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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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LARRY MICHAELS and DEBBIE MICHAELS, husband and wife and
the marital community comprised thereof; DAN P. EVANS, a single
person; and KATHY D. CMOS, individually, and as Administratrix and
Representative of the ESTATE OF MIKE P. CMOS, JR.,

Plaintiffs/Respondents,

vs.

CH2M HILL, INC., a Florida corporation; and KELLY IRVING,

Defendants/Appellants.

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STATE OF WASHINGTON

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. These name changes were effective January 1, 2009.

WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of injured persons, including an interest in preserving the right of workers or their estates to bring tort actions against non-employer tortfeasors under RCW 51.24.030 for injury or death occurring in the course of employment. WSAJ Foundation has a corresponding interest in interpretation and application of RCW 51.24.035, providing design professionals and their employees a limited immunity from such third party tort liability.¹

¹ Gary Bloom, a co-counsel for Kathy D. Cmos and the Estate of Mike P. Cmos, Jr., and George Ahrend, a co-counsel for respondent Dan P. Evans, currently serve on the WSAJ Foundation Amicus Committee, and Mr. Ahrend is the Associate Coordinator for the Committee. Neither Mr. Bloom nor Mr. Ahrend participated in the Committee's determination to seek amicus curiae status in this case, nor in the preparation of this amicus curiae brief.

II. INTRODUCTION AND STATEMENT OF THE CASE

A principal issue on appeal is the proper interpretation and application of RCW 51.24.035, which provides a limited immunity for design professionals in tort actions brought against non-employer third party tortfeasors under RCW 51.24.030.² The appeal arises out of consolidated negligence actions by Larry Michaels (Michaels), et ux, Dan P. Evans (Evans), and Kathy D. Cmos, both individually and as Personal Representative of the estate of her deceased husband Mike Cmos, Jr. (Cmos).³ These actions were brought against the engineering consulting firm CH2M Hill, Inc. and its employee Kelly Irving (CH2M).

The underlying facts are drawn from the briefing of the parties and the superior court's Memorandum Opinion and Plaintiffs' Findings of Fact and Conclusions of Law. See CH2M Br. at 3-39, APPENDIX A & APPENDIX B; Cmos Br. at 3-24; Michaels/Evans Br. at 2-3; Cmos et al Joint Ans. to ACEC-W Am. Br. at 1-7.⁴

For purposes of this brief, the following facts are relevant: Cmos was killed and Michaels and Evans injured while in the course of employment for the City of Spokane (City) at its sewage treatment plant. As employer, the City is immune from tort liability under the Industrial

² The current versions of RCW 51.24.030 and RCW 51.24.035 are reproduced in the Appendix to this brief.

³ Michaels, Evans and Cmos are collectively referred to as "the workers" in this brief.

⁴ Copies of the Plaintiffs' Findings of Fact and Conclusions of Law and Memorandum Opinion are attached to the CH2M Br. as APPENDIX A and APPENDIX B, respectively. (Some findings of fact in APPENDIX A have been highlighted by CH2M to indicate they are challenged on appeal.) "ACEC-W" is the abbreviation for The American Council of Engineering Companies of Washington, which filed an amicus curiae brief in this case.

Insurance Act, Title 51 RCW (IIA or act). The workers' negligence actions were brought against CH2M pursuant to RCW 51.24.030, authorizing third party tort actions against non-employer tortfeasors. See Appendix.

The workers alleged that CH2M was negligent in recommending to the City an interim modification to the sewage treatment plant recirculation and heating system without providing it a written analysis as to how the modification would alter operation of the recirculation and heating system. The workers contended this failure constituted negligent design and was a proximate cause of their injuries/death when the dome on one of the sewage treatment system digesters (concrete holding tanks) collapsed during an attempted sludge transfer involving the recirculation and heating system. See Cmos Br. at 1-3; Cmos et al Joint Ans. to ACEC-W Am. Br. at 1-7.

CH2M denied liability, contending that as a design professional it was immune from liability under RCW 51.24.035. CH2M further asserted that it was not negligent in any event, and that any negligence on its part was not a proximate cause of the workers' injuries under either a "legal cause" or "cause-in-fact" analysis. See CH2M Br. at 1.

Following a three week bench trial, the superior court found CH2M negligent and entered judgment for each of the workers. The court concluded that CH2M's negligence in conjunction with its recommendation regarding interim modification of the recirculation and

heating system constituted negligent design services and was a proximate cause of the workers' injuries. See CH2M Br. at APPENDIX A (FF ##24-28, 37-39, 94-95 & CL ##2-5, 10). The court further concluded CH2M's negligence surrounding its interim modification recommendation constituted "the negligent preparation of a design plan within the meaning of RCW 51.24.035(2)," see id. (FF #95), and that CH2M was not immune from liability under the statute, see id. (CL #10).

CH2M appealed to Division III of the Court of Appeals, which certified the appeal to this Court. On review, CH2M renews its claim of immunity under RCW 51.24.035. It also argues that it owed no legal duty to the workers under these circumstances, and that any breach of duty did not proximately cause the workers' injuries/death in any event, under either a legal cause or cause-in-fact analysis. See CH2M Br. at 2-3. CH2M challenges a number of the superior court's findings of fact bearing on liability. See CH2M Br. at 2 & APPENDIX A (as highlighted).

The workers argue that the trial court's findings of fact are supported by substantial evidence. As to CH2M's legal challenges, the workers contend the superior court correctly found CH2M liable for negligent design, that the immunity statute does not apply under these circumstances, and that CH2M's breach of duty was a proximate cause of the workers' injuries/death. See Cmos et al Joint Ans. to ACEC-W Am. Br. at 1-2.

III. ISSUE PRESENTED

What is the proper interpretation and application of RCW 51.24.035, providing design professionals and their employees a limited immunity from tort liability in third party actions brought pursuant to RCW 51.24.030?

IV. SUMMARY OF ARGUMENT

RCW 51.24.030 is a broad enabling statute permitting workers injured in the course of employment to pursue tort claims against non-employer tortfeasors. These third party actions are favored under the IIA, and RCW 51.24.030 is liberally construed consistent with the remedial purposes of the act. On the other hand, RCW 51.24.035, which operates as an exception to RCW 51.24.030 in providing design professionals a limited immunity from suit, must be strictly construed.

Under a plain reading, let alone strict construction, of RCW 51.24.035, the statute immunizes certain claims by workers against design professionals based upon negligent supervision of the worksite, while leaving undisturbed claims against design professionals based upon negligent preparation of design plans and specifications.

The two substantive subsections of RCW 51.24.035, when read together, reflect separate treatment of each theory of liability. Under subsection (1) negligent supervision claims involving "responsibility for safety practices" are not actionable unless the design professional assumes responsibility either by a mutually negotiated contract or the exercise of actual control over the relevant portion of the worksite. Under subsection (2) all tort claims based on "negligent preparation of design

plans and specifications" fall outside of the limited immunity granted by the statute, including common law claims for negligent design. Subsection (2) is not an "exception" to subsection (1). Rather, it is a simple declaration confirming the limited nature of the immunity provided by the statute.

V. ARGUMENT

A.) **RCW 51.24.030, Authorizing Workers To Bring Tort Actions Against Non-Employer Third Parties For Workplace Injuries, Is Liberally Construed To Effectuate Its Remedial Purposes.**

The IIA immunizes employers from tort liability for workers' injuries/death sustained during the course of employment. RCW 51.04.010. The act replaces the civil justice system with a no-fault compensation system based upon a schedule of benefits, assuring "sure and certain relief for workers." *Id.* The Legislature requires that the IIA "be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010.

At the same time, the IIA authorizes workers with industrial insurance claims to sue third parties in tort for such injuries. See RCW 51.24.030 (reproduced in Appendix).⁵ This enabling provision is broad in nature, allowing recovery under traditional tort principles. See

⁵ Third party tort actions by workers against non-employer tortfeasors have been a feature of the act since its inception, although the approach has varied over the years. See 1911 Laws, Ch. 74 §3. See Case Note, 51 Wash. L. Rev. 151 (1957) (synopsizing case involving worker's third party action under one version of former RCW 51.24.010).

Flanigan v. Labor & Industries, 123 Wn.2d 418, 424, 869 P.2d 14 (1994).

The third party statute serves two functions:

First, it spreads responsibility for compensating injured employees and their beneficiaries to third parties who are legally and factually responsible for the injury. Because third parties are not part of the compromise underlying the [Industrial Insurance] Act, they are not entitled to immunity from civil actions. Second, it permits the employee to increase his or her compensation beyond the Act's limited benefits.

Id.⁶

Given its remedial purposes, RCW 51.24.030 must be liberally construed. See Burns v. Johns, 125 Wash. 387, 216 Pac. 2 (1923) (involving interpretation of an IIA third party election statute; RRS §7675). As explained in Burns:

The right of election is a valuable right to the workman, and, to secure it to him, the act [*sic*] should receive the same liberal construction that is required to be given to other parts of the act in order to secure his rights thereunder.

125 Wash. at 392-93; see also Mathewson v. Olmstead, 126 Wash. 269, 218 Pac. 226 (1923) (involving same third party statute as Burns, concluding "we will, in all doubtful cases, sustain the right of the injured workman against the third party wrongdoer who has not contributed to the fund"). This rule of liberal construction must be taken into account when interpreting RCW 51.24.035's limited immunity provision, examined below. See infra §C.

⁶ When third party liability is imposed under RCW 51.24.030, the Department of Labor & Industries or self-insurer may recoup some of the benefits paid under the industrial insurance claim. See RCW 51.24.030(2); RCW 51.24.060; see also Tobin v. Labor & Industries, 2010 WL 3170295 (Wash. Supreme Court, August 12, 2010).

B.) RCW 51.24.035, Providing A Limited Immunity To Design Professionals From Third Party Personal Injury Claims Involving Workplace Safety Practices, Must Be Strictly Construed Under Governing Rules Of Statutory Construction.

In 1987, the Legislature provided a limited immunity to design professionals for tort actions brought by workers against non-employer third parties involving workplace injuries. See 1987 Laws, Ch. 212 §1801 (codified as RCW 51.24.035, reproduced in Appendix). Section 1801 begins by stating that: "[a] new section is added to chapter 51.24 RCW to read as follows." Three numbered subsections follow this statement. Subsections (1) and (2) address the immunity and its scope, and subsection (3) defines "design professional" for purposes of the statute.⁷

As explained more fully below, see infra §C., this statute immunizes certain conduct by design professionals from third party liability under RCW 51.24.030. Because this immunity statute is at odds with the remedial purposes of RCW 51.24.030, essentially operating as an exception to that statute, it must be narrowly construed. See Miller v. City of Tacoma, 138 Wn.2d 318, 324, 326-27, 979 P.2d 429 (1999) (exception to open public meetings act must be read narrowly to give effect to the mandated liberal construction of the act); cf. Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 105, 829 P.2d 746 (1992) (recognizing

⁷ Under RCW 51.24.035(3) "design professional" includes architects and professional engineers licensed under Washington law. The treatment of architects and engineers together under the rubric of "design professional" is in keeping with the recognized affinity between these two professions in tort law. See Note, Architectural Malpractice: A Contract-Based Approach, 92 Harv. L. Rev. 1075 n.1 (1979) (Harvard Note) (cited with approval in Seattle Western v. Mowat Co., 110 Wn.2d 1, 10, 750 P.2d 245 (1988)).

common law immunities disfavored because they leave claimants without a remedy).

If RCW 51.24.035 is ambiguous, in that it may be reasonably interpreted in more than one way, see Vashon Island v. Boundary Review Bd., 127 Wn.2d 759, 771, 903 P.2d 953 (1995), then the Court must narrowly construe it to further the remedial purposes of the IIA and RCW 51.24.030. With this additional rule of construction in mind, it remains to determine the proper interpretation and application of this immunity statute.

C.) RCW 51.24.035 Provides A Narrow Immunity Cutting Off Some Common Law Liability For Design Professionals For Negligent Supervision, While Leaving Intact Common Law Liability Based Upon Negligent Preparation Of Design Plans And Specifications.

Overview

Generally, statutes are to be read as a whole, and the words of the statute are to be given their plain and ordinary meaning. See Burns v. City of Seattle, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). Read in this manner, RCW 51.24.035 provides a limited immunity to design professionals for certain negligent supervision claims on construction sites, unless the design professional, by negotiated agreement or conduct, voluntarily accepts "responsibility for safety practices." See RCW 51.24.035(1); see also Cmos Br. at 30. Design professionals otherwise remain subject to suit under RCW 51.24.030 when the gravamen of the claim is negligent design. See RCW 51.24.035(2); Cmos

Br. at 29-30. This interpretation of RCW 51.24.035 does not require use of the rules of construction discussed in §§A and B, supra. However, as will be seen, those rules are an impediment to the expansive interpretation of RCW 51.24.035 offered by CH2M.⁸

Historically, there are two common bases for civil liability of design professionals -- negligent supervision of the worksite and negligent design. See Harvard Note, 92 Harvard L. Rev. at 1094. RCW 51.24.035 addresses each of these theories separately.

Subsection (1) and Negligent Supervision

At the time RCW 51.24.035 was adopted in 1987, the law on negligent supervision tort liability for design professionals was fairly well developed, both generally and in Washington. Historically, it was rooted in contract-based obligations and/or conduct reflecting the exercise of control over worksite safety. See Harvard Note, at 1085-1086 (describing alternate negligent supervision theories); Annot., Liability to one injured in course of construction based upon architect's failure to carry out supervisory responsibility, 59 A.L.R.3d 869, §2[b] (1974); Riggins v. Bechtel Power Corp., 44 Wn.App. 244, 249-52, 722 P.2d 819 (surveying negligent supervision common law liability based upon agreement or conduct and the impact of contract-based duties), *review denied*, 107

⁸ The legislative history of RCW 51.24.035 offers no real insight into what the Legislature intended in enacting the statute, beyond the language of the statute itself. Documents regarding Substitute Senate Bill (SSB) 6048, enacted as 1987 Laws, Ch. 212 §1801, are stored at the Washington State Archives in Olympia. What appears to be the House Bill Report and Final Bill Report on SSB 6048, obtained from the Archives, are reproduced in the Appendix. Neither the House Journal nor the Senate Journal contain any discussion of §1801 bearing on legislative intent.

Wn.2d 1003 (1986). The Legislature is presumed to be aware of the state of the common law at the time it enacted RCW 51.24.035. See Wynn v. Earin, 163 Wn.2d 361, 371, 181 P.3d 806 (2008).

Properly interpreted, subsection (1) of RCW 51.24.035 focuses on negligent supervision claims. It is concerned with design professional tort liability grounded in "responsibility for safety practices" on the worksite ("site of the construction project"). Without a contract provision or overt act by the design professional accepting responsibility for safety practices there is no tort liability under RCW 51.24.030 based on negligent supervision. Use of the term "unless" in subsection (1) indicates these two bases for liability are exceptions to the principle of non-liability under this provision. See Appendix.

In framing this limited immunity, the Legislature did not markedly alter the existing law on negligent supervision. The effect of carving out these exceptions is basically to recognize the historical bases for negligent supervision liability, while otherwise halting any further expansion of the common law that would potentially impose liability outside of this traditional framework. For example, the immunity provided in subsection (1) is arguably available to a design professional when the governing contract sets forth an obligation to supervise, but the obligation was not "mutually negotiated." Similarly, subsection (1) may prevent litigants from urging courts to impose a common law duty to supervise worksite safety in the absence of a contract requirement to this effect. See

e.g. Gary E. Snodgrass & William S. Thomas, Defending Design Professionals: Is Contract Language an Adequate Shield?, 64 Defense Counsel Journal, 389, 390 (1997) (warning of arguments urging "courts to impose a duty to supervise, and thus liability, on the design professional in the absence of, or even contrary to, their contractual terms").

Subsection (2) and Negligent Design

In 1987, common law liability of design professionals for personal injuries due to negligent design was well recognized both as to workers' claims in particular, and third party plaintiff's claims in general:

Workers injured on the job site often sue architects for negligent design or breach of a duty of supervision. The negligent design cases present few theoretical difficulties since the standard of care is well-established and the architect has no argument that others should bear the liability.

Harvard Note at 1094-95; see also Nathan Walker & Theodor Rohdenburg, Legal Pitfalls In Architecture, Engineering, and Building Construction, §§3.2-3.2.1 (McGraw Hill, Inc. 1968) (supporting legal soundness of extending "MacPherson doctrine" regarding defective design of chattels to negligent design involving structures);⁹ George M. Bell, Professional Negligence of Architects and Engineers, 12 Vand. L. Rev. 711, 713 (1958-59) (noting resistance of some courts to extend liability of design professionals for negligent design to third parties, while urging "[n]o reason appears why those who design chattels and those who design

⁹ See MacPherson v. Buick Motor Co., 111 N.E. 1050 (NY 1916) (eliminating privity requirement in tort for personal injuries involving defective products). Washington long ago adopted MacPherson, and eliminated a privity requirement between plaintiff and

structures on land should not receive the same treatment"); Annot., Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 A.L.R.3d 455, §3 (1980) (recognizing near unanimity in cases imposing common law liability on architects for negligent design).

While by 1987 Washington appellate courts had not had the occasion to expressly uphold common law negligent design claims as actionable, this Court implicitly did so in Seattle Western, *supra*, 110 Wn.2d at 10, by citing with approval both the Harvard Note, referenced *supra*, and Davidson & Jones, Inc. v. County of New Hanover, 255 S.E.2d 580, 582-84 (N.C. App. 1979), which recognized a design professional's common law liability for negligent design in a third party context involving economic loss. Moreover, prior to 1987 the Court had imposed common law liability for injuries to third parties resulting from design defects in chattels. See Seattle-First Nat'l Bank v. Tabert, 86 Wn.2d 145, 149-50, 542 P.2d 774 (1975) (strict liability).¹⁰

defendant before imposing tort liability. See Riggins, 44 Wn.App. at 249 (referencing MacPherson).

¹⁰ The evidence that Washington implicitly recognizes a common law duty in tort for negligent design services is even stronger today. For example, in fashioning the "economic loss rule," limiting tort recovery for contract-based economic loss, this Court has developed a different analysis when the wrongful conduct carries the risk of personal injury, death or physical damage. See Stuart v. Caldwell Banker, 109 Wn.2d 406, 418-21, 745 P.2d 1284 (1987) (first articulating distinction between third party tort claims for economic loss and claims for personal injury/property loss); Alejandro v. Bull, 159 Wn.2d 674, 682-86, 153 P.3d 864 (2007) (articulating "risk of harm analysis" representing an exception to economic loss rule because the spectre of personal injury and injury to property requires a tort-based analysis, and noting similar sensibilities under the Washington Product Liability Act, Ch. 7.72 RCW). There is no principled basis for treating negligent preparation of design plans and specifications differently. This Court should take this occasion to confirm that design professionals are liable at common law for negligent design. To the extent Burg v. Shannon & Wilson, 110 Wn.App. 798, 807,

Subsection (2) of RCW 51.24.035 simply declares that "[t]he immunity provided by this section *does not apply* to the negligent preparation of design plans and specifications." (Emphasis added) The "section" referred to is RCW 51.24.035 in its entirety. See 1987 Laws, Ch. 212 §1801 (adding a "new section" to Ch. 51.24 RCW); see also RCW 51.24.035(3) (defining "design professional" for "purposes of this section"). Consequently, subsection (2) clarifies that the intended scope of subsection (1) is negligent supervision, while preserving tort claims for negligent preparation of design plans and specifications based on common law liability.¹¹ Subsection (1) cannot be interpreted as addressing negligent design because subsection (2) flatly states the entire statute ("section") does not apply to negligent preparation of design plans and specifications.

Response to CH2M's Analysis

CH2M reads RCW 51.24.035 incorrectly. See CH2M Br. at 40-48; CH2M Reply Br. at 5-18. It interprets subsection (1) as providing a broad, all-encompassing immunity, only allowing for liability for design professionals who accept responsibility for worksite safety by contract or conduct. See CH2M Br. at 41-42. It views subsection (2) as providing a

43 P.3d 526 (2002), suggests no common law duty for negligent design is actionable absent proof of a special relationship, it should be disapproved. A plaintiff need only be within the general field of danger. See Cmos Br. at 32-34 (and authorities cited therein).

¹¹ Subsection (2) likewise preserves negligent preparation of design plans and specifications claims involving contract provisions or statutes, as these factors may impact the nature and extent of the duty imposed.

narrow "exception" to the immunity for negligent design implicit in subsection (1). See CH2M Br. at 45; CH2M Reply Br. at 6; see also ACEC-W Am. Br. at 4.¹² Under CH2M's reading, the subsection (2) exception allows a subset of negligent design cases involving preparation of design plans and specifications to escape immunity, but apparently only if the plans and specifications are in writing. See CH2M Reply Br. at 8, 12-13; see also ACEC-W Am. Br. at 12-17.

CH2M's argument should be rejected for a number of reasons. First, there is no indication in subsection (2) that it serves as an exception to subsection (1). Subsection (2) contains no reference back to subsection (1) or any of the typical language earmarking it as an exception to another provision, such as "except that," "provided that," "unless" or the like. The Legislature knows how to frame an exception. For example, subsection (1) itself signals an exception to RCW 51.24.030 with its opening clause "Notwithstanding RCW 51.24.030(1)...." Because the Legislature did not frame subsection (2) as an exception, this Court should refuse to treat it as such.

Any doubt that CH2M is incorrect in portraying subsection (2) of RCW 51.24.035 as an exception to subsection (1) should be resolved by looking at the effect of reversing the order of these two subsections, to see what difference results. This sequencing makes no difference whatsoever. The two sections remain congruent under this reformulation -- one

¹² The workers refer in passing to subsection (2) as an "exception." See Cmos Br. at 29; Michaels/Evans Br. at 25.

preserves negligent design tort liability while the other immunizes negligent supervision claims against design professionals absent acceptance of "responsibility for safety practices" on the construction site.

Second, even if subsection (1) is not viewed as plainly and unambiguously relating to negligent supervision, interpreting it as a broad immunity that sweeps up both negligent supervision and design claims violates the rules of construction discussed in §§A & B, supra. Because RCW 51.24.035, considered as a whole, does not establish a complete immunity for design professionals, the immunity it does provide must be strictly construed. Viewed in this manner, subsection (1) only addresses negligent supervision liability.

Third, CH2M's interpretation of RCW 51.24.035 does not withstand scrutiny when read in *pari materia* with the third party action statute, RCW 51.24.030, which it specifically references. As the workers point out, RCW 51.24.035 is an exception to RCW 51.24.030. See Michaels/Evans Br. at 26-28; Cmos et al Joint Ans. to ACEC-W Am. Br. at 10-11. RCW 51.24.030 must be liberally construed. See §A. As an exception to RCW 51.24.030, RCW 51.24.035 must be strictly construed. See §B. CH2M's analysis is inconsistent with these rules of construction.

Under the analysis proposed here, negligent design claims are simply not immunized. As a consequence, the Court need not reach CH2M's argument that the limited liability contemplated under subsection (2) for negligent preparation of design plans and specifications

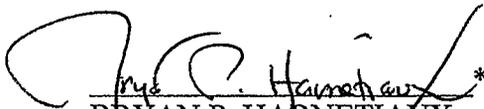
must be supported by a writing. See CH2M Reply Br. at 8, 12-13; see also ACEC-W Am. Br. at 12-17. In any event, this argument fails because it impermissibly requires reading something into the statutory provision that is not there -- the word "written." See Jenkins v. Bellingham Municipal Court, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981). Further, reading subsection (2) as only applying to written plans and specifications is unsupportable because this would mean design professionals that negligently fail to prepare plans and specifications would be immunized, while those who prepare written plans and specifications negligently are not immune. This is an absurd result. See Cmos et al Joint Ans. to ACEC-W Am. Br. at 17-18.

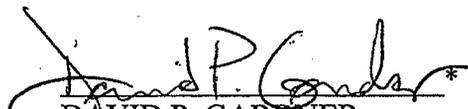
For all of the above reasons, RCW 51.24.035 should be interpreted as leaving intact common law tort liability for negligent design. The limited immunity provided by the statute only bears on tort liability based upon the separate theory of negligent supervision.

VI. CONCLUSION

The Court should adopt the analysis set forth in this brief and interpret RCW 51.24.035 accordingly.

DATED this 21st day of September, 2010.


BRYAN P. HARNETIAUX*


DAVID P. GARDNER*

On behalf of WSAJ Foundation

*Brief transmitted for filing by email; signed original retained by counsel.

Appendix

RCW 51.24.030

Action against third person — Election by injured person or beneficiary — Underinsured motorist insurance coverage.

(1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium.

[1995 c 199 § 2; 1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

RCW 51.24.035

Immunity of design professional and employees.

(1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land surveyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions.

[1987 c 212 § 1801.]

HOUSE BILL REPORT

SSB 6048
As Amended by the House

BY Senate Committee on Judiciary (originally sponsored by Senators Talmadge, Nelson, Newhouse, McCaslin, Moore and Bottiger)

Revising provisions on civil actions and liabilities.

House Committee on Judiciary

Majority Report: Do pass. (12)

Signed by Representatives Armstrong, Chair; Crane, Vice Chair; Hargrove, Heavey, Moyer, Niemi, Padden, Patrick, Schmidt, Scott, Wang and Wineberry.

House Staff: Charlie Gavigan (786-7340)

AS PASSED HOUSE APRIL 14, 1987

BACKGROUND:

Tort law has generally been developed by the courts on a case-by-case basis. The legislature has periodically intervened in order to bring about reforms deemed necessary by the legislature. In 1986, the legislature made substantial changes to tort law to create what the legislature felt was a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

There are many areas that people argue need to be adjusted or reformed further. The Tort Reform Act of 1986 was reviewed by a task force appointed by the Insurance Commissioner. The task force recommended that several changes be made.

The areas discussed in general as needing further review include:

MANDATORY ARBITRATION is available in superior court in counties that have authorized arbitration and where the relief requested is only monetary and does not exceed \$10,000. In counties where two-thirds of the judges have approved the limit is \$25,000. Arbitrators shall be appointed based on rules adopted by the supreme court.

In order to obtain additional superior court judicial positions, counties must implement a mandatory arbitration program.

FRIVOLOUS LAWSUITS, claims, or defenses can result in the nonprevailing party paying additional expenses accrued by the prevailing party as a result of the frivolous action. Final

judgment and written findings by the trial judge are required, which necessitates a post-trial motion.

THE RELEASE OF PATIENTS IN THE MENTAL HEALTH SYSTEM done in good faith and without gross negligence by employees of public or private agencies in the course of their official job responsibilities cannot lead to a criminal or civil action. These persons are immune from legal action taken against them.

IMMUNITY FOR ELECTED AND APPOINTED OFFICIALS under present law extends to elected officials of special purpose districts, school boards, and school board superintendents. A special purpose district is any governmental/public entity below a city or a county. Special purpose district officials are presently immune from civil liability for damages arising from actions within the scope of their official duties, except for tortious conduct. School boards and school district superintendents cannot be held civilly liable for any action within the scope of their employment unless it is gross negligence.

VOLUNTEER FIREMEN, POLICEMEN, AND EMERGENCY MEDICAL TECHNICIANS, or other uncompensated persons who render emergency medical care at the scene of an emergency are not liable for civil damages unless their acts or omissions are grossly negligent or constitute wilful or wanton misconduct. Compensation, scene of emergency, and other terms are defined in the current law.

A FEASIBILITY STUDY ON EXCESS INSURANCE is suggested be done by the state risk manager. The risk manager administers the state risk management office in the Department of General Administration.

CORPORATE AND COOPERATIVE DIRECTORS LIABILITY is addressed in a limited manner in present law. Generally, a corporation's liability is not limited and neither is a director's liability. However, any amounts that a corporate director or officer must pay because of acts that fall within the scope of employment or responsibility are indemnified (repaid) by the corporation.

The board of directors or officers of a nonprofit corporations are immune to civil liability by law for conduct within the scope of their official capacity unless the conduct constitutes gross negligence. This immunity does not include liability for duties owed to the nonprofit corporation or its shareholders.

CONSORTIUM is not specifically addressed in statutory law. Case law allows recovery for loss of consortium.

The contributory fault of one spouse is not imputed to the other spouse to diminish recovery in an action by the other spouse to recover damages for death or injury, except in cases by wrongful death.

LIMITATION OF ACTIONS - FELONY means that a person committing a felony cannot recover civil damages for wrongful death or injury

if the death or injury was causally related to the commission of the felony.

AN INTOXICATION DEFENSE exists for a defendant where an intoxicated person attempts to recover damages for injury or death while being intoxicated that were caused by the defendant. This complete defense is available to a defendant where the state of intoxication of the plaintiff contributed more than 50 percent to the injury or death. A chemical analysis which shows an alcohol level in the blood of .10 percent or greater is conclusive proof of intoxication.

IMMUNITY FOR DIRECTORS OF NONPROFIT CORPORATIONS exists for a member of the board of directors or an officer from civil liability for any act or omission done in the scope of the director or officer's official capability unless the act or omission constitutes gross negligence or violates a duty owed to the corporation or shareholders of the corporation.

IMMUNITY FOR DIRECTORS OF HOSPITALS exists which prevents the director from being civilly liable for injuries resulting from health care administered by an authorized health care provider unless the authorization of the health care provider to provide services at the hospital constitutes gross negligence.

THE JUDICIAL COUNCIL consists of the Chief Justice and one other judge of the Supreme Court, two Court of Appeals judges, two superior court judges, eight members of the legislature, the dean of each law school in the state, eight members of the state bar, the attorney general, two court of limited jurisdiction judges, and one court clerk.

The duties of the council include surveying and studying the operation of the judicial system in the state, devising ways to simplify judicial proceedings, and to report to the governor and the legislature its recommendations for changes and improvements to the judicial system.

HEALTH CARE LIMITATIONS of action include a statute of limitation. A civil action for damages based on professional negligence after June 25, 1976, must be initiated within three years from the date of the injury or within one year of the discovery (or reasonably should have been discovered) whichever is later. However, the complaint must be initiated within eight years of the injury in all cases, although the statute is tolled (put on hold) if fraud, intentional concealment, or the improper presence of a foreign body (i.e., instrument) exists.

The knowledge of a custodial parent or guardian is imputed to a person under 18. Generally a statute of limitation is tolled for a minor until the minor turns 18.

A PHYSICIAN-PATIENT PRIVILEGE exists that precludes a physician from testifying about information obtained in the course of examination or treatment, except for the injury, neglect, or sexual abuse of a child. A plaintiff in a civil action for

personal injury or wrongful death must elect whether to waive the physician-patient privilege. If the plaintiff does not waive the privilege, the claimant (plaintiff) cannot raise his or her physical or mental condition and cannot later waive the privilege.

THE REASONABLENESS OF ATTORNEYS FEES can be reviewed by a court upon petition by a named party in a tort action, except for health care cases where the court always determines the reasonableness of attorney's fees. The statutes list several considerations the court should use in determining reasonableness.

IN WORKER'S COMPENSATION CLAIMS the injured worker may seek recovery of damages from a third person if the third person contributed to the injury.

LIABILITY OF DESIGN PROFESSIONALS AND ARCHITECTS can be at issue if the design professionals or architects are providing services to a construction project but are not the primary parties in the contract. A worker injured on the job may attempt to recover damages from a third person (design professional or architect) involved in the project, which is a separate claim from workers compensation.

OFFERS OF SETTLEMENT, under current law, must be reviewed by the court for reasonableness.

SUMMARY:

Modifications are made to tort litigation procedures and to tort law. Some of these are technical, while others change substantive parts of tort law. These modifications are:

MANDATORY ARBITRATION dollar limits are increased to \$15,000 and \$35,000 where two-thirds of the superior court judges approve. Qualifications of an arbitrator include being a member of the state bar association for at least five years or being a retired judge. The parties can choose an arbitrator who is not a lawyer.

The requirement that an increase in superior court personnel be conditioned on setting up a mandatory arbitration program in a county is removed.

FRIVOLOUS LAWSUITS, claims, or defenses can be addressed by motion of the prevailing party. A final judgment is not necessary, but the motion must be made within 30 days from the termination of the action.

THE RELEASE OF PATIENTS IN THE MENTAL HEALTH SYSTEM provisions are extended to grant immunity to the state, local government, and evaluation and treatment facilities. Good faith requirements and an absence of gross negligence are necessary for the immunity to apply.

IMMUNITY FOR ELECTED AND APPOINTED OFFICIALS is repealed for the present groups now covered in law (special purpose district

officials, school boards, and school superintendents). An appointed or elected public official (state, local, or special purpose) is immune from civil liability for any discretionary decision or omission within the persons scope of office, but liability will extend to tortious conduct.

VOLUNTEER FIREMEN, POLICEMEN, AND EMERGENCY MEDICAL TECHNICIANS and other persons have immunity from civil liability for uncompensated assistance at the scene of an emergency. The definition of compensation is expanded to include payment made to part-time volunteer and on-call volunteer personnel of any emergency response organizations (i.e., police or fire departments). The definition of scene of emergency includes hospitals, doctors' offices, and other places where medical persons practice or are employed.

A first responder (a person authorized to give emergency medical care) is included in the list of emergency medical technicians that may be immune from civil liability under specified circumstances.

A FEASIBILITY STUDY ON EXCESS INSURANCE is to be conducted by the state risk manager. The study is to determine the costs and benefits if the state provides excess insurance to political subdivisions. The study is to be submitted to the judicial committees of the House and Senate by December 31, 1987.

CORPORATION AND COOPERATIVE DIRECTORS LIABILITY to the corporation or its shareholders can be statutorily limited by including such provisions in the articles of incorporation. Liability cannot be eliminated for intentional misconduct by the director, a knowing violation of the law by the director, approving loans where a conflict of interest exists, or where the director receives an illegal benefit of money, property, or services.

Cooperative associations, including agricultural associations, are included under the limitation of liability afforded directors or officers of nonprofit corporations (no liability unless gross negligence exists or a duty to the corporation or shareholders is violated).

CONSORTIUM is added to wrongful death actions in imputing the contributory fault of one spouse to the other spouse. Therefore contributory fault of one spouse who is killed or injured will be imputed to the other spouse to reduce or eliminate damages for loss of consortium.

LIMITATIONS OF ACTIONS - FELONY is modified to limit causes of actions for injury or wrongful death by a person committing a felony only if the death or injury occurred at the time the felony was committed and was the proximate cause of the injury or death. Proximate cause basically means that the death or injury was a direct result of the action, with no independent or other significant event occurring to contribute to the injury or death, and without the action the injury or death would not have occurred. Generally, causation requires foreseeability, whereas

proximate cause requires a policy decision by the court that it is appropriate for liability to attach.

AN INTOXICATION DEFENSE applies where the intoxication existed at the time of the injury or death and that the intoxication was a proximate cause of the injury or death and the intoxicated person was more than 50 percent at fault. Determination of intoxication is the same as determining driving while under the influence of intoxicating liquor or drugs (.10 percent alcohol level in the blood or under the influence as determined by other means).

IMMUNITY FOR DIRECTORS OF NONPROFIT CORPORATIONS only applies to the discretionary decisions of directors or officers within the scope of their responsibility.

IMMUNITY FOR DIRECTORS OF HOSPITALS is expanded to include civil actions for death of a patient from a health care provider approved to provide health care at the hospital unless the authorization constitutes gross negligence. Injuries must be personal injuries.

THE JUDICIAL COUNCIL is required to conduct studies and report its findings and recommendations to the judiciary committees of the House and Senate by January 1, 1988 on the benefits and detriments of the following subjects: (a) mandatory settlement conference in the superior court; (b) examination of jurors as part of the jury selection process; (c) mandatory appellate settlement conferences; (d) mandatory discovery conference in specific civil actions, and (e) a comprehensive state statute on offers of settlement.

In applying the statute of limitation in HEALTH CARE SERVICES, knowledge of a custodial parent or guardian imputed to a person under 18 will bar a claim for the minor to the same extent the claim of an adult is barred.

The knowledge of a custodial parent or guardian of a minor whose cause of action arose between June 25, 1976 and August 1, 1986, will be imputed to the minor from the effective date of this act.

THE PHYSICIAN-PATIENT PRIVILEGE is deemed waived 90 days after an action is filed.

IN REQUESTING REVIEW OF ATTORNEYS' FEES for reasonableness, any party charged with payment of the fees in a tort action can petition the court within 45 days of receipt of the attorneys final bill.

The terms of the fee agreement is added to the list of consideration the court should use in determining reasonableness of attorney's fees.

This applies to agreements entered into after the effective date of this act.

If an injured worker who received WORKERS' COMPENSATION seeks damages against a third person, the plaintiff (injured worker)

must give notice to the Department of Labor and Industries or self-insurer who may file a notice of statutory interest in recovery for reimbursement of the worker compensation payments).

LIABILITY OF DESIGN PROFESSIONALS AND ARCHITECTS is limited if the design professional or architect is a third person retained to perform services on a construction project. A worker injured on a construction project may not seek damages from a design professional or architect unless the design professional or architect specifically assumes responsibility for safety practices or exercised control over the portion of the premises where the worker was injured.

Immunity does not extend to negligently prepared design plans and specifications.

OFFERS OF SETTLEMENT, which must be reviewed by the court, must be reasonable and the burden of proof regarding reasonableness is on the person requesting the settlement.

Fiscal Note: Not Requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

House Committee - Testified For Original Measure in Committee: Daniel B. Heid, Sunnyside City Attorney; Harold Fosso, State Farm Insurance; Anne Redmen, Washington State Bar Association; Pat Thibaudeau, Washington Community Mental Council; Kevin McMahon, Washington State Bar Association.

House Committee - Testified Against Original Measure in Committee: None Presented.

House Committee - Testimony For: Adjustments are needed to the massive Tort Reform Act of 1986. The task force appointed by the Insurance Commissioner to review the Tort Reform Act has recommended some of the changes. This act will continue progress in tort reform by reducing court costs, improving the flow of litigation, and decreasing the existing court congestion.

House Committee - Testimony Against: None Presented.

FINAL BILL REPORT

SSB 6048

PARTIAL VETO

C 212 L 87

BY Senate Committee on Judiciary (originally sponsored by Senators Talmadge; Nelson, Newhouse, McCaslin, Moore and Bottiger)

Revising provisions on civil actions and liabilities.

Senate Committee on Judiciary

House Committee on Judiciary

SYNOPSIS AS ENACTED

BACKGROUND:

In 1986 the Legislature made substantial changes to tort law to create what the Legislature felt was a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

There are many areas of tort law that people argue need to be adjusted or reformed further. The Tort Reform Act of 1986 was reviewed by a task force appointed by the Insurance Commissioner. The task force recommended that several changes be made.

SUMMARY:

Mandatory Arbitration: As of July 1, 1988, the mandatory arbitration ceiling for cases in superior court in counties which have authorized arbitration is increased from \$10,000 to \$15,000. If two-thirds of the superior court judges in the county vote to increase the ceiling, the arbitration ceiling can be increased up to \$35,000 from the present \$25,000 level. The minimum qualifications for arbitrators are established.

The statute which requires counties to have implemented a mandatory arbitration program to obtain additional superior court judicial positions is repealed.

Frivolous Lawsuits: The frivolous lawsuit statute is clarified to carry out its purpose and intent. A court may determine if an

action was frivolous and advanced without reasonable cause upon either a pre-trial or post-trial motion by the prevailing party.

Release of Patients in Mental Health System: The state, a unit of local government, and evaluation and treatment facilities are not civilly or criminally liable for the good faith release of persons held under the Involuntary Treatment Act, Chapter 71.05 RCW, if the release was done without gross negligence.

Immunity For Elected and Appointed Officials: Appointed or elected officials and members of the governing body of a public agency are immune from liability for discretionary decisions performed within the course of their official duties. Liability remains on the public agency for the tortious conduct of its officials.

Volunteer Firemen, Policemen and EMT: Noncompensated part-time and on-call volunteers, such as firefighters, policemen and emergency response organizations, who provide emergency care at the scene of an emergency are not civilly liable for their acts or omissions unless such acts or omissions are grossly negligent.

Feasibility Study on Excess Insurance: The State Risk Manager is to conduct or contract for a feasibility study on the costs and benefits of the State of Washington providing excess liability and property insurance to political subdivisions of the state.

Corporate Directors Liability: Statutes on profit and nonprofit corporations, nonprofit cooperatives, and nonprofit associations are amended to allow the articles of incorporation to include a provision eliminating or limiting the personal liability of a director for damages caused by an action taken by the director in good faith. Such provisions may not limit a director's liability for acts involving intentional misconduct, such as a knowing violation of the law or a knowing breach of the director's fiduciary duty to the corporation.

Consortium: The contributory fault of a decedent is imputed to a claimant in an action for loss of consortium.

Liability For Design Professionals: The liability of design professionals for injuries to employees of subcontractors is limited by statute. Liability remains for design professionals if responsibility for safety practices is assumed by contract or if the design professional exercised control over the work area.

Limitation of Actions--Felony: The existing statute is clarified regarding the commission of a felony and its relationship to the injury suffered. It is a defense to an action for personal injury if the person was engaged in a felony that was a proximate cause of the injury.

Intoxication Defense: A defense exists for a defendant where an intoxicated plaintiff attempts to recover damages for injuries incurred while intoxicated.

The existing statute is clarified regarding the relationship between the intoxication of a plaintiff and the occurrence which results in the plaintiff's injury. It is a defense in an action for personal injuries if: (1) the plaintiff was intoxicated; (2) the intoxication was a proximate cause of the injuries; and (3) the plaintiff was more than 50 percent at fault.

The Judicial Council: The Judicial Council is required to conduct studies on the following issues: (1) settlement conferences; (2) examination of jurors during the jury selection process; (3) appellate evaluation conferences; (4) discovery conferences; and (5) offers of settlement.

Health Care Limitations: The statute of limitations on actions relating to health care is clarified. A "window period" is established to ensure that minors do not have their actions for personal injuries eliminated because of the assumed knowledge of their parent.

Accelerated Waiver of the Physician-Patient Privilege: The requirement for an affirmative act to waive the privilege within 90 days of filing the action is deleted. The privilege is deemed to be waived 90 days after filing the lawsuit for personal injuries or wrongful death.

Attorney's Fees: A petition for determination of the reasonableness of attorney's fees in tort actions must be filed within 45 days of the final billing. The court is to review the terms of the fee agreement in making its determination of reasonableness.

Workers' Compensation Liens: The provisions of law relating to third-party actions by persons covered by workers' compensation statutes are modified when an employer or co-employee is at fault. The Department of Labor and Industries is to be notified of such a lawsuit and may intervene to protect its statutory interests.

Settlement Agreements: The terms of a settlement agreement, which must be reviewed by a court, must be reasonable and the burden of proof regarding reasonableness is on the person requesting the settlement.

VOTES ON FINAL PASSAGE:

| | | | |
|--------|----|---|--------------------|
| Senate | 48 | 1 | |
| House | 94 | 1 | (House amended) |
| Senate | 37 | 1 | (Senate concurred) |

EFFECTIVE: April 29, 1987 (Sections 401, 402, 701-710, 901, 1001, 1101, 1201, 1401, 1501, 1601, 1602)
July 26, 1987
July 1, 1988 (Sections 101 and 102)

PARTIAL VETO SUMMARY: The Governor vetoed provisions requiring the Risk Manager to conduct a feasibility study of the State of Washington providing liability insurance to political subdivisions. Lack of money was cited as the reason for the veto. (See VETO MESSAGE)

OFFICE RECEPTIONIST, CLERK

To: Washington State Association for Justice
Cc: r-wlaw@richter-wimberley.com; tscanlan@skellengerbender.com; ken@appeal-law.com; shelby@appeal-law.com; djg@gyseattle.com; sestres@kbmlawyers.com
Subject: RE: Michaels, et al. v. CH2M Hill, Inc. (S.C. # 84168-3)

Rec. 9-21-10

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-----Original Message-----

From: Washington State Association for Justice [mailto:amicuswsajf@wsajf.org]
Sent: Tuesday, September 21, 2010 4:47 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: r-wlaw@richter-wimberley.com; tscanlan@skellengerbender.com; ken@appeal-law.com; shelby@appeal-law.com; djg@gyseattle.com; sestres@kbmlawyers.com
Subject: Michaels, et al. v. CH2M Hill, Inc. (S.C. # 84168-3)

Dear Mr. Carpenter,

Please see the attached letter to the court and amicus curiae brief in the above entitled case.

Respectfully submitted,

Bryan Harnetaiux
On behalf of WSAJ Foundation

--

The preceding message and any attachments contain confidential information protected by the attorney-client privilege or other privilege. This communication is intended to be private and may not be recorded or copied without the consent of the author. If you believe this message has been sent to you in error, reply to the sender and then delete this message. Thank you.

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To: Washington State Association for Justice
Cc: r-wlaw@richter-wimberley.com; tscanlan@skellengerbender.com; ken@appeal-law.com; shelby@appeal-law.com; djg@gyseattle.com; sestest@kbmlawyers.com
Subject: RE: RE Michaels, et al. v. CH2M Hill, Inc. (S.C. # 84168-3) - Corrections in Table of Authorities

Rec. 9-27-10

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From: Washington State Association for Justice [mailto:amicuswsajf@wsajf.org]
Sent: Monday, September 27, 2010 2:42 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: r-wlaw@richter-wimberley.com; tscanlan@skellengerbender.com; ken@appeal-law.com; shelby@appeal-law.com; djg@gyseattle.com; sestest@kbmlawyers.com; amicuswsajf@wsajf.org
Subject: RE Michaels, et al. v. CH2M Hill, Inc. (S.C. # 84168-3) - Corrections in Table of Authorities

TO: Ronald R. Carpenter, Clerk

FROM: Bryan Harnetiaux (WSBA No. 5169), on behalf of WSAJ Foundation

RE: Michaels, et al. v. CH2M Hill, Inc. (S.C. # 84168-3) - Corrections on WSAJ Foundation Proposed Amicus Curiae Brief Table of Authorities

Dear Mr. Carpenter,

The WSAJ Foundation submitted a letter request and proposed amicus curiae brief in this case on September 21, 2010. This submission is presently pending before the Court. The Table of Authorities in the submitted proposed amicus curiae brief is flawed in several respects, including the omission of two ALR annotations cited in the body of the brief, an improper listing of the Note from Harvard Law Review, an irregularity in the alphabetical sequencing of the authorities, and missing page references to two citations. These flaws are corrected in the attached revised pages, iii and iv. (The originals of these proposed substitute pages are retained by counsel.)

If the proposed WSAJ Foundation amicus curiae brief is accepted for filing, it requests that the accompanying revised pages iii and iv be substituted for the existing pages, before printing of the brief.

Respectfully submitted,

Bryan Harnetiaux
On behalf of WSAJ Foundation

cc: Daniel E. Huntington/Gary N. Bloom/George M. Ahrend/John R. Layman (c/o: r-wlaw@richter-wimberley.com)
Terence J. Scanlan (tscanlan@skellengerbender.com) Kenneth W. Masters (ken@appeal-law.com; shelby@appeal-law.com) Douglas J. Green/Amber Hardwick (On behalf of ACEC-W) [c/o: djq@gyseattle.com]
Stew Estes (On behalf of Washington Defense Trial Lawyers) [sestes@kbmlawyers.com] Dave P. Gardner (c/o amicuswsajf@wsajf.org)

Atts: Revised pages iii and iv

--
Bryan P. Harnetiaux
On behalf of WSAJ Foundation

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