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(Court of Appeals No. 32314-5-III)

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THE SUPREME COURT OF THE STATE OF WASHINGTON

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CLINESMITH CATTLE COMPANY, INC., a Washington corporation; CALF CREEK CATTLE COMPANY, INC., a Washington corporation; J.W. HARDER LIVESTOCK, INC., a Washington corporation, and J.J.H. LIVESTOCK, INC., a Washington corporation, partners of HARDER RANCHES, a Washington general partnership; HERBERT and DOROTHY KENT, husband and wife; GLADYS KENT, TRUSTEE OF ALFRED R. KENT FAMILY TRUST; ALFRED J. OCHOA, a married man dealing as his separate property; and BAR U RANCH CO., a Washington corporation,

Petitioners,

vs.

KINCH FARMS, INC., a Washington corporation,

Respondent.

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# ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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EWING ANDERSON, P.S.

By: _____
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ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

TABLE OF CASES

Page

REGULATIONS AND RULES



OTHER AUTHORITIES

## I. INTRODUCTION

From day one, Petitioners have been characterizing this case as one governed by strict liability and not negligence. But this is not the law in Washington. Petitioners lost a negligence case at the trial level because they could not prove Respondents were negligent. The result was upheld on appeal, and this Court should decline further review.

## II. STATEMENT OF THE CASE

### A. Facts Of The Case

This case centers on a fire that occurred on August 10 and 11 of 2009 approximately 20 miles east of Ritzville, Washington. Plaintiffs in this matter sued, alleging Defendant Kinch Farms negligently started and/or allowed a fire to spread from its property to adjacent property. After a nearly two-week trial, an Adams County jury returned a defense verdict.

Kinch Farms is owned and operated by Ron Kinch, Joe Kinch, and A.J. Miller. All three are experienced farmers. CP Vol. IV, p. 65; Vol. V, p. 64, lns. 17-20; CP Vol. IV, p. 18, lns. 1-10. As part of its farming practices, Kinch Farms utilizes controlled burns to manage disease and crop stubble. CP Vol. V, p. 65, lns. 15-17. Ron Kinch, as principal of Kinch Farms, had been conducting controlled burns to manage weed

growth on his farm since 1996. CP Vol. IV, p. 66, lns. 7-14; CP Vol. V, p. 65, lns. 8-11.

In the summer of 2009, Kinch Farms determined it needed to conduct a controlled burn on Circle 6, a crop circle on its property. The first step in conducting a controlled burn in Adams County is to obtain a burn permit from the Department of Ecology ("DOE"). CP Vol. V, p. 121, lns. 5-14. On August 4, 2009, Ron Kinch completed application for, and obtained, a burn permit. CP 136, Exs. 7 and 8. Kinch Farms then waited for the DOE to declare a "burn day" in Adams County.

In the meantime, Kinch Farms prepared Circle 6 for the controlled burn, which involved several tasks. First, Joe Kinch created a fire break around Circle 6 with a tractor and disk. CP Vol. IV, p. 72, lns. 15-24; CP Vol. V, p. 19, lns. 9-20. The purpose of a fire break was to eliminate all combustible material within the fire break so as to minimize the risk of the fire spreading to other areas. CP Vol. V, p. 20, lns. 25; p. 21, lns. 1-8. Next, Kinch Farms posited several pieces of fire suppression equipment on Circle 6, including a tractor and disc and a 1,000 gallon water truck. CP Vol. IV, p. 67, lns. 3-25; p. 68, lns. 1-8; CP Vol. V, p. 19, lns. 21-25; Vol. V, p. 69, lns. 8-16.

The area near Circle 6 also possessed a natural fire barrier to the northeast. In Adams County, the prevailing winds generally come out of the southwest CP Vol. II, p. 68, lns. 8-12. Northeast of Circle 6 is Plaintiff Ochoa's CRP land. CP 136, Exs. 11, 12, and 13. However, between Circle 6 and Ochoa's land is Sutton Road, a gravel road. CP Vol. V, lns. 1-20. During trial, testimony confirmed Sutton Road acted as a fire barrier between Plaintiff Ochoa and Kinch Farms' land. CP Vol. V, p. 125, lns. 19-23.

On August 10, 2009, Kinch Farms contacted the DOE and learned that August 10 was a burn day between 1:00 p.m. to 4:00 p.m. CP Vol. IV, p. 75, lns. 6-9; CP Vol. V, p. 19, lns. 16-20. CP 136, Ex. 9. The permit provided burns were not permitted if winds exceeded 15 mph. CP 136, Ex. 9. A.J., Joe, and Ron believed it was a good day to conduct a controlled burn. CP Vol. IV, pp. 5-12; CP Vol. V, p. 22, lns. 3-9. The wind speeds at the time were below 10 mph. CP Vol. IV, pp. 8-10; CP Vol. V, p. 23, lns. 15-25; p. 24, lns. 1-2; CP Vol. V, p. 68, lns. 22-25. Other witnesses testified they believed it was a good day to conduct a controlled burn. CP Vol. IV, p. 186, lns. 4-7. In addition, it had rained a week before.

In fact, one witness confirmed he still had moisture in his crop on August 10, 2009. CP Vol. V, p. 24, lns. 3-11.

On the morning of August 10, A.J., Joe, and Ron contacted the local fire department, sheriff, and neighbors to notify them they were planning to conduct a controlled burn. CP Vol. IV, p. 75, lns. 1-25, p. 76, lns. 1-20; CP Vol. IV, p. 147, lns. 16-25; CP Vol. V, p. 66, lns. 17-25; CP Vol. V, p. 67, lns. 1-9.

Around 1:00 p.m. on August 10, 2009, Ron A.J., and Joe began a controlled burn on Circle 6. Prior to starting the burn, Joe checked a wind gauge located in his pickup truck and determined the wind speed was less than 10 mph. CP Vol. V, p. 24, lns. 18-24.

The process used for the controlled burn was very methodical. First, the method used to light a fire was controlled via a propane torch with a "long extension" to ensure the flames came out "slowly." CP IV, p. 68, lns. 6-13. Using a propane torch, Joe and Ron Kinch created a "back burn" on the northeast section of Circle 6 approximately 10-15 yards wide. CP Vol. IV, p. 80, lns. 19-20; CP Vol. V, p. 24, lns. 18-24; CP Vol. V, p. 70, lns. 9-17. This provided a safeguard against fire escape. CP Vol. IV, p. 81, lns. 16-19; CP Vol. V, p. 25, lns. 4-15; CP Vol. V, p. 70, lns. 20-24.

Kinch Farms then created a second back burn adjacent to the first back burn. CP Vol. IV, p. 82, lns. 13-15. This built additional fire protection so the fire "can extinguish itself" as Kinch Farms conducted its burn. CP Vol. IV, p. 83, lns. 6-9; CP Vol. V, p. 26, lns. 1-5. The back burn was placed in the northeast section of Circle 6 to prevent the fire from spreading onto Ochoa's property. CP Vol. IV, pp. 6-12 CP Vol. V, p. 25, lns. 1-15. Once the back burns were finished, Kinch Farms began burning downwind in "manageable" sections, forcing the fire into the back burns so the fire extinguished itself. CP Vol. IV, p. 83, lns. 6-9; CP Vol. IV, p. 84, lns. 21-24; CP Vol. V, p. 71, lns. 3-4. In short, Joe and Ron would light one parcel on fire, wait for the parcel to burn out, and then proceed to the next parcel. CP Vol. IV, pp. 86-90.

While Ron and Joe were conducting the controlled burn, A.J. sat in the water truck and kept watch on the fire progression to ensure none of the fire escaped Circle 6. CP Vol. IV, p. 88, lns. 9-19; CP Vol. V, p. 26, lns. 15-20. To quickly communicate with each other, both A.J. and Joe were in radio communication. CP Vol. IV, p. 90, lns. 23-25.

Around 3:30 p.m., Kinch Farms was nearly finished with the controlled burn. CP Vol. IV, p. 90, lns. 6-14. They had begun mop up

operations to ensure all portions of the fire were out. CP Vol. IV, p. 90, lns. 6-14; CP Vol. V, p. 27, lns. 2-14; CP Vol. V, p. 71, lns. 14-25. At that time, A.J. spotted a fire just outside Circle 6 that was still on Kinch Farms' property. CP Vol. IV, lns. 18-20; CP Vol. V, p. 27, lns. 10-12. Ron and Joe immediately responded and began creating a fire line around the escaped fire. CP Vol. IV, p. 91, lns. 1-9; CP Vol. V, p. 27, lns. 13-14. Shortly thereafter, A.J. spotted a second fire, this time to the northeast on Ochoa's CRP land. CP Vol. IV, p. 91, lns. 5-9. A.J. contacted the fire department immediately. CP Vol. IV, p. 92, lns. 3-9. He then rushed over to Ochoa's property and began applying water. CP Vol. IV, p. 93, lns. 7-25. Ron began creating a fire line around the fire on Ochoa's property. CP Vol. V, p. 73, lns. 1-25.

The wind speed at the time the fire jumped from Kinch Farms onto Ochoa's property was contested at trial. A weather station at Ritzville recorded the highest sustained wind on August 10, 2009, at 14 mph, a wind gust at 17 mph, and an average wind speed of 8 mph. CP 136, Ex. 6. Fire Chief Dainty, who was six miles away from Kinch Farms, testified he never thought the winds reached dangerous speeds on August 10, 2009. CP Vol. IV, p. 182, lns. 14-17.

When the fire department (District 7) arrived to Ochoa's property, Kinch Farms had most of the fire under control. CP Vol. IV, p. 152, lns. 18-25. At that time, the fire chief for District 7 was Brian Dainty. CP Vol. IV, p. 146, lns. 12-18. Chief Dainty arrived to the scene and began directing fire suppression efforts on Ochoa and Kinch Farms' land. CP Vol. IV, p. 154, lns. 3-25; CP Vol. V, p. 155, lns. 1-25; CP Vol. 156, lns. 1-25. He brought with him 12 voluntary firefighters and 6 fire trucks. CP 136, Ex. 10. While the fire department was conducting its own fire suppression activities, Kinch Farms continued to fight the fire by creating additional fire lines and pouring water on the burn scene. CP Vol. V, p. 30, lns. 6-10. A.J. testified he activated the sprinkler pivot on Circle 6 to begin putting water on the ground. CP Vol. IV, p. 94, lns. 19-25; p. 95, lns. 5-15.

During the mop-up phase of the fire suppression, one of the firefighters, Mr. Jessup, placed his hand into a ditch and discovered it was still hot. CP Vol. IV, p. 157, lns. 11-25; CP Vol. IV, p. 158, lns. 1-25. Chief Dainty responded immediately by placing more water on the ditch. CP Vol. IV, p. 159, lns. 1-12. The fire department was on the scene for some three hours. *See* CP 136, Ex. 28. During that time, the fire department's water tender was refilled on Kinch Farms' property.

CP Vol. IV, p. 156, lns. 18-21. Chief Dainty testified the fire department never departs from a fire scene without emptying all of its water. CP Vol. IV, p. 167, lns. 22-23.

Around 7:00 p.m., Chief Dainty determined the fire was sufficiently extinguished. CP Vol. IV, p. 165, lns. 13-23. He testified at trial that he left the scene on August 10 feeling the fire was extinguished. CP Vol. IV, p. 166, lns. 12-17. He further testified he did not believe the fire would rekindle. CP Vol. IV, p. 166, lns. 18-19. According to Chief Dainty's report, only two acres of Ochoa's land were burned after the mop-up operations were complete. CP 137, Ex. 28.

As the fire department was leaving, Chief Dainty and A.J. had a conversation as to what to do after the fire department departed the scene. What was said was disputed, CP Vol. IV, p. 167, lns. 2-12, but A.J. came away from the conversation understanding he should pour more water in the ditch between Ochoa's CRP land and Sutton Rd. He believed Chief Dainty also told him to "watch it." CP Vol. II, p. 220, lns. 15-22. Chief Dainty testified at trial he never explicitly asked A.J. to pour more water on the ditch or to watch the site. CP Vol. IV, p. 167, lns. 11-25.

After the fire department left the scene, A.J. and Joe continued to pour water into the ditch between Sutton Road and Ochoa's property for approximately two hours. CP Vol. IV, p. 98, lns. 7-14; CP Vol. V, p. 31, lns. 16-23; CP Vol., V, p. 32, lns. 17-23. A.J. testified he and Joe laid "thousands of gallons" of water in the ditch between Ochoa's property and Sutton Rd. CP Vol. IV, p. 98, lns. 7-14. Joe testified he and A.J. poured 1,500 gallons of water in the ditch. CP Vol. V, p. 32, lns. 5-8. In addition, A.J. turned the Circle 6 sprinkler pivot on full power, dumping approximately a quarter of an inch of water on the ground in a 12-hour period. CP Vol. IV, p. 96, lns. 3-10. Joe and A.J. stayed by the burn a few hours after the fire department left the scene. CP Vol. 99, lns. 10-22.

A.J. and Joe left the scene after 9:00 p.m. on August 10. CP Vol. IV, p. 99, lns. 10-22; CP Vol. V, p. 32, lns. 16-18. However, A.J. continued to watch the burn area from his house throughout the night. CP Vol. IV, lns. 4-11.

On August 11, 2009, at least four individuals, at different times, inspected the burn area. In the morning, *Chief Dainty* returned to the burn area. CP Vol. IV, p. 169, lns. 22-25; p. 170, lns. 1-9. He saw nothing of concern and was satisfied the fire was extinguished. CP Vol. IV, p. 170,

lns. 1-9. Around 8:00 a.m., *Jerry Snyder*, on behalf of Ochoa, inspected the burn area. CP Vol. 134, lns. 16-22. Jerry saw nothing that warranted contacting Kinch Farms or the fire department. CP Vol. II, p. 135, lns. 1-9. A little after, Snyder left the scene, *A.J.* drove by the burn area. CP Vol. IV, p. 101, lns. 4-10. A.J. saw nothing of concern. CP Vol. IV, p. 101, 1-25. Around 10:00 that morning, *Ron Kinch* drove out to the burn area. Ron saw nothing of concern. Around 12:00 p.m., *A.J. again* drove by the burn area and, again, did not see anything of concern. CP Vol. IV, p. 102, lns. 18-25; p. 103, lns. 1-20.

After all these inspections and 15 hours after the fire department left, the winds in the area began to pick up. Joe spotted smoke from his home and immediately contacted A.J. CP Vol. V, p. 33, lns. 5-14. A.J. confirmed there was indeed a fire on Ochoa's property. CP Vol. IV, p. 105, lns. 1-17. The fire department was contacted again. CP Vol. IV, p. 105, lns. 8-10. From this fire, Plaintiffs suffered damage. The fire was eventually extinguished on August 12, 2009.

**B. Jury Reaches Defense Verdict**

The jury returned a defense verdict. In particular, the jury found that Defendant was not negligent. The Court of Appeals affirmed.

## III. ARGUMENT

### A. The Court Should Deny The Petition Because The Decision Of The Court Of Appeals Is Not In Conflict With Any Decision Of The Washington Supreme Court

Under RAP 13.4(b)(1), a Petition for Discretionary Review will only be granted "[i]f the decision of the Court of Appeals is in *conflict with a decision* of the Supreme Court." (*emphasis* added). The Petitioners argue the trial court abused its discretion by allowing evidence concerning (1) Kinch Farms' obtainment of a burn permit, and (2) Adams County Fire Department's involvement in extinguishing the fire. The Petitioners' claim must be rejected for five reasons.

First, a trial court's decision to allow or exclude evidence is discretionary, and reviewed by this Court under an abuse of discretion standard. Diaz v. State, 175 Wn.2d 457, 462, 285 P.3d 873 (2012).

Second, Petitioners' argument makes a fatal assumption: it assumes, without citation to the record, that Kinch Farms argued it had delegated its duty, and otherwise was relieved from its duty to exercise reasonable care, to the Fire Department. However, in their petition, Petitioners did not, and cannot, point to a single instance where the Defendant argued, or the trial court instructed, they could, and had, delegated their duty of care. Instead,

the Petitioners form quotes from transcripts of a five-day trial to insinuate that, from a few sentences and few words here and there, testimony was sufficient to create an impression on the jury that required a non-delegable duty instruction. Four different judges (one trial judge, three appeals judges) have reviewed the trial testimony and found no indication Defendant attempted to "pass the buck" to the Fire Department or argue that the burn permit relieved them of a duty to use reasonable care. The Court of Appeals noted that neither did the trial court instruct nor the Defendant argue that Kinch Farms delegated its duty to exercise reasonable care.

> **The court did not instruct, and Kinch did not attempt to argue, that responsibility for the fire was somehow delegated to the fire department....There was never any claim, by testimony or argument or jury instruction, that the department's presence on the scene itself absolved Kinch of responsibility of the fire. (emphasis added).**

P. 9. Simply put, Petitioners are attempting to lure this Court into accepting discretionary review based on a mischaracterization of the testimony and arguments.

Third, Petitioners try to sidestep the fact that the Fire Department's evidence was relevant by accusing the Court of Appeals that they did not

consider an ER 403 analysis. Petitioners, however, *never argued to the Court of Appeals that the trial court misapplied a 403 analysis.* In fact, there is not a single cite to ER 403 in either their opening brief or reply brief. The reason: Petitioners never asserted the subject testimony/evidence should be excluded per ER 403 at the trial court level. Petitioners waived any ER 403 argument they believe they possess. See RAP 2.5; See State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995) ("As a general rule, appellate courts will not consider issues raised for the first time on appeal.").

The fourth reason Petitioners' request for review should be denied is because they waived any objection because they failed to object. The Court of Appeals correctly when it found Petitioners waived any objection to Defendant's testimony, because they failed to timely object. It is black letter law that an objection must be lodged *during trial* to preserve the issue for appeal. See RAP 2.5; see also ER 103 (all evidence is admissible unless objection is made). Petitioners admit they failed to object during trial concerning any of the quoted testimony. Instead, Petitioners assert all they had to do to preserve their objection was file a motion in limine. Contrary to Petitioners' argument, a motion in limine is not a standing

objection if the trial court's ruling is merely tentative. State v. Kelly, 102 Wn.2d 188, 192-193, 685 P.2d 564 (1984). If the court indicates its ruling is merely tentative, then counsel must object to the challenged evidence as it is presented. See Id; State v. Weber,159 Wn.2d 252, 271-272, 149 P.3d 646 (2006); State v. Asaeli, 150 Wn.App. 543, 587, 208 P.3d 1136, 1161 (2009). As the Court of Appeals correctly noted, the trial judge reserved ruling concerning admissibility of the fire department's actions.

Finally, the Petitioners' solution in the form of a curative instruction was correctly denied by the trial court. Because Defendant did not argue it was relieved from liability because of the burn permits or fire department's involvement, there was no need for a non-delegable jury instruction. Petitioners' solution, if followed, would have created a prejudicial error to Defendant. "Non-delegable" is a formidable word to use in front of a jury. Kelley v. Great Northern Ry. Co., 59 Wn.2d 894, 904-05, 371 P.2d 528 (1962). Petitioners were attempting at every turn to mislead the jury into believing Kinch Farms should be held to a strict liability standard, asserting in closing: "In the broadest picture, your job is to determine, where does that – who is responsible? Who has to pay for that? And, you know, there's only two possibilities being presented to you in this case. It

either falls on the defendant who started the fire or it falls on the plaintiffs who did not." Vol. VI., p. 20, lns. 13-18. In their opening brief to the Court of Appeals, Petitioners asserted in the introduction, "the issue at trial was, of course, who had to pay for the loss – the entity that started the fire and allowed it to spread, or the victims?" p. 1. Petitioners' scheme of forcing a "higher" standard, a strict liability standard, on Kinch Farms was thwarted when the trial court properly denied the use of a non-delegable duty instruction. Once the non-delegable duty instruction was rejected, Petitioners resigned to complying with the law: trying to prove Kinch Farms was negligent. The jury correctly found that Kinch Farms utilized reasonable care in starting and managing the fire. Therefore, there is no conflict in the law warranting review.

### B. The Court Should Deny The Petition Because It Does Not Involve A Substantial Public Interest That Should Be Determined By The Court

Under RAP 13.4(b)(4), the Washington Supreme Court can grant discretionary review only "if the petitioner involves an issue of substantial public interest that *should be determined by the Supreme Court.*" (*emphasis* added)

At the very beginning of this case, Petitioners have attempted to characterize this matter as one of strict liability. The standard for assessing landowners' legal liability for starting, controlling, and extinguishing a fire is governed by a negligence standard. RCW 4.24.040 and RCW 76.04.740. The Petitioners offer no alternative way to interpret the statutes. They do not argue the statutes are in some way unconstitutional.

Petitioners appear to be asserting that strict liability should be applied to Kinch Farms' conduct. However, this Court does not review the wisdom of legislative enactments. See State v. Wanrow, 88 Wn.2d 221, 232, 559 P.2d 548, 554 (1977). If Petitioners believe a negligence standard is no longer the governing standard, then their avenue of redress is through the Washington State Legislature, not this Court.

### C. The Court Should Deny The Petition Because It Does Not Implicate A Significant Question Under The Constitution

Under RAP 13.4(b)(3), the Washington Supreme Court can grant discretionary review only "if a *significant question of law* under the Constitution of the State of Washington or of the United States is involved." (*emphasis* added.) Petitioners are asserting that the trial court's

failure to issue its proposed jury instructions implicates a constitutional question. This is false.

It is well established law in Washington that jury instructions are sufficient if: (1) the instructions permit the party to argue that party's theory of the case; (2) the instructions are not misleading; and (3) when read as a whole, all instructions properly inform the trier of fact on the applicable law. Douglas v. Freeman, 117 Wn.2d 242, 256-57, 814 P.2d 1160, 1168 (1991). "No more is required." Id. In addition, "[t]he number and specific language of the instructions are matters left to the trial court's discretion." Petersen v. State, 100 Wn.2d 421, 440, 671 P.2d 230, 243 (1983).

There is no "significant question" under the Constitution that needs to be resolved here. The trial court complied with the three elements set forth in Douglas. Petitioners were allowed to argue their "theory of the case." Petitioners cannot point to a single jury instruction that was "misleading" or that, "when read as a whole," the instructions did not properly inform the trier of fact concerning the applicable law.

Frustratingly, Petitioners broadly cite to Supreme Court case law for the proposition that "[a]n instructional error is presumed to be prejudiced

unless, with certainty, it can be shown to be harmless." This assertion is misleading, because the case law is clear that prejudice is only presumed if a jury instruction contains a *clear misstatement of law*. Andfinson v. FedEx Ground Package System, Inc., 174 Wn.2d 851, 860, 281 P.3d 289, 294 (2012). If the instruction is merely misleading, then the aggrieved party must *demonstrate prejudice*. Id. As noted by the Court of Appeals: "The neighbors do not contend that the court's instructions were misleading or otherwise incorrect." P. 9. Petitioners have not cited to one jury instruction they believe contained a misstatement of the law to this Court, and therefore there is no presumed prejudice. Petitioners cannot even show the jury instructions, given as a whole, were misleading in any way. And, even if Petitioners could show the instructions, as a whole, were misleading, they have failed to show prejudice.

Petitioners' real problem is the trial judge declined to issue a non-delegable jury instruction per their demand. Petitioners' likely motive for sprinkling their argument with "instructional error" and "prejudice" is to hide the fact that Washington courts have stated non-delegability instructions *should be avoided*. "[N]on-delegability" is a "formidable" word to use with a jury. Kelley v. Great Northern Ry. Co., 59 Wn.2d 894,

904-05, 371 P.2d 528 (1962). Non-delegability instructions are often not necessary to utilize in a case, as doing so could mislead jurors into thinking a non-delegable duty sets a higher standard of care than does a delegable duty. Cf. Strandberg v. Northern Pac. Ry. Co., 59 Wn.2d 259, 367 P.2d 137 (1961); Sage v. Northern Pac. Ry. Co., 62 Wn.2d 6, 16, 380 P.2d 856 (1963); Kelley v. Great Northern Ry. Co., 59 Wn.2d 894, 904-05, 371 P.2d 528.

Even the comments to WPI 12.09 warn against using the instruction in situations where vicarious liability or subject contract is not implicated. In cases where subcontracting or vicarious liability is involved, jurors could speculate the legal duty was transferred along with the work being subcontracted; hence, they would need to be instructed that non-delegable duties are not transferred along with the subcontracted work. *"However, for cases that do not similarly raise questions in jurors' minds about potential delegability, the committee recommends that the instruction not be given."* 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. 12.09 (6th ed.) (emphasis added).

Instead of focusing on the case law concerning non-delegable jury instructions, or the jury instructions actually given to the jury in this case,

Petitioners spend pages 16 through 18 of their brief harvesting witness testimony from transcripts of a 5-day trial. It is telling that all Petitioners were able to cobble together were a few lines and words in their petition. Petitioners assert "dozens of examples" of improper conduct, but have only been able to provide alleged few to this Court in their petition.

In summary, the jury instructions issued by the trial court were sufficient in that they allowed Petitioners to argue the theory of their case. The instructions did not contain a misstatement of the law. The instructions, as a whole, were not misleading. There is no need for this Court to get involved, and the Petition for review should be denied.

## IV. CONCLUSION

For the above-stated reasons, Petitioners' request for discretionary review must be denied.

DATED this 15th day of December 2015.

EWING ANDERSON, P.S.

By: _____
KENT NEIL DOLL, JR., WSBA 40549
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December 2015, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

| | |
|---|---|
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Kent Neil Doll, Jr.

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Attached is Appellee/Defendant's Answer to Petition for Discretionary Review in the above-referenced matter. Please confirm receipt and this pleading is considered "filed".

*Angel Gonzalez, Paralegal*

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