NO. 96189-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL WEAVER

Respondent,

v.

CITY OF EVERETT, DEPARTMENT OF LABOR AND INDUSTRIES

Appellants.

ANSWER OF RESPONDENT MICHAEL WEAVER TO CITY OF EVERETT'S PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners the City of Everett and the Department of Labor & Industries assert collateral estoppel and *res judicata* as defenses to Michael Weaver's current claim. To prevail, they are obligated to establish all the required elements of at least one of these two doctrines. The Court of Appeals correctly held that the petitioners failed on both counts.

Both petitioners contend that the decision below conflicts with a host of this Court's decisions. On the contrary, the Court of Appeals simply applied the law of collateral estoppel and *res judicata* -- as established by this Court -- to the facts of this case. Unless this Court is inclined to change the well-established law concerning these two doctrines, review is unnecessary.

Although both petitions discuss both doctrines, the City's petition focuses mainly on *res judicata*, and the Department's is directed mostly at collateral estoppel. Accordingly, in this Answer to the City's petition Weaver addresses petitioners' *res judicata* arguments. He discusses their collateral estoppel arguments in his Answer to the Department's petition.

II. STATEMENT OF THE CASE

The opinion of the Court of Appeals, *Weaver v. City of Everett*, 4 Wn.App.2d 303, 421 P.3d 1013 (2018), sets forth the facts of the case.

Weaver supplements the court's recitation of the facts in his Answer to the Department's petition. To avoid repetition here, he respectfully refers the Court to his Statement of the Case in that Answer.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals Did Not "Fail to Follow the Statutory Mandate of Finality"

The City argues that review is necessary because the Court of Appeals usurped legislative functions by "striking" RCW 51.52.110. The court did no such thing. RCW 51.52.110 provides that if the worker does not file a timely appeal to the superior court, the Board's decision becomes final. It is undisputed that the Board's decision denying Weaver's prior claim became final when he dismissed his appeal to superior court. The Court of Appeals simply proceeded to the next step, applying the principles of *res judicata* to hold that the prior decision, although final, did not preclude Weaver's current claim. In effect, the City argues that *every* final order necessarily precludes *every* later related claim. If that were correct, the principles established by this Court for deciding whether to apply *res judicata* would be unnecessary.

B. Petitioners' "*Res judicata*" Argument Is a Collateral Estoppel Argument in Disguise

The City and the Department ostensibly seek review of the decision of the Court of Appeals that *res judicata* does not bar Weaver's current

claim. Both petitions discuss *res judicata* in the abstract. But as applied to the facts of this case, the argument that petitioners make under the mantle of *res judicata* is actually just a collateral estoppel argument in different clothes. Where the respective elements of each doctrine are established, *res judicata* bars relitigation of the *same claim*, while *collateral estoppel* prevents relitigation of the *same issue*. *Afoa v. Port of Seattle*, __ Wn.2d __, 421 P.3d 903, 914 (July 19, 2018).

Although they characterize it as a matter of *res judicata*, the real complaint of both petitioners is that the factual *issue* of whether Weaver's employment caused his melanoma was litigated in the first proceeding and should not be litigated again. The City says: "Weaver's second action is barred by both collateral estoppel and *res judicata* because there was one issue in Weaver's first action: whether his melanoma arose naturally and proximately out of the distinctive conditions of his employment . . . ." City Pet. at 12. Addressing the requirement of *res judicata* that the subject matter of the two claims must be identical, the City says: "The prior and present action involve exactly the same subject matter; that is, the threshold question of whether Weaver's melanoma arose naturally and proximately out of . . . his employment." Id. at 13. Similarly, in arguing that *res judicata* applies, the Department says that in both proceedings "It was the same

subject matter: whether the firefighting proximately caused the cancer." Dept. Pet. at 19-20.

But the question of whether the firefighting caused the cancer is an *issue*. By contrast, the subject matter of the first claim was the removal of the melanoma from Weaver's back and the temporary benefits he sought for the brief time he was unable to work. The subject matter of the second claim is his brain cancer and the resulting permanent and total disability for which he now seeks benefits. Since the heart of the "*res judicata*" argument in both petitions is directed toward an issue and is therefore a repackaged collateral estoppel argument, there is no reason for this Court to review the Court of Appeals' decision concerning *res judicata*.

C. The Decision that *Res judicata* Does Not Bar Weaver's Claim Is in Harmony with the Law Established by this Court

Even if the petitions actually present a question concerning *res judicata*, review of the Court of Appeals' decision on that subject is unnecessary because its decision is consistent with the law established by this Court. Under the doctrine of *res judicata*, "a subsequent action is barred when it is identical with a previous action in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made." *Hayes v. City of Seattle*, 131 Wn.2d 706, 712, 934 P.2d 1179 (1997). The Court of

Appeals based its decision concerning *res judicata* solely on the first element -- identity of subject matter.[1]

The City apparently contends that this Court should not follow the established principles of *res judicata* in workers' compensation cases. "The Court's resort to common law cases not involving the application and interpretation of the Industrial Insurance act is not instructive or persuasive." City Pet. at 14, n.13. The Court of Appeals correctly considered cases discussing the common-law doctrine of *res judicata* in a variety of contexts. Unless this Court is prepared to carve out the kind of exception that the City desires, the Court should not accept review.

1. In finding no identity of subject matter, the Court of Appeals followed established precedent

Res judicata does not apply if the events underlying the relief sought in the second claim had not yet occurred at the time of the first. *Mellor v. Chamberlin*, 100 Wn.2d 643, 646-47, 673 P.2d 610 (1983). In other words, the subject matter of the two claims cannot be identical if at the time of the first claim the subject matter of the second claim did not exist. In *Mellor*, the purchaser of two buildings sued the seller for misrepresenting a parking

[1] With regard to the second element, the court accepted, without analysis and for the limited purpose of resolving this particular case only, "the contention that the Act sets forth a single cause of action for an allowance." 4 Wn.App.2d at 321. Thus, the City's discussion of the second element is misplaced. City's Pet. at 16-17. Since the Court of Appeals did not decide the case on that basis, there is nothing concerning the second element for this Court to "review."

lot as being included in the sale. Id. at 644. That action was settled and dismissed with prejudice. Id. More than a year later, the owner of an adjoining parcel demanded that the purchaser of the buildings pay her $5,000 because the buildings encroached on her land. Id. at 645. After paying the adjoining owner's demand, the purchaser of the buildings sued the seller a second time – this time for damages for breach of the covenant of title. Id. This Court held that *res judicata* did not apply because at the time of the first action, the purchaser had not yet been required to pay the $5,000 to the adjoining owner for the encroachment. Id. at 647. Until the purchaser had incurred that damage, the second action "was not ripe." Id. As the Court of Appeals observed in the present case, the subject matter of the two actions in *Mellor* was different because at the time of the first, the subject matter underlying the second action did not exist—and, hence, could not have been litigated. *Weaver*, 4 Wn.App. 2d at 323.

The *Mellor* court relied on *Harsin v. Oman*, 68 Wash. 281, 123 P. 1 (1912). In *Harsin* the purchaser sued the seller for breach of the covenant against encumbrances and recovered nominal damages. Id. at 283. Later, a more substantial breach occurred, and the purchaser sued again. Id. The *Harsin* court held that the subject matter of the two actions was different, and thus that *res judicata* did not apply, because at the time of the first action the events underlying the second action had not yet occurred. Id.

> While it is admitted, there can be but one recovery upon the same cause of action. *This does not mean the subject-matter of a cause of action can be litigated but once. It may be litigated as often as an independent cause of action arises which, because of its subsequent creation, could not have been litigated in the former suit, as the right did not then exist.* It follows from the very nature of things that a cause of action which did not exist at the time of a former judgment could not have been the subject-matter of the action sustaining that judgment.

Id. at 283-284 (emphasis added).

In addition, the subject matter of the two proceedings is not identical if the nature of the claim asserted in the first is different from that in the second, even though both actions arose out of the same facts. *Hayes v. City of Seattle*, 131 Wn.2d 706, 712-713, 934 P.2d 1179 (1997). In *Hayes* this Court held that the nature of the two actions differed because the first was an action to overturn the City's initial imposition of a condition on Hayes's building permit, while the second sought damages after the City had removed the condition. Id. at 709-713. See also *Mellor* 100 Wn.2d at 646.

Finally, *res judicata* does not apply if the type of proceeding pursued in the first action did not authorize the kind of relief that the plaintiff sought in the second. See *Hayes*, 131 Wn.2d at 714 (plaintiff could not have obtained damages in original action for writ of certiorari because writ actions cannot be used to decide damage issues).

Here, as in *Mellor* and *Harsin*, the events underlying Weaver's second claim had not occurred at the time of the first. At the time of the first claim, Weaver was temporarily disabled only for the five weeks necessary to recover from his 2011 surgery. The subject matter of the second claim – his brain cancer and resulting permanent total disability – did not then exist. His second claim "was not ripe." *Mellor*, 100 Wn.2d at 647. His second claim, "which did not exist at the time of a former judgment could not have been the subject-matter of the action sustaining that judgment." *Harsin*, 68 Wash. at 284.

In addition, the subject matter of Weaver's two claims differs due to radical differences between the nature of the events giving rise to them and the nature of the claims themselves. The first claim arose out of the relatively minor surgery to remove the melanoma from Weaver's scapula. He missed only five weeks of work. The nature of his disability was, by definition, temporary. The second claim arose out of Weaver's January 2014 diagnosis of brain cancer and ensuing brain surgery. Life as he had known it ended then, and the prognosis was that the actual end of his life would come very soon. The presence of the cancer in his brain combined with the associated cognitive deficits the cancer treatment left made it clear he would never be able to return to work. Only 45 years old when the brain cancer was diagnosed, Weaver faces the loss of what would otherwise have

been another 20 years of working life. The nature of his current claim for permanent total disability benefits differs dramatically from that of his prior claim for five weeks of missed work.

Finally, Weaver could not have obtained an award of permanent total disability benefits in the first claim because the applicable statutes and case law would not have allowed it. If at that time he had sought such an award because the cancer *might* metastasize in the future, he would have failed.[2] Weaver in effect would have been required to project a future aggravation or worsening of his condition. But to prevail in an aggravation case, the worker must present medical evidence showing "that an aggravation of the industrial injury *resulted* in increased disability." *Lewis v. Dep't of Labor & Indus*., 93 Wn.2d 1, 3, 603 P.2d 1262 (1979). In other words, an aggravation claim must be based on *actual* worsening of the condition between an earlier date and the present. At the time of Weaver's first claim, any request for *potential future* worsening of his condition would have been rejected. Thus, *res judicata* does not bar his current claim because the law would not have allowed him to pursue it the first claim.

[2] The Department's counsel conceded this point in oral argument. The Court, referring to the time of the first proceeding, asked: "Could he have looked at the Board and testified: 'they said it's foreseeable that it might [spread and get worse], therefore I want those awards [permanent disability] now'"? Counsel responded: "He can't say that." June 4, 2018, at 22:51-23:07.

2. The cases cited by the petitioners are irrelevant to the analysis of this case

Both the City and the Department contend that the decision of the Court of Appeals conflicts with decisions of this Court. But the cases they cite did not address the issue presented here: whether the first element of *res judicata* – identity of subject matter – was established.

Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 886 P.2d 189 (1994), has no bearing on the present case. In *Marley*, the worker's widow sought a declaration that a prior unappealed order was void. Id. at 534. The only two issues before this Court were: "(1) what must a party show to establish that an order from the Department of Labor and Industries is void, and (2) was the October 4, 1984 order denying benefits to Mrs. Marley void?" Id. at 537. Here the Court of Appeals did not hold that the prior order of the Department or that of the Board was void. Instead, it held that *res judicata* should not apply to that order because the subject matter of the prior proceeding was not identical to that of the present one. Mrs. Marley made no such argument, and the *Marley* court did not consider that question. *Marley* is irrelevant. So, too, is *Abraham v. Dep't of Labor & Indus.*, 178 Wash. 160, 34 P.2d 457 (1934) (rejecting Department's argument that it could vacate its own prior order on the ground that it lacked jurisdiction and that the order was therefore void).

Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 937 P.2d 565 (1997), is similarly distinguishable. Although the lead opinion signed by four justices mentioned *res judicata* in dicta, it did not decide the case on that basis. And it did not conduct the four-part analysis mandated by this Court for determining whether *res judicata* applies. Instead, the issue in *Kingery* concerned the power of either the Department or the superior court to *vacate* or *set aside* an unappealed order issued the Department. Id. at 164-165. Again, Weaver has not asked the Department, the Board, or the superior court to set aside or vacate the order denying his prior claim. Instead, when Weaver became permanently and totally disabled due to brain cancer, he submitted a different claim for different relief under entirely different circumstances. The City and the Department raised *res judicata* as a defense. The decision of the Court of Appeals that they failed to establish a required element of *res judicata* – identity of subject matter – doesn't conflict with *Kingery* because in *Kingery* the Court didn't consider that question at all.

The City relies on a trio of cases in which this Court gave preclusive effect to a prior order of the Department or the Board. But these cases are also irrelevant because they, too, didn't consider the issue of identity of subject matter.

In *Le Bire v. Dep't of Labor & Indus*., 14 Wn.2d 407, 128 P.2d 308 (1942), the court simply held in conclusory fashion that a prior Board decision from which no appeal was taken was "*res judicata* of the issues now sought to be relitigated." Id. at 420. In *Ek v. Dep't of Labor & Indus.*, 181 Wash. 91, 41 P.2d 1097 (1935), the court held without analysis that a prior unappealed order of the Department was binding on the worker's widow. Id. at 94. The opinion in *Ek* did not even use the phrase "*res judicata*" (or "collateral estoppel"). In *Lehtinen v. Weyerhaeuser Co.*, 63 Wn.2d 456, 387 P.2d 760 (1963), the Board denied the claim and the worker did not appeal. Id. at 457-458. He then brought a common-law action for damages against the employer. Id. The case could have been resolved purely on the ground that the worker had no right to sue his employer because his exclusive remedy was under the Industrial Insurance Act. Id. at 462. Nevertheless, in dicta the court said that *res judicata* barred the common-law action. Id.

None of these three opinions even mentioned the established four-part analysis for determining whether *res judicata* should apply. None of them addressed the issue presented here – i.e., whether the subject matter of the two proceedings was identical. Neither this Court nor the Court of Appeals has ever declared that the Department or employers are exempt from the requirement of establishing all four elements of *res judicata*. Even

the City and the Department concede that *res judicata* applies only if the four-part analysis, including identity of subject matter, is satisfied. City Pet. at 12-13; Department Pet. at 19. In applying that analysis here, the Court of Appeals followed established precedent.

3. The Court appropriately considered each claim as seeking different relief and involving different facts

Citing *Lenk v. Dep't of Labor & Indus.*, 3 Wn.App. 977, 478 P.2d 761 (1970), the City says the Court of Appeals had no authority to regard the first claim as one for temporary disability and the second as one for permanent disability because the Department did not decide Weaver's entitlement to any particular remedy. In *Lenk*, the court said, "if a question is not passed upon by the department, it cannot be reviewed either by the board or the superior court." Id. at 982. If the Court of Appeals had awarded specific benefits to Weaver, that would have been contrary to *Lenk*.

But the Court of Appeals didn't do that. It did not award Weaver any benefits. It confined itself to the issue that the Department's Industrial Appeals Judge and then the Board decided: whether the order in the first proceeding precluded the second proceeding. That, in turn, required the court to decide whether there was identity of subject matter. And in deciding that question, the Court of Appeals appropriately considered the different circumstances and facts of the two claims. At the time of the first

claim, Weaver anticipated and in fact needed only a short time away from work. At the time of the second, he had been diagnosed with a lethal brain cancer that he and his physician believed would render him permanently disabled. It was entirely appropriate for the Court of Appeals to view the two claims as what in reality they were: one for temporary disability and the other for permanent disability.

Next, the City argues that because the Accident Report Forms that City provided to Weaver did not ask him to specify the type of benefits he sought, the Court of Appeals mistakenly considered the two claims as seeking different relief.[3] The City's argument effectively insists that in determining whether the subject matter of the two claims was identical, the court must blind itself to reality.

Workers and their beneficiaries don't make claims for "claim allowance." They don't make claims just for theoretical possibilities. In reality, they make claims to obtain the particular benefits they think they are entitled to receive based on current circumstances. Indeed, this Court has described the claim of a widow after her husband died in his employment as "a claim for widow's benefits." *Kingery v. Dep't of Labor & Indus.*, 132

[3] The City says that instead, the form that Weaver completed in both instances was an application "to have his claim allowed for melanoma as a work related-condition." Id. at 15. Actually, the form says nothing about "claim allowance," or "claim allowed." CBR 277, 280.

Wn.2d 162, 165, 937 P.2d 565 (1997). Here the court appropriately considered the different circumstances under which the two claims were made and properly regarded them as seeking different relief.

With a similarly narrow view, the Department argues that there could be only one claim because a single statute, RCW 51.28.020, directs the worker to file an application for compensation, regardless of the type of benefit that the worker seeks. This argument confuses the subject matter of a claim with the procedural vehicle by which that claim is initiated. The Civil Rules specify a single procedural device – a complaint – for commencing a civil action. CR 3(a), 7(a). This does not mean, however, that the subject matter of every complaint filed by the same plaintiff against the same defendant is identical, even when the some of the facts asserted are similar. Similarly, the existence of a single procedural device for commencing workers' compensation claims does not mean that the subject matter of a claim filed when the worker misses a few weeks of work is identical to that of a claim filed when he suffers from brain cancer that has rendered him permanently and totally disabled.

Pointing to the "aggravation" statute, RCW 51.32.060, the City and the Department note that if Weaver's first claim had been "allowed," Weaver could have reopened the claim and obtained additional benefits when his condition worsened. But the aggravation statute doesn't the alter

res judicata analysis established by this Court. The subject matter of Weaver's first claim was the melanoma on his scapula and the short period of disability following its removal. The subject matter of the second claim was his brain cancer and resulting permanent and total disability. Weaver could not have sought permanent disability benefits at the time of the first claim because the cancer had not yet metastasized, and he was soon back at work full time. And if he had asserted at the time of the first claim that he should then be awarded permanent disability benefits because the cancer *might* metastasize in the future, the applicable law would not have allowed such an award. Nothing in the aggravation statute changes these conclusions. The subject matter of the second claim was profoundly different from that of the first.

4. The Court of Appeals' Decision to Apply Equitable Principles Is Consistent with the Decisions of this Court

Citing *Kingery*, the City also argues that in refusing to apply *res judicata*, the Court of Appeals "improperly applied equity to relieve Weaver of the finality of the Board's decision." City Pet. at 17. This argument is mistaken for several reasons. First, the Court of Appeals did not relieve Weaver of the finality of the Board's decision. It did not void, vacate, or set aside the decision of the Board that denied him temporary disability

benefits associated with the 2011 surgery. The Court of Appeals did not hold that Weaver is entitled to those benefits.

Second, the principal ground on which the Court of Appeals refused to apply *res judicata* was independent of any equitable considerations. Instead, the main reason for its decision was simply that one of the required elements of *res judicata* – identity of subject matter – was not established. It was only in a footnote that the Court of Appeals also noted, as a second ground for its decision, that applying *res judicata* would be inequitable. 4 Wn.App.2d at 334, n.19.

Third, the Court of Appeals' reliance on equity as an independent ground for refusing to apply *res judicata* does not conflict with *Kingery* because *Kingery* was not decided on the basis of *res judicata*. As Weaver has explained above, the issue in *Kingery* was whether the Department or the superior court had authority to *set aside* or to *vacate* the Department's prior order, and if so, whether the circumstances of the case warranted the exercise of that authority. 132 Wn.2d at 165. *Res judicata*, by contrast, addresses the question of what effect, if any, a final judgment should have on the opposing party's ability to pursue a second proceeding.

Fourth, the City mistakenly asserts that *Kingery* limits the circumstances in which a court may apply equity to those in which the claimant is incompetent or illiterate and the Department has failed to

communicate its order. This was the holding of the four justices who signed the lead opinion. 132 Wn.2d at 173-175. But five justices held that the superior court's equitable powers were *not* limited to those circumstances. See Justice Alexander's dissent and Justice Madsen's separate opinion. 132 Wn.2d at 178-182. Accord, *Dept. of Labor & Indus. v. Fields Corp*., 112 Wn.App. 450, 457-459, 45 P.3d 1121 (2002).

Res judicata is an equitable doctrine. *Afoa v. Port of Seattle*, __ Wn.2d __, 421 P.3d 903, 914 (July 19, 2018). There is nothing "in the doctrine or in its historic application which encourages the court to so apply it as to ignore principles of right and justice." *Luisi Truck Lines, Inc. v. Wash. Utilities & Transp. Comm'n*, 72 Wn.2d 887, 896, 435 P.2d 654 (1967). Here the court's decision to consider equitable principles was consistent with the law as determined by this Court.

D. The Decision of the Court of Appeals Will Not Produce the Dire Effects Predicted by Petitioners, and Adoption of their Positions would be Unfair to Workers and Employers Alike

Leaving the decision of the Court of Appeals in place will not have the dire consequences that the Department and the City describe. As they point out, most claims involve only a request for medical benefits. So long as no improper preclusive effect later stems from the initial contest, parties in the workers compensation arena can be trusted to use logic and good business judgment to decide when to contest, or not contest, a particular

claim. Should a worker sensibly wish to advance a claim worth less than $10,000 by spending nearly $20,000 in expert witness fees, or more, to do so? Should an employer litigate every modest medical or time loss compensation claim for fear its economic profile might, in the worker's lifetime, radically change?

Neither of those outcomes is desirable and neither is required so long as an aggrieved party—whether department or worker---has an opportunity to later litigate if or when, for example, the worker's cancer transforms from being a brief medical and occupational annoyance to a menace which could cause serious peril or potential death.

The imaginary horribles envisioned by the petitioners are better addressed using precisely respondent's---and the Court of Appeals' — construct for confronting later claims which bear little resemblance to the harm or economic profile of the initial, minor, claim. By judicious use of claim preclusion principles, when a worker or an employer is faced with a 'later' claim that presents either with harm disproportionate to the scale of the past efforts to address that claim, recalibration of the opposing efforts by the parties is warranted and expectable. And allowing the system to function with the intact safeguards of *res judicata* and collateral estoppel will encourage savvy use of resources for only those contests which really 'matter.'

Adopting the positions advanced by the City and the Department, however, would be unfair to workers and employers alike and would require a radical change in the law. While paying lip service to both doctrines, petitioners in effect ask the Court to abandon the principles of *res judicata* and collateral estoppel in favor of a rule of automatic preclusion. They ask this Court to hold that collateral estoppel automatically applies to decisions of the Board even if the result would work an injustice on the party against whom the doctrine is asserted. (See Answer to Department's Petition). And they urge an interpretation of the "subject matter" element of *res judicata* that would effectively eliminate that element from the analysis in workers' compensation cases.

If the Court were to adopt petitioners' positions, workers like Weaver would be denied the benefits they deserve. Few if any of them will know -- when they file claims for short periods of temporary disability or claims just for medical benefits -- that their failure to spend the money required for a full litigational effort will bar them from seeking the exponentially greater benefits needed should their conditions worsen terribly in the future. Certainly nothing in the Industrial Insurance Act or the orders of the Department or the Board gives them any reason to appreciate that peril. And for those few workers who might understand the automatic preclusive effect that the petitioners propose, the result in many

cases will be wasted money. These workers, faced with the prospect of future preclusion, will feel compelled either to forego a minor claim entirely or to spend large sums litigating even those claims in which the injury/illness has resulted in only brief disability. In all likelihood, most of those injuries or illnesses will not worsen. But the money will have been spent. Employers, too, will be forced to spend disproportionately large sums litigating claims of low value, and will have no opportunity to litigate subsequent claims having different subject matter and involving exponentially higher stakes.

E. Attorneys' Fees

If on remand to the Board it is determined that Weaver is entitled to benefits, he will be entitled to recover his attorneys' fees incurred in all Board proceedings and in all appeals to any court. RCW 51.32.185(9). In that event, and if this Court denies review of the Court of Appeals' decision, this Court should award Weaver his reasonable attorneys' fees incurred in preparing this Answer to the City's petition. RAP 18.1(j).

IV. CONCLUSION

In determining that *res judicata* and collateral estoppel do not bar Weaver's current claim, the Court of Appeals properly applied the law as established by this Court to the facts of the case. This Court should deny review.

Respectfully submitted this 15th day of October, 2018.

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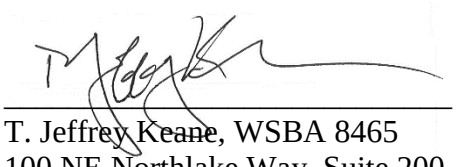

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