Supreme Court No. 91969-1
Court of Appeals Cause No. 71297-7-I

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Appellant,

v.

ASBESTOS CORPORATION LIMITED, et al.,

Respondents.

RESPONDENTS ASBESTOS CORPORATION LIMITED, INGERSOLL RAND COMPANY, AND ASTENJOHNSON INC.'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Respondents Asbestos Corporation Limited (ACL), AstenJohnson Inc. (AstenJohnson), and Ingersoll Rand Company (Ingersoll Rand) (collectively "Respondents") jointly submit this brief in opposition to Appellant Judy R. Deggs's Petition for Review.

II. COURT OF APPEALS DECISION

A copy of the decision affirming summary judgment for Respondents, dated June 22, 2015, is included in the Appendix.

III. ISSUE ON REVIEW

Respondents do not raise any issues for review. The issue raised by Petitioner is whether the Court of Appeals correctly applied this Court's precedent in *Grant v. Fisher Flouring Mills Co.*, 181 Wn. 576, 44 P.2d 193 (1935); *Calhoun v. Washington Veneer Co.*, 170 Wn. 152, 159-60, 15 P.2d 943 (1932); and *Johnson v. Ottomeier*, 45 Wn.2d 419, 422-23, 275 P.2d 723 (1954) and held that the trial court properly granted summary judgment for Respondents on Petitioner's wrongful death claims because there was no valid cause of action against Respondents at the time of Decedent's death.

IV. STATEMENT OF THE CASE

Respondents incorporate by reference the statement of the facts in the Courts of Appeals decision. Respondents respond to two points made

by Petitioner. First, the latency periods for asbestos-related diseases are immaterial to this appeal. The discovery rule is not at issue in this case, as it is undisputed that Decedent, his spouse, and Petitioner, who is his daughter and the personal representative of his estate, knew or should have known they had claims against Respondents[1] when Decedent filed his personal injury action in 1999 (which Decedent's spouse subsequently joined). While Petitioner could have brought claims against Respondents in her parents' 1999 Lawsuit under *Ueland v. Reynolds Metals Co.*, 103 Wn.2d 131, 140-141, 691 P.2d 190 (1984), she elected not to do so.[2]

Second, Petitioner has presented no evidence in the record that "[w]ith respect to [personal injury] cases, settlement agreements often do not release the claims such tort claimants' estates may have for statutory wrongful death." Pet. at 2. But in any event, the relevant point is that plaintiffs in personal injury actions can release their estates' claims under the wrongful death statute.[3] Thus, contrary to Petitioner's suggestions,

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[1] Respondent ACL was also a defendant in the 1999 Lawsuit.

[2] Petitioner's emphasis on the fact that the personal representative is the named plaintiff in a wrongful death is also misplaced. While the personal representative is the person who is the named plaintiff and brings the wrongful death action, the action itself is for the benefit of the decedent's family members, who recover the damages from the action. RCW 4.20.020; *see, e.g., Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 377-78, 166 P.3d 662 (2007). The wrongful death beneficiaries are the same family members who could have recovered the same damages in the personal injury action.

[3] Washington law recognizes that if the decedent executes an effective release in his or her personal injury action, the release bars any subsequent wrongful death action by the personal representative and the statutory beneficiaries based on the same injuries. *Grant*

actions (or inactions) taken by personal injury plaintiffs may restrict or eliminate their estates' rights to maintain a statutory wrongful death action for the benefit of their family members, even though a wrongful death action could not be brought until after their death. The same result should occur when instead of releasing certain defendants, the inaction of personal injury plaintiffs like Decedent (as well as his spouse and Petitioner) leads to the statute of limitations to run on any personal injury claims they may have had before the injured parties' death.

Finally, Respondents note that prior to the Court of Appeals' decision, this Court previously denied Petitioner's Motion to Transfer under RAP 4.4. *See* Appendix. Thus, this Court has already passed once on the opportunity to review this appeal.

V. ARGUMENT

For over eighty years, this Court has held that there is no viable wrongful death action if the injured party had no valid and existing cause of action based on the same injuries and wrongful conduct at the time of death. *Grant v. Fisher Flouring Mills Co.*, 181 Wn. 576, 44 P.2d 193 (1935); *Johnson v. Ottomeier*, 45 Wn.2d 419, 422-23, 275 P.2d 723 (1954); *Calhoun v. Washington Veneer Co.*, 170 Wn. 152, 159-60, 15 P.2d 943 (1932). This Court has consistently recognized that an action under

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v. Fisher Flouring Mills Co., 181 Wn. 576, 580-81, 44 P.2d 193 (1935) (citing *Brodie v. Washington Water Power Co.*, 92 Wn. 574, 159 P. 791 (1916)).

the wrongful death statute is "dependent upon the right the deceased would have to recover for such injuries up to the instant of his death." *Johnson*, 45 Wn.2d at 422-23; *Grant* 181 Wn. at 581; *Calhoun*, 170 Wn. at 159-60; *see Ryan v. Poole*, 182 Wn. 532, 536, 47 P.2d 981 (1935) ("If the deceased had no cause of action, none accrues to his heirs or personal representatives."). This principle applies to "situations in which, after receiving the injuries which later resulted in death, the decedent pursued a course of conduct which makes it *inequitable* to recognize a cause of action for wrongful death," such as "where the statute of limitations had run prior to decedent's death." *Johnson*, 45 Wn.2d at 422-23 (emphasis added). As a result, while acknowledging that wrongful death actions generally accrue at the time of death, this Court has applied a "well-recognized limitation" that "there must be a subsisting cause of action in the deceased" at the time of death and that "the action for wrongful death is extinguished by an effective release executed by the deceased in his lifetime, by a judgment in his favor retendered during his lifetime, [or] *by the failure of the deceased to bring an action for injuries within the period of limitation*." *Grant*, 181 Wn. at 581 (emphasis added) (citations omitted).

In this case, the Court of Appeals properly applied this long-standing precedent and affirmed the trial court's summary judgment for

Respondents because Decedent (as well as his spouse and Petitioner) had allowed the statute of limitations to expire on any personal injury claims against Respondents and thus had no valid cause of action at the time of death. Petitioner cannot identify a single Washington appellate decision that conflicts with the rule set forth in *Grant*, *Calhoun*, and *Johnson.* The Washington Legislature has known about this rule of law since at least 1932, yet has declined to change it. "This court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision." *City of Federal Way v. Koenig,* 167 Wn.2d 341, 348, 217 P.3d 1172 (2009); *Riehl v. Foodmaker, Inc.,* 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *Friends of Snoqualmie Valley v. King Cnty. Boundary Review Ed.,* 118 Wn.2d 488, 496, 825 P.2d 300 (1992)). Under the doctrine of *stare decisis*, Washington appellate courts "do not lightly set aside precedent, and the burden is on the party seeking to overrule a decision to show that it is both incorrect and harmful." *State v. Kier,* 164 Wn.2d 798, 804, 194 P.3d 212 (2008) (citing *State v. Devin*, 158 Wn.2d 157, 168, 142 P.3d 599 (2006)). Petitioner has failed to meet her burden here. Review by this Court is purely discretionary under RAP 13.4. Because the

Court of Appeals properly applied the rule of law that has existed in this state for nearly a century, this Court should deny review.

A. There Is No Conflict Among Washington Appellate Decisions.

1. This Court Already Decided That When the Statute of Limitations on a Decedent's Personal Injury Claims Has Expired Before Death, There Is No Viable Wrongful Death Action.

Petitioner premises her petition upon the faulty premise that there is a conflict among Washington appellate authorities where none exists. Under well-settled Washington law, when decedents have no valid cause of action at the time of death – such as when they have released their claims, obtained a judgment, or allowed the statute of limitations to expire during their lifetime – this similarly bars a personal representative from asserting an action under the wrongful death statute. *Calhoun v. Washington Veneer Co.*, 170 Wn. 152, 159-60, 15 P.2d 943 (1932); *accord Johnson v. Ottomeier*, 45 Wn.2d 419, 422-23, 275 P.2d 723 (1954); *Grant v. Fisher Flouring Mills Co.*, 181 Wn. 576, 44 P.2d 193 (1935). As the Court of Appeals properly noted, Washington's wrongful death statute, formerly codified as Rem. Comp. Stat. § 183 and now codified as RCW 4.20.010 and RCW 4.20.020, has not changed in any material way since its enactment in 1917. *Compare* 1917 Sess. Laws ch. 123, §§ 1-4 *and* Rem. Comp. Stat. § 183 *with* RCW 4.20.010 (adding gender-neutral language and a comma) *and* RCW 4.20.020 (adding adult

brothers, stepchildren, and domestic partners as possible statutory beneficiaries). "The weight of authority in other jurisdictions, unsurprisingly, reaches the same result."[4]

This Court previously decided the exact issue raised by Petitioner in *Calhoun*, which remains binding precedent. In *Calhoun*, the decedent was allegedly injured by exposure to a toxic substance while working at the defendant's factory. *Id.* at 153-57. The decedent, however, failed to bring a personal injury action until after the three-year statute of limitations triggered by his last exposure had expired. *Id.* The decedent passed away shortly after filing the personal injury action, and his spouse, as the estate's personal representative, filed an amended complaint to add a claim under the wrongful death statute based on the same exposure as the decedent's personal injury action. *Id.* Even though the personal representative's claims for wrongful death, "of course, had not accrued at the time the original complaint was filed," this Court held that the applicable three-year statute of limitations barred not only the decedent's

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[4] *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 352 (Tex. 1992) (surveying other states' law and concluding that the majority rule is that "if a decedent's action would be barred by limitations, then so would a wrongful death action"); *see, e.g., Flynn v. New York*, 283 U.S. 53, 56 (1931) (applying same rule to federal statute); *Michigan Central R.R. Co. v. Vreeland*, 227 U.S. 59, 70 (1913) ("[I]t has been generally held that [a wrongful death] action is a right dependent upon the existence of a right in the decedent immediately before his death to have maintained an action for his wrongful injury.").

untimely personal injury action but also the personal representative's claim under the wrongful death statute. *Id.*

This Court subsequently re-affirmed *Calhoun* in *Grant v. Fisher Flouring Mills Co.*, 181 Wn. 576, 44 P.2d 193 (1935). In *Grant*, the decedent had been injured when exposed to hazardous fumes while working at defendant's facility. *Id.* at 576-77. But unlike *Calhoun* (or Decedent in this case), the decedent brought his personal injury action before the three-year statute of limitations had expired. *Id.* at 577, 582. After the decedent passed away but while the personal injury action was still pending, his personal representative was substituted as the plaintiff and amended the complaint to add a wrongful death claim against the same defendants. *Id.* at 577. The issue on appeal was whether the statute of limitations barred the wrongful death claim even though the decedent had a viable personal injury claim at the time of his death. *Id.* at 577-78.

While acknowledging that a wrongful death cause of action generally accrues at the time of death, this Court held that the right to a wrongful death action is still subject to a "well-recognized limitation" that the decedent must have a cause of action at the time of death:

> The action for wrongful death, under [now RCW 4.20.010 -.020], is a distinct and separate action from the survival action, under section 194. In accord with the great weight of authority, this court has held that the action accrues at the time of death, and that the statute of

> limitations then begins to run. *The rule, however, is subject to a well-recognized limitation; namely, at the time of death there must be a subsisting cause of action in the deceased.* Tiffany, Death by Wrongful Act (2d Ed.) § 124. Under this limitation, it has been held that the action for wrongful death is extinguished by an effective release executed by the deceased in his lifetime (*Brodie v. Washington Water Power Co.*, [92 Wn. 574, 159 P. 791 (1916)]; *Mellon v. Goodyear*, 277 U.S. 335, 48 S.Ct. 541, 72 L.Ed. 906 [(1928)]); by a judgment in his favor rendered during his lifetime (*Littlewood v. Mayor, etc., of N. Y.*, 89 N.Y. 24, 42 Am. Rep. 271 [(1882)]; *Hecht v. Ohio & Mississippi Ry. Co.*, 132 Ind. 507, 32 N.E. 302 [(1892)]); *by the failure of the deceased to bring an action for injuries within the period of limitation* (*Flynn v. New York, N.H. & H. R. Co.*, 283 U.S. 53, 51 S.Ct. 357, 75 L.Ed. 837 [(1931)]). In this latter class falls the case of *Calhoun v. Washington Veneer Co.*, [170 Wn. 152, 159-60, 15 P.2d 943 (1932)].

Grant, 181 Wn. at 580-81 (emphasis added) (additional citations omitted). Applying *Calhoun*, the Court concluded that the statute of limitations did not bar the wrongful death claim because the decedent had timely filed his personal injury action and that action was still pending at the time of his death:

> The instant case presents an entirely different problem [than *Calhoun*]. Here, 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 cause of action accrued, he left a valid subsisting cause of action. Under these circumstances, we think there is no question but that the action for wrongful death can be maintained.

Id. at 582 (citations omitted). Thus, this Court expressly applied the *Calhoun* rule to the *Grant* facts to reach its holding.

This Court subsequently re-affirmed *Calhoun* and *Grant* in *Johnson v. Ottomeier*, 45 Wn.2d 419, 422-23, 275 P.2d 723 (1954). In that case, this Court held that the exclusionary rule barring spouses from suing each other for a tort committed during the marriage did not apply to a wrongful death action brought by a wife's personal representative on behalf of the children against the estate of her husband who had murdered her and then committed suicide. *Id.* at 420-21. In doing so, this Court discussed other recognized circumstances in which a wrongful death claim could not be maintained:

> The second category of cases in which this general rule of exclusion has been applied involves situations in which, after receiving the injuries which later resulted in death, the decedent pursued a course of conduct which makes it *inequitable* to recognize a cause of action for wrongful death. Among such cases are *Brodie v. Washington Water Power Co.*, 92 Wn. 574, 159 P. 791, where decedent gave an effective release and satisfaction; and *Calhoun v. Washington v. Veneer Co.*, 170 Wn. 152, 15 P.2d 943, as interpreted in *Grant v. Fisher Flouring Mills Co.*, 181 Wn. 576, 44 P.2d 193, where the statute of limitations had run prior to decedent's death.

Id. at 422-23 (emphasis added).[5] This Court held that there was no statutory language or principle of law or equity that "warrants the

[5] This Court in *Johnson* further explained that there are circumstances in which the decedent's conduct *at the time* of the alleged tort preclude a wrongful death cause of action from accruing even though the decedent's injuries later resulted in death. *Johnson*, 45 Wn.2d at 422-23 (citing, *inter alia*, *Hart v. Geysel*, 159 Wn. 632, 294 P. 570 (1930) (decedent consented to prize fight); *Ryan v. Poole*, 182 Wn. 532, 536, 47 P.2d 981 (1935) (decedent injured while engaged in unlawful and criminal acts)). These cases further establish that the wrongful death action is derivative of the personal injury action in the

recognition of the wife's personal disability to sue her husband as a defense against her personal representative's action for wrongful death." *Id* at 423-24. Thus, the *Johnson* Court re-affirmed that *Calhoun* and *Grant* remained good law.

This instant case presents nothing more than a straightforward application of *Calhoun*, *Grant*, and *Johnson*.[6] Like *Calhoun* but unlike *Grant*, the Decedent (as well as Petitioner) here failed to bring a personal injury action against Respondents within the three-year statute of limitations.[7] Because the statute of limitations expired during Decedent's lifetime, there was "no subsisting cause of action in the deceased" at time

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sense that they are based on the same alleged injury and wrongful action and that the decedent's conduct may extinguish or diminish the statutory beneficiaries' right to recover. *See, e.g., Upchurch v. Hubbard*, 29 Wn.2d 559, 564, 188 P.2d 82 (1947) ("A limitation upon such independently created right, recognized by this court and elsewhere generally, is that the wrongful act or default must be of such character as would have entitled the injured person to maintain an action and recover damages, had not death ensued; stated conversely, if the deceased never had a cause of action, no right of action accrues under the wrongful death statute."); *Ginochio v. Hesston Corp.*, 46 Wn. App. 843, 845, 846, 733 P.2d 551, 553 (1987) (citing Washington State Senate Select Comm. on Tort & Prod. Liab. Reform, *Final Report 1981,* at 48, with respect to diminishment of derivative wrongful death claim based on decedent's contributory fault).

[6] As *Grant* and *Johnson* demonstrate, Washington law recognizes several circumstances in which conduct by a decedent affects potential wrongful death claims brought on behalf of the heirs. Washington law recognizes that if the decedent executes a release in his or her personal injury action, the release bars any subsequent wrongful death action by the personal representative and the statutory beneficiaries based on the same injuries. *Grant*, 181 Wn. at 580-81 (citing *Brodie v. Washington Water Power Co.*, 92 Wn. 574, 159 P. 791 (1916)). Similarly, a verdict in a Decedent's personal injury action subsequently bars a wrongful death action by the personal representative and the statutory beneficiaries for the same injuries. *Id.* There is no logical reason to treat an expired statute of limitations any differently.

[7] Again, Petitioner could have brought her own independent claim either in her parents' 1999 Lawsuit or, if that was not feasible, in her own action. *Ueland v. Reynolds Metals Co.*, 103 Wn.2d 131, 140-141, 691 P.2d 190 (1984).

of his death. *Grant*, 181 Wn. at 580-81. As a result, Petitioner has no viable cause of action under the wrongful death statute. *Id.*; *Calhoun*, 170 Wn. at 159-60.

2. Appellant Has Not Cited Any Washington Appellate Decisions That Actually Conflict With *Calhoun*, *Grant*, and *Johnson*.

Petitioner cannot identify a single Washington appellate decision that conflicts with the rule set forth in *Grant*, *Calhoun*, and *Johnson*. Petitioner cites several cases stating that a wrongful death action is a distinct cause of action and that a personal representative cannot bring a wrongful death action until it accrues upon the decedent's death, but so did *Grant* and *Calhoun*.[8] Yet, as this Court further explained in *Grant*, that rule was "subject to a well-recognized limitation" that the deceased must have a viable cause of action at the time of death, *Grant*, 181 Wn. at 580-81, and there are circumstances where "the decedent pursued a course of conduct which makes it *inequitable* to recognize a cause of action for wrongful death," such allowing the statute of limitations to run during his or her lifetime or giving an effective release, *Johnson*, 45 Wn.2d at 422-23. Petitioner cannot cite any Washington appellate decision that actually

[8] *Grant*, 181 Wn. at 580-81 ("The action for wrongful death, under section 183, Rem. Rev. Stat ., is a distinct and separate action from the survival action, under section 194. In accord with the great weight of authority, this court has held that the action accrues at the time of death, and that the statute of limitations then begins to run."); *Calhoun*, 170 Wn. at 159-60 (stating that the personal representative's claims for wrongful death, "of course, had not accrued at the time the original complaint was filed").

conflicts with *Grant*, *Calhoun*, or *Johnson*. Moreover, Petitioner misses the bigger point that the Court of Appeals implicitly recognized: a wrongful death action does not accrue following every death; rather, "a decedent's inaction as to his claims during his lifetime can preempt the accrual of a personal representative's wrongful death cause of action." Decision at 5.

Petitioner cites *Wills v. Kirkpatrick*, 56 Wn. App. 757, 785 P.2d 834 (1990), but *Wills* is nothing more than an application of *Grant* because, like *Grant* but unlike *Calhoun* (or this case), the *Wills* decedent had a viable cause of action for personal injuries at the time of death.[9] In *Wills*, the decedent died from a heart condition three weeks after her doctor had failed to diagnose it during her last medical appointment. *Id.* at 758-59. Like *Grant* but unlike *Calhoun* (or this case), there was no dispute that the decedent had a viable cause of action at the time of her death, given that the applicable statute of limitations was three years yet she had died only a matter of weeks after the doctor's allegedly negligent misdiagnosis. *Id.* at 759. Under the circumstances, the court held the claim was timely because the three-year statute of limitations on the wrongful death action began to run at death. *Id.* at 763. This is no different than *Grant* in which the decedent had a viable cause of action at

[9] Petitioner makes no attempt to explain how *Wills*, a Court of Appeals decision, can create a conflict with the Supreme Court's holdings in *Calhoun* and *Grant*.

death because he had timely filed his pending personal injury action within the three-year statute of limitations. Thus, the "well-recognized limitation" that "at the time of death there must be a subsisting cause of action in the deceased" was satisfied in both *Wills* and *Grant*, but not in *Calhoun*. *Grant*, 181 Wn. at 580-81. Accordingly, there is no conflict.

The Court of Appeals also properly explained why a federal judge's order granting a motion to remand does not apply here. Decision at 13-14 & n.5 (discussing *Barabin v. Asten Johnson, Inc.*, 2014 WL 2938457 (W.D. Wash. June 30, 2014)). As a preliminary matter, the order is not a Washington appellate court decision and has no binding authority. Moreover, the order concerned a completely different issue – fraudulent joinder – with a much stricter legal standard in which remand is presumed unless the defendants meet their heavy burden by showing through "clear and convincing evidence" that there is no "doubt" that the complaint "obviously fails" to state a claim and that remand is required if there is any "possibility that a state court would find that the complaint states a cause of action."[10] Such a strict standard has no bearing on the summary judgment standard at issue here. In fact, the *Barabin* order primarily relies upon the possibility that the statute of limitations may have been tolled under the discovery rule, as recognized by *White v. Johns-Manville Corp.*,

[10] *Barabin*, slip op. at 4.

103 Wn.2d 344, 693 P.2d 687 (1985).[11] The application of the discovery rule, however, is not an issue in this appeal, and there is no evidence in the summary judgment record to support such a claim. Simply put, there is no conflict among Washington appellate decisions.

B. This Appeal Presents No Issues of Significant Public Importance.

Petitioner has not shown how a straightforward application of long-standing Supreme Court precedent presents an issue of significant public importance. Petitioner, her father, and her mother had the opportunity during her father's lifetime to bring an action against Respondents based on the same exposure and same injuries as alleged here. In fact, her parents did exactly that by filing the 1999 Lawsuit against Respondent ACL and other defendants. Washington law recognizes that children may bring their own "independent cause of action" for damages based on injuries to a parent,[12] so Petitioner had the right to bring a claim for damages that she suffered as a result of her

[11] *White* does not conflict with *Calhoun* or *Grant* because the parties stipulated for purposes of the appeal that "the decedent never knew that he was suffering from any adverse effects of exposure to asbestos-containing materials" before his death. *White*, 103 Wn.2d at 345. Thus, this Court expressly declared that "*we are not faced with, nor do we decide, a case in which the deceased is alleged by the defendant to have known the cause of the disease which subsequently caused his death.*" *Id.* at 347 (emphasis added).

[12] *Ueland v. Reynolds Metals Co.*, 103 Wn.2d 131, 140-141, 691 P.2d 190 (1984) ("[W]e hold that a child has an independent cause of action for loss of the love, care, companionship and guidance of a parent tortiously injured by a third party. This separate consortium claim must be joined with the parent's underlying claim unless the child can show why joinder was not feasible."). Thus, the same type of damages sought by Decedent's family members in this case could have been recovered in the 1999 Lawsuit.

father's alleged asbestos-related injuries in the 1999 Lawsuit. But for whatever reason, she chose not to do so. Decedent and Petitioner then slept on their rights for over a decade. Decedent's and Petitioner's inequitable conduct substantially prejudiced Respondents because it deprived Respondents of their ability to depose Decedent or conduct other discovery from him as well as the ability to obtain relevant information from any other witnesses who may have passed away or become sick, or whose memories have faded, over the ensuing decade. This is a run-of-the-mill application of statute of limitations, not a case of great public importance.

Washington has long endorsed statutes of limitations as part of the overall administration of justice. Washington's three-year statute of limitations has existed as the State's firm policy since 1854.[13] Recognizing that statutes of limitations have a long history in English law and are firmly rooted in modern jurisprudence, this Court has concluded that statutes of limitations further Washington public policy because they protect individuals from threatened litigation where their ability to defend is compromised due to the passage of time:

> In Washington, the goals of our limitation statutes are to force claims to be litigated while pertinent evidence is still available and while witnesses retain clear

[13] *See* Laws of 1854, § 4, p. 363; Laws of 1854, § 7, p. 364.

> impressions of the occurrence. *Summerrise v. Stephens*, 75 Wn.2d 808, 811, 454 P.2d 224 (1969). Our policy is one of repose; the goals are to eliminate the fears and burdens of threatened litigation and to protect a defendant against stale claims. *Ruth v. Dight*, 75 Wn.2d 660, 664, 453 P.2d 631 (1969).

Stenberg v. Pacific Power & Light, 104 Wn.2d 710, 713-14, 709 P. 2d 793 (1985). Given that Petitioner waited over a decade and after Decedent's death to bring any claims against Respondents, this case is a perfect example of why Washington public policy favoring enforcement of statutes of limitations is correct.

The application of this Court's precedent creates no injustice or unreasonable result. Once injured parties and their families have notice of potential personal injury claims against certain defendants, the statute of limitations commences, and they have three years to bring their claims. If the injured parties die before the three years expire, or if they file a lawsuit within the three years and have a viable action pending at the time of death, the personal representatives can bring a valid wrongful death action on behalf of the family because the injured parties had a subsisting cause of action when they passed away. No wrongful death action accrues, however, if the decedents (and their family) pursued an inequitable course of conduct during their lifetime, namely, the decedents released their claims, the decedents obtained a verdict, or, as in this case, the decedents

allowed the statute of limitations on their claims against the defendants to expire before their death. Here, Decedent and his wife did utilize their rights to bring claims against defendants during his lifetime – and within the statute of limitations – based on the same injury caused by the same alleged wrongful acts to recover the same available damages. The discovery rule is not implicated. There is nothing unfair or unreasonable about the Court of Appeals' decision holding that under such circumstances, and because Petitioner herself failed to join her parents' original action, there is no valid cause of action for wrongful death. Review is not warranted.

VI. CONCLUSION

This case presents a straightforward application of long-established Washington Supreme Court precedent. Petitioner cannot cite any Washington appellate decisions that actually conflict with this precedent. Accordingly, this Court should deny review.

DATED this 7th day of August, 2015.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I caused a true and correct copy of the foregoing to be served via e-mail on all counsel of record, addressed as follows:

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DATED this 7th day of August, 2015.

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Please find attached Respondents Asbestos Corporation Limited, Ingersoll Rand Company, and AstenJohnson Inc.'s Answer to Appellant's Petition for Review for filing and service in the above-referenced matter. Please let me know if you have any problems with opening the attached. Thank you.

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