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October 14, 2016

Susan Carlson, Clerk of the Court
Washington Supreme Court
Temple of Justice
Olympia, WA 98504

Re: ***Xia v. ProBuilders Specialty Insurance Company RRG***
Supreme Court Cause No. 92436-8

Dear Clerk Carlson:

I am counsel for *amicus curiae* Property Casualty Insurance Association of America. I am writing in follow-up to the oral argument in this matter, heard on October 12, 2016.

During that argument the parties and the *amicus curiae* addressed an issue concerning the production of carbon monoxide by a gas water heater. In his rebuttal argument on this point, counsel for Petitioner referenced two pages of the record, specifically Clerk's Papers pages 194 and 200, and correctly quoted from one of those pages.

I realized after reviewing the TVW archive record of the argument that counsel did not say from which of the two pages he was quoting. I therefore am writing to request that the Justices be advised that the page from which counsel was quoting was Clerk's Papers page 200. The text counsel quoted is found under the bolded heading "CONCLUSIONS," and is the first half of the sentence numbered using an Arabic numeral "1." A copy of the page is enclosed.

Thank you in advance for your consideration of this request.

Respectfully,

CARNEY BADLEY SPELLMAN, P.S.

Michael B. King #19405

Michael B. King

cc: Counsel of Record

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DISCUSSION

In consideration to the findings presented herein, the ability of a gas appliance to produce appreciable levels of CO is dependant of the oxygen content of the combustion air. Because the exhaust from the water heater was found to be oxygen deficient, venting this exhaust in the atmosphere of the utility room results in elevated production CO from the water heater and the continued lowering of the oxygen in the air. Ventilation to the utility room consisted of a single louvered opening located above the door which communicated with the laundry room. A similar vent arrangement was present above the laundry room door which communicated with the landing and stairs leading to the remainder of the living space. The re-circulating exhaust inhibited the water heater from drawing fresh air in the combustion chamber...

During the testing, it was determined that the water heater produced CO in the closed utility room at a rate of 14 ppm per minute, and that the operation of the furnace permitted the accumulation of CO in the utility room to be uniformly distributed through the living space. A 15 minute firing of the water heater while the furnace was not operating would produce a CO level in the utility room that exceeded the 200 ppm short term, 15-minute, exposure limit (STEL) set forth by OSHA. Activating the furnace with the 200 ppm CO level in the utility room distributed CO throughout the second and third floors to a concentration of 12 ppm. Because the CO concentration in the living space did not dissipate during the testing, and because subsequent cycles of CO formation by the water heater and distribution by the furnace resulted in an increase of CO in the living space, several repeated cycles could potentially produce a CO level exceeding the maximum 35 ppm OSHA, time weighted average (TWA) exposure for an 8-hour day, and produce an oxygen deficient atmosphere.

Although the CO in the utility room was determined to rise at a rate of 14 ppm/minute, the maximum concentration of CO production in was not determined. However, the continued operation of the water heater would have continued to produce CO beyond the 225 ppm that was achieved in this test.

CONCLUSIONS

Based on the testing presented herein, to a reasonable degree of scientific probability, it is our professional opinion that:

1. The water heater in the exemplar unit, when connected to a properly assembled exhaust flue, emits less than one part per million CO; however the oxygen concentration of the exhaust was reduced to 17.3 percent.
2. Test results showed that the disconnected flue pipe observed in Ms. Xia's home likely caused the water heater to produce CO levels in the utility room that exceeded the 200ppm OSHA (STEL) standard.
3. Test results indicated the disconnected flue pipe observed in Ms. Xia's home likely caused the water heater to produce CO levels in the first and second floor living space that exceeded the 35 ppm OSHA TWA exposure limit for an 8-hour day.

George M. Ahrend 100 E. Broadway Ave. Moses Lake, WA 98837 gahrend@ahrendlaw.com	
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DATED this 14th day of October, 2016.



Patti Saiden, Legal Assistant

CARNEY BADLEY SPELLMAN

October 14, 2016 - 11:37 AM

Transmittal Information

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Appellate Court Case Number: 92436-8
Appellate Court Case Title: Zhaoyun Xia, et al. v. Probuilders Specialty Insurance Company, et al.

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