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NO. 91969-1

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SUPREME COURT
OF THE STATE OF WASHINGTON

JUDY R. DEGGS, as Personal Representative for the Estate of RAY
GORDON SUNDBERG, deceased,

Petitioner,

v.

ASBESTOS CORPORATION LIMITED, et al.,

Respondents.

Filed *E*
Washington State Supreme Court
FEB 10 2016 *hjh*
Ronald R. Carpenter
Clerk

BRIEF OF AMICUS CURIAE WASHINGTON DEFENSE
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I. INTRODUCTION

Many decades ago this Court read our state's wrongful death statute to prohibit a personal representative from bringing an action if the decedent, had they survived, would not have been able to assert on their own because of the bar imposed by the governing statute of limitations. This decision was not made in isolation, but represented the application of an already well-established reading of that statute, under which wrongful death claims may not proceed if the decedent would have been barred by a rule of law or equity from pursuing them if they had survived their injury. In the many years since this Court adopted this interpretation, the Legislature has not seen fit since to reject this fundamental limitation on wrongful death suits.

The Plaintiff would have this Court abrogate this long-standing application of statutory law, as if the question presented is merely whether the historical application is "outdated," and should now be replaced with a different, "updated" application that, in the Plaintiff's view, better suits the sensibilities and standards of today -- as well as the Plaintiff's interests in this case. But as the Plaintiff herself recognizes, wrongful death actions are a departure from the common law. The Legislature, not the Court, created our state's wrongful death action, by statute. That the Legislature has not seen fit to reject this Court's long-standing application of that statute should be taken, under well-established rules of statutory interpretation and construction, as evidence that the Legislature has no quarrel with that application. Any change in that application must come

from the Legislature, not this Court. The Court of Appeals should be affirmed.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

WDTL, established in 1962, includes more than 750 Washington attorneys engaged in civil defense litigation and trial work. The purpose of WDTL is to promote the highest professional and ethical standards for Washington civil defense attorneys and to serve our members through education, recognition, collegiality, professional development and advocacy. One important way in which WDTL represents its member is through amicus curiae submissions in cases that present issues of statewide concern to Washington civil defense attorneys and their clients.

Statutes of limitations serve an important purpose in our civil justice system. They protect parties against the danger of injustice inherent in claims gone stale by the passage of time. These policy concerns apply to wrongful death claims just as much as to any other tort claim.

III. STATEMENT OF THE CASE

WDTL relies upon the statement of facts set forth by the Court of Appeals.

IV. ARGUMENT

- A. **This Court's reading of the wrongful death statute applied by the Court of Appeals in this case did not originate with the decisions that have been the focus of the parties' briefing to date. Those decisions reflect what was already the "definitely settled" law of this state (*Ryan v. Poole*, 182 Wash. 532, 47 P.2d 981 (1935)), under which the Plaintiff's claims in this case had to be dismissed.**

The parties before the Court of Appeals and this Court have focused on three decisions of this Court.¹ These decisions, however, are not the origin of this Court's application of the wrongful death statute which the Plaintiff seeks to overthrow, and which the Respondents ask this Court to uphold. In fact, in those decisions this Court was merely applying what this Court had already expressly recognized to be the "settled" law of this state.

1. **This Court's 1935 decision in *Ryan v. Poole* recognized the already "definitely settled" nature of Washington wrongful death law, which barred wrongful death claims if the decedent, had they survived their injury, would have been barred from bringing an action in their own right.**

In *Ryan v. Poole*, 182 Wash. 532, 47 P.2d 981 (1935), this Court applied what it expressly recognized to be the "settled" law of our state, governing whether a wrongful death action can be maintained in the face of a legal or equitable rule that would have barred the decedent from

¹ See *Calhoun v. Washington Veneer Co.*, 170 Wash. 152, 15 P.2d 943 (1932), *Grant v. Fisher Flouring Mills Co.*, 181 Wash. 576, 44 P.2d 193 (1935), and *Johnson v. Ottomeier*, 45 Wn.2d 419, 422-23, 275 P.2d 723 (1954), cited in Supplemental Brief of Respondents at 1.

pursing the claim if they were still alive.² This Court addressed the wording of this state's wrongful death act, and specifically how it differs from Lord Campbell's Act,³ the original wrongful death statute adopted in England in the mid-1800s. Like the Plaintiff in this case, the decedent's personal representative in *Ryan* sought to avoid a bar to a wrongful death action where the decedent, had he survived, would himself have been barred from bringing an action in his own right. Here, the bar is the statute of limitations; in *Ryan*, the bar was illegality (the decedent was killed while engaged in a criminal act). *See id.* at 538.

This Court acknowledged the absence in our state's wrongful death statute of language found in Lord Campbell's Act that, if included in our act, would leave no doubt that the claim at issue was barred:

It will be observed that there is no provision in this act, like that quoted from Lord Campbell's Act, which states that the act, neglect, or default must be such that would, if death had not ensued, entitle the party injured to maintain an action for damages for injuries which he had sustained.

182 Wash. at 535.⁴ This Court held that whether the claim before the Court was barred, given the absence in our wrongful death statute of the

² *Ryan* is a departmental decision. The Plaintiff implies that departmental decisions are entitled to less deference than *en banc* decisions, but cites no authority for this proposition. *See* Deggs' Supplemental Brief at 9. The suggestion is meritless. *See State ex rel. Vanderveer v. Gormley*, 53 Wash. 543, 556, 104 P. 620 (1909) (holding that the separate departments of the Supreme Court have each been provided "with full power to hear causes and pronounce decisions").

³ Fatal Accidents Act, 1846, 9 & 10. Vict., c. 93 (Eng.).

⁴ The Court of Appeals' majority acknowledged the same point in this case:

The issue here is whether the expiration of the statute of limitations for an individual's personal injury claims or a judgment or settlement on those same claims during his lifetime can preempt the accrual of his personal
(Footnote continued next page)

limiting language found in Lord Campbell's Act, was controlled by prior decisions of this Court. This Court reviewed those decisions, and concluded that it was already the "definitely settled" law of this state that a defense that would bar a claim, if brought by a decedent who survived their injury, *also* bars that claim when brought by the decedent's personal representative under the authority of our state's wrongful death statute. *Id.* at 537.

2. **The Supreme Court of the United States in its 1904 decision in the *Northern Pacific* wrongful death litigation held that claims brought under wrongful death statutes like Washington's are barred if the decedent, had they survived their injury, would have been barred from bringing an action in their own right.**

This Court in *Ryan* began its review of prior case law with an examination of the decisions of the Ninth Circuit Court of Appeals and the Supreme Court of the United States in a case from Washington State which arose out of the death of a passenger thrown from a train. See *Northern Pacific Ry. Co. v. Adams*, 116 F. 324, 325 (9th Cir. 1902). The railroad had unsuccessfully sought dismissal based on the terms of the free pass under which the passenger was travelling, which waived any claims based on negligence.⁵ The jury returned a verdict of negligence, and on

representative's wrongful death claim. The wrongful death statute is silent on this issue.

Deggs v. Asbestos Corp., Ltd., 188 Wn. App. 495, 500, 354 P.3d 1 (2015) (opinion per Applewick, J, joined by Lau, J.).

⁵ "For a further affirmative defense it was alleged that the deceased was not a passenger for hire, but was a purely gratuitous passenger upon the terms and conditions and subject to the provisions of a free ticket, ... [which stated that t]he person accepting this free ticket agrees that the Northern Pacific Railway Company shall not be liable
(Footnote continued next page)

appeal the Ninth Circuit affirmed, rejecting the applicability of the waiver defense based on the terms of the pass. The Ninth Circuit found the wrongful death statute was unambiguous, and the railroad's waiver defense therefore was not a bar to the plaintiff's claim, for reasons virtually identical to those advanced by the Plaintiff in this case:

The intention of the lawmakers is to be determined from the words they employ; and, where statutes have been enacted by certain states omitting provisions which occur in similar statutes in other states, courts have no right to presume that such omission was negligent or unintentional, especially where the language is clear and conclusive without such clauses. In such cases there is nothing to construe. Language bearing a plain import needs no extended construction. In the statutes of both Idaho and Washington the clause [found in Lord Campbell's Act] limiting the right of action to circumstances which would have permitted the deceased to sue is entirely omitted, and nothing appears elsewhere in the statutes to warrant its insertion by implication. The omission must therefore be considered as unintentional [sic], and the legislative will to be completely expressed without such limiting provision.

Id. at 328.⁶

The Supreme Court reversed. See *Northern Pacific Ry. Co. v. Adams*, 192 U.S. 440, 24 S.Ct. 408, 48 L. Ed. 513 (1904). Focusing on the language of our state statute requiring that the death arise out of a “wrongful act or neglect,” see 192 U.S. at 449 (quoting the statute),⁷ the

under any circumstances, whether of negligence of agents or otherwise, for any injury, to the person.” 116 F. at 325 (internal quotation omitted).

⁶ Apparently the parties disputed whether the wrongful death act of Washington or Idaho applied. The Ninth Circuit's reason for decision avoided having to resolve this choice of law issue.

⁷ RCW 4.20.010 states that a cause of action for wrongful death arises where “the death of a person is caused by the wrongful act, neglect, or default of another[.]”. This language was the same at the time of this Court's decision in *Ryan*. See 182 Wash. at 534 (quoting Rem. Rev. Stat. § 183).

Supreme Court held that, “[i]f there be no omission of duty to the decedent, *his heirs have no claim*”:

The two terms ...-- wrongful act and neglect -- imply alike the omission of some duty, and that duty must, as stated, be a duty owing to the decedent. It cannot be that, if the death was caused by a rightful act, or an unintentional act, with no omission of duty owing to the decedent, it can be considered wrongful or negligent at the suit of the heirs of the decedent. *They claim under him, and they can recover only in case he could have recovered damages had he not been killed, but only injured.* The company is not under two different measures of obligation, one to the passenger and another to his heirs. If it discharges its full obligation to the passenger, his heirs have no right to compel it to pay damages.

Id. at 449-50 (emphasis added). Having thus rejected the Ninth Circuit’s reading of our state’s wrongful death statute,⁸ the Supreme Court then held that the waiver language of the free pass was indeed enforceable, and ordered that the judgment in favor of the personal representative by reversed. *See id.* at 451-54.

- 3. Decisions of this Court several years before *Ryan* adopted the reading of Washington’s wrongful death statute, as set forth by the Supreme Court of the United States in *Northern Pacific*, making that reading the “definitely settled” law of this state well before the decisions challenged by the Plaintiff in this proceeding.**

Having reviewed the treatment of our state’s wrongful death statute by the federal courts in the *Northern Pacific* case, this Court in

⁸ There is a question as to whether the Supreme Court was interpreting the language of Idaho’s as opposed to Washington’s wrongful death statutes, both having been implicated during the proceedings before the lower courts. But as this Court would later observe, the two state’s wrongful death statutes were identical in their relevant particulars. *See Ostheller v. Spokane & Inland Empire R.R. Co.*, 107 Wash. 678, 682, 182 P. 630 (1919).

Ryan then reviewed its prior decisions, and concluded that this Court's decisions were in accord with the views of the Supreme Court of the United States.⁹ Describing the question as having been "definitely settled in this state[,]" 182 Wash. at 537, this Court highlighted its prior decisions in *Welch v. Creech*, 88 Wash. 429, 153 P. 355 (1915), and *Ostheller v. Spokane & Inland Empire R.R. Co.*, 107 Wash. 678, 182 P. 630 (1919), as illustrative of that "settled" law. See 182 Wash. at 537-38.

The following language from this Court's decision in *Ostheller*, quoted by this Court with approval in *Ryan*, is squarely on point:

We regard it as well-settled law that while this is not a statute providing for the survival of a cause of action possessed by the deceased for recovery for injuries resulting in his death, but is a statute giving to the heirs a new right of action nor [sic] recognized by the common law, it nevertheless gives a right of action to the heirs of the deceased which is *dependent upon the right the deceased would have to recover for such injuries up to the instant of his death; in other words, dependent upon the right of the injured person to maintain an action for the damage resulting from his injury, had he survived. And this, we think, is the law governing the rights of the heirs, whether the statute expressly so provides or not.* It appears that the original Lord Campbell Act did so provide in express terms, as do several of the state statutes of this country; while our statute above quoted, those of the several states, and the federal Employers' Liability Act (Act April 22, 1908, c. 149, 35 Stat. 65 [U. S. Comp. St. §§ 8657-8665]) do not so provide in express terms. *The words 'wrongful act or neglect,' used in statutes of this nature in defining the quality of the act*

⁹ The United States Supreme Court in *Northern Pacific* was not purporting to determine the substantive content of Washington wrongful death law *per se*, but rather was addressing the legally correct reading of the phrase "wrongful act and neglect" when employed in *any* wrongful death statute. The Supreme Court's decision in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L. Ed. 1188 (1938), lay thirty-four years in the future.

causing the injury and death, it seems to be universally agreed by the courts, mean wrong or neglect as against the deceased; that is, in the sense that the deceased could have recovered damages for the injury resulting in his death.

107 Wash. at 681-82 (emphasis added).

Welch and *Ostheller* illustrate the broad import of this reading. In *Welch*, the personal representative could not prevail unless it was shown that the killing of her decedent was not done in self-defense; only then would it be “wrongful.” See 88 Wash. at 437-40. In *Ostheller*, the defendant railroad could not be held liable if the decedent had been contributorily negligent (an absolute bar to recovery at the time). See 107 Wash. at 683-85.¹⁰ The rule derived from these cases is clear: If a decedent, had they lived, would have been barred from pursuing a personal injury claim because of some rule of law or equity, then the decedent’s personal representative will likewise be barred from pursuing a claim under the wrongful death statute.

That this Court proceeded a few years later in *Calhoun v. Washington Veneer Co.*, 170 Wash. 152, 15 P.2d 943 (1932), and *Grant v. Fisher Flouring Mills Co.*, 181 Wash. 576, 44 P.2d 193 (1935), to rule that a wrongful death action would be barred where the decedent’s claim in their own right would have been barred by the statute of limitations did not represent a “new” interpretation of our state’s wrongful death statute. Rather, those decisions simply continued to apply the same interpretation

¹⁰ More precisely, the railroad could not be held liable if the negligence of the decedent’s husband could be imputed to her. See 107 Wash. at 685-87.

of the statute which this Court said in *Ryan* was the “definitely settled” law of this state. *See* 182 Wash. at 537.

In sum, the Plaintiff is wrong when she characterizes the issue before this Court as the continued vitality of a handful of old, rogue cases that supposedly originated the reading of the wrongful death statute which the Plaintiff now asks this Court to abrogate.¹¹ To the contrary, those cases actually represent *continuity* with earlier decisions explaining limitations inherent in our wrongful death statute and *consistency* with the fundamental principle underlying them all: that if the decedent, had they survived, would have been barred from asserting their own personal injury claim (e.g., by a statute of limitations), then so, too, are any subsequent claimants barred from asserting wrongful death claims.¹² If this Court is going to reinstate the Plaintiff’s action, the Court will have to abrogate a

¹¹ The dissent in *Deggs* is similarly mistaken. Judge Dwyer wrote:

In fairness, the *Calhoun-Grant* “limitation” was also purportedly founded upon “generally recognized equitable principles.” *Johnson*, 45 Wn.2d at 423, 275 P.2d 723. Notably, though, these equitable principles were not elucidated in *Calhoun, Grant, Johnson, or in any other decision*.

Deggs, 188 Wn. App. at 517 (emphasis added). Judge Dwyer is correct that none of the three decisions (*Calhoun, Grant, Johnson*) elucidated the principles underlying the rule applied in those cases. What Judge Dwyer -- and *Deggs* -- overlooked is that there was no need for such elucidation, it having already been provided in the earlier cases that made the rule underlying *Calhoun, Grant, and Johnson* the definitely settled law of this state.

¹² The decedent’s claim in *Grant* was held not barred by the applicable statute of limitations, but only because the decedent had brought a timely action prior to his death for personal injuries from which he later died. *See* 181 Wash. at 582 (“Grant brought his action for personal injuries within the time prescribed by the statute of limitations. While he died more than three years after his [wrongful death] cause of action accrued, *he left a valid subsisting cause of action*. (emphasis added)).

reading of our wrongful death statute that this Court described more than 80 years ago as the “definitely settled law of this state”

B. This Court should refuse to abrogate a reading of the wrongful death statute that the Legislature has for decades not seen fit to undo.

As the Respondents have observed, this Court generally will not abrogate its reading of a statute when the Legislature has chosen not to do so. This long-standing rule of *stare decisis*, statutory interpretation and construction has been applied by this Court in recent years in many contexts. *See, e.g., City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) (Public Records Act); *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (Washington Law Against Discrimination); *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319, 327, n.3, 971 P.2d 500 (1999) (Products Liability Act); *Friends of Snoqualmie Valley v. King Cty. Boundary Review Bd.*, 118 Wn.2d 488, 496, 825 P.2d 300 (1992) (SEPA); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 789, 719 P.2d 531 (1986) (CPA).

WDTL would certainly agree that an inference of Legislative “concurrency-by-inaction” regarding a decision of this Court interpreting a state statute may be inappropriate where the decision is recent and the Legislature has not had reasonable time to enact any “corrective” legislation. But as the decisions just cited reflect, when a decade or more has passed and the Legislature has taken no action to undo that reading, a presumption arises that the Legislature is aware of the reading and has no quarrel with it, and this Court will not disturb that reading. *See City of*

Federal Way, 167 Wn.2d at 348 (23 years); *Riehl*, 152 Wn.2d at 147 (11 years); *Soproni*, 137 Wn.2d at 327, n.3 (10 years); *Friends of Snoqualmie Valley*, 118 Wn.2d at 496 (11 years); *Hangman Ridge Training Stables*, 105 Wn.2d at 789 (10 years).

Here, the Court is dealing with a reading of the wrongful death statute that in 1935 was declared to have been the “settled” law of this State since at least 1919. See *Ryan*, 182 Wash. at 537-38 (citing and quoting *Ostheller*, 107 Wash. at 681-82). Thus, the reading of the wrongful death statute that the Plaintiff asks this Court to abrogate has been in place for over *eighty years*. Moreover, as the Respondents point out in their Supplemental Brief, while the Legislature has from time to time amended the wrongful death statute, this Court’s reading has been left undisturbed. See Supplemental Brief of Respondents at 10 (identifying four occasions when the Legislature had amended the wrongful death statute since *Calhoun* in 1932). Accordingly, the question of whether to abrogate this Court’s reading of our wrongful death statute, under which the Plaintiff’s claims against the Respondents were correctly dismissed, should be resolved as matter of *stare decisis*. If that reading is to be abrogated, that abrogation must be left to the Legislature to effectuate.

C. The cause of action for wrongful death in Washington is a creature of statute. Rules governing the development of the common law therefore have no relevance to determining whether this Court should abrogate its longstanding interpretation of our state's wrongful death statute.

The Plaintiff acknowledges that wrongful death actions are creatures of statute, and not the common law. Yet when she comes to the heart of her argument as to why this Court should abrogate its longstanding interpretation of our state's wrongful death statute, and allow her actions against the Respondents to proceed, she invokes this Court's authority to change a common law rule when this Court determines that the existing rule is no longer correct and has become harmful. *See Deggs'* Supplemental Brief at 13, n. 21 ("This Court generally follows principles of *stare decisis* But the common law must necessarily evolve and when a common law principle is incorrect and harmful, it should be abandoned" (citations omitted)).

The Plaintiff's appeal to common law principles is plainly wrong. WDTL has no quarrel with the Plaintiff's characterization of the common law "law-making" process. But that approach has no place when this Court is dealing with a statute. As a matter of separation of powers, the courts are obligated to apply a statute so as to effect the intent of the branch of government responsible for its adoption. And this Court has repeatedly recognized that there is no place in that analysis for giving weight to the Court's view about the wisdom or necessity of the statute:

• In *North Spokane Irrigation District No. 8 v. Spokane Cty.*, 173 Wash. 281, 22 P.2d 990 (1933), this Court stated:

It is not the province of the court to judge of the wisdom or expediency of a statute when the intention of the Legislature is clearly expressed. 'When the meaning of a statute is clear, its consequences, if evil, can only be avoided by a change of the law itself, to be effected by the legislature and not by judicial construction.' Lewis' Sutherland, *Statutory Construction*, § 367. The effect of the statute was as obvious at the time that it was enacted as it is now upon counsel's criticism. The Legislature did not see fit to hedge it about at the time. If it went further than it intended, it has not seen fit to recede. ***If it made an error, it is an error that should be corrected by it and not by us.***

173 Wash. at 283-84 (opinion per Steinert, J.) (emphasis added).

- In *Young v. Estate of Snell*, 134 Wn.2d 267, 948 P.2d 1291

(1997), this Court stated:

Most significantly ..., our interpretation of the former language of former RCW 11.40.011 is borne out by the plain language of that statute. See *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 458, 869 P.2d 56 (1994) ("Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself") (citations omitted) (quoting *Service Employees Int'l Union, Local 6 v. Superintendent of Pub. Instruction*, 104 Wn.2d 344, 348, 705 P.2d 776 (1985)). The Legislature's intent to subject claims such as Young's to the applicable statute of limitations is evidenced by the language in the statute that claims such as Young's may be filed "at any time" but "subject to applicable statutes of limitation" and that "[n]othing in this section serves to extend the applicable statute of limitations..." former RCW 11.40.011. While it may appear to some that it is unreasonable to only subject claims where insurance is involved to the three-year statute of limitations, ... it is not our province to question the Legislature's reasons for distinguishing such cases from cases where insurance is not involved. The plain fact is that the Legislature has expressed its intent to subject claims such as Young's to that statute of limitations and ***we must respect that exercise of its legislative discretion.***

134 Wn.2d at 279-80 (opinion per Alexander, J.) (emphasis added).

In short, the fact that courts in some other states in recent years have seen fit to allow wrongful death actions to proceed on claims that the decedent would have been barred from pursuing if they had survived their injury, and for reasons of policy with which a majority of the members of this Court may agree, is *irrelevant* to resolving the issue before this Court in this case. This Court is not writing on a blank interpretive slate. This Court is not being asked to decide whether Washington should join the approach to wrongful death actions that other courts in recent years have favored. Here, the interpretive slate was filled in by this Court many years ago, and the Legislature has not seen to change the content of that slate in the many years that have passed since what was written by this Court on that slate became the “settled” law of this state. Due respect for the separation of powers that characterizes our state’s system of government requires that this Court leave the question of whether the contents of that slate should be re-written to the branch of government whose job it is to promulgate the statutory law of this state: the Legislature.

V. CONCLUSION

This Court should affirm the Court of Appeals. This Court should re-affirm the rule that the Court will not disturb a prior reading given to a statute when the Legislature has had a fair opportunity to become familiar it, and the Legislature has not seen fit to disturb it. Under this longstanding rule, this Court should leave undisturbed its reading of our state’s wrongful death statute which bars the Plaintiff’s claims against the

Respondents. As a matter of the separation of powers, any change in that reading must now come from the Legislature.

Respectfully submitted this 29th day of January, 2016.

**KEATING, BUCKLIN &
MCCORMACK, INC., P.S.**

By: MB King for
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CARNEY BADLEY SPELLMAN, P.S.

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CERTIFICATE OF SERVICE

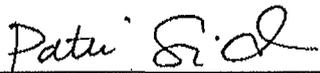
The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

<p>Meredith Boyden Good Brayton Purcell, LLP 806 SW Broadway, Suite 1100 Portland, OR 97205 portland@braytonlaw.com</p>	<p>Philip A. Talmadge Talmadge/Fitzpatrick 2775 Harbor Avenue SW Third Floor, Suite C Seattle, WA 98126 phil@tal-fitzlaw.com</p>
<p>J. Scott Wood Jan E. Brucker Bonnie L. Alldredge Daniel Ruttenberg Foley & Mansfield, PLLP 999 Third Ave., Suite 3760 Seattle, WA 98104 asbestos-sea@foleymansfield.com</p>	<p>Richard G. Gawlowski Wilson, Smith, Cochran & Dickerson 901 Fifth Avenue, Suite 1700 Seattle, WA 98164-2050 MetLifeAsbestos@wscd.com</p>
<p>Bonnie Lynn Black 1020 N K St., Apt. D Tacoma, WA 98403-1861 bonnielablack@gmail.com</p>	<p>Matthew P. Bergman Colin B. Mieling Bergman Draper Ladenburg, PLLC 821 2nd Avenue, Suite 2100 Seattle, WA 98104 matt@bergmanlegal.com colin@bergmanlegal.com</p>

George M. Ahrend Ahrend Law Firm PLLC 100 E. Broadway Ave. Moses Lake, WA 98837 gahrend@ahrendlaw.com	Bryan P. Harnetiaux Attorney at Law 517 E. 17 th Ave. Spokane, WA 99203
Valerie D. McOmie 4549 NW Aspen St. Camas, WA 98607-8302 valeriemcomie@gmail.com	

DATED this 29th day of January, 2016.



Patti Salden, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Saiden, Patti
Cc: asbestos-sea@foleymansfield.com; MetLifeAsbestos@wscd.com; matt@bergmanlegal.com; colin@bergmanlegal.com; bonnielablack@gmail.com; gahrend@ahrendlaw.com; valeriemcomie@gmail.com; King, Mike; sestest@kbmlawyers.com
Subject: RE: 91969-1; Judy R. Deggs, et al. v. Asbestos Corporation Limited, et al.

Received on 01-29-2016

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Saiden, Patti [mailto:saiden@carneylaw.com]
Sent: Friday, January 29, 2016 8:59 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: asbestos-sea@foleymansfield.com; MetLifeAsbestos@wscd.com; matt@bergmanlegal.com; colin@bergmanlegal.com; bonnielablack@gmail.com; gahrend@ahrendlaw.com; valeriemcomie@gmail.com; King, Mike <king@carneylaw.com>; sestest@kbmlawyers.com
Subject: 91969-1; Judy R. Deggs, et al. v. Asbestos Corporation Limited, et al.

Dear Clerk:

Attached for filing are the following documents:

- *Motion for Acceptance of Late Submission of Brief of Amicus Curiae Washington Defense Trial Lawyers; and,*
- *Brief of Amicus Curiae Washington Defense Trial Lawyers.*

Case Name: Judy R. Deggs, as Personal Representative for the Estate of Ray Gordon Sundberg, deceased, v. Asbestos Corporation Limited, et al.

Cause #: 91969-1

Filing Attorney:

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Thank you.

**CARNEY
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SPELLMAN**

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