard of public safety.

The trial court erred in concluding that Jacksons owed no duty to Schuck either under common law negligence and/or strict liability principles or under the HWMA. This Court should reverse the trial court's summary judgment rulings and remand the case to the trial court to allow Schuck his day in court before a jury. Costs on appeal should be awarded to appellant Schuck.

DATED this 13th day of August, 2019.

Respectfully submitted,



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Felix W. Schuck

APPENDIX

RCW 70.105.005:

The legislature hereby finds and declares:

- (1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial process that produce these goods also generate waste by-products, some of which are hazardous to the public health and the environment if improperly managed.
- (2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.
- (3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.
- (4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.
- (5) Negotiation, mediation and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.
- (6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.
- (7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:
 - (a) Public confidence in the safety of the facilities;
 - (b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous by-products, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a statewide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state, regional and local agencies to approve, deny and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

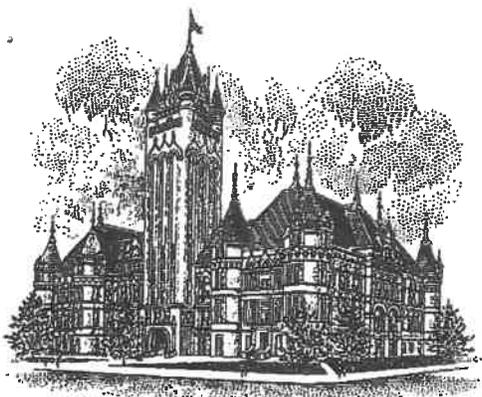
(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department.

RCW 70.105.007:

The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural economic, and energy resources of the state. To this end it is the purpose of this chapter:

- (1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;
- (2) To promote waste reduction and to encourage other improvements in waste management practices;
- (3) To promote cooperation between state and local governments by assigning responsibilities for planning hazardous wastes to the state and planning for moderate-risk waste to local government;
- (4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and
- (5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities.



SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
for the County of Spokane

Department No. 9

John O. Cooney

Judge

DEC 04 2018

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Re: *Felix W. Schuck v. Gordon Beck, et al., Case No. 17-2-02508-3*

Dear Counsel:

This matter came before the Court on November 28, 2018, on Defendants Tim Jackson, Roberta Jackson, and Ibex Construction's (hereinafter "Jackson/Ibex") motion for summary judgment dismissal of Plaintiff's claims. Although the motion does not concern Defendants Inland Northwest Equipment Auction, Inc., dba Reinland Auctioneers; Reinland, Inc., dba Reinland Equipment Auction; Reinland Properties, LLC; Thomas and Kunya Reinland and Ashley Reinland and John Doe Reinland (hereinafter "Reinland"), they filed a motion to strike portions of the Jackson/Ibex memoranda. The Court previously granted Defendant Gordon Beck's motion for summary judgment dismissal. Nevertheless, Defendant Beck filed a response to the present motion. This letter serves as the Court's decision on Defendants' motion.

In deciding the present motion, the Court reviewed:

- Defendants Jacksons' and IBEX Construction, Inc.'s Motion for Summary Judgment;
- Defendants Jacksons' and IBEX Construction, Inc.'s Memorandum in Support of Motion for Summary Judgment;
- Declaration of Ryan Vollans in Support of Defendants Jacksons' and IBEX Construction, Inc.'s Motion for Summary Judgment;
- Plaintiff's Response in Opposition to Defendants' Tim Jackson, Roberta Jackson, and IBEX Construction, Inc.'s Motion for Summary Judgment;
- Declaration of Sara Maleki in Support of Plaintiff's Response in Opposition to Defendants Tim Jackson, Roberta Jackson, and IBEX Construction, Inc.'s Motion for Summary Judgment;
- Defendants Jacksons' and IBEX Construction, Inc.'s Reply in Support of Motion for Summary Judgment;
- Plaintiff's Statement of Additional Authorities;
- Defendant Beck's Response to Defendants Jackson's and IBEX Construction's Motion for Summary Judgment;
- Defendants Inland Northwest Equipment Auction, Inc., dba Reinland Auctioneers; Reinland, Inc., dba Reinland Equipment Auction; Reinland Properties, LLC; Thomas and Kunya Reinland and Ashley Reinland and John Doe Reinland's Motion to Strike;
- Objection of Defendants Inland Northwest Equipment Auction, Inc., dba Reinland Auctioneers; Reinland, Inc., dba Reinland Equipment Auction; Reinland Properties, LLC; Thomas and Kunya Reinland and Ashley Reinland and John Doe Reinland; and
- Declaration of Geoffrey D. Swindler.

As a preliminary matter, the Court needs to address three procedural issues. First, the Spokane County Superior Court adopted page limits for summary judgment motions. LCR 56(b). Although a minor violation, the Plaintiff, in his response, exceeded the maximum page limit of 20. For such a violation, the "court shall have discretion to not consider the document or citation, strike the document, strike the hearing, continue the hearing, and/or impose terms or sanctions." LCR 40(b)(6). Additionally, in violation of CR 56(c) and LCR 56(a), on November 27, 2018 (one day before the hearing), the Plaintiff filed a statement of additional authorities. Pursuant to LCR 40(b)(6), the Court is not going to consider pages 21-25 of Plaintiff's Response in Opposition to Defendants' Tim Jackson, Roberta Jackson, and IBEX Construction, Inc.'s, Motion for Summary Judgment or Plaintiff's Statement of Additional Authorities.

Secondly, Reinland filed a motion to strike page 10, paragraphs 18-21, of Defendants Jacksons' and IBEX Construction, Inc.'s, Memorandum in Support of Motion for Summary Judgment and page 4, paragraphs 18-19, of Defendants Jacksons' and IBEX Construction, Inc.'s, Reply in Support of Motion for Summary Judgment. Reinland is understandably concerned with waiving an objection if not timely made. However, Reinland's objections are directed at the Jackson/Ibex memoranda (argument) rather than the affidavits (evidence). A failure to timely

make objection to affidavits may constitute a waiver of such objection. Meadows v. Grant's Auto Brokers, 71 Wn.2d 874, 881, 431 P.2d 216 (1967). Regardless of the content of the Jackson/Ibex memoranda, the Court is required to decide a motion for summary judgment "on pleadings, affidavits, admissions and other material properly presented." Landberg v. Carlson, 108 Wn.App. 749, 753, 33 P.3d 406 (2001) (citing Chase v. Daily Record, Inc., 83 Wn.2d 37, 42, 515 P.2d 154 (1973)). Memoranda is not a pleadings, affidavits, or admission. The Court need not decide Reinland's motion to strike.

Thirdly, Defendant Beck, who was previously dismissed from this litigation, filed response to Jackson/Ibex's motion for summary judgment. CR 56 allows an adverse party to file affidavits, memoranda of law or other documentation. Those "who may be affected by the suit, indirectly or consequently, are persons interested but not parties." LaMon v. Butler, 112 Wn.2d 193, 202, 770 P.2d 1027 (1989) (citing Black's Law Dictionary 1010 (5th ed. 1979)). Since the claims against Defendant Beck have been dismissed, he is no longer a party to this action. As a non-party, he lacks standing under CR 56 to file a response.

In its motion for summary judgment dismissal of the Plaintiff's claims, Jackson/Ibex assert they did not owe a duty to the Plaintiff under the Hazardous Waste Management Act ("HWMA"), that they did not owe a common law duty to the Plaintiff, that they were not the legal cause of the Plaintiff's injuries as there was an intervening superseding cause, and the actions of Jackson/Ibex do not constitute an inherently dangerous activity.

In part, the Plaintiff claims Jackson/Ibex owed him a statutory duty of care under RCW 70.105 – the HWMA. Jackson/Ibex argue the record before this Court lacks evidence supporting such a duty. RCW 70.105.005 provides the legislative findings in enacting the HWMA. The legislature declared: "The complex industrial processes that produce these goods also generate waste by-products, some of which are hazardous to the public health and the environment if improperly managed." RCW 70.105.005(1). The legislature delegated regulatory implementation to the Department of Ecology ("Department"). RCW 70.105.020. Regulations adopted by the Department can be found in WAC 173-303.

Under WAC 173-303-020, and consistent with the legislative intent of RCW 70.105.020, the Department made the HWCA applicable to all persons who handle dangerous wastes and solid wastes as generators; transporters; owners and operators of dangerous waste recycling, transfer, storage, treatment and disposal facilities; and the operator of the state's extremely hazardous waste management facility. Jackson/Ibex claim they do not fit any of these designations. The Plaintiff counters that admissible evidence creates a genuine issue of material fact that Jackson/Ibex were generators of dangerous wastes.

A "generator" is "any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation." WAC 173.303.020. The Plaintiff has failed to present any admissible evidence that Jackson/Ibex produced dangerous waste. Rather, the records reveals Jackson/Ibex possessed one tank containing dangerous waste. The Plaintiff requests the Court liberally interpret RCW 70.105 when deciding its

applicability to Jackson/Ibex. However, the legislature, in designating who is subject to the HWMA and in stating its intent in enacting the HWMA, purposefully excludes those that do not fit within the definition. Jackson/Ibex did not owe a statutory duty of care to the Plaintiff under the HWMA.

Jackson/Ibex next argue they did not owe a common law duty of care to the Plaintiff. Generally, the question of a duty owed is a question of law. Pedroza v. Bryant, 101 Wn.2d 226, 228, 677 P.2d 166 (1984). The Plaintiff asserts Jackson/Ibex owed a duty of care under the Restatement (Second) of Torts § 388 (1965). See Mele v. Turner, 106 Wn.2d 73, 720 P.2d 787 (1986). Section 388 of the Restatement (Second) of Torts subjects liability to a supplier of chattel if the supplier: "(a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous."

The record does not definitively establish that Jackson/Ibex knew the chattel (tank of chlorine gas) was dangerous. However, even absent the objectionable chart note of Captain K. Miller, sufficient evidence exists that creates a genuine issue of material fact as to whether Jackson/Ibex either knew or should have known of the dangerous condition of the tank. There is a genuine issue of material fact as to what materials Jackson/Ibex knew to be on the property, whether the tank of chlorine gas may have been readily identifiable to Jackson/Ibex over the decades it was on the property, whether others would have noticed the dangerousness of the tank, and whether Jackson/Ibex failed to exercise reasonable care in informing the Plaintiff of the dangerous condition.

Jackson/Ibex next claim an intervening superseding cause resulted in the Plaintiff's injuries. As such, the actions of Jackson/Ibex were too attenuated to extend legal causation to them. The doctrine of superseding cause "applies where the act of a third party intervenes between the defendant's original conduct and the plaintiff's injury such that the defendant may no longer be deemed responsible for the injury." Anderson v. Dreis & Krump Mfg. Corp., 48 Wn.App. 432, 442, 739 P.2d 1177 (1987) (citing Campbell v. ITE Imperial Corp., 107 Wn.2d 807, 813, 733 P.2d 969 (1987); Restatement (Second) of Torts § 440 (1965)). "Superseding cause thus prevents a determination of legal causation between a defendant's actions and a plaintiff's injuries where the intervening act breaks the otherwise natural and continuous causal connection between events." Id. (citing Pratt v. Thomas, 80 Wn.2d 117, 119, 491 P.2d 1285 (1971)).

Jackson/Ibex knew Reinland was collecting scrap metal, at his discretion, from the property. The parties knew the scrap metal Reinland chose to collect was intended for recycling. The Plaintiff has presented sufficient evidence to create a genuine issue of material fact as to whether Jackson/Ibex either knew or should have known of the dangerous condition of the tank. The collective actions of the defendants in granting permission to collect scrap metal, collecting scrap metal, having the metal collected at Reinland's discretion, and attempting to

recycle the scrap metal may establish a continuous causal connection of events without an intervening act.

Lastly, Jackson/Ibex argue the Plaintiff is unable to establish they were engaged in an inherently dangerous activity, causing them to be strictly liable for the Plaintiff's damages. Generally, the determination of whether an activity is abnormally dangerous is a question law. Klein v. Pyrodyne Corp., 117 Wn.2d 1, 6, 810 P.2d 917 (1991). The Supreme Court adopted the factors contained in the Restatement (Second) of Torts §§ 519, 520 (1977) to assist in determining what constitutes an abnormally dangerous activity. Id. Section 520 of the Restatement lists the factors to be considered when deciding what constitutes an abnormally dangerous activity. These factors include:

- (a) existence of a high degree of risk of some harm to the person, land or chattels of others;
- (b) likelihood that the harm that results from it will be great;
- (c) inability to eliminate the risk by the exercise of reasonable care;
- (d) extent to which the activity is not a matter of common usage;
- (e) inappropriateness of the activity to the place where it is carried on; and
- (f) extent to which its value to the community is outweighed by its dangerous attributes.

Comment (f) to the Restatement (Second) of Torts § 520 (1977) provides guidance in applying the above-cited factors. Comment (f) states:

The essential question [in making a determination as to whether an act is an abnormally dangerous activity] is whether the risk created is so unusual, either because of its magnitude or because of the circumstances surrounding it, as to justify the imposition of strict liability for the harm that results from it, even though it is carried on with all reasonable care.

An abnormally dangerous activity, as provided through the Restatement (Second) and case law, tends to exist where there is a high risk of harm coupled with a limited ability to reduce the risk of harm. See Klein v. Pyrodyne Corp., 117 Wn.2d 1, 810 P.2d 917 (1991); Langan v. Valicopters, Inc., 88 Wn.2d 855, 567 P.2d 218 (1977); and Siegler v. Kuhlman, 81 Wn.2d 448, 502 P.2d 1181 (1972), *cert. denied*, 411 U.S. 983, 93 S.Ct. 2275, 36 L.Ed.2d 959 (1973). Here, the record fails to establish Jackson/Ibex were engaged in an abnormally dangerous activity. Neither the magnitude nor the circumstances surrounding the disposal of a single tank created an unusual risk that could not have been easily mitigated. Had reasonable care been used in the disposal of the tank, the risk of harm would have been minimal.

Based upon the foregoing, the Court is denying Jackson/Ibex's motions regarding their common law duty of care, an intervening superseding cause, and legal causation. The Court is granting Jackson/Ibex's motion regarding a statutory duty of care under the HWMA and that Jackson/Ibex were not engaged in an abnormally dangerous activity.

Each party is directed to prepare an order related to the issues in which they prevailed. A presentment date is scheduled for Friday, January 4, 2019, at 8:30 a.m.

Sincerely,

A handwritten signature in black ink, appearing to read 'John O. Cooney', with a long horizontal flourish extending to the right.

John O. Cooney



Superior Court of the State of Washington
for the County of Spokane

Department No. 9

John O. Cooney

Judge

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January 11, 2019

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Re: Felix W. Schuck v. Gordon Beck, et al., Case No. 17-2-02508-3

Dear Counsel:

Defendants Tim Jackson, Roberta Jackson, and Ibex Construction, Inc., moved this Court for reconsideration of its denial of their motion for summary judgment dismissal of Plaintiff's negligence claim under Restatement (Second) of Torts § 388 (1965). In deciding the motion for reconsideration, the Court reviewed the documents listed in its letter dated December 3, 2018, as well as Defendants Jacksons' and Ibex Construction, Inc.'s Motion for Reconsideration, the Declaration of Ryan Vollans in Support of Defendants Jacksons' and Ibex Construction, Inc.'s Motion for Reconsideration, Plaintiff's Response in Opposition to Defendants Jacksons' and Ibex Construction, Inc.'s Motion for Reconsideration, and Defendants Jacksons' and Ibex Construction, Inc.'s Reply in Support of Reconsideration.

In reconsidering this motion, the Court concludes the Plaintiff has failed to put forth admissible evidence to support his claim under Restatement (Second) of Torts § 388(b). Specifically, the Plaintiff submitted evidence showing the characteristics of the tank made it readily identifiable as dangerous. This is fatal to the Plaintiff's claim as section (b) requires the supplier "has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition." § 388(b).

To succeed on a claim under § 388, the Plaintiff is required to put forth admissible evidence supporting elements (a), (b), and (c). Simonetta v. Viad Corp., 165 Wn.2d 341, 348, 197 P.3d 128 (2008). Since the Plaintiff has failed to submit admissible evidence to support his claim under section (b), the Defendants are entitled to summary judgment dismissal of the claim. Given this ruling, the Court need not address the motion for reconsideration under section (a).

Counsel for Defendants Tim Jackson, Roberta Jackson, and Ibex Construction, Inc., are directed to prepare and order granting partial summary judgment dismissing Plaintiff's claim of negligence under Restatement (Second) of Tort § 388. A presentment date is scheduled for Friday, February 1, 2019, at 8:30 a.m.

Sincerely,

A handwritten signature in black ink, appearing to read "John O. Cooney", with a long horizontal flourish extending to the right.

John O. Cooney

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CN: 201702025083

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FILED

FEB - 1 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

FELIX W. SCHUCK, a single individual,

Plaintiff,

v.

GORDON BECK and JANE DOE BECK,
individually, as well as the marital
community thereof; TIM JACKSON and
ROBERTA JACKSON, individually, as well
as the marital community thereof; IBEX
CONSTRUCTION, INC., a Washington
corporation; INLAND NORTHWEST
EQUIPMENT AUCTION, INC., d/b/a
REINLAND AUCTIONEERS, a Washington
corporation; REINLAND, INC., d/b/a/
REINLAND EQUIPMENT AUCTION, an
Idaho corporation; REINLAND
PROPERTIES, L.L.C., an Idaho limited
lablity company; THOMAS REINLAND
and KUNYA REINLAND, individually, as
well as the marital community thereof;
ASHLEY REINLAND and JOHN DOE
REINLAND, individually, as well as the
marital community thereof; and JOHN DOE
1-5, entities or individuals,

Defendants.

)
) No. 17-2-02508-3
)

) ORDER GRANTING IN PART, DENYING
) IN PART DEFENDANTS' TIM JACKSON,
) ROBERTA JACKSON, AND IBEX
) CONSTRUCTION INC.'S MOTION FOR
) SUMMARY JUDGMENT DISMISSAL

**ORDER GRANTING IN PART, DENYING IN PART
DEFENDANTS' TIM JACKSON, ROBERTA JACKSON,
AND IBEX CONSTRUCTION, INC.'S
MOTION FOR SUMMARY JUDGMENT - 1**

**GLP ATTORNEYS, P.S., INC.
ATTORNEYS AT LAW
601 W. MAIN AVENUE, SUITE 305
SPOKANE, WA 99201
(509) 455-3636
FACSIMILE (509) 321-7459**

1 **THIS MATTER** came on for hearing upon Defendants' Tim Jackson, Roberta
2 Jackson, and IBEX Construction, Inc.'s motion for summary judgment and the Declaration
3 of Ryan Vollans, Plaintiff's Response to Defendants Tim Jackson, Roberta Jackson, and
4 IBEX Construction, Inc.'s Motion for Summary Judgment, and the Court having considered
5 the following additional documents:
6

- 7 1. Defendants Jacksons' and IBEX Construction, Inc.'s Motion for Summary Judgment;
- 8 2. Defendants Jacksons' and IBEX Construction, Inc.'s Memorandum in Support of
9 Motion for Summary Judgment;
- 10 3. Declaration of Ryan Vollans in Support of Defendants Jacksons' and IBEX
11 Construction, Inc.'s Motion for Summary Judgment;
- 12 4. Plaintiff's Response in Opposition to Defendants' Tim Jackson, Roberta Jackson, and
13 IBEX Construction, Inc.'s Motion for Summary Judgment;
- 14 5. Declaration of Sara Maleki in Support of Plaintiff's Response in Opposition to
15 Defendants Tim Jackson, Roberta Jackson, and IBEX Construction, Inc.'s Motion for
16 Summary Judgment;
- 17 6. Defendants Jacksons' and IBEX Construction, Inc.'s Reply in Support of Motion for
18 Summary Judgment;
- 19 7. Plaintiff's Statement of Additional Authorities;
- 20 8. Defendant Beck's Response to Defendants Jackson's and IBEX Construction's Motion
21 for Summary Judgment;
- 22
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- 1 9. Defendants Inland Northwest Equipment Auction, Inc., dba Reinland Auctioneers;
2 Reinland, Inc., dba Reinland Equipment Auction, Reinland Properties, LLC; Thomas
3 and Kunya Reinland and Ashley Reinland and John Doe Reinland's Motion to Strike;
4
5 10. Objection of Defendants Inland Northwest Equipment Auction, Inc., dba Reinland
6 Auctioneers, Reinland, Inc., dba Reinland Equipment Auction; Reinland Properties,
7 LLC; Thomas and Kunya Reinland and Ashley Reinland and John Doe Reinland;
8
9 11. Declaration of Geoffrey D. Swindler;
10
11 12. Defendants Jacksons' and Ibex Construction, Inc.'s Motion for Reconsideration;
12
13 13. Declaration of Ryan Vollans in Support of Defendants Jacksons' and IBEX
14 Construction, Inc.'s Motion for Reconsideration; and
15
16 14. Plaintiff's Response in Opposition to Defendants Jacksons' and IBEX Construction,
17 Inc.'s Motion for Reconsideration.

18 It is hereby **ORDERED ADJUDGED AND DECREED** that Defendants' Tim Jackson, Roberta
19 Jackson, and IBEX Construction Inc.'s Motion for Summary Judgment Dismissal is **GRANTED**
20 **IN PART, DENIED IN PART** as follows:

- 21 1. The Jacksons/Ibex's Motion for Summary Judgment on Plaintiff's claim under the
22 Hazardous Waste Management Act is **GRANTED**;
23
24 2. The Jacksons/Ibex's Motion for Summary Judgment on Plaintiff's claim based on strict
25 liability for an inherently dangerous activity is **GRANTED**;
26
3. The Jacksons/Ibex's Motion for Summary Judgment on Plaintiff's claim of common law
negligence under Restatement (Second) of Tort § 388 is **GRANTED**;

**ORDER GRANTING IN PART, DENYING IN PART
DEFENDANTS' TIM JACKSON, ROBERTA JACKSON,
AND IBEX CONSTRUCTION, INC.'S
MOTION FOR SUMMARY JUDGMENT – 3**

**GLP ATTORNEYS, P.S., INC.
ATTORNEYS AT LAW
601 W. MAIN AVENUE, SUITE 305
SPOKANE, WA 99201
(509) 455-3636
FACSIMILE (509) 321-7459**

1 4. The Jacksons/Ibex's Motion for Summary Judgment on Plaintiff's remaining common
2 law negligence claims is DENIED;

3
4 5. The Jacksons/Ibex's Motion for Summary Judgment on intervening superseding cause is
5 DENIED; and

6 6. The Jacksons/Ibex's Motion for Summary Judgment on legal causation is DENIED.

7 *7. Motion to strike is denied.*
8 DONE IN OPEN COURT this 1 day of February, 2018.

9
10 
HONORABLE JOHN O. COONEY

11 Presented by:

12 GLP ATTORNEYS, P.S., INC.

13 
14 Sara Maleki, WSBA #42465
15 Janelle Carney, WSBA #41028
16 James Gooding, WSBA #23833
Attorneys for Plaintiff Schuck

17 Agreed as to form, notice of presentation waived:

18 LAW OFFICE OF GEOFFFREY SWINDLER/
19 JOHNSON LAW GROUP

20 
21 Geoffrey Swindler, WSBA #20176
22 Peter Johnson, WSBA #6195
Attorney for Defendants Reinland et. al.

23 WILLIAMS, KASTNER & GIBBS PLLC

24 
25 Mark M. Myers, WSBA #15632
26 Ryan W. Vollans, WSBA #45302
Attorneys for Defendant Jacksons & IBEX

**ORDER GRANTING IN PART, DENYING IN PART
DEFENDANTS' TIM JACKSON, ROBERTA JACKSON,
AND IBEX CONSTRUCTION, INC.'S
MOTION FOR SUMMARY JUDGMENT - 4**

**GLP ATTORNEYS, P.S., INC.
ATTORNEYS AT LAW
601 W. MAIN AVENUE, SUITE 305
SPOKANE, WA 99201
(509) 455-3636
FACSIMILE (509) 321-7459**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify and declare under penalty of perjury under the laws of the State of Washington
3 that I caused the foregoing to be delivered to the following as indicated:

4 ***Counsel for IBEX, Tim Jackson, & Roberta Jackson***

5 Mark M. Myers
6 Ryan W. Vollans
7 Williams, Kastner & Gibbs PLLC
8 601 Union Street, Suite 4100
9 Seattle, WA 98101-2380

- U.S. Mail
- Legal Messenger
- Facsimile
- Electronic Mail

10 ***Counsel for Reinland Auctioneers, Reinland Equipment Auction,
11 Reinland Properties, LLC, Thomas Reinland, Kunya Reinland,
12 and Ashley Reinland***

13 Geoffrey Swindler
14 Law Office of Geoffrey Swindler
15 103 E. Indiana Avenue, Suite A
16 Spokane, WA 99207

- U.S. Mail
- Legal Messenger
- Facsimile
- Electronic Mail

17 ***Counsel for Reinland Auctioneers, Reinland Equipment Auction,
18 Reinland Properties, LLC, Thomas Reinland, Kunya Reinland,
19 and Ashley Reinland***

20 Peter Johnson
21 Johnson Law Group
22 103 E. Indiana Avenue, Suite A
23 Spokane, WA 99207

- U.S. Mail
- Legal Messenger
- Facsimile
- Electronic Mail

24 DATED this 30th day of January, 2019.

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Jeri Kopet

**ORDER GRANTING IN PART, DENYING IN PART
DEFENDANTS' TIM JACKSON, ROBERTA JACKSON,
AND IBEX CONSTRUCTION, INC.'S
MOTION FOR SUMMARY JUDGMENT - 5**

**GLP ATTORNEYS, P.S., INC.
ATTORNEYS AT LAW
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SPOKANE, WA 99201
(509) 455-3636
FACSIMILE (509) 321-7459**



Superior Court of the State of Washington
for the County of Spokane

Department No. 9

John O. Cooney

Judge

1116 W. Broadway
Spokane, Washington 99260-0350
(509) 477-5784 • Fax: (509) 477-5714
dept9@spokanecounty.org

March 5, 2019

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Spokane, WA 99207

Brian Sheldon
Phillabaum Ledlin Matthews & Sheldon, PLLC
1235 N. Post St., Ste. 100
Spokane, WA 99201

RECEIVED
MAR 08 2019
TALMADGE/FITZPATRICK

Re: Felix W. Schuck v. Gordon Beck, et al., Case No. 17-2-02508-3

Dear Counsel:

On November 28, 2018, Defendants Tim Jackson, Roberta Jackson, and Ibex Construction, Inc., ("Jackson/Ibex") brought a motion for summary judgment dismissal of Plaintiff's claims. Following the hearing, the Court granted Jackson/Ibex's motion on the Plaintiff's claim under the Hazardous Waste Management Act ("HWMA") and denied Jackson/Ibex's motion on Plaintiff's negligence claim.

Following Jackson/Ibex timely filing a motion for reconsideration, the Court concluded that the Plaintiff failed to present admissible evidence to support his claim under Restatement (Second) of Torts § 388 (1965) (hereinafter "§ 388"). At the presentment hearing of February 1, 2019, a dispute arose as to whether the Court intended to dismiss the Plaintiff's claim under § 388 or the entirety of Plaintiff's common law negligence claim. The Court clarified its intent as the two letter decisions were, admittedly, confusing. Counsel for Jackson/Ibex attempted to use the presentment hearing as an opportunity to persuade the Court of its perceived error in not

dismissing the entirety of the Plaintiff's negligence claim. Due to the hearing being a presentment, not to mention the Court's busy motion and law calendar, the Court declined to hear argument.

For the following reasons the Court grants Jackson/Ibex's motion for reconsideration, dismissing the entirety of the Plaintiff's common law negligence claim. Jackson/Ibex argues that all common law negligence theories for recovery should be dismissed because § 388 exclusively governs its duty with regards to chattel. Contrary to the Plaintiff's arguments, in cases involving chattel, the Restatement (Second) of Torts § 343 (1965) does not establish any duty of a land owner provided the chattel at issue is clearly separable from the land. Lunt v. Mount Spokane Skiing Corp., 62 Wn.App. 353, 358, 814, P.2d 1189 (1991). Further, in cases involving chattel, § 388 sets forth the duties owed by those who provide or supply chattel. Id. Here, the chlorine tank (chattel) was clearly separable from the land as evidenced by the fact that the tank was removed from the property and leaked at the recycling center. Any duty that Jackson/Ibex owed to the Plaintiff stemming from the chlorine tank would have to be established under § 388.

Lastly, Restatement of Torts (Second) § 302B (1965) is only applicable when the actions taken by a defendant are affirmative actions that place a plaintiff in danger. Robb v. City of Seattle, 176 Wn.2d 427, 439, 295 P.3d 212 (2013). Here, Jackson/Ibex allowed the tank to be located on their property and allowed the tank to be removed from their property. Even assuming Jackson/Ibex realized or should have realized that action is necessary for another's aid or protection does not, of itself, impose upon them a duty to act. Id. at 433.

The Plaintiff moves this Court to reconsider its summary judgment dismissal of his HWMA claim against Jackson/Ibex. For the first time, the Plaintiff argues Jackson/Ibex are generators as they first caused a dangerous waste to become subject to regulation. "A 'generator' means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation." WAC 173-303-040. The Plaintiff has failed to present any admissible evidence to create a genuine issue of material fact to show the chlorine tank was not previously subject to regulation under the HWMA. Further, even assuming the Plaintiff had presented admissible evidence, this argument was not raised at the summary judgment hearing. New theories of liability are improper on reconsideration.

For the foregoing reasons, the Court grants Jackson/Ibex's motion for reconsideration and denies the Plaintiff's motion for reconsideration. A presentment hearing, without oral argument, is scheduled for Friday, March 22, 2019, at 8:30 a.m.

Sincerely,



John O. Cooney

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CN: 201702025083
SN: 160
PC: 4

FILED
MAR 22 2019
TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR SPOKANE COUNTY

FELIX W. SCHUCK, a single individual,
Plaintiff,

v.

GORDON BECK and JANE DOE BECK,
individually, as well as the marital community
thereof; TIM JACKSON and ROBERTA
JACKSON, individually, as well as the marital
community thereof; IBEX CONSTRUCTION,
INC., a Washington corporation; and JOHN
DOE 1-5, entities or individuals,

Defendants,

v.

TIM JACKSON and ROBERTA JACKSON,
individually, as well as the marital community
thereof; IBEX CONSTRUCTION, INC., a
Washington corporation,

Third-Party Plaintiffs,

v.

THOMAS REINLAND, an individual;
INLAND NORTHWEST EQUIPMENT
AUCTION, INC., d/b/a REINLAND
AUCTIONEERS, a Washington corporation;
PACIFIC HIDE & FUR DEPOT d/b/a
PACIFIC STEEL & RECYCLING, a Montana
corporation,

Third-Party Defendants.

NO. 17-2-02508-3

[PROPOSED] ORDER ON DEFENDANTS
JACKSONS' AND IBEX
CONSTRUCTION, INC.'S MOTION FOR
SUMMARY JUDGMENT, AND ON
PLAINTIFF'S AND DEFENDANTS'
MOTIONS FOR RECONSIDERATION

[PROPOSED] ORDER ON DEFENDANTS JACKSONS' AND IBEX
CONSTRUCTION, INC.'S MOTION FOR SUMMARY JUDGMENT,
AND ON PLAINTIFF'S AND DEFENDANTS' MOTIONS FOR
RECONSIDERATION- 1
6793026.1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 **THIS MATTER** came before the Court on Defendants Jacksons' and Ibex Construction,
2 Inc.'s (collectively, the "Jacksons") Motion for Summary Judgment, and then subsequently on the
3 Jacksons' two motions for reconsideration and on Plaintiff's motion for reconsideration. In
4 addition to oral argument on Jacksons' motion for summary judgment, which occurred on
5 November 28, 2018, and the presentation of the order hearing which occurred on February 1,
6 2019, the Court considered the following:

- 7 1. The Jacksons' Motion for Summary Judgment;
- 8 2. The Jacksons' Memorandum in Support of Summary Judgment;
- 9 3. Declaration of Ryan W. Vollans in support of The Jacksons' Motion for Summary
10 Judgment, with Exhibits [except that Ex. 10 to this declaration was not considered
11 as substantive evidence];
- 12 4. Defendants Beck's Response to Defendants Jackson's and Ibex Construction's
13 Motion for Summary Judgment;
- 14 5. Plaintiff's Response in Opposition to The Jacksons' Motion for Summary
15 Judgment;
- 16 6. Declaration of Sara Maleki in Support of Plaintiff's Response in Opposition to The
17 Jacksons' Motion for Summary Judgment, with Exhibits;
- 18 7. Reinland Defendants' Motion to Strike;
- 19 8. The Declaration of Geoffrey D. Swindler in support of Reinland Defendants'
20 Motion to Strike;
- 21 9. The Jacksons' Reply in Support of Motion for Summary Judgment;
- 22 10. The Court's December 3, 2018 letter;
- 23 11. The Jacksons' Motion for Reconsideration;
- 24 12. Declaration of Ryan W. Vollans in support of The Jacksons' Motion for
25 Reconsideration, with Exhibit;
13. Plaintiff's Response to The Jacksons' Motion for Reconsideration;

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- 14. The Jacksons' Reply in Support of Motion for Reconsideration;
- 15. The Court's January 11, 2019 letter;
- 16. Order Granting in Part, Denying in Part Defendants' Tim Jackson, Roberta Jackson, and Ibex Construction Inc.'s Motion for Summary Judgment entered on February 1, 2019;
- 17. Plaintiff's Motion for Reconsideration, dated February 7, 2019;
- 18. The Jacksons' Second Motion for Reconsideration, dated February 8, 2019;
- 19. Declaration of Ryan W. Vollans in support of The Jacksons' Second Motion for Reconsideration dated February 8, 2019, with Exhibits;
- 20. Plaintiff's Response to The Jacksons' Second Motion for Reconsideration dated February 19, 2019;
- 21. Declaration of Sara Maleki in Support of Plaintiff's Response in Opposition to The Jacksons' Second Motion for Reconsideration, with Exhibit;
- 22. The Jacksons' Response to Plaintiff's Motion for Reconsideration dated February 15, 2019;
- 23. The Jacksons' Reply to Second Motion for Reconsideration dated February 22, 2019;
- 24. The Plaintiff's Reply to Its Motion for Reconsideration dated February 25, 2019;
- 25. _____;
- 26. _____.

The Court being fully advised now finds that

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: The Jacksons' Second Motion for Reconsideration dated February 8, 2019 is hereby GRANTED. Accordingly, The Jacksons' Motion for Summary Judgment is hereby GRANTED in full. All of Plaintiff's claims against Tim and Roberta Jackson and Ibex Construction, Inc. are hereby dismissed with prejudice and without costs to any party.

1 IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 Reinland Defendants' Motion to Strike is DENIED.

3 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that: Plaintiff's

4 Motion for Reconsideration is DENIED.

5

6

7 DATED this 22 day of March, 2019.

8

9

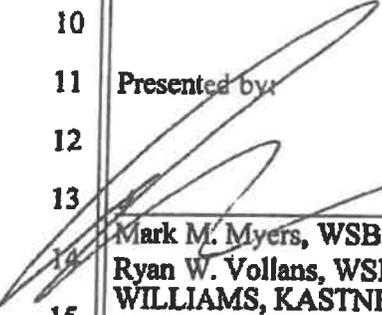

Honorable John O. Cooney

10

11 Presented by:

12

13


Mark M. Myers, WSBA #15362
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rvollans@williamskastner.com

18 *Attorneys for Defendants Ibex Construction,
19 Inc., Tim Jackson and Roberta Jackson*

20

21

22

23

24

25

* No parties appeared
at the presentment to
object to the entry of
this order.


CN: 201702025083

FILED

SN: 181

APR 19 2019

PC: 4

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

FELIX W. SCHUCK, a single individual,

No. 17-2-02508-3

Plaintiff,

ORDER GRANTING IN PART, AND
DENYING IN PART, PLAINTIFF'S
MOTION FOR CR 54(b) CERTIFICATION
AND STAY OF PROCEEDINGS

v.

GORDON BECK and JANE DOE BECK,
individually, as well as the marital
community thereof; TIM JACKSON and
ROBERTA JACKSON, individually, as well
as the marital community thereof; IBEX
CONSTRUCTION, INC., a Washington
corporation; INLAND NORTHWEST
EQUIPMENT AUCTION, INC., d/b/a
REINLAND AUCTIONEERS, a Washington
corporation; REINLAND, INC., d/b/a/
REINLAND EQUIPMENT AUCTION, an
Idaho corporation; REINLAND
PROPERTIES, L.L.C., an Idaho limited
lablity company; THOMAS REINLAND
and KUNYA REINLAND, individually, as
well as the marital community thereof;
ASHLEY REINLAND and JOHN DOE
REINLAND, individually, as well as the
marital community thereof; and JOHN DOE
1-5, entities or individuals,

Defendants.

ORDER GRANTING IN PART, AND DENYING IN PART,
PLAINTIFF'S MOTION FOR CR 54(b) CERTIFICATION
AND STAY OF PROCEEDINGS - 1

GLP ATTORNEYS, P.S., INC.
ATTORNEYS AT LAW
601 W. MAIN AVENUE, SUITE 305
SPOKANE, WA 99201
(509) 455-3636
FACSIMILE (509) 321-7459

1 **THIS MATTER** came on for hearing upon Plaintiff's Motion for CR 54(b)
2 Certification and Stay of Proceedings and the Declaration of Sara Maleki in Support of
3 Plaintiff's Motion for CR 54(b) Certification and Stay of Proceedings, and the Court having
4 considered the following additional documents:
5

- 6 1. Declaration of Geoffrey D. Swindler;
- 7 2. Defendants Jacksons' and IBEX Construction, Inc.'s Opposition to Plaintiff's Motion
8 for CR 54(b) Certification and Stay of Proceedings; and
- 9 3. Plaintiff's Reply in Support of Motion for CR 54(b) Certification and Stay of
10 Proceedings.
11

12 It is hereby **ORDERED ADJUDGED AND DECREED** that Plaintiff's Motion for
13 CR 54(b) Certification is granted and, pursuant to CR 54(b), the Court directs entry of the
14 Court's summary judgment order dismissing Defendants Tim Jackson, Roberta Jackson, and
15 Ibex Construction, Inc. from this action.
16

- 17 1. In support of this decision, the Court finds that there is more than one party against whom
18 relief was sought.
- 19 2. The Court also finds that there is no just reason for delay of entry of judgment against
20 Defendants Jackson and Ibex. Specifically, the Court finds that it is clear that there will
21 be an appeal, at least with respect to Defendants Jackson and Ibex. The Court also finds
22 that there could be an appeal or a trial with respect to Defendants Reinland, et al. The
23 Court finds that if this matter were to go to trial against Defendants Reinland, the Court is
24 sure that there would still be an appeal as to Defendants Jackson and Ibex. Thus, the Court
25 finds that this case is different than where there are multiple claims and still a remedy
26

**ORDER GRANTING IN PART, AND DENYING IN PART,
PLAINTIFF'S MOTION FOR CR 54(b) CERTIFICATION
AND STAY OF PROCEEDINGS – 2**

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1 available for the plaintiff if some of those claims have been dismissed. Here, this action is
2 dealing with more than one defendant and different claims asserted – there is similar
3 claims asserted against some of the defendants and different claims asserted against some
4 of the defendants. For example, Defendants Reinland could potentially be found liable
5 under the Hazardous Waste Management Act but not as a landowner or any duties they
6 might owe as a landowner. Defendants Jackson and Ibex could potentially be liable as a
7 landowner, which has been dismissed.
8

9
10 3. The question ultimately becomes who is going to bear the brunt of all of this work. If this
11 matter stays with this Court and proceeds to trial, at some point Plaintiff may be successful
12 on appeal, causing the case to be sent back for trial a second time. The Court anticipates
13 a trial would take at least a couple of weeks given the issues. The Court of Appeals will
14 be reviewing this case, whether now or later, because of the rulings that were made in
15 favor of Defendants Jackson and Ibex.
16

17 4. Additionally, there is legal authority indicating that when joint and several liability is
18 sought, judgment should not be entered until all potentially liable parties have been
19 adjudicated. Thus, even if Plaintiff were to obtain judgment against Defendants Reinland
20 alone, Plaintiffs may not be able to enter such judgment until the appeal, and potential
21 later trial, against Defendants Jackson and Ibex is resolved.
22

23 5. For these reasons, the Court finds there is no just reason for the delay in certifying the
24 judgment and, therefore, enters the judgment against Defendants Jackson and Ibex.
25

26 6. _____ ;

7. _____ ;

**ORDER GRANTING IN PART, AND DENYING IN PART,
PLAINTIFF'S MOTION FOR CR 54(b) CERTIFICATION
AND STAY OF PROCEEDINGS – 3**

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ATTORNEYS AT LAW
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SPOKANE, WA 99201
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1 8. _____ ;

2 It is further **ORDERED ADJUDGED AND DECREED** that all proceedings in this
3 case are stayed during the pendency of Plaintiff's appeal, with the exception that Defendants
4 Reinland may file their motion for summary judgment.
5

6
7 DONE ~~IN OPEN COURT~~ this 19 day of April, 2019.

8 

9
10 HONORABLE JOHN O. COONEY

11 Presented by:

12 GLP ATTORNEYS, P.S., INC.

13  #41575
14 Sara Maleki, WSBA #42465
15 Janelle Carney, WSBA #41028
16 James Gooding, WSBA #23833
17 Attorneys for Plaintiff Schuck

18 Agreed as to form, notice of presentation waived:

19 LAW OFFICE OF GEOFFFREY SWINDLER & JOHNSON LAW GROUP

20 
21 Geoffrey Swindler, WSBA #20176
22 Peter Johnson, WSBA #6195
23 Attorney for Defendants Reinland et al.

24 WILLIAMS, KASTNER & GIBBS PLLC

25 _____
26 Mark M. Myers, WSBA #15632
Ryan W. Vollans, WSBA #45302
Attorneys for Defendant Jacksons & IBEX

**ORDER GRANTING IN PART, AND DENYING IN PART,
PLAINTIFF'S MOTION FOR CR 54(b) CERTIFICATION
AND STAY OF PROCEEDINGS - 4**

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FACSIMILE (509) 321-7459**

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Brief of Appellant Schuck* in Court of Appeals, Division III Cause No. 36754-1-III to the following by the method indicated below:

Sara Maleki
Janelle Carney
James Gooding
GLP Attorneys, P.S., Inc.
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Brian S. Sheldon
Douglas R. Dick
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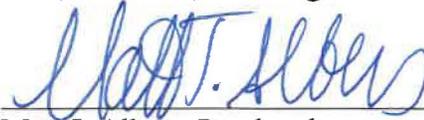
Mark M. Myers
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Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380

Geoffrey D. Swindler
Law Office of Geoffrey D.
Swindler, PS
103 E. Indiana Avenue, Suite A
Spokane, WA 99207

Original electronically served via appellate portal to:
Court of Appeals, Division III
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: August 13, 2019, at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK

August 13, 2019 - 2:13 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36754-1
Appellate Court Case Title: Felix W. Schuck v. Gordon Beck, et ux, et al
Superior Court Case Number: 17-2-02508-3

The following documents have been uploaded:

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This File Contains:
Briefs - Appellants
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Comments:

Brief of Appellant Schuck

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