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COURT OF APPEALS DISTRICT
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**COURT OF APPEALS
STATE OF WASHINGTON**

JOSEPHINE CLIPSE,
a single individual

Petitioner,

v.

MICHELS PIPELINE CONSTRUCTION, INC., a Wisconsin corporation;
PIPE EXPERTS, LLC, a Washington limited liability company,

Respondents and Cross-Petitioner.

**BRIEF OF PETITIONER
JOSEPHINE CLIPSE**

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I.

ASSIGNMENTS OF ERROR

The trial court below erred as a matter of law in reaching the following conclusions of law contained at section III of the January 7, 2009 *Order* [CP 278-279]:

1. To prevail on a statutory trespass claim under RCW 4.24.630, this statute requires a showing that:

a. Respondents entered petitioner's property.

b. Respondents' actions led to damage of petitioner's property.

c. Respondents' actions were wrongful either because such actions were unreasonable and intentional" OR respondents "knew or had reason to know that [they] lack[ed] authorization to act."

2. The "General Requirements/Technical Specifications" and Project Drawings offered into evidence by petitioner below are not admissible under either ER 402 or ER 403 to prove either petitioner's statutory trespass or negligence claims.

The issues presented for review by this appeal are:

1. Does the definition of "wrongfully" contained in RCW 4.24.630 apply to the means by which the injury takes place or simply to the injury itself?

2. Is a breach of contract, as demonstrated by a failure to adhere to construction project specifications or drawings, admissible evidence to demonstrate either a violation of RCW 4.24.630 or common law negligence?

II. STATEMENT OF THE CASE

A. Factual Background.

1. Nature of the Dispute Between the Parties.

This lawsuit arises out of a back up of sewage on October 4, 2003 that substantially damaged the house and personal property owned by petitioner, JOSEPHINE CLIPSE (“Ms. Clipse”) located at 24803 35th Place S., Kent, Washington 98032. [CP 44; 277, ¶¶11, 12]

Ms. Clipse brought this suit against respondents, MICHELS PIPELINE CONSTRUCTION, INC. and PIPE EXPERTS, INC. (hereinafter collectively referred to as "the contractors"), alleging they were legally responsible for these damages under a theory of either statutory trespass or negligence. [CP 275, ¶1]

2. Ms. Clipse's Case-in-Chief.

In 2002, the King County Department of Natural Resources and Parks, Wastewater Treatment Division embarked upon a construction project to rehabilitate side sewer pipes on

private property located in a Kent, Washington neighborhood situated along Military Road South between S. 240th Street and S. 248th Street (“pilot project”). [CP 276, ¶5; 297-298]

The purpose of this pilot project was to install new sewer pipe lining to repair damage to side sewer pipes caused by cracks, loose joints and tree root intrusion into these pipes. [CP 297-298; 300-301] Not all of the homes inside the pilot project’s boundaries were chosen to participate in this pilot project; King County selected only 153 individual properties to participate. [CP 381] Ms. Clipse's residence was not selected by King County to participate in this pilot project. [CP 349-355]

King County entered into a construction contract with respondent, MICHELS PIPELINE CONSTRUCTION, INC., to serve as general contractor to supervise the completion of the work associated with the pilot project. [CP 276, ¶6; 307-308] MICHELS in turn entered into a subcontract with respondent, PIPE EXPERTS, LLC, to complete the actual work associated with installing the new pipe lining for existing side sewers. [*Id.*]

In accordance with the "General Requirements/Technical Specifications" for the pilot project, before beginning construction work on any particular piece of property that was included in the pilot project, it was the responsibility of the contractors to check with King County to see that a “right-of-

entry agreement” form had been signed by the owner for that particular property before the contractors began working on that particular property. [CP 313] This right-of-entry agreement specifically stated King County and its contractors would be responsible for any damage done in the course of completing any work on any particular property involved in the pilot project. [CP 343, ¶3] The contractors were not to proceed with working on a particular property until the owner of that property gave permission to enter the property by signing a right-of-entry agreement. [CP 313] No written right-of-entry agreement was ever secured by the contractors to complete work of any nature on Ms. Clipse’s property. [CP 312]

In addition, the construction specifications for the pilot project required that the contractors see to it that a “side sewer work agreement” be signed by both King County and the owner for a particular property before the contractors actually began working on that particular property. [CP 378] The "side sewer work agreement" served as a “notice to proceed” from King County and was a prerequisite for getting paid for work done on a particular property. [*Id.*] The City of Kent also required a public works permit be taken out for work done on individual properties. [CP 339] No side sewer work agreement or city

permit was ever secured by the contractors to complete any work on Ms. Clipse's property. [CP 378]

The contractors claim its workers entered onto Ms. Clipse's property and excavated a hole to allow for a new side sewer that was installed on or about October 2 and 3, 2004. [CP 277, ¶9] The new side sewer included an underground pipe that ran horizontally and joined the main sewer pipe in the street, and a new vertical cleanout pipe that allowed access to the underground pipe from street level. [CP 300-301]

The contractors claim its workers went to Ms. Clipse's residence three or four days before the sewage back up on October 4, 2003 took place in order to get a right-of-entry agreement signed. [364] Cory Hale, the contractors' project manager, claims he spoke with Ms. Clipse's son, Joe Clipse, who indicated he could not sign the right-of-entry agreement. [*Id.*] Mr. Hale admitted he knew Ms. Clipse owned the property but did not speak to her in order to receive permission to come onto the property. [CP 365]

Mr. Hale claims the contractors received verbal permission from Joe Clipse to enter Ms. Clipse's residence three to four days before the sewage backup in order to place a camera in an existing side sewer located in the basement. [CP 365-366] Two to three days after this, the contractors' workers returned to

Ms. Clipse's property and installed a new side sewer that included the new cleanout pipe. [CP 367] When they returned, the contractors' workers did not speak with Ms. Clipse nor receive permission from anyone at that time to come onto Ms. Clipse's property. [CP 368]

The contractors do not dispute that on October 3, 2003, the day before the back up of sewage took place in Ms. Clipse's residence, the contractors were backfilling an 18 cubic foot hole dug in plaintiff's driveway to install the new side sewer clean out pipe. [CP 382-383] This 18 cubic foot hole was filled with a combination of dirt and gravel. [*Id.*] After the back up of sewage in Ms. Clipse's residence was discovered, the contractors placed a camera inside the newly installed clean out pipe and discovered it was blocked by gravel. [CP 322; 370-371]

To complete the installation of the new cleanout pipe on the afternoon of Friday, October 3, 2003, including permanently gluing a permanent cap to the newly installed cleanout pipe, would have required an additional one hour at a total labor cost of \$100.00 to backfill the excavation for the new cleanout pipe. [CP 383] Unfortunately, this minor task was left to be completed on the following Monday. [*Id.*] Over the weekend, sewage backed up and flooded Ms. Clipse's residence.

On or about Saturday, October 4, 2003, Ms. Clipse's residence was substantially damaged when sewage backed up inside her basement. [CP 277, ¶11] The sewage back up did considerable damage to the house itself as well as to a substantial amount of personal property stored in the basement.

It is undisputed this sewage backup was caused by gravel entering a clean out pipe newly installed by the contractors and causing a blockage in the underground section of pipe. [CP 277, ¶13] It is further undisputed that if the new cleanout had never been installed, the damage to Ms. Clipse's residence would not have occurred. [CP 322]

B. Procedural Background.

1. Cross-Motions for Summary Judgment.

On May 23, 2008 the trial court below considered the parties' cross motions for summary judgment. [CP 83] Ms. Clipse brought a motion for partial summary judgment claiming the contractors were liable as a matter of law for violation of RCW 4.24.630. [CP 43-51] The contractors likewise brought a cross-motion for summary judgment requesting the court dismiss Ms. Clipse's claim for damages under RCW 4.24. 630. [CP 37-42] On June 6, 2008 the trial court granted Ms. Clipse's motion and denied the contractors' cross-motion. [CP 107-110]

The contractors then brought a motion for reconsideration which the trial court granted on July 16, 2008. [CP 126-130; 131-134] This case thereupon proceeded to trial.

At trial, the contractors orally moved for the trial court to further reconsider the contents of its July 16, 2008 order granting the contractors' motion for reconsideration. [CP 262-267] The contractors' motion was denied by the trial court. [CP 278]

2. Contractors' Motions *in limine*.

The contractors brought numerous motions *in limine*, the first of which was to prevent Ms. Clipse from introducing into evidence either the "General Requirements/Technical Specifications" or the Project Drawings. The contractors claimed these exhibits were not relevant under either ER 402 or 403. [CP 136-141]

Ms. Clipse opposed the majority of these motions *in limine*. Ms. Clipse specifically argued that both the "General Requirements/Technical Specifications" and the Project Drawings established the contractors' violation of RCW 4.24.630 and the specific failures by the contractors to complete their work on Ms. Clipse's property in a good and workmanlike manner leading to gravel being allowed to enter the newly installed clean out pipe. [CP 170-171]

On December 11, 2008, the trial court granted the contractors' motion *in limine* and excluded the "General Requirements/Technical Specifications" as evidence of the contractors' contractual requirement to obtain the agreement of the property owner, but allowed admission of the project drawings.¹ However, in its January 7, 2009 Order, the trial court excluded both the "General Requirements/Technical Specifications" and Project Drawings from introduction into evidence for any purpose. [CP 278]

3. Ms. Clipse's Motion for Discretionary Review.

By the second day of trial on December 11, 2008, the trial court had made two very important rulings. By refusing to reconsider its July 16, 2008 order granting the contractor's motion for reconsideration, the trial court had effectively defined the elements Ms. Clipse would need to prove to establish the contractors' liability under RCW 4.24.630. At the same time, by granting the contractors' motion *in limine* regarding the "General Requirements/Technical Specifications", the trial court had excluded what Ms. Clipse believed was overwhelming evidence of the contractors' violation of RCW 4.24.630.

¹ See Petitioner's Motion for Discretionary Review, Exhibit D, p. 2 (2/6/2009).

Consequently, Ms. Clipse moved, with the contractors' acquiescence and the trial court's approval, to stay the trial in order to allow the parties to pursue an interlocutory appeal of these two rulings. With the trial court's express approval, the parties submitted proposed orders concerning Ms. Clipse's motion and signed an order dated January 9, 2009 certifying for interlocutory review pursuant to RAP 2.3(b)(4) these two rulings. [CP 273-279]

III. LEGAL ARGUMENT

A. Standard of Review.

An appellate court reviews a trial court's ruling on summary judgment *de novo*, performing the same inquiry as the trial court. *Herron v. Tribune Publishing Co., Inc.*, 108 Wn.2d 162, 169, 736 P.2d 249 (1987).

A trial court's decision to grant a motion *in limine* to prevent certain evidence from being admitted at trial will be reversed on appeal if the decision constitutes an abuse of the trial court's discretion. Discretion is abused if the decision is one no reasonable person would make. *State v. Ellis*, 136 Wn.2d 498, 504, 963 P.2d 843 (1998).

B. The Trial Court Below Erred as a Matter of Law In Its Determination of the Elements Necessary To Prove a Violation of RCW 4.24.630.

RCW 4.24.630 states:

(1) Every person who *goes onto the land of another* and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or *wrongfully injures* personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "*wrongfully*" if the person *intentionally and unreasonably* commits the act or acts while *knowing, or having reason to know, that he or she lacks authorization to so act*. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. (Emphasis added)

The trial court below ruled in the January 7, 2009 *Order* [CP 278-279] that, to prevail on a statutory trespass claim under RCW 4.24.630, this statute requires a showing that:

- a. The contractors entered Ms. Clipse's property.
- b. The contractors' actions led to damage of Ms. Clipse's property.
- c. The contractors' actions were wrongful either because such actions were "unreasonable and intentional" OR respondents "knew or had reason to know that [they] lack[ed] authorization to act."

The definition of "wrongfully" in RCW 4.24.630, is potentially confusing.

The word "wrongfully, as used in RCW 4.24.630, is an adverb. An adverb typically modifies a verb and answers the question how. As used in RCW 4.24.630, "wrongfully" is used to modify the verbs "causes" or "injures".

With respect to damage to land, the word "wrongfully" is used to modify the verb "causes": "...or wrongfully *causes* waste or injury to the land." With respect to damage to personal property or improvements to real property, "wrongfully" is used to modify the verb "injures" without any reference to cause: "...or wrongfully *injures* personal property or improvements to real estate."

At common law, causation is the physical connection between an act and resulting damage. *Hartley v. State*, 103 Wn.2d 768, 778, 698 P.2d 77 (1985). The parties' competing interpretations of RCW 4.24.630 in this case center on whether the adverb "wrongfully" modifies the act that causes the damage, or the damage that ensues from the act.

The term "while", as used in RCW 4.24.630, serves as a subordinating conjunction that connects the phrase "intentional and unreasonable" with the subordinate clause "knowing, or having reason to know, that he or she lacks authorization to so act." Thus, the term "wrongfully" is defined as an "intentional and unreasonable" act. An "intentional and unreasonable" act is further sub-defined as an act committed "knowing, or having reason to know, that he or she lacks authorization to so act."

Ms. Clipse submits "wrongfully", as used in RCW 4.24.630, modifies the act or acts that caused damage to her residence. The act or acts that caused damage to her residence was either: (1) the contractors coming onto her property without her permission; and/or (2) the completion of the work associated with installing a new cleanout pipe. The contractors concede they intentionally came onto Ms. Clipse's property to complete the work associated with installing a new lining for the existing side sewer, which included installing a new cleanout pipe. [CP

368] Ms. Clipse contends the contractors' act of coming onto her property and completing the work was without authorization and therefore "intentional and unreasonable" because the contractors knew, based on the requirements set out in the construction contract and the project specifications, that: (a) they were not to enter onto any privately owned property unless the contractors' possessed a right of entry agreement signed by the property owner; [CP 313] (b) they were not to proceed with any work before concluding a side sewer work agreement; [CP 378] and (c) they were to secure a public works permit from the City of Kent. [CP 339] It is undisputed the contractors never possessed any of things before beginning work on Ms. Clipse's property.

In fact, according to the contract specifications for the pilot project, Ms. Clipse's property was never supposed to be part of the pilot project to begin with. [CP 349-355]

The purpose of all these requirements was to prevent a potential trespass by the contractors in the course of completing their work under the pilot project. [CP 313]

In *Standing Rock v. Misich*, 106 Wn. App. 231, 23 P.3d 520 (2001), Ms. Clipse, an unincorporated association of landowners, sued defendant, an adjoining property owner, alleging statutory trespass under RCW 4.24.630 for tearing down gates erected across roads running through Ms. Clipse's property.

Defendant tore down these gates because he believed he had an easement to use these roads. In his defense, defendant claimed he did not “wrongfully” destroy the gates for purposes of RCW 4.24.630 because the gates had been declared a public nuisance under a 1993 court order.

Both the trial court and Washington Court of Appeals did not accept this defense. The Washington Court of Appeals held the defendant had acted “wrongfully” because the court order relied upon by defendant did not confer on defendant any right to take down the gates in question and therefore defendant either knew, or had reason to know, he lacked authorization to take down these gates. *Id.*, 106 Wn. App. at 246. Throughout the *Standing Rock* decision, the courts applied the adverb “wrongfully” to defendant’s act of coming onto Ms. Clipse’s property and removing the gates, not the ensuing damage that resulted from the gates being torn down. Throughout the lawsuit, defendant contended he never physically damaged the gates at issue. However, in affirming the defendant’s liability under RCW 4.24.630, the Court of Appeals held the defendant’s “wrongful conduct” was his discussing the removal of the gates and providing transportation, tools and advice to those who actually removed the gates. *Id.* Thus, defendant’s wrongful

conduct was his actions that resulted in removal of the gates at issue, not the actual removal of the gates themselves.

In *Colwell v. Etzwell*, 119 Wn. App. 432, 438, 81 P.3d 895 (2003), the Washington Court of Appeals observed the premise of RCW 4.24.630 is that the defendant physically trespasses on the plaintiff's land. Consequently, in order to prove statutory trespass under RCW 4.24.630, a plaintiff must show the commission of an intentional and unreasonable act or acts upon plaintiff's property by defendant, and subsequent damage to plaintiff's property caused by defendant's intentional and unreasonable act or actions. *Id.*

The interpretation given RCW 4.24.630 in the *Colwell* decision was reiterated by the Washington Supreme Court in *Kershaw Sunnyside v. Interurban Lines*, 156 Wn.2d 253, 277, 126 P.3d 16 (2006), wherein the Washington Supreme Court held that the mere presence of telecommunications lines installed on property for which the installer did not possess a valid easement was sufficient to sustain a cause of action by the owner of the property for trespass.

It is undisputed the contractors knew, or had reason to know, that they did not have authorization to be on Ms. Clipse's property on October 2 and 3, 2003 since the contractors: (1) knew Ms. Clipse, not her son, was the owner of 24803 35th Place

S., Kent, Washington 98032; and (2) had not secured the required agreements and permits prior to entering onto Ms. Clipse's property on October 2 and 3, 2003 to complete their work.

The contractors claim they did not trespass on Ms. Clipse's property because, several days before actually doing the work that was done on Ms. Clipse's property on October 2 and 3, 2003, they entered the property to secure a signature on a right-of-entry agreement (which they never secured) and were orally given permission by Joseph Clipse to enter the residence to place a camera in the existing side sewer pipe. Assuming this to be true for purposes of this appeal, the contractors did not have permission from anyone to later return onto the property on October 2 and 3, 2003 and install the cleanout pipe responsible for the damage to Ms. Clipse's residence.

It is undisputed the work done by defendant on Ms. Clipse's property on October 2 and 3, 2003 included the installation of a new cleanout pipe. It is undisputed that if this new cleanout pipe had not been installed, the damage to Ms. Clipse's property on October 4, 2003 would never have occurred. Consequently, there is no genuine issue of material fact to dispute that defendant violated RCW 4.24.630 as a matter of law in working on Ms. Clipse's property on October 2 and 3, 2003 and that this work proximately caused the damages Ms. Clipse's

property sustained as a result of the sewage backup on or about October 4, 2003.

C. A Breach of Contract Is Admissible Evidence to Demonstrate the Breach of a Common Law Duty in Order to Meet the Burden of Proof to Establish Common Law Negligence.

Ms. Clipse's marked for identification as exhibit 7 the "General Requirements/Technical Specifications" for the pilot project. Ms. Clipse's marked for identification as exhibit 8 the Project Drawings for the pilot project.

In accordance with the "General Requirements/Technical Specifications" for the pilot project, before beginning construction work on any particular piece of property that was included in the pilot project, it was the responsibility of the contractors to check with King County to see that a right-of-entry agreement form had been signed by the owner for that particular property before the contractors began working on that particular property. [CP 313} This right-of-entry agreement specifically stated King County and its contractors would be responsible for any damage done in the course of completing any work on any particular property involved in the pilot project. [CP 343, ¶3] The contractors were not to proceed with working on a particular property until the owner of that property gave permission to enter the property to complete this work by signing a right-of-entry

agreement. [CP 313] No written right-of-entry agreement was ever secured by the contractors to complete work of any nature on Ms. Clipse's property. [CP 312]

In addition, the construction specifications for the pilot project required that the defendants see to it that a "side sewer work agreement" be signed by both King County and the owner for a particular property before defendants began working on that particular property. [CP 378] The "side sewer work agreement" served as a "notice to proceed" from King County and was a prerequisite for getting paid for work done on a particular property. [*Id.*] The City of Kent also required a public works permit be taken out for work done on individual properties. [CP 339] No side sewer work agreement or city permit was ever secured by defendants to complete any work on plaintiff's property. [CP 378]

The contractors argued to the trial that it should exclude any reference to these contract specifications because they do not create a duty owed by the contractors to Ms. Clipse since there was no privity of contract between Ms. Clipse and the contractors.

In Washington, it is recognized that privity of contract is not necessary to sustain an action in tort by an individual specially injured by an act or omission constituting a breach of

contract where it also constituted an invasion of the legal right of, or the violation of a legal duty owed to, the plaintiff independently of or concurrently with the contract. *Freeman v. Navarre*, 47 Wn.2d 760, 771, 289 P.2d 1015 (1955). *Hunter v. Knight, Vale & Gregory*, 18 Wn. App. 640, 571 P.2d 212 (1977).

It is generally recognized that the requirement of privity itself has long ceased to control negligence claims. Dobbs, *Law of Torts*, §321, p. 870 (2000). When the defendant causes physical harm through misfeasance (affirmative acts of negligence) rather than nonfeasance, the defendant is liable to the foreseeably injured person for that harm. *See also* Restatement (Second) of Torts §324A.

RCW 4.24.630 provides an independent duty imposed on the contractors to refrain from trespassing on Ms. Clipse's property. The damage caused by the contractors is directly attributable to the misfeasance of the contractors, *i.e.* the work they completed on Ms. Clipse's property.

The breach of contract, however, remains admissible evidence of the defendant's negligence since the contract may establish the standard of care breached by the defendant. This is particularly probative in the construction context where the construction contract oftentimes specifically sets out the means and methods whereby the construction work is to be completed.

These means and methods are typically set out in the plans and specifications adopted for the project. *See e.g. Kenney v. Abraham*, 199 Wash. 167, 168, 90 P.2d 713 (1939); *Valley Construction Co. v. Lake Hills Sewer District*, 67 Wn.2d 910, 410 P.2d 796 (1966).

In *Freeman v. Navarre*, 47 Wn.2d 760, 771, 289 P.2d 1015 (1955), plaintiff developer sued the contractor, the engineering firm and the manufacturer of an allegedly defective heating system installed for the newly constructed Bellevue Square for breach of warranty and negligence. Plaintiff developer established the defective nature of the heating system and the consequent negligence of defendant manufacturer by demonstrating the heating system did not comply with the construction specifications for the construction of Bellevue Square and that defendant manufacturer participated in the preparation of the specifications. *Id.*, 47 Wn.2d at 773-774.

In *Leija v. Materne Brothers, Inc.*, 34 Wn. App. 825, 828, 664 P.2d 527 (1983), the Court of Appeals held the specifications to a construction contract set the standard of care the conduct of the contractor could be judged by.

The road construction contract required Materne to comply with the terms of the STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.

By this contract, Materne assumed an obligation to the traveling public. "[A]n affirmative duty assumed by contract may create a liability to persons not party to the contract, where failure to properly perform the duty results in injury to them." KELLEY v. HOWARD S. WRIGHT CONSTR. CO., 90 Wn.2d 323, 334, 582 P.2d 500 (1978). Although we agree the contract did not make Materne liable as an insurer, Leija has a valid claim for breach of contract to determine the appropriate standard of care.

See also Manson v. Foutch-Miller, 38 Wn. App. 898, 903, 691 P.2d 236 (1984)(construction contract imposed upon contractor a duty of care to as measured by the safety manual provision contained in the contract).

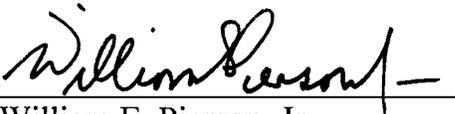
RCW 4.24.630 provides an independent duty imposed on the contractors to refrain from trespassing on Ms. Clipse's property. The damage caused by the contractors is directly attributable to the misfeasance of the contractors, *i.e.* the work they completed on Ms. Clipse's property. Consequently, Ms. Clipse's exhibits 7 and 8 are admissible to establish the contractors' violation of RCW 4.24.630 and breach of the common law duty of care the contractors owed Ms. Clipse in this lawsuit.

IV. CONCLUSION

The contractors were wrongfully on Ms. Clipse's property on October 2 and 3, 2003 and did not have authorization to be on her property doing work of any nature on those dates. Consequently, the contractors are liable under RCW 4.24.630 to Ms. Clipse as a matter of law in this lawsuit for the damages she sustained as a result of the sewage backup on October 4, 2003.

RESPECTFULLY SUBMITTED this 25th day of June, 2009.

LAW OFFICE OF
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By 
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Attorneys for Petitioner
JOSEPHINE CLIPSE

CERTIFICATE OF SERVICE

The undersigned certifies that on this day he caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following counsel of record:

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RE: *Josephine Clipse v. Michels Pipeline Construction, Inc., et al.*
Court of Appeals Cause No. 62911-5-I
Our Client : Josephine Clipse
Our File No. : 07-009

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COURT OF APPEALS
STATE OF WASHINGTON

Dear Sir or Madam:

Enclosed please find the original and one copy of petitioner's, Josephine Clipse, opening brief in this matter.

Sincerely,



William E. Pierson, Jr.

WEP/jtv
Enclosure