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SUPREME COURT
STATE OF WASHINGTON
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No. 90973-3

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SUPREME COURT OF THE STATE OF WASHINGTON

PORT OF OLYMPIA, a municipal corporation of the State of
Washington,

Petitioner,

v.

ARTHUR WEST and JERRY DIERKER,

Respondents.

**REPLY TO JERRY DIERKER'S ANSWER
TO
NOTICE OF VOLUNTARY WITHDRAWAL OF PETITION
AND
MOTION TO DISMISS REVIEW**

HEATHER L. BURGESS, WSBA #28477
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(360) 742-3500
Attorneys for Petitioner

 ORIGINAL

A. Identity of Replying Party

The Port of Olympia (the “Port”) is a municipal corporation of the State of Washington, Defendant below, Respondent at the Court of Appeals, and now Petitioner before this Court.

B. Facts Relevant to Reply

On August 5, 2014, the Court of Appeals issued an unpublished decision in this case (Court of Appeals No. 43876-3-II), reversing a previous Superior Court dismissal of Respondents’ Public Records Act claims for want of prosecution and remanding the case to Superior Court for a show cause hearing on the only remaining dispute: Respondent Arthur West’s Public Records Act claim. *See* Attachment A. The Court of Appeals affirmed dismissal¹ of Respondent Jerry Dierker for lack of standing because he was not a party to the Public Records Act request forming the basis of Mr. West’s claim, and because the record was devoid of any evidence that Respondents alleged any impropriety based upon withheld records pursuant to a request from Mr. Dierker. Appendix A at 4. The Court also affirmed dismissal of both Mr. West’s and Mr. Dierker’s SEPA claims for lack of standing. Appendix A at 8-10.

Although the Port petitioned this Court for review of the Court of Appeals’ decision regarding its reversal of dismissal for want of prosecution, no other party sought review of any other issues related to the decision. The Port

¹ In his response, Mr. Dierker takes considerable issue with the Port’s characterization of the Court of Appeals’ dismissal of Mr. Dierker’s Public Records Act claim, asserting that the Port is attempting to “falsify” the prior rulings in the case. Dierker Answer at 3. The Port stands by its original characterization of the Court of Appeals’ decision: the Court of Appeals affirmed the dismissal of Mr. Dierker’s Public Records Act claim based on his lack of standing. Appendix A at 4.

subsequently settled with Mr. West and filed the present motion seeking to voluntarily withdraw its Petition for Review.

On January 8, 2015, prior to the Port's original deadline to reply to Mr. Dierker's opposition to its voluntary dismissal motion, this Court's Clerk's Office referred the motion to a Department of the Court for consideration. Mr. Dierker was also allowed time to answer the Port's Petition, including the opportunity to raise additional issues on review.

C. Grounds for Relief and Argument

Mr. Dierker's Answer in opposition to the Port's motion for voluntary dismissal raises a battery of complaints against the Court of Appeals, the Superior Court, the Port, and the Port's current and prior counsel. However, Mr. Dierker's Answer fails to articulate any basis for this Court to maintain the Port's withdrawn Petition for Review and, indeed, at one point actually argues *for* granting the Port's dismissal. Dierker Answer at 16. For this reason, the Port respectfully requests that the Court grant its motion terminating further review of this case.

Furthermore, Mr. Dierker in his Answer seeks, and has tentatively received, the extraordinary remedy of this Court granting a three-and-one-half-month extension of the deadline for Mr. Dierker to file his own challenge to the Court of Appeals' decision—at this late date after the Port reached an amicable settlement with the only party maintaining a viable claim in light of the Court of Appeals' decision. Dierker Answer at 7-8. For the reasons set forth below, the

Port vigorously opposes allowing Mr. Dierker the opportunity to raise new issues in challenge to the Court of Appeals' decision.

While this Court frequently grants extensions of various deadlines upon timely motion, untimely extensions of appeal deadlines are granted on extremely rare occasions. Under RAP 18.8(b), appellate courts grant such requests “only in extraordinary circumstances and to prevent a gross miscarriage of justice... .” This high standard is based upon the principle that appellate courts will “ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension” under RAP 18.8. *Id.* This test is rigorously applied, and there are “very few instances in which Washington appellate courts have found that this test was satisfied.”² *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192, 194 (2005); *see also, Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998) (Stating that RAP 18.8(b) “is rarely satisfied”). Mr. Dierker fails to meet this extremely high bar.

With regard to extraordinary circumstances, and although the Port does not dispute Mr. Dierker's statements regarding his health and/or disabilities, Mr. Dierker has not established that these issues impair his ability to file a timely motion for discretionary review or otherwise comply with applicable timelines. Mr. Dierker does not claim or establish reasonable diligence, confusion about the method of seeking review, excusable error in interpreting the rules, or circumstances beyond his control. Indeed, Mr. Dierker's prior litigation history

² The few decisions that have found the standard to be met have involved unique or unusual occurrences; for example, new (and apparently latent) amendments to court rules that radically altered the status quo and to which no prior court decisions existed to shed light on the change. *See Scannell v. State*, 128 Wn.2d 829, 833-36, 912 P.2d 489 (1996). Even then, this Court went out of its way to caution that future misinterpretations “will not be treated with equal leniency.” *Id.* at 835-36.

demonstrates his firm grasp of court rules. As is noted by Mr. Dierker himself, Mr. Dierker filed a lengthy—and timely—motion for reconsideration of the Court of Appeals’ decision. Mr. Dierker has also timely filed for, and successfully received, multiple extensions in this case—including an extension to file his Answer to the Port’s motion for voluntary dismissal. Extraordinary circumstances are not present here.

A gross miscarriage of justice is similarly absent from the Port’s voluntary withdrawal. Typically, a lost appeal opportunity is found to constitute a gross miscarriage of justice only when caused by excusable error or circumstances beyond a party’s control. *See Beckman ex rel. Beckman v. State, Dept. of Social and Health Services*, 102 Wn. App. 687, 694, 102, Wn. App. 687 (2000) (citation omitted). Mr. Dierker’s deliberate failure to file his own Petition for Review because he intended to piggyback on any subsequent Petitions filed by other parties is not a miscarriage of justice, let alone a gross one. Additionally, Mr. Dierker has still failed to establish that his original claim ever included Public Records Act requests from anyone other than Mr. West. And, throughout the seven-year history of this case and numerous other claims against the Port, Mr. Dierker has had numerous opportunities to press his claims against the Port and continues to do so via other avenues. In fact, Mr. Dierker recently filed notices of tort claims against both the Port and the Thurston County Superior Court seeking up to \$500 million in damages. *See Attachment B.*

In sum, this Court would indeed be setting radical precedent to find extraordinary circumstances and a miscarriage of justice with regard to a party

who simply fails to file an appeal, then later cries foul when the parties with active interests in the case reach an amicable settlement. However, to the extent the Court allows Mr. Dierker to raise a belated challenge to the Court of Appeals' decision, the Port respectfully requests that the Court also maintain the Port's Petition for Review.

D. Conclusion

The Port respectfully requests that the Court grant its motion for voluntary withdrawal in light of Mr. Dierker's failure to establish a basis to maintain the Port's Petition for Review. Furthermore, in the substantial interest of finality, the Port respectfully requests that the Court refuse to allow Mr. Dierker to maintain an appeal for the purpose of raising new issues unrelated to the Port's withdrawn Petition.

RESPECTFULLY SUBMITTED this 27th day of January, 2015.

PHILLIPS BURGESS PLLC

By: 

HEATHER L. BURGESS, WSBA #28477

KELLY T. WOOD, WSBA #40067

Attorneys for Petitioner, Port of Olympia

Attachment A

FILED
COURT OF APPEALS
DIVISION II

2014 AUG -5 AM 10:37
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BY lp
DEPUTY
No. 43876-3-II

ARTHUR WEST and JERRY L. DIERKER
JR.,

Appellants,

v.

PORT OF OLYMPIA; WEYERHAEUSER
CO. d/b/a WEYCO.; EDWARD GALLIGAN;
BILL MCGREGGOR, ROBERT VAN
SCHOORL, and PAUL TELFORD,

Respondents,

UNPUBLISHED OPINION

MELNICK, J. — Arthur West and Jerry Dierker appeal several court orders culminating in the dismissal of their Public Records Act (PRA)¹ and State Environmental Policy Act (SEPA)² claims. West filed a public records request with the Port of Olympia (Port) under the PRA, seeking records related to the Port's lease with Weyerhaeuser. Unsatisfied with the records the Port produced, West filed an action in superior court against the Port and Weyerhaeuser alleging, among other things, violations of the PRA and the SEPA. West later filed an amended complaint that included Jerry Dierker as an additional plaintiff. The trial court bifurcated the PRA claims from the SEPA claims, dismissed the SEPA claims for lack of standing, and dismissed the PRA claims against Weyerhaeuser because it is not a public entity. After over a year of inaction, West attempted to file a show cause hearing on the remaining PRA claims. The Port filed a motion to dismiss the PRA claims under CR 41(b)(1) and the court's inherent

¹ Ch. 42.56 RCW.

² Ch. 43.21C RCW.

authority. The trial court dismissed the PRA claims after concluding that West and Dierker deliberately and willfully caused excessive delays.

West and Dierker appeal, arguing the trial court erred when it (1) dismissed the PRA claims for excessive delay, (2) entered and construed the bifurcation order, and (3) dismissed the SEPA claims for lack of standing. West and the Port seek attorney fees on appeal. We hold that the trial court abused its discretion in dismissing the PRA claims because its conclusion that West and Dierker acted willfully is not supported by its findings. We additionally hold that, (1) Dierker does not have standing to enforce the PRA claims, (2) West and Dierker waived their arguments regarding the bifurcation order, (3) the trial court properly concluded that West and Dierker lacked standing for their SEPA claims, and (4) none of the parties is entitled to attorney fees. Accordingly, we affirm the trial court's bifurcation order and order dismissing the SEPA claims, but reverse the order of dismissal of the PRA claims and remand for further proceedings on this claim.

FACTS

On March 17, 2007, West filed a public records request with the Port, seeking records related to the Port's lease with Weyerhaeuser. On June 12, 2007, the Port sent West a letter listing the records it provided and the records it considered exempt. The letter stated that the Port considered the request completed.

On June 18, 2007, West filed a complaint against the Port and Weyerhaeuser for alleged violations of the PRA, SEPA, and the Harbor Improvement Act. That same day, he obtained an ex parte show cause order compelling the Port to appear on June 29 and show cause why it should not be required to release the exempt records. This hearing never occurred. West filed an amended complaint in July 2007 that included Dierker as a plaintiff.

In August 2007, Weyerhaeuser moved to bifurcate the PRA claims from the rest of West's and Dierker's claims. West agreed, and the trial court granted the motion. Over the next few months, all the parties filed multiple motions, mostly regarding the non-PRA claims.

On April 25, 2008, the trial court entered an order dismissing the case with prejudice for lack of standing. Later, the trial court issued a clarifying order stating that the April 25 dismissal referred only to the non-PRA claims and that the PRA claims were not dismissed. On May 2,, the trial court dismissed the PRA claim against Weyerhaeuser.

West and Dierker did not take any action regarding this case until October 16, 2009, when West attempted to note the PRA case for a show cause hearing. Between October 2009 and June 2011, West attempted to set eight show cause hearings. Because of the Port's counsel's or the Judge's unavailability or because of West's failure to confirm the hearings, no hearing took place.

On June 24, 2011, the Port filed a motion to dismiss under both CR 41(b)(1), failure to prosecute, and the court's inherent power to manage a case. West filed his fifth affidavit of prejudice in this case, which resulted in a delay.

On June 29, 2012, the trial court held a hearing on the Port's motion to dismiss. The trial court granted the motion to dismiss, relying on its inherent authority to manage cases. It concluded that (1) West and Dierker "deliberately and willfully caused excessive delays," (2) the delays prejudiced the Port because, if it was found to have violated the PRA, it would be subject to daily penalties, and (3) no lesser sanction than dismissal would suffice. Clerk's Papers (CP) at 938. West and Dierker both filed motions for reconsideration. The trial court denied the motions.

West and Dierker appeal, challenging the trial court's (1) June 27, 2012 dismissal, (2) order denying reconsideration of the June 27 dismissal, and (3) May 30, 2008 dismissal of the non-PRA claims for lack of standing.

ANALYSIS

I. PRA CLAIMS

West and Dierker first argue that the trial court erred when it dismissed their PRA claims for excessive delay. Because the trial court's dismissal was based on untenable reasons, we reverse. We also hold that (1) Dierker does not have standing to enforce the PRA claims and (2) we do not reach the merits of West's PRA claims because the trial court did not rule on this issue.

A. Dierker's Standing for PRA Claims

As an initial matter, the Port argues that Dierker lacks standing to enforce the PRA request. Because Dierker did not join in the PRA request, he has failed to show that he has a personal stake in the outcome; thus, he lacks standing to enforce West's PRA request.

"The doctrine of standing requires that a claimant must have a personal stake in the outcome of a case in order to bring suit." *Kleven v. City of Des Moines*, 111 Wn. App. 284, 290, 44 P.3d 887 (2002). Here, Dierker joined the suit after West had filed his PRA request with the Port and after West had filed his first complaint against the Port. The record does not show that Dierker joined with West in making the PRA request.³

³ Dierker argues that he made his own PRA requests but they were kept out of the record by the Port. First, Dierker could have supplemented the record with his requests. RAP 9.6(a). Second, the complaint in this case does not mention Dierker's alleged PRA requests.

Our courts have found that people other than the person who actually made the PRA request have standing to bring a PRA action under limited circumstances. For example, in *Kleven*, the court held that the plaintiff had standing to sue under the PRA even though his attorney filed the initial PRA request. 111 Wn. App. at 290. The court determined that the complaint clearly indicated that the attorney made the request on behalf of his client. *Kleven*, 111 Wn. App. at 290.

By contrast, here, neither the PRA request nor the complaint state that West made the PRA requests on Dierker's behalf. Unlike the attorney/client relationship in *Kleven*, there is no similar relationship between West and Dierker to show that West acted on Dierker's behalf. Consequently, Dierker does not have standing to enforce the PRA claims and he is not entitled to relief relating to these claims.

B. Dismissal of PRA Claims

West first argues that the trial court erred when it dismissed the PRA claims for excessive delay. Because the trial court's order is based on untenable reasons, we reverse.

We review a trial court's order exercising its inherent power to dismiss a case for an abuse of discretion. *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821 (1949). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

1. CR41 (b)(1)

CR 41(b)(1) governs involuntary dismissal for want of prosecution if the plaintiff fails to "note the action for trial or hearing within 1 year after any issue of law or fact has been joined."

“If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.”
CR 41(b)(1).

Here, the Port moved to dismiss under both CR 41(b)(1), lack of prosecution, and the court’s inherent authority. The trial court granted the Port’s motion to dismiss, although it did not specify under which theory. To the extent that the trial court dismissed the order under CR 41(b)(1), this was an error. Dismissal under CR 41(b)(1) is not appropriate because West filed a motion to set a trial date before the hearing on the motion to dismiss.

2. Inherent Authority

“A court of general jurisdiction has the inherent power to dismiss actions for lack of prosecution, but only when no court rule or statute governs the circumstances presented.” *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166-67, 750 P.2d 1251 (1988) (footnote omitted). As we discussed in the previous section, CR 41(b)(1) does not apply here. “Where dilatoriness of a type not described by CR 41(b)(1) is involved, a trial court’s inherent discretion to dismiss an action for want of prosecution remains.” *Wallace v. Evans*, 131 Wn.2d 572, 577, 934 P.2d 662 (1997) (quoting *Thorp Meats*, 110 Wn.2d at 169). “Dilatoriness of a type not described by CR 41(b)(1)” refers to unacceptable litigation practices other than mere inaction. *Wallace*, 131 Wn.2d at 577. Dismissal is justified under the court’s inherent authority only when a party acts in willful and deliberate disregard of reasonable and necessary court orders. *Apostolis v. City of Seattle*, 101 Wn. App. 300, 304, 3 P.3d 198 (2000); *see, e.g., Woodhead v. Discount Waterbeds, Inc.*, 78 Wn. App. 125, 131, 896 P.2d 66 (1995) (finding the plaintiff willfully and deliberately misled the court by falsely claiming to have effected proper service). Examples include failing to comply with court rulings, failing to appear, and filing late briefs. *Bus. Servs. of Am. II, Inc. v. WaferTech LLC*, 174 Wn.2d 304, 311, 274 P.3d 1025 (2012); *see*

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also *Alexander v. Food Servs. of Am., Inc.*, 76 Wn. App. 425, 430, 886 P.2d 231 (1994) (dismissing case where the plaintiff had notice of the trial and willfully chose not to attend); *Jewell v. City of Kirkland*, 50 Wn. App. 813, 821-22, 750 P.2d 1307 (1988) (dismissing case where plaintiff violated a court order by failing to post funds by a certain date).

In this instance, there are no findings showing “dilatoriness of a type not described by CR 41(b)(1).” See *Wallace*, 131 Wn.2d at 577. The trial court found there existed 17 months of inaction in the proceedings; however, mere inaction is an insufficient basis to support dismissal based on the trial court’s inherent authority. *Wallace*, 131 Wn.2d at 577. The Port argues that the trial court found that West and Dierker violated a court order to “proceed with the case,” Resp’t Port’s Br. at 20, but the trial court did not find that West or Dierker violated an order to “proceed with the case.”

Additionally, even if plaintiffs’ conduct could be characterized as “dilatoriness not described by CR 41(b)(1),” the trial court did not make a finding that West or Dierker acted willfully and deliberately. Here, the trial court concluded that West and Dierker deliberately and willfully caused excessive delays. But the trial court’s findings do not support this conclusion. Although the findings list the various delays in this case, nothing in the findings indicates that West and Dierker deliberately and willfully acted to cause the delays. For example, the findings state that five judges were recused from this case. But the trial court did not find the affidavits of prejudice were a deliberate delay tactic. The record shows that the judges were unable to hear the case because of “conflicts and affidavits.” CP at 2719. Further, in its oral ruling, the trial court expressly declined to determine whether West’s eight failed attempts at setting a hearing were intentional. Because the trial court did not find, and the record

does not show, that West or Dierker acted in deliberate and willful disregard of a court order, the trial court based its order on untenable reasons and we reverse the dismissal of the PRA claims.

3. Merits of the PRA Claim

West asks us to determine the merits of his PRA claim. RCW 42.56.550(1), which governs judicial review of agency actions under the PRA, states that the *superior court* may require the agency to show why it refused to allow inspection of the withheld records. Here, the superior court did not hold a hearing or make a decision on the merits of the PRA claim. We remand this claim to the trial court. *See Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 106, 117 P.3d 1117 (2005) (remanding to the trial court where the plaintiff had not yet had a court review the allegedly exempt documents).

II. BIFURCATION

Next, West and Dierker make various claims regarding the trial court's bifurcation order. But because they failed to object in the trial court, this argument is waived on appeal. RAP 2.5(a). Additionally, to the extent they are arguing that the delay in commencing the PRA claims is the result of the bifurcation order and not their own inaction, it is unnecessary to reach this argument in light of our decision to reverse the trial court on this issue.

III. STANDING FOR NON-PRA CLAIMS

West and Dierker next argue that the trial court erred by dismissing their non-PRA claims for lack of standing. Because West's and Dierker's claimed injuries are speculative and nonspecific, we hold that they lacked standing.

To establish standing to challenge an action under SEPA, a party must (1) show that the alleged endangered interests fall within the zone of interests protected by SEPA and (2) allege an injury in fact, which requires evidence of specific and perceptible harm. *Kucera v. Dep't. of*

Transp., 140 Wn.2d 200, 212, 995 P.2d 63 (2000). A party alleging a threatened injury instead of an existing injury must show that the injury will be “immediate, concrete, and specific” rather than conjectural or hypothetical. *Leavitt v. Jefferson County*, 74 Wn. App. 668, 679, 875 P.2d 681 (1994) (quoting *Trepanier v. Everett*, 64 Wn. App. 380, 383, 824 P.2d 524 (1992)). The party’s interest must be more than the general public’s abstract interest in having others comply with the law. *Chelan County v. Nykreim*, 146 Wn.2d 904, 935, 52 P.3d 1 (2002).

Here, the trial court found that West’s and Dierker’s interests were arguably within the zone of interest protected by SEPA but that they failed to allege an injury in fact. CP at 94 (“Plaintiffs have not alleged immediate, concrete, specific injury required to establish standing or injury particular to them beyond any other member of the public.”). Therefore, we review whether West and Dierker have alleged an immediate, concrete, and specific injury.

In *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 831, 965 P.2d 636 (1998), the court held that the plaintiffs had standing to contest a proposed residential development plan because their properties were adjacent to the planned developments and the plan would result in increased traffic on the roads plaintiffs used to access their properties. Similarly, in *Kucera*, the court held that the plaintiffs, who owned shoreline property, sufficiently alleged injury in fact when they claimed that wakes off of a ferry damaged the shorelines. 140 Wn.2d at 213. The plaintiffs in these actions alleged concrete injuries to their specific interests.

By contrast, West and Dierker have alleged only speculative and general injuries. They assert that the Weyerhaeuser lease will result in greater pollution in the area, increased traffic around the port, and negative effects on wildlife. But these harms are not particularized like the harms asserted by the adjacent property owners in *Suquamish Indian Tribe* and *Kucera*.

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Furthermore, the claims are hypothetical (e.g., ships may sink; there may be more boat wakes, which disrupt the sand lance habitat and, in turn, affect animals further up the food chain; and the new activity may disturb areas that plaintiffs claim are already polluted). West's and Dierker's allegations were insufficient to establish injury in fact and, thus, they do not have standing.

IV. ATTORNEY FEES

West requests attorney fees under RAP 18.1 and RCW 42.56.550(4). RCW 42.56.550(4) states:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

A party prevails if "the records should have been disclosed on request." *Spokane Research & Def. Fund*, 155 Wn.2d at 103. Although West successfully argued that the trial court improperly dismissed his PRA claims, he has not yet shown that the Port withheld records that should have been immediately disclosed. Accordingly, he has not prevailed under RCW 42.56.550(4) and attorney fees are not appropriate at this stage in the proceeding.

Dierker also seeks costs and sanctions based on the PRA claims. Because Dierker does not have standing to enforce the PRA claims, we deny his request.

The Port requests attorney fees under RAP 18.9 and RCW 4.84.185 for defending a frivolous appeal. An action is frivolous if, considering the action in its entirety, it cannot be supported by any rational argument based in fact or law. *Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 785, 275 P.3d 339, review denied, 175 Wn.2d 1008 (2012). West successfully appealed the trial court's dismissal of the PRA claims. This action was not frivolous and we deny the Port's attorney fee request.

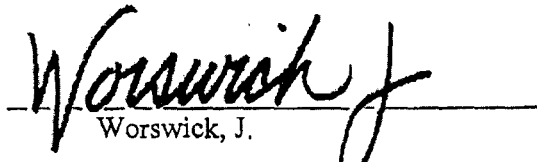
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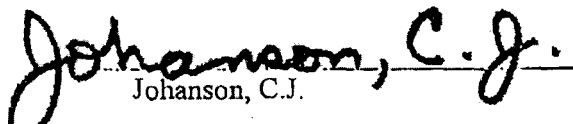
We reverse the trial court's dismissal of West's PRA claims and remand for further proceedings. We affirm the trial court's bifurcation order and order dismissing the SEPA claims. We deny all parties' requests for attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Melnick, J.

We concur:


Worswick, J.


Johanson, C.J.

Attachment B



CLAIM FOR DAMAGES

Review Instructions Prior to Completing this Form
PLEASE TYPE OR PRINT IN INK

FOR OFFICE USE ONLY
CLAIM #

RECEIVED

Pursuant to Chapter 4.96 RCW, this form is for filing tort claims for damages against Thurston County. Some of the information requested on this form is required by RCW 4.96.020 and may be subject to public disclosure. You must submit a claim against Thurston County using this form or the "Standard Tort Claim" form available from Washington State Office of Financial Management (OFM) available on-line at <http://www.ofm.wa.gov/rmd/forms/allforms.pdf>. Claims cannot be submitted electronically (via e-mail or fax).

The signed original Claim for Damages against Thurston County must be presented in person or mailed to the Thurston County Risk Manager. The Risk Manager is located in the Human Resources Office.

MAILING ADDRESS:
Thurston County Human Resources
Risk Management Division
2000 Lakeridge Drive SW
Olympia, WA 98502

OFFICE LOCATION:
Thurston County Human Resources
Risk Management Division
929 Lakeridge Drive SW, Room 202
Olympia, WA 98502

OFFICE BUSINESS HOURS: Monday – Friday 9:00 a.m. – 4:00 p.m.
CLOSED ON WEEKENDS AND HOLIDAYS
OFFICE TELEPHONE NUMBER: (360) 786-5498

- 1) NAME OF CLAIMANT: Dickson Jerry L 2) BIRTH DATE: 2/6/1950
Last Name First Middle
- 3) CURRENT RESIDENTIAL ADDRESS: 2826 Cooper Point Road NW, Olympia, WA 98502
Street Apt # City State Zip
- 4) CURRENT MAILING ADDRESS IF DIFFERENT: Same
Street and/or PO Box Apt # City State Zip
- 5) RESIDENTIAL ADDRESS AT TIME OF INCIDENT (If different from current address): Same
- 6) TELEPHONE: (include Area Code) Home 360 866 5297 EMAIL: _____
Work _____
Cell _____
- 7) DATE OF INCIDENT: _____ 8) TIME OF INCIDENT: _____ am pm
(mm/dd/yyyy)
- 9) IF THE INCIDENT OCCURRED OVER A PERIOD OF TIME, DATE OF FIRST AND LAST OCCURRENCES:
 FROM 08/2007 Time: _____ am pm TO: 12/30/14 Time: _____ am pm
(mm/dd/yyyy) (mm/dd/yyyy)
- 10) LOCATION OF INCIDENT: Thurston County Superior Court
Address City, Building or Office if applicable
- 11) LOCATION IF THE INCIDENT OCCURRED ON A STREET OR HIGHWAY:
N/A
Name of Street or Highway, Milepost Number,

At the intersection with/or nearest cross street

If your vehicle is involved:	
Year:	_____
Make:	<u>N/A</u>
Model:	_____
Color:	_____
License #:	_____
Registered Owner:	_____

12) THURSTON COUNTY OFFICE OR DEPARTMENT ALLEGED RESPONSIBLE FOR DAMAGE OR INJURY:

Thurston County Superior Court

13) NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL COUNTY EMPLOYEES HAVING KNOWLEDGE ABOUT THIS INCIDENT:

Thurston County Court staff and judges. Detailed list to be provided

14) NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PERSONS INVOLVED IN OR WITNESSES TO THIS INCIDENT AND A DESCRIPTION OF THE NATURE OF THEIR KNOWLEDGE OR INVOLVEMENT.

All persons involved in TC case # 07-II-001198-3
COA # 43876-3-II, Supreme Court Case 90973-3
Arthur West & Ferry Dickker v. Port of Olympia

15) NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL INDIVIDUALS NOT ALREADY IDENTIFIED IN (13) AND (14) ABOVE WHO HAVE KNOWLEDGE REGARDING THIS INCIDENT OR THE CLAIMANT'S DAMAGES. PLEASE INCLUDE A BRIEF DESCRIPTION OF EACH PERSON'S KNOWLEDGE.

To be provided

16) DESCRIBE THE CAUSE OF THE INJURY OR DAMAGE. EXPLAIN THE EXTENT OF THE PROPERTY LOSS OR MEDICAL, PHYSICAL OR MENTAL INJURIES. ATTACH DOCUMENTS SUPPORTING YOUR CLAIM, INCLUDING PHOTOGRAPHS, LAW ENFORCEMENT REPORTS, WITNESS STATEMENTS, INVOICES, ESTIMATES AND ANY OTHER AVAILABLE EVIDENCE.

Details to be provided. - Due process, equal protection, ADA, and other civil rights violations

17) NAMES, ADDRESSES AND TELEPHONE NUMBERS OF TREATING MEDICAL PROVIDERS. ATTACH COPIES OF YOUR MEDICAL RECORDS AND BILLS.

N/A

18) LIST IDENTITY AND CONTACT INFORMATION FOR ALL INSURERS TO WHICH THE CLAIMANT IS ELIGIBLE TO MAKE A CLAIM.

N/A

19) I CLAIM MONETARY DAMAGES FROM THURSTON COUNTY DESCRIBED BELOW: Value (Cost)

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>Civil Rights</u>	\$ <u>50,000,000</u>
I hereby make claim against Thurston County for the damages stated in the amount of:	\$ <u>50,000,000</u>
	(Total)

THIS CLAIM FORM MUST BE SIGNED EITHER BY: THE CLAIMANT; BY THE ATTORNEY IN FACT FOR THE CLAIMANT PURSUANT TO A WRITTEN POWER OF ATTORNEY; BY AN ATTORNEY ADMITTED TO PRACTICE IN WASHINGTON STATE ON THE CLAIMANT'S BEHALF; OR BY A COURT- APPROVED GUARDIAN OR GUARDIAN AD LITEM ON BEHALF OF THE CLAIMANT.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

20) CLAIMANT SIGNATURE: [Signature] DATE: 12/19/14 PLACE: Olympia, WA
(mm/dd/yyyy) City/State

21) IDENTITY OF SIGNATURE ABOVE AND/OR RELATIONSHIP TO CLAIMANT: _____

ATTACH ADDITIONAL SHEETS AS NECESSARY IF THERE IS NOT ENOUGH ROOM FOR ANSWERS

TORT CLAIM FORM ¹
TO: PORT OF OLYMPIA, et al

1. Claimant's name: Dierker Jerry Lee 2/6/50
Last name First Middle Date of birth (mm/dd/yyyy)

2. (NA)

3. Current residential address: 2826 Copper Point Road NW, Olympia, Washington, 98502

4. Mailing address (if different): NA

5. Residential address at the time of the incident: same address back to July 2012, then 1720 Bigelow Ave. NE, Olympia, WA 98506 back through 1999

6. Claimant's daytime telephone number: 360-866-5287 NA
Home Business or Cell

7. Claimant's e-mail address: NA

8. Date of the incident: repeatedly and continuously since at least 1999

9. If the incident occurred over a period of time, date of first and last occurrences:
from: repeatedly and continuously since at least 1999;
to: some future time long **after** the Port, et al, has finally ceased their many complained of related improper, illegal and/or unconstitutional actions and/or omissions to properly act underlying this claim as complained of in this matter, and **after** Mr. Dierker can reasonably be found to have finally all of discovered the harm the Port, et al, has caused to Mr. Dierker resulting from the Port's, et al, many complained of related improper, illegal and/or unconstitutional actions and/or omissions to properly act in this matter underlying this claim of the Port, others these Port and their known and unknown named agents, employees, organizations, persons, or others acting in concert, collusion, and/or conspiracy with the Port, et al, in these matters pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics; see also answers to #10 and #13.

10. Locations of the complained of incidents:

While the locations for the Port's, et al, fraudulently concealed "secret" actions taken in

¹ made from Washington State's STANDARD TORT CLAIM FORM, General Liability Claim Form #SF 210 pursuant to Chapter 4.92 RCW for filing a tort claim against the state of Washington, where it cannot be submitted electronically (via e-mail or fax), and where some of the information requested on this form (that is required by RCW 4.92.100 may be subject to public disclosure.

these matters underlying this claim on behalf of the Port or others are reasonably unknown to the claimant, there are many known incidents that were done openly in the matters underlying this claim were done mostly in government offices, buildings, court rooms, and elsewhere in Olympia, Thurston County, Washington, or in offices of the Port's governmental attorneys of the Goodstein Law Group in Tacoma, Washington, and/or were done in other cities and counties of this state, other states of the United States, and/or were done in other countries of the Earth, et seq., which were all done on behalf of the complained of known and "secret" improper actions or omissions of the Port of Olympia, et al, here part of which were done for the improper purposes of "cover-up" of the extent and improper nature of the Port's actions and omissions, by the Port's attorneys' subversion and suborning of unconstitutional, unlawful and/or unauthorized actions of numerous judicial personnel of Washington State's legal system to deny Mr. Dierker all due process and equal protection of the law, often through the use of the many improper use of "sham" and improper due process proceedings, the Port used to "legitimize" the Port's many complained of related improper actions and/or omissions to properly act of the Port's and other political subdivisions of the State of Washington and/or other involved public and private entities, and their known and unknown named agents, employees, organizations, persons, or others acting in concert, collusion, and/or conspiracy with them in the matters underlying this claim, much of which has been detailed in the over 15 years of pleadings Mr. Dierker has filed and served upon the Port, et al, and others concerning the matters underlying this claim, that the Port already has and which would contain such locations.

11. If the incident occurred on a street or highway: NA

12. Port agency or department alleged responsible for damage/injury in this claim:

The Port of Olympia, Thurston County, Washington, municipal corporation of Thurston County, Washington, and/or a political subdivision of Thurston County, Washington, and/or the State of Washington, et seq., which was made such by the 1922(?) passing of a Petition by vote of the People of Thurston County, Washington, and by the filing with the Secretary of State such papers necessary for the making such a municipal corporation pursuant to law and a constitutionally authorized provision of law, et seq.; and see answers to #13

13. Names addresses and telephone numbers of all persons involved in or witness to this incident:

I am unable to provide most of such data about "all persons" who would be too numerous to name here since I do not know such information, due to the Port's numerous incidents of illegal and fraudulent concealment of relevant discoverable materials, the Port's failures to produce records under the APA, SEPA the OPRA, and the PRA, and the rules of discovery by the Port's withholding of Port public records, the Port's falsifications of the Port's Official Public Records, the Port's violations of due process rights and failure to produce a complete record of the Port's "sham" SEPA Appeals I filed on parts of the Port's a single set of development plans for this area

relevant to this matter, and, thereby, only the Port and/or it's attorneys have such knowledge or documents showing such data and since such knowledge or documents showing such data was not disclose to me, it will have to be "disclosed" by the Port to me **before** I can give it to the Port for this Tort Claim, a further Port violation of such "Sunshine Laws" related to this matter.

However, I name a few persons which the Port and/or it's attorneys already have knowledge or documents showing the requested identifying data, et al., for this Tort Claim such data Ed Galligan, Port of Olympia Executive Director, the Port's previous and current governmental attorneys for the last 15 years; Mr. Arthur West; Thomas Bjorgen, members of the Army Corps of Engineers, and other federal, state and local courts, judges, judicial staff, and my related questions, pleadings, and/or testimony given during from 20 to 30 different legal venues about the Port's "unconcealed" development plans for these sites and other areas of Thurston County and the Puget Sound region administrative due process agencies and agencies with jurisdiction and/or approval of the concealed "piecemealed" parts of the Port's development project plans the Port and/or it's attorneys already have knowledge and documents. (see attached; see also the over 15 years of documents, correspondences, pleadings, et al, that Mr. Dierker has filed and served upon the Port and/or it's various attorneys of record, et al, during the proceedings on these matters underlying this claim; see the over 15 years of documents, correspondences, pleadings, et al, that the Port and/or it's various attorneys of record, et al, has produced, filed and/or served upon Mr. Dierker during the proceedings on these matters underlying this claim; and see the over 15 years of relevant documents, correspondences, pleadings, et al, much of which the Port has "fraudulently concealed" in this matter as a "cover-up" of their actions, et al., that was produced by the Port and/or which the Port holds and/or already knows of, produced by other persons, organizations, and/or agencies with approval or jurisdiction over the Port's actions or omissions the matters underlying this claim over at least the last 15 years that Mr. Dierker has questioned the Port, et al, and others concerning the matters underlying this claim related to the Port's fraudulently concealed plans to make this small Port into a GIANT "multi modal" truck/rail/air/marine deep water container Port with a GIANT 2 square mile Port freight transfer, storage and a "new Port city" the size of Alameda, California in Maytown, Washington, a very rural and poorest area of Thurston County, Washington, (that now has a 10 story tall casino/resort hotel almost no one in the area goes to that costs \$500.00 per night single occupancy for the cheapest room), and all of which the Port had "secretly" planned with others would be constructed along a 20 mile long section of the I-5 Interstate Highway Corridor in Thurston County, Washington from Olympia through the Port's Olympia Airport expansion and the recent "New Market" surrounding developments in Tumwater, Washington, down South to the GIANT 2 square mile Port air, water, rail and truck freight and container transfer and storage project with its surrounding "new Port city" the size of Alameda, California, which would effectively complete a Giant 140 mile long "strip city" along I-5 from above Everett South to almost Centralia by these Port projects, as part of the Port's, et al., actions which the Port' et al, acted to "cover-up" and fraudulently conceal a part of the overall their "secret" development plans for giant urban developments this large mostly rural area of Thurston County, by the Port's plans and project which were done to develop numerous environmentally

sensitive sites like the Port's Marine Terminal area with the Cascade Pole Industrial Hazardous Waste Site and other hazardous waste sites, and the recent "New Market" surrounding developments in and around the Port's Marine Terminal in Olympia Washington located on a man-made peninsula in Budd Inlet of Puget Sound of the Pacific Ocean, impacting the fresh waters, forests, rivers, marine waters, people, wildlife, endangered species, environmentally sensitive areas, and impacting numerous governmental, public and private interests in such things, as I have previously noted and which the Port and/or it's attorneys already have knowledge and documents about including the information that the Port has illegally withheld from me and others which would contain such names, etc., and the Port and/or it's attorneys already have knowledge and documents the copies of 15 years of my related questions, pleadings, and testimony in from 20 to 30 different legal venues about the Port's "unconcealed" development plans for these sites and other areas of Thurston County and the Puget Sound region; and see also answers to #9, #10 and #12).

14. Names addresses and telephone numbers of all governmental employees having knowledge about this incident:

See answers to #9, #10, #12, and #13, supra, and the documents in the possession of the Port and/or it's attorneys that would contain such information.

15. Names addresses and telephone numbers of all individuals not already identified in #13 and #14 above that have or may have knowledge regarding the liability issues involved in this incident, or knowledge of Claimant's resulting damages, with a brief description as to the nature and extent of each person's knowledge:

See answers to #9, #10, #12, #13 and #14, supra, and the documents already in the possession of the Port and/or it's attorneys that would contain such information.

16. Describe the cause of the injury or damages, explaining the extent of property loss or medical, physical or mental injuries.

Descriptions of the causes of the many injuries, damages and/or harm to or suffered by Mr. Dierker leading from the Port's complained actions or omissions to properly and legally act in the matters complained of here that underlie this claim, are generally contained within the documents already in the possession of the Port and/or it's attorneys would contain most of such requested information, especially those Mr. Dierker gave the Port's attorneys recently for purposes of settling this claim related to the above noted case, et seq.: and see also the answers to #9, #10, #12, #13, #14, and #15, supra, and the knowledge and documents already in the possession of the Port and/or it's attorneys would contain much of such requested information for this Tort Claim, especially since much of the Port's knowledge and documents were withheld by the Port and its attorneys from Mr. Dierker, the Court, agencies, and other persons or organizations over the last 15 years.

Further, as noted herein, though the nature and extent of the damages, property loss or medical, physical or mental injuries, et al, to the severely disabled U.S. Air Force Veteran Mr. Dierker's interests and those of the public's interest he was attempting to protect during his

interactions with the Port, et al, during these 15 years, which would reasonably be leading from 15 years of the repeated and continuous complained actions or omissions to properly and legally act of the Port, et al, and since as noted "facts" of these matters underlying this claim complained of here have yet to be disclosed by the Port for any proper or reasonable determination to be made by Mr. Dierker.

17. Has this incident been reported to law enforcement, safety or security personnel? If so, when and to whom? Please attach a copy of the report or contact information.

As previously noted to the Port and/or its attorneys, see answers to #9, #10, #12, #13, #14, and #15, supra, and the documents already in the possession of the Port and/or it's attorneys that would contain such most of such information, though Mr. Dierker has filed one Tort Claim with Thurston County, and Mr. Dierker will be filing other Tort Claims, etc., about these claims leading from the Port's, et al., actions and/or omissions complained of in this claim, et seq., against the Port, et al, with the Port's governmental attorneys, with Washington State, and/or others involved in this claim who acted improperly and/or failed to properly act on behalf of the Port, et al, during the complained of actions underlying this claim, and Mr. Dierker has begun and will continue to file other claims, complaints and/or requests for investigation of the Port's, et al., actions and/or omissions complained of in this claim, et seq., based upon documents Mr. Dierker has obtained showing the names of some of the persons and/or organizations that were the Port's known and unknown named agents, employees, organizations, persons, or others acting in concert, collusion, and/or conspiracy with the Port, et al, in these matters pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics* (supra), and these requested names and organizations that all of which the Port's and its attorneys already known to be involved in this claim.

Besides the attached Tort Claim filed with Thurston County concerning damages to Mr. Dierker leading from the improper actions of and violations of judicial discretion, et al, et seq., of the staff, judges and/or others acting for and/or with the Superior Court during their 5 years of judicial proceedings held on just one of the cases related to this claim, Mr. Dierker has also 1) made a telephone Governmental Waste and Fraud HotLine request to the Washington State Auditor for an investigation into the waste and fraudulent unconstitutional and unlawful uses of public funds and resources used to "cover-up" the nature and extent of the unconstitutional and unlawful actions and omissions of the Port, et al, of all governmental agents, officials, and/or organizations of the State of Washington, et al, concerning the matters underlying this claim contained in the Court pleadings of the Port, Weyerhaeuser, Arthur West, and Mr. Dierker which the Port or it's attorneys already have; and 2) in August, 2014, Mr. Dierker made a telephone to the U.S. Dept. of Justice's Civil Right Divisions Hotline to make a similar complaint and request for investigation on these matters to and which the U.S. Dept. of Justice's Office of Justice Programs has responded to me in writing, but I have not yet written back.

18. Names, addresses and telephone numbers of treating medical providers. Attach copies of all medical reports and billings.

Though, as already noted herein, the Port, its attorneys, and others generally know of some of this data, and further such data will be provided upon requests, once there has been a complete determination as to just what "harm" to the severely disabled Mr. Dierker's health has occurred during at least the past 15 years which was caused or exacerbated by the Port's actions complained of in this matter, and what "harm or damage" to Mr. Dierker's past, current and future health that would reasonably be leading from actions or omissions of the Port, et al, complained of in this matter, and since much of such data are yet to be determined in the future on Mr. Dierker's medical problems caused by and/or leading from this claim against the Port.

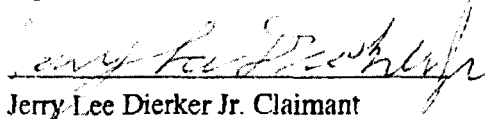
19. Please attach documents which support the allegations of the claim. (See attached).

20. I claim damages from the Port of Olympia, a political subdivision and municipal corporation of Thurston County and State of Washington in the sum of \$ 500,000,000.00.

This Claim form must be signed by the Claimant, a person holding a written power of attorney from the Claimant, by the attorney in fact for the Claimant, by an attorney admitted to practice in Washington State on the Claimant's behalf, or by a court-approved guardian or guardian ad litem on behalf of the Claimant.

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

Signature of Claimant



Jerry Lee Dierker Jr. Claimant

Date and place (residential address, city and county)

Signed on Dec. 23, 2014

2826 Copper Point Road NW,
Olympia, Washington, 98502

Or

Signature of Representative

Date and place (residential address, city and county)

—

Print Name of Representative

Bar Number (if applicable)

DECLARATION OF SERVICE

I, Deanna L. Gonzalez, declare as follows:

I am a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Phillips Burgess PLLC, whose address is 724 Columbia Street NW, Suite 140, Olympia, Washington 98501.

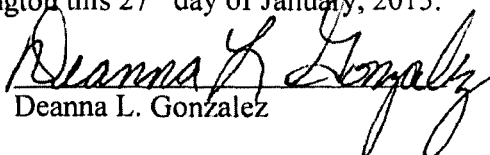
On January 27, 2015, I sent out for service upon the below-listed parties at the addresses and in the manners described below, the following document appended hereto:

- Reply to Jerry Dierker's Answer to Notice of Voluntary Withdrawal of Petition and Motion to Dismiss Review

Arthur West 120 State Avenue NE, #1497 Olympia, Washington 98501	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input type="checkbox"/>	Electronically via email:
	<input type="checkbox"/>	Facsimile
Jerry L. Dierker, Jr. 2826 Cooper Point Road NW Olympia, Washington 98502	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input type="checkbox"/>	Electronically via email:
	<input type="checkbox"/>	Facsimile
Kimberly A. Hughes Senior Legal Counsel Weyerhaeuser Post Office Box 9777 Federal Way, WA 98063	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input checked="" type="checkbox"/>	Electronically via email: <u><i>kim.hughes@weyerhaeuser.com</i></u>
	<input type="checkbox"/>	Facsimile

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

DATED at Olympia, Washington this 27th day of January, 2015.


 Deanna L. Gonzalez

OFFICE RECEPTIONIST, CLERK

To: Deanna Gonzalez
Subject: RE: 90973-3 / Port of Olympia v Arthur West, et al

Received 1-27-15

From: Deanna Gonzalez [mailto:dgonzalez@phillipsburgesslaw.com]
Sent: Tuesday, January 27, 2015 4:53 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Hughes, Kimberly; Heather Burgess; Kelly Wood
Subject: 90973-3 / Port of Olympia v Arthur West, et al

Greetings,

On behalf of Heather Burgess and Kelly Wood, attorneys for Petitioner, Port of Olympia, attached please find our Reply to Jerry Dierker's Answer to Notice of Voluntary Withdrawal of Petition and Motion to Dismiss Review in the above-entitled matter.

Thank you,
Deanna

Deanna Gonzalez

Legal Assistant | Phillips Burgess PLLC

Olympia: 360-742-3500 | 724 Columbia St. NW Suite 140 | Olympia WA 98501

Tacoma: 253-292-6640 | 505 Broadway St. Suite 408 | Tacoma WA 98402

www.phillipsburgesslaw.com

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