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**IN THE SUPREME COURT OF WASHINGTON**

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**GARY G. WALSTON and DONNA WALSTON, husband and wife,**

**Petitioners,**

**v.**

**THE BOEING COMPANY,**

**Respondent.**

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**SUPPLEMENTAL BRIEF FOR RESPONDENT  
THE BOEING COMPANY**

---

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## INTRODUCTION

The Industrial Insurance Act makes workers' compensation the exclusive remedy for employees injured in the workplace except in the narrow category of cases in which an injury results from the deliberate intention of the employer to produce that injury. In *Birklid v. Boeing Co.*, 127 Wn.2d 853, 904 P.2d 278 (1995), this Court held that the exception applies only when the employer has actual knowledge that the injury is certain to occur and acts in willful disregard of that knowledge.

In this case, Walston alleges that he developed mesothelioma from exposure to asbestos in 1985 while an employee of The Boeing Company. But he has produced no evidence that Boeing knew that Walston was certain to be injured by any exposure to asbestos in the workplace. The Court of Appeals therefore correctly determined that Boeing was entitled to summary judgment on his tort claim. 173 Wn. App. 271, 294 P.3d 759. That does not mean that Walston cannot be compensated for his work-related injuries, only that he must seek such compensation through the system the legislature provided, rather than through an action in tort.

As the Court of Appeals recognized, any suggestion that Boeing had actual knowledge of certain injury from exposure to asbestos founders on the reality that, even today—let alone at the time Walston was exposed—there is no evidence that exposure to asbestos is certain to cause

injury. To the contrary, while asbestos exposure creates a risk that some people may develop mesothelioma, it is not certain to cause it. Even for individuals exposed to levels of asbestos far higher than those alleged here, mesothelioma is a rare condition.

Accepting Walston's argument in this case would thus require the Court to re-write the *Birkliid* test—either by redefining “injury” so that changes to the body at the cellular level are sufficient or by eliminating the requirement of certainty of injury to the plaintiff. Each of those changes would upset the grand compromise the Legislature achieved in the Industrial Insurance Act by allowing the deliberate-intent exception to swallow the rule of employer immunity. Each is foreclosed by settled law.

First, Walston argues that Boeing had knowledge that his exposure to asbestos would begin an injurious process by damaging cells in his lungs. As an initial matter, that theory fails because such cellular damage is not the “injury” for which he is seeking to recover. Instead, he is seeking damages for mesothelioma. In any event, damages for asymptomatic cellular-level injury are not available under Washington tort law, nor are they a basis for an exception to the Industrial Insurance Act, which defines “injury” as a compensable condition—that is, one with a physical manifestation. If Walston's theory were correct, then the tort

immunity provided by the statute would be unavailable in almost all cases of exposure to carcinogenic substances, which are pervasive in society.

Second, Walston suggests that the deliberate-intent exception is satisfied as long as the employer has knowledge that someone, not necessarily the plaintiff, is certain to be injured. There is no evidence that Boeing had that kind of knowledge with respect to the asbestos exposure alleged here, but even if there were, this Court in *Birklid* expressly rejected a test under which an employer could be liable because it knew that “someone, not necessarily the plaintiff specifically, would be injured.” 127 Wn.2d at 865.

Although Walston’s arguments are incompatible with *Birklid*, he does not urge the overruling of that case, and that omission is reason enough for this Court not to consider such a step. In any event, *Birklid* represents a longstanding, well-established rule that preserves the grand compromise the Legislature achieved in the Industrial Insurance Act and should be reaffirmed under the principle of stare decisis.

**A. The Court of Appeals correctly applied *Birklid* in concluding that Walston’s claims are barred by the Industrial Insurance Act**

1. The Industrial Insurance Act eliminates the jurisdiction of courts to hear tort claims against an employer arising from workplace injuries. RCW 51.04.010. As this Court has observed, the Act was “the

product of a grand compromise” that gave employers “immunity from civil suits by workers” in return for giving injured workers “a swift, no-fault compensation system for injuries on the job.” *Birklid*, 127 Wn.2d at 859.

The statute contains a narrow exception, however, that allows an employee to sue an employer for a work-related injury that “results . . . from the deliberate intention of his or her employer to produce such injury.” RCW 51.24.020. In *Birklid*, this Court held that the “phrase ‘deliberate intention’ . . . means the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.” *Birklid*, 127 Wn.2d at 865. More recently, the Court has reaffirmed that “the *Birklid* test can be met in only very limited circumstances where continued injury is not only substantially certain, but *certain* to occur.” *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 32, 109 P.3d 805 (2005). “Mere negligence” therefore “does not rise to the level of deliberate intention,” nor do “[g]ross negligence and a failure to follow safety procedures.” *Folsom v. Burger King*, 135 Wn.2d 658, 664-65, 958 P.2d 301 (1998). In other words, “[d]isregard of a *risk* of injury is not sufficient,” but “*certainty* of actual harm must be known and ignored.” *Vallandigham*, 154 Wn.2d at 28.

In this case, Walston seeks to recover for injuries caused by his exposure to asbestos while he was an employee at Boeing. The Court of Appeals correctly applied *Birklid* in determining that Walston's tort claims against Boeing are barred by the Industrial Insurance Act. The court acknowledged that "Boeing was aware that asbestos was a hazardous material," but that fact, the court recognized, establishes only that Boeing knew that asbestos poses a *risk* of injury. 173 Wn. App. at 274. Walston has produced no evidence that Boeing had actual knowledge that asbestos exposure was *certain* to cause injury, and in fact it is not. To the contrary, "Walston's experts conceded that there is no known threshold of exposure to asbestos that results in certain asbestos related disease." *Id.* at 286; *see id.* ("[N]ot everyone exposed to asbestos develops an asbestos related disease."); CP 287 ("Even with substantial exposure to asbestos, . . . mesothelioma remains a rare disease."). The Court of Appeals therefore correctly concluded that Walston failed to satisfy the deliberate-intent exception as interpreted by this Court in *Birklid*.

2. As the Court of Appeals recognized, 173 Wn. App. at 282-83, its decision is consistent with Division One's decision in the closely analogous case of *Shellenbarger v. Longview Fibre Co.*, 125 Wn. App. 41, 49, 103 P.3d 807 (2004). Like this case, *Shellenbarger* involved claims of injury from workplace exposure to asbestos, and the court recognized that

“asbestos exposure does not result in injury to every person.” 125 Wn. App. at 49. The court therefore concluded that the plaintiff’s claims failed because a jury “could not conclude that [the employer] knew injury was certain to occur.” *Id.*; *see id.* at 47 (The requirement of certainty “leaves no room for chance.”). The same is true here.

Walston attempts (Pet. 18) to distinguish *Shellenbarger* on the ground that the employer in that case did not know “that inhaling asbestos dust was harmful and would trigger an injurious process that could lead to [the employee’s] deadly disease.” But the court in *Shellenbarger* did not base its decision on an assessment of whether the workplace conditions were “harmful” or whether they “could” have caused injury. To the contrary, the court applied *Birklid* in concluding that “the relevant inquiry is not whether the employer knew it was performing a dangerous activity, but rather whether the employer knew of certain injury.” 125 Wn. App. at 49. Here, as in *Shellenbarger*, there is no evidence of such knowledge.

3. In his petition for review, Walston attacked (Pet. 12) the proposition, evidently meant to represent the holding of the Court of Appeals, that “immediate and visible injury is a prerequisite to bringing a tort claim” against an employer. That is not what the Court of Appeals held. Although the court observed that Walston was not “immediately or visibly injured by the exposure to asbestos,” it did not suggest that

immediate, visible injury is required. 173 Wn. App. at 284. Instead, it examined the factual context of *Birklid*, as well as the facts of two other cases involving chemical exposure, *Hope v. Larry's Markets*, 108 Wn. App. 185, 29 P.3d 1268 (2001), and *Baker v. Schatz*, 80 Wn. App. 775, 912 P.2d 501 (1996), and it observed that in those cases, “[t]he immediate visible effects of chemical exposure . . . provided the requisite material issue of fact relating to the employer’s actual knowledge of certain injury.” 173 Wn. App. at 284. Here, by contrast, “there is no material factual dispute relating to Walston’s injury and Boeing’s alleged actual knowledge that injury was certain to occur”—whether through evidence of immediate, visible injury or through any other evidence. *Id.* at 285.

What matters under *Birklid* is not immediate or visible injury, but the employer’s knowledge of certainty of injury to the plaintiff. *See* 127 Wn.2d at 865. If other employees also suffered injury, and if the injuries were immediately manifested, those facts might have some evidentiary value in tending to establish the employer’s actual knowledge of certain injury to the plaintiff. Likewise, if other employees were not injured, or if the injuries were not apparent at the time, those facts would tend to disprove the employer’s actual knowledge that the plaintiff was certain to suffer injury. In either case, however, those facts would not themselves be

legally determinative. The decisive fact is the employer's knowledge of certain injury, which Walston cannot establish.

**B. Certainty of an “injurious process” is not the same as certainty of injury**

Walston asserts (Pet. 1) that any exposure to asbestos “is certain to cause an invisible injurious process.” For that reason, he says, any exposure to asbestos constitutes the deliberate infliction of certain injury. That argument lacks merit. *See* 173 Wn. App. at 286 (rejecting the argument “that Walston has shown that Boeing had actual knowledge of certain injury in the absence of clinical symptoms and based only on asbestos-caused cellular inflammation and irregular cell division increasing the risk of an asbestos related disease”); Boeing C.A. Br. 29-34.

1. As an initial matter, even if the cellular-level processes that occur upon exposure to asbestos could be described as “injuries,” those are not the injuries for which Walston is seeking to recover. In this action, he seeks damages as a result of his development of mesothelioma—a disease that was *not* certain to result from his exposure to asbestos.

2. In any event, the effects of mere exposure to asbestos do not constitute an “injury” under the Industrial Insurance Act or under general principles of tort law. The statute defines “injury” for purposes of the deliberate-injury exception as “any physical or mental condition, disease,

ailment or loss, including death, for which compensation and benefits are paid or payable under this title.” RCW 51.24.030(3). In other words, the relevant injury must be a compensable condition. While the manifestation of a disease is compensable, the asymptomatic cellular-level effects of asbestos are not. *See Dep’t of Labor & Indus. v. Landon*, 117 Wn.2d 122, 128, 814 P.2d 626 (1991) (holding that the date of injury for calculating benefits is “the date the disease manifests itself,” not the date when the “last injurious exposure to the harmful material” occurred).

Walston relies (Pet. Reply 2) on *Dep’t of Labor & Indus. v. Fankhauser*, 121 Wn.2d 304, 849 P.2d 1209 (1993), but the Court in that case held only that the statute allows compensation for occupational diseases that manifest after employment if the disease-causing exposure occurred during covered employment, 121 Wn.2d at 315-17. The Court did not hold that exposure is the relevant injury or that anything short of manifestation of disease is compensable.

Outside of the employment context, Washington courts have held that a plaintiff who has been exposed to asbestos may not recover damages for an increased risk of developing cancer, or for a reduced life expectancy, unless he can demonstrate with reasonable probability that he will actually develop cancer. *Koker v. Armstrong Cork, Inc.*, 60 Wn. App. 466, 482, 804 P.2d 659 (1991); *Sorenson v. Raymark Indus., Inc.*, 51 Wn.

App. 954, 956-57, 756 P.2d 740 (1988). And courts have held that a plaintiff does not have a reasonable probability of developing cancer even if he has already developed an asbestos-related disease such as asbestosis. *Niven v. E.J. Bartells Co.*, 97 Wn. App. 507, 983 P.2d 1193 (1999); *Koker*, 60 Wn. App. at 482. *A fortiori*, mere exposure is not a basis for recovery.

3. Walston has not identified a single case in which a court treated exposure to or inhalation of asbestos fibers as a compensable injury under the Industrial Insurance Act, or under tort law generally. The courts have avoided such an expansive notion of injury for good reason. As Walston's experts conceded, inhalation of many common substances such as smog can cause asymptomatic, cellular-level effects in the lungs. CP 612, 638. Treating such exposure as an "injury" would expand the narrow deliberate-injury exception into a broad rule of liability for all cases of exposure to asbestos and many other substances. For example, under Walston's interpretation, any employer would be subject to tort suits for having permitted smoking in the workplace, since it has been well known for decades that "any exposure to tobacco smoke, even occasional smoking or exposure to secondhand smoke, causes *immediate* damage to your body," damage that "can lead to serious illness or death." Regina M. Benjamin, Surgeon General, *Exposure to Tobacco Smoke Causes Immediate Damage: A Report of the Surgeon General*, 126 Pub. Health

Rep. 158 (Mar.-Apr. 2011), *available at* <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3056024>>. The same is true of exposure to other carcinogens, which can cause immediate cellular damage that may (or may not) eventually lead to the development of cancer. Such an expansive interpretation of the deliberate-intent exception would nullify the immunity that is a key part of the balance the Legislature created in the Industrial Insurance Act.

Walston tries to limit the implications of his theory by observing (Pet. Reply 4) that “inhalation of tobacco smoke does not constitute a ‘compensable’ injury in itself.” But with admirable candor, he acknowledges (*id.*) that, in his view, an employee exposed to a carcinogen *could* recover in tort, outside of the Act, if he could prove that the exposure eventually “caused a compensable injury.” In other words, Walston concedes that his theory is not limited to asbestos, but that it would allow any employee who can establish causation to recover damages if cancer results from workplace exposure to any carcinogen. He attempts to justify that conclusion by asserting that “in the year 2011 forcing office workers to toil in the deep blue haze of tobacco smoke would be an unacceptable employer practice.” *Id.* That may be true, but an employer does not have a deliberate intent to injure simply because its practices are deemed “unacceptable.” To the contrary, this Court has held

that even “[g]ross negligence and failure to follow safety procedures” are not sufficient to establish a deliberate intent to injure. *Folsom*, 135 Wn.2d at 665. And under Walston’s theory, an employer who followed safety procedures and complied with all applicable regulations could still be liable in tort if a worker was exposed to a substance that posed a known risk of injury, as long as the worker could later establish that the exposure had caused him to develop a disease. That result cannot be reconciled with *Birklid*.

4. Even if there were authority for Walston’s novel cellular-level injury argument, Walston has presented no evidence that Boeing had actual knowledge that inhalation of asbestos fibers was certain to cause such an “injury” to its employees. The evidence that Walston cites establishes only that asbestos exposure creates a risk of lung disease, not that Boeing knew of a certainty of cellular or other actual injury.

**C. Evidence that some employee will be injured at some point in time does not satisfy the certainty requirement**

Walston argues (Pet. 7) that an employer is liable whenever it causes its workers to suffer exposure that it knows will cause injury to some unspecified employee. That theory of liability was expressly rejected in *Birklid* when the Court declined to adopt the test used in Oregon, which focused on whether the employer “had an opportunity

consciously to weigh the consequences of its act and knew that someone, *not necessarily the plaintiff specifically*, would be injured.” 127 Wn.2d at 865 (emphasis added); *accord Vallandigham*, 154 Wn.2d at 28; *see* Boeing C.A. Br. 26-29. Consistent with that decision, Courts of Appeals have repeatedly rejected employee claims because the employer lacked knowledge that the plaintiff, in particular, was certain to be injured. *See Garibay v. Advanced Silicone Materials, Inc.*, 139 Wn. App. 231, 236, 238, 159 P.3d 494 (2007); *Schuchman v. Hoehn*, 119 Wn. App. 61, 65, 72, 79 P.3d 6 (2003); *Goad v. Hambridge*, 85 Wn. App. 98, 104, 931 P.2d 200 (1997).

That approach makes good sense. Any enterprise—including the state government—that employs a large enough number of workers for a long enough period of time can be certain, based on the law of averages, that at least one worker will slip and fall, be involved in a motor-vehicle accident, or be injured in some other way. In fact, state employees suffer a higher rate of workplace injuries requiring days away from work than do employees of private industries in Washington—a rate of 1.9 injuries per 100 workers each year. Bureau of Labor Statistics, *Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Selected Industries and Case Types: Washington* (2011), available at <<http://www.lni.wa.gov/claimsins/Files/DataStatistics/blsi/NONFATAL2011WASummary.pdf>>.

Given the size of its workforce, the state government can therefore be certain that at least some employees will be injured in any given year. If that kind of “certainty” were sufficient to permit liability, the deliberate-intent exception would swallow the rule of employer immunity.

In any event, even if Walston’s legal theory were valid, it would not help him unless he could produce evidence that Boeing had actual knowledge that one of its employees was certain to develop mesothelioma as a result of workplace exposure to asbestos. No such evidence exists.

**D. This Court should reaffirm *Birklid***

Because Walston’s arguments are incompatible with the *Birklid* rule, they could be accepted only if this Court were to replace *Birklid* with a broader test, under which an employer’s knowledge of “substantial certainty” of injury or certainty of injury to “someone” could be sufficient for liability. Walston does not ask this Court to overrule *Birklid*, and that omission is reason enough for this Court to decline to take such a step. *See State v. Kier*, 164 Wn.2d 798, 804, 194 P.3d 212 (2008) (“We do not lightly set aside precedent, and the burden is on the party seeking to overrule a decision to show that it is both incorrect and harmful.”). But even if Walston had suggested the overruling of *Birklid*, the Court should decline the suggestion.

**1. *Birklid* is consistent with the text and purpose of RCW 51.24.020**

Walston largely ignores the origins of the *Birklid* rule, which is not a judicial creation but an interpretation of RCW 51.24.020. Walston accordingly makes no effort to ground the rule he proposes in the statutory text. That is likely because he cannot do so—the plain language of the statute compels the conclusion that an employer cannot be liable unless it willfully disregards actual knowledge of certain injury. *See Birklid*, 127 Wn.2d at 860 (noting that “Washington courts have consistently interpreted” the statute and the early decisions applying it “to require a specific intent to injure”).

As noted, RCW 51.24.020 allows an action by an employee against an employer only for an injury that “results . . . from the deliberate intention of [the] employer to produce such injury.” By itself, the phrase “intent to injure” would seem to be sufficient to exclude merely negligent or even reckless conduct. But the legislature made its meaning unmistakably clear by adding the word “deliberate,” which—in 1911 as today—suggests calculated, willful action. *See Webster’s Third New International Dictionary of the English Language* 596 (1976) (“characterized by presumed or real awareness of the implications or consequences of one’s actions or sayings or by fully conscious often

willful intent”); accord *Webster's New International Dictionary of the English Language* 692 (2d ed. 1934); see also *Black's Law Dictionary* 492 (9th ed. 2009) (“[i]ntentional; premeditated; fully considered”). That language precludes any interpretation that would allow liability to be predicated simply on knowledge of risk, such as a “substantial certainty” of injury. At least in the absence of direct evidence that the employer intended to cause harm, the mere knowledge of a *risk* of injury cannot plausibly be said to establish a “deliberate intention” to injure. Nor is knowledge of a certainty of injury to someone—but not necessarily the plaintiff—sufficient to show that the plaintiff’s injury resulted from “the deliberate intention of the employer to cause *such* injury,” as the statute requires.

The interpretation reflected in *Birklid* is also consistent with the purposes underlying the statute. As the Court has observed, the Industrial Insurance Act “was the product of a grand compromise” whereby “[i]njured workers were given a swift, no-fault compensation system for injuries on the job” and “[e]mployers were given immunity from civil suits by workers.” 127 Wn.2d at 859. The deliberate-intent-to-injure provision of RCW 51.24.020 represents an exception to the general rule of immunity, and it should be narrowly construed in order to prevent it from swallowing that rule. See *Commissioner v. Clark*, 489 U.S. 726, 739, 109

S. Ct. 1455, 103 L. Ed. 2d 753 (1989) (“In construing provisions . . . in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision.”).

**2. *Birklid* is consistent with the rule adopted in other states**

In *Birklid*, this Court acknowledged that courts in some states had construed their workers’ compensation statutes to allow for more “expansive” employer tort liability than that permitted under Washington law. 127 Wn.2d at 864. After examining those decisions, however, it declined to follow them. As the Court had previously explained, “our Industrial Insurance Act is unique and the opinions of other state courts are of little assistance in interpreting our Act.” *Dennis v. Dep’t of Labor & Indus.*, 109 Wn.2d 467, 482-83, 745 P.2d 1295 (1987).

Even if the Court were now to look to other states, it nevertheless may not adopt a rule that conflicts with the Industrial Insurance Act, and it should not abandon *Birklid*. Indeed, the trend in decisions from other states supports the retention of the *Birklid* rule. In particular, of the seven states identified in *Birklid* as having adopted a broader reading of the intentional-tort exception to the exclusivity provision of their workers’ compensation statutes, six have subsequently *narrowed* their exceptions.

In Ohio and Michigan, legislatures have expressly repudiated the “substantial certainty” test that those states previously followed. *See Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St. 3d 250, 927 N.E.2d 1066 (2010) (rejecting a constitutional challenge to Ohio Rev. Code Ann. § 2745.01 (West 2005), which narrowed the intentional-tort exception to cases of specific intent); *Travis v. Dreis & Krump Mfg. Co.*, 453 Mich. 149, 551 N.W.2d 132, 142 (1996) (explaining that Mich. Comp. Laws Ann. § 418.131 (West 1988) was “intended to reject” the more lenient exception established by *Beauchamp v. Dow Chem. Co.*, 427 Mich. 1, 398 N.W.2d 882, 883 (1986)); *Agee v. Ford Motor Co.*, 208 Mich. App. 363, 528 N.W.2d 768 (1995) (holding workers-compensation statute to be plaintiffs’ exclusive remedy despite employer’s knowledge that asbestos was present and was substantially certain to cause *someone* harm).

In Louisiana, North Carolina, Oregon, and South Dakota, judicial decisions subsequent to *Birkliid* have narrowed the intentional-tort exception. *See, e.g., Broussard v. Smith*, 999 So. 2d 1171, 1174 (La. Ct. App. 2008) (requiring plaintiff to show that harm was “‘nearly inevitable,’ ‘virtually sure,’ and ‘incapable of failing’”) (citations omitted); *Shaw v. Goodyear Tire & Rubber Co.*, 737 S.E.2d 168, 176 (N.C. Ct. App. 2013) (court was “unaware of a single litigant in any case which has been subject to appellate review who has [ever] successfully pursued a [substantial

certainty] claim” in North Carolina); *Davis v. U.S. Emp'rs Council, Inc.*, 147 Or. App. 164, 934 P.2d 1142 (1997) (imposing “intent to injure” requirement); *Fryer v. Kranz*, 2000 S.D. 125, 616 N.W.2d 102, 109 (2000) (“Intent really means intent.”).

The decisions of other states thus provide no basis for departing from the rule in *Birklid*. To the contrary, the case for adherence to a narrow interpretation of the deliberate-intent exception is even stronger than it was when *Birklid* was decided.

**3. Principles of stare decisis support the retention of *Birklid***

Even if this Court were to conclude that *Birklid* does not represent the best interpretation of RCW 51.24.020 as an original matter, it should nevertheless adhere to *Birklid* on the basis of stare decisis. In *Birklid*, the Court emphasized “the narrow interpretation Washington courts have historically given to RCW 51.24.020,” as well as “the appropriate deference four generations of Washington judges have shown to the legislative intent embodied in RCW 51.04.010.” 127 Wn.2d at 865. Those considerations have even greater force now that 17 years have passed since the decision in *Birklid*. As this Court has observed, the “‘Legislature is presumed to be aware of judicial interpretation of its enactments,’ and where statutory language remains unchanged after a

court decision the court will not overrule clear precedent interpreting the same statutory language.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *Friends of Snoqualmie Valley v. King Cnty. Boundary Review Bd.*, 118 Wn.2d 488, 496, 825 P.2d 300 (1992)); accord *City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009). In light of the legislative acquiescence in the rule adopted in *Birklid*, this Court should not revisit that decision.

#### CONCLUSION

The judgment of the Court of Appeals should be affirmed.

DATED: August 9, 2013

Respectfully submitted,

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**DECLARATION OF SERVICE**

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

DATED: August 9, 2013, at Seattle, Washington.

  
\_\_\_\_\_  
Jane Liston  
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**To:** OFFICE RECEPTIONIST, CLERK  
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Good afternoon. Please accept the attached *Supplemental Brief for Respondent The Boeing Company* for filing in case 88511-7, "Walston v. Boeing."

Thank you very much for your assistance.

Sincerely, Jane.

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