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NO. 64558-7-1

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

RONALD PACE, et al.,

Plaintiffs-Appellants.

v.

JAMES DAVIS, SCOTT DAVIS, TYLER DAVIS , et al,

Defendants-Respondents.

BRIEF OF APPELLANTS

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DIVISION I
TACOMA, WA

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I. INTRODUCTION

This case involves a “hit and run” accident, involving a boat and personal watercraft (SeaDoo brand, jet ski). The accident in this matter occurred on June 30, 2006, on the Columbia River, near the Sunland Estates Development. It was undisputed in pretrial and trial proceedings that on that date, in the late afternoon, Mr. Pace, while driving his boat with two friends as passengers, was approached by three jet skis, one who sprayed his boat with water, and another which engaged in a radical maneuver, riding at a high rate of speed towards the front of his boat, requiring Mr. Pace to take evasive actions (swerve sharply), which as discussed in more detail below, set into motion the events which caused Mr. Pace to suffer severe personal injury (shattered clavicle and shoulder injury). Following the this event, although one of the jet skiers stopped momentarily (providing an opportunity for Mr. Pace to observe him), ultimately the jet skiers fled the scene without providing identifying information. Prior to his leaving, Mr. Pace’s passengers were able to view the jet ski’s “hull number” (an identification affixed on the jet ski, which is analogous to a car’s license place number), and were able to recite and memorize such number as they rushed Mr. Pace to emergency aid.

Within the initial Complaint filed within this case, Mr. Pace, the Appellant (hereinafter “Plaintiff”), brought claims of negligence and pursued theories of

negligent entrustment, as well as an allegation that “the Family Car Doctrine” was applicable under the alleged facts. (CP 2). The jet ski with the hull number observed by Mr. Pace’s party belonged to James Davis. Initially, claims were brought against James Davis as owner of the jet ski involved in the incident. Subsequent investigation revealed that Mr. James not only owned the jet ski with the referenced hull number, but also another jet ski that was likely also involved in the incident.

Unfortunately, as discussed below, early following the above-referenced incident, efforts were made to obscure (cover up) the use of such jet skis at the time and place in question, and the identity of who would have been riding them at the relevant time.

Unfortunately, despite the fact that defendant Scott Davis admitted at time of trial that jet skis are fast and powerful motorized watercraft, Plaintiff’s public policy arguments regarding the extension of entrustment and/or Family Car principles to watercrafts were rejected by the Trial Court in pretrial proceedings.¹

Plaintiff’s core position in this appeal is that the Trial Court’s failure to recognize the need to extend negligence principles and/or doctrines to personal

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At time of trial, Scott Davis indicated that he believed that the supercharged 2006 SeaDoo jet ski which he was allegedly riding at the time of the above-referenced incident was both fast and powerful, but nevertheless was so easy to operate that if an individual capable of riding a bicycle, they could operate a jet ski, which Plaintiff views as being an inherently dangerous instrumentality.

watercraft, failed to recognize the substantial public policy need to extend such principles. Attached hereto as Appendix "1" is a publication entitled "Recreational Boating Statistics 2008," published by the U.S. Department of Homeland Security/U.S. Coast Guard, which is indicative of the substantial reasons why common law doctrines typically applicable to automobiles should be extended to recreational watercraft such as jet skis. As indicated within the publication set forth as Appendix "1", in the United States, in the year 2008, 2,022 deaths occurred involving open motor boats (such as the boat owned by Mr. Pace) and 965 deaths occurred involving personal watercrafts such as jet skis. The number one cause of such deaths and/or injury was the "careless/reckless operation" of such watercraft. Predictably, statistically, accidents involving such crafts increase significantly in late spring (May) and the summer months (June through August). Specifically, Washington ranks number 18 nationwide in accidents, casualty or damage producing events involving watercraft. In 2008, there were 18 fatal accidents in the State of Washington involving watercraft, and there were 46 non-fatal injury producing events as well. Where personal watercraft are involved, the primary source of injury and/or death is "trauma," including broken bones, back injuries and internal injuries.

It is suggested that there is simply no public policy basis not to treat personal watercraft such as jet skis as dangerous instrumentalities equal to automobiles.

II. ASSIGNMENT OF ERROR

1. The Trial Court erred in granting Defendant James Davis' Motion for Summary Judgment, by failing to extend agency principles, including the Family Car Doctrine, to the personal watercrafts owned by James Davis.
2. The Trial Court erred in granting summary judgment when genuine issues of material fact existed which supported a claim of negligent entrustment of the personal watercraft owned and maintained by James Davis to his son and grandson, Scott and Tyler Davis.
3. The Trial Court erred in granting summary judgment to James Davis, the owner of the jet skis involved in the accident at issue in this case, because he can be subject to liability pursuant to presumed agency principles.
4. The Trial Court erred in granting summary judgment to Tyler Davis where credibility issues presented genuine issues of material fact as to Tyler Davis' involvement in the accident at issue.
5. The Trial Court erred by failing to give Plaintiff's proposed Jury Instructions Nos. 13 and 17, which instructed the jury regarding the statutory standard of care set forth within RCW 79A.60.030, prohibiting the operation of watercraft "in a negligent manner," and were correctly stated law, and which was necessary for the Plaintiffs to appropriately argue his theory of the case. (Appendix "2").
6. The Trial Court erred by answering a jury question posed during deliberation in a manner which constituted a "comment on the evidence."
7. The Trial Court erred by unduly discouraging the jurors' rights to ask questions of witnesses, by informing the jury that it could only ask "clarifying questions," and then defining what was or was not a clarifying question in an extremely limiting manner.

III. ISSUES RELATING TO ASSIGNMENT OF ERROR

1. Did the Trial Court err in granting James Davis' Motion for Summary Judgment, when there were factual and credibility issues regarding the use of his jet skis at the location and time at issue, and when his personal liability could be predicated on presumed agency principles,

negligent entrustment doctrine, and the family purposes doctrine, which are typically applicable to automobiles?

2. Did the Trial Court err in dismissing on summary judgment Tyler Davis (James Davis' grandson), when there are material issues of fact regarding his credibility and his involvement in the injury-producing incident at issue in this case?
3. Did the Trial Court err by refusing to give Plaintiff's proposed Jury Instructions Nos. 13 and 17, relating to the Defendants' alleged violation of a statute, prohibiting the negligent operation of watercraft, when the giving of such a proposed instruction, which was a correct statement of the law, was supported by the evidence and necessary for the Plaintiff to argue his theory of the case?
4. Did the Trial Court inappropriately "comment on the evidence" when it answered a jury question posed after the jury was instructed and during deliberation in the negative, when such a negative response would be indicative of the Trial Court's opinions regarding factual issues which were for the jury to decide?
5. Was the Trial Court's approach regarding jury questions to witnesses erroneous, because the method and manner in which the Court instructed the jury regarding such an issue substantially narrowed the circumstances in which the jury could ask the witnesses questions?

IV. STATEMENT OF FACTS

A. Factual Overview.

On June 30, 2006, Ronald Pace was working on a cabin located in the Sunland Estates development on the Columbia River. After finishing his work on the cabin for the day, Mr. Pace and two companions, Sean Putnam and Trevor Korn, decided to take a boat ride in Mr. Pace's boat. After traveling around in the Columbia River adjacent to Sunland Estates, Mr. Pace noted off in the distance, on the other side of the river, three jet skiers (on SeaDoos) heading in his direction. (CP 63:674).

The jet skiers approached Mr. Pace's party, and asked if they could ride in the wake behind Mr. Pace's boat. A good-natured Mr. Pace apparently did not object, and attempting to get his boat on a plane, i.e., with its bow up, without warning to Mr. Pace, one of the jet skiers came to the driver's side of the boat and sprayed Mr. Pace's boat with water. (CP 63:677).

As a result of being sprayed with water, Mr. Pace was temporarily disoriented, and prior to having an opportunity to fully recover from this unexpected event, another jet skier came upon the right side of the boat at a high rate of speed, cutting off Mr. Pace's boat's direction of travel, requiring Mr. Pace to make an abrupt emergency turn to avoid the jet-ski. (CP 63:681). As a result of the abrupt turn, Mr. Putnam, one of Mr. Pace's passengers, was thrown out of his passenger seat towards Mr. Pace. Mr. Putnam's shoulder and all of his weight hit Mr. Pace with such force it caused Mr. Pace to be crushed into the side of the boat. (CP 63:681).

Mr. Pace was not able to get a good look at two of the three jet skiers. However, according to Mr. Pace, he was able to get a good look at the jet skier who attempted to cut off his boat prior to the injury-producing event. Mr. Pace recalls seeing the color yellow on one of the jet skis, and noted the rider who cut him off looked similar to Brian Bosworth.² (CP 63:681). The jet skier swung around and

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Mr. Bosworth was a star college linebacker at the University of Oklahoma, and a Seattle Seahawk, first round draft choice, who had a short but colorful pro football career. He was noted for his distinctive

paused momentarily and Mr. Putnam shouted there was someone injured on board. (CP 63:687). During this time, Mr. Pace had an opportunity to get a good look at the individual (who looked like Brian Bosworth), as well as the vessel's hull identification numbers. (CP 63:682-683). Mr. Pace told Mr. Putnam and Mr. Korn to recite the vessel number over and over. (CP 63:688).

The individuals within Mr. Pace's boat began reciting the hull identification number of the jet ski which had caused the injury; i.e., "**WN7704NT.**" (CP 24:1006). This hull number traced directly back to one of the jet skis, specifically a 2006 Sea-Doo brand jet ski, owned by defendant James Davis. It was subsequently discovered that Mr. James Davis owned two jet skis - one a newer 2006 SeaDoo jet ski and also an older 1997 SeaDoo jet ski which had yellow detailing. (CP 67:318-322). Not too coincidentally, Mr. Davis and Mr. Pace owned vacation properties at the same development in Eastern Washington on the Columbia River.

Following the events, Mr. Pace's companions laid him down in the boat and tried to provide aid, while they piloted the boat to shore. Once they arrived back at Mr. Pace's property, they made contact with Mr. Pace's wife, Patty, and immediately called for emergency aid. Mr. Pace initially received medical care from EMT personnel, who responded to the scene. He was transported by ambulance to Quincy

haircut and physical appearance.

Valley Hospital, where he was diagnosed as suffering from a fractured clavicle and shoulder injuries.

Shortly after the event, Mr. Davis expressly denied to the police that his Sea-Doo/jet ski was being utilized on the date in question or at the time in question, and the inconclusive police investigation into the matter was closed without citations. (CP 51).

B. Pretiral Proceedings.

As a result, Mr. Pace initially filed a lawsuit against James Davis under Snohomish County Cause No. 07-2-03073-2. (CP 2).

Following the filing of the complaint, James Davis answered, and Alice Brown (trial counsel for Scott Davis) appeared. ³Ms. Brown filed an early motion for summary judgment which was ultimately continued by agreement. Within the motion for summary judgment, James Davis specifically asserted he had personal knowledge his jet-skis were not being utilized at the time in question. (CP 17).

Subsequently, Mr. Davis' deposition was taken, and it was determined he was not at the location where the jet-skis were at the time in question, thus he had no personal knowledge with respect to the use of the jet-skis within the operative time frame. (CP 67). Within his declaration, Mr. Davis falsely stated he had personal

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All of the Davises, throughout the course of the trial and pretrial proceedings were represented by the same counsel.

knowledge regarding the location of the jet-skis at the time of the subject accident when in actuality he did not. (CP 17).

Following additional discovery, defendant James Davis renewed his motion for summary judgment. At that time, Plaintiff responded to the defendant's motion for summary judgment, arguing there were questions of fact with respect to the utilization of Mr. Davis' Jet-ski in a negligent manner, and it was argued due to his ownership of such Jet-ski, he should be vicariously liable for the injuries suffered by Mr. Pace under a number of theories. (CP 23). In addition, a second lawsuit was filed against Scott and Tyler Davis, under Snohomish County Cause No. 09-2-06363-8, who had been identified as persons using the jet ski on the date in question. Scott Davis met the description provided by Mr. Pace as to who the operator of the Sea-Doo was that cut him off, causing him injury.

In July of 2009, the Honorable George Appel heard defendant's motion for summary judgment. During the motion for summary judgment, James Davis continued to clearly dispute the use of the jet-skis. At that time, Plaintiff argued the "Family Purposes Doctrine" commonly known as the "Family Car Doctrine" should be applied to jet skis within the State of Washington, because the situation was closely analogous to similar situations involving automobiles and/or motorcycles. In addition, presumed agency principles were argued, as well as the concept of

negligent entrustment. (CP 23). Despite the fact such recreational vehicles are often high-powered, fast moving vehicles, where the application of the doctrine would no doubt be in the public good,

Judge Apple found the doctrines inapplicable to recreational vehicles such as jet-ski/jet skis, and dismissed Mr. James Davis.⁴

Following the dismissal of James Davis on summary judgment by Judge Appel, what remained were the claims against Scott Davis and Tyler Davis, as well as Scott Davis' marital community. Prior to trial, the defendants again moved for summary judgment regarding the claims against Tyler Davis and Scott Davis' marital community with Kendall Davis. This matter was assigned to Judge Downes as the second summary judgment Judge. Judge Downes rejected the defendant's effort at summary judgment regarding the marital community of Scott Davis, but granted as to Tyler Davis, finding there to be insufficient facts to find he was riding the subject Sea-Doo at the time in question, despite the fact that Tyler Davis admittedly had been one of the individuals riding the jet-ski earlier the same day, and was amongst the regular users of one of the subject jet-ski (1997 jet ski with yellow detailing). Mr. Pace indicated he saw yellow on one of the jet skis involved in the incident resulting

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Prior to hearing the Motion for Summary Judgment, Judge Apple entered an Order consolidating cases Nos. 07-2-03073-3 and 09-2-06363-8 into Cause No. 07-2-03073-3

in his injuries and the undisputed facts (and the inferences therefrom) revealed Tyler Davis' statements regarding his location at the time of the accident (CP 69) were in direct conflict with the statements of his grandmother, Carol Davis, regarding Tyler's location at the time of the accident. (CP 66). In other words, there were questions of fact regarding Tyler's "alibi." From these facts, a reasonable jury could have concluded Tyler Davis was among the jet-ski party involved in the June 30, 2006 incident.

This case was called for trial before the Honorable Gerald Knight. During the course of trial, substantial testimony was presented regarding the above issues. Due to the previously granted summary judgment motions, the case proceeded only against Scott Davis and his marital community.

C. Trial Proceedings.

This case was called for trial on October 22, 2009. The case was assigned to The Honorable Gerald Knight. (RP 2). At the commencement of trial, Judge Knight heard the parties' motions in limine/evidentiary motions. (RP 2 - 43). During the course of such argument, Judge Knight appeared to go out of his way to emphasize the fact that Plaintiff's counsel were officed in Pierce County, as opposed to Snohomish County. (RP 17). At time of trial, Plaintiff called 12 witnesses, including his physician by way of videotape. Plaintiff called both Scott Davis and

James Davis as adverse witnesses in his case in chief. ⁵

During the course of trial, Mr. Pace testified that by way of background he is a dog trainer, who trains, among other dogs, police and service dogs. (RP 73-76). On the date in question, June 30, 2006, he was working on his cabin early in the day, and in the late afternoon, his friends, Trevor Korn and Shawn Putnam arrived. (RP 82). After their arrival, Mr. Pace and his two companions decided to take a boat ride on the Columbia River in Mr. Pace's personal boat. (RP 82-92).

During their boat ride, Mr. Pace observed three jet skis in the distance, who subsequently approached them. Mr. Pace specifically testified that one of the jet skis sprayed his boat with water, i.e., at a fast rate of speed rode the jet ski toward his boat and then sharply veered way, propelling water into the passenger area of Mr. Pace's boat. (RP 96). Being sprayed by such water disoriented Mr. Pace, and the next thing he was aware of one of the three jet skis approaching his boat on a collision course at a high rate of speed. In reaction to the fast-approaching jet ski, Mr. Pace took evasive action, which unfortunately resulted in one of his companions being propelled into him, causing a crushing injury to his shoulder and clavicle. (RP 97-99).

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It is noted that the index to the Verbatim Report of Proceedings is inaccurate in that it indicates that Scott Davis, Bruce Jackson, Cara Putnam, Carol Davis and James Davis were "defendant witnesses," when in fact they were called as witnesses during the course of Plaintiff's case in chief.

Mr. Pace was immediately aware that he had suffered significant injury. Nevertheless, he instructed both Mr. Putnam and Mr. Korn to get the hull number from the jet ski that had engaged in the conduct which had required him to take evasive action. (*Id.*, 99). The jet skier who had caused the need for Mr. Pace to take evasive action, temporarily stopped and inquired as to whether or not anybody was hurt, and was informed that someone had been injured. The wrongdoing jet skier indicated that he was going to leave the scene to get help. Mr. Pace described this individual as looking like "Brian Bosworth," and identified Mr. Scott Davis as being the rider of the jet ski who was on a collision course with Mr. Pace's boat, not only in Court, but also through photographs which had been produced by the defense in the case, depicting Scott and Tyler Davis on the two jet skis owned by James Davis. (RP 100-104).

Mr. Pace also indicated that one of the other jet skis involved in the incident had yellow on it. One of the jet skis owned by Mr. Davis (a 1997 SeaDoo jet ski) had yellow detailing. Mr. Pace also indicated that after the incident, he had an opportunity to go by the cabin owned by James Davis, also located at Sunland Estates, and observed that there was also a yellow life vest on the property owned by the Davises. (RP 103).

Mr. Pace emphatically testified that as they traveled from the scene of the

incident to shore, for the purposes of acquiring emergency medical aid for Mr. Pace, that he and his companions repeatedly recited the hull number of the involved jet ski, to ensure that the person involved could be held accountable. (RP 104-105).

As a result of the above-referenced incident, Mr. Pace suffered a shattered clavicle (four breaks), and significant damage to his shoulder, which his physician opined would require surgery in the future. (RP 110).

In addition, Mr. Pace related to the jury an incident after the accident where he discovered James Davis on his property. Mr. Pace indicated that once he had an opportunity to observe James Davis, he noted a familiarity, and believed that Mr. Davis substantially resembled the individual who was involved in the boat/jet ski incident. (RP 124-126).

During the course of Mr. Pace's testimony, Exhibit "10" - a photo of Brian Bosworth, was admitted into evidence for illustrative purposes, so the jury could compare and contrast the photographs of Scott Davis depicting him on a jet ski, which had previously been admitted into evidence. (RP 131).

In addition, Plaintiff called Sean Putnam and Trevor Korn, who were Mr. Pace's companions at the time of the accident. (RP 168-213). Mr. Putnam verified Mr. Pace's versions of the events, and again reiterated that they were able to acquire the hull number of one of Mr. James Davis' jet skis at the time of the incident. (Mr.

Davis' 2006 jet ski). Mr. Korn also testified about his recollections of the events, and his certainty that the hull number which they had recited from the scene of the incident to shore, was indeed accurate. (RP 205-213).

Following Mr. Korn's testimony, a juror submitted an inquiry about whether or not Mr. Putnam could be re-called as a witness. (RP 238). Judge Knight admonished the jury that such an inquiry was not of a "clarifying nature" and defined what was or was not a clarifying question in an extremely limited manner by providing a hypothetical situation where there was some uncertainty as to a date when a particular event occurred. (RP 240). Following such a hypothetical, Judge Knight admonished the jurors that "but when you get into questions that you really want questions asked of witnesses in addition to what they have already testified about, or not testified about, that's not clarification, its really a question that you would like to ask, but it is not clarifying something, of prior testimony." (RP 240).

Mr. Pace's wife, Patti Pace, was also called as a witness and verified that once Mr. Pace and his companions arrived back at shore, following the injury-producing event, she was given the vessel identification number, which she contemporaneously wrote down. (RP 253-266) (Trial Exhibit "12"). Thereafter, Mr. Scott Davis was called as an adverse witness.

During the course of his testimony, Scott Davis conceded that he primarily

rides the jet skis with his son, Tyler, and that the SeaDoos owned by James Davis were new to the family, and had only been recently purchased at the end of May, 2006. (RP 300-305). He also conceded that Tyler was restricted to riding only the 1997 jet ski, because the 2006 jet ski was supercharged, and later admitted that the 2006 jet ski was a powerful and fast instrumentality, akin to a motorcycle, and that he had personally tested. (RP 307; 313).

According to Scott Davis, James Davis had specific rules about using the jet skis, and Scott had previously been personally admonished to be “careful,” and that “don’t be stupid,” when it came to utilizing his father’s jet skis. (RP 308-309). Scott Davis admitted that early on the date of accident, June 30, 2006, that he and Tyler were both riding the jet skis, but he subsequently denied that he was involved in the incident. (RP 310;371). Nevertheless, Scott Davis indicated that even on the very weekend in question he had used the jet skis to “jump wakes” generated by other watercraft on the Columbia River. (RP 313). He also admitted that he allowed his then 14 year-old son, Tyler, to use the 1997 jet ski to jump wakes, and that Tyler was an extremely rambunctious young man.

Scott Davis conceded that the hull number memorized by the Plaintiff and his party, was the hull number of the 2006 jet ski, and ultimately he could not account for his or Tyler’s whereabouts during the relevant time frame. (RP 318-320).

He also acknowledged that on that date, James Davis had admonished that the jet skis should not be used the remainder of the holiday weekend out of safety concerns. Scott Davis did not agree with his father's concerns, and after making such a statement, Mr. Davis left the family property and did not return until after the accident involving Mr. Pace. (RP 321). Scott Davis characterized Tyler as being a rambunctious teen, and admitted that after his father had left the property on the day in questions, Tyler continued to pester Scott to use the jet skis, even though the owner of the jet skis, his grandfather, had said no. (RP 321). Scott Davis also testified that despite his father's concerns about the use of the jet skis on that holiday weekend, the keys to the jet skis were attached to life vests that remained on the property and which were kept on a rack, located out of doors. (RP 360-362).

In other words, despite concerns that Scott could do things which were "stupid," and was resisting James Davis' direction regarding the use of the subject jet skis, the keys to the jet skis were left within easy access for either Tyler or Scott, or anyone else who desired to use the jet skis while James Davis was absent from the property.

Scott Davis, during the course of his testimony he did admitted that if he had engaged in the conduct alleged by the Plaintiff, i.e., using a jet ski to cut off a boat's course of travel, that such conduct would be negligent. (RP 321-323).

Suspiciously, Scott Davis admitted that after he became aware of the accident-producing incident involving Mr. Pace, the jet skis were moved from a location near the Davis' vacation property, to "a cove" within a secluded area. (RP 321; 404). Scott Davis admitted that the family had a yellow life vest at the location, and remarkable testified that prior to his deposition in the matter, there were up to seven family meetings where the allegations of Mr. Pace were discussed. (RP 379-384; 398). Nevertheless, Scott Davis continued to deny that he had been riding the jet ski at the time in question. (RP 371).

James Davis was also called as an adverse witness. (RP 490). Mr. Davis testified that he purchased two SeaDoo jet skis on May 31, 2006, and that Tyler was the first person to ride the 1997 jet ski. (RP 491-493). James Davis conceded the obvious, that 14 year-old Tyler was anxious to use the SeaDoos, and admitted that the keys to the SeaDoos were attached to life vests, which were kept on a rack outside of the cabin. (RP 494;501). Mr. Davis conceded that on the date in question, he left his cabin property (and the SeaDoos) at approximately 2:30 p.m., and did not return until after he heard the sirens of the emergency vehicles, which came to provide Mr. Pace aid. (RP 507-509). He also related that when he returned, he did not know where Tyler was, and that earlier in the day that he and Scott had a

disagreement as to whether or not Scott should use the SeaDoos. (*Id.*) It was clear to James Davis, prior to leaving the premises, that Tyler also wanted to use the SeaDoos. (*Id.*) He acknowledged that when he finally returned to the cabin on that date, everybody was gone. He also acknowledged that after Mr. Pace was injured, the SeaDoos were moved to a cove area, which was more secluded than the buoy, located near the Davis' property. (RP 12).

Mr. Davis, during the course of his testimony, conceded that he had previously, in support of his earlier Motion for Summary Judgment, had filed a declaration that contained substantial misstatements of fact (which was false). (RP 512-514). He admitted, despite the previous representation to the contrary, that based on his own personal knowledge, he could not say where the SeaDoos were actually located at the time of Mr. Pace's injuries. (See, Trial Exhibit "14")

Nevertheless, Mr. James Davis indicated that Scott generally did have permission to use the jet skis, even when James Davis was not located on the vacation property. (RP 520). He also conceded that when the police attempted to investigate the incident, that he had lied to the police with regard to the use of his SeaDoos at the time in question, telling the police that the SeaDoos had not left the buoy the entirety of the day. Mr. Davis admitted that such representations were in fact false. (RP 512).

Finally, by way of significant Trial Court proceedings, it is noted that Tyler Davis was called by the defense in the case, and admitted that he certainly wanted to use the subject SeaDoos, which were new to the family. (RP 569-575).

Following the submission of testimony in this case, the Court and the parties engaged in an instruction conference. (RP 604-612).

The Plaintiff took the exception of the failure to give Plaintiff's proposed instructions nos. 13 and 17, which related to statutory violations. Both instructions are attached hereto as Appendix "2". Plaintiff's formal exceptions with regard to the failure to give such instructions were predicated on the position that such a statute was part and parcel of the standard of care applicable to watercraft such as jet skis, and that the jury should be properly informed of such a standard of care. (RP 613-615). Nevertheless, the Trial Court rejected such instruction on the grounds that it was potentially confusing, and an allegation that it was a "poorly drafted instruction." (RP 616).⁶

Following closing arguments, the jury began its deliberation. During the course of deliberations, the jury submitted a question to the Trial Court, inquiring as follows:

In regard to Instruction No. 7 and further clarification, does any

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It is noted that the subject instruction was simply a paraphrase which substantially tracked the relevant statutory language.

negligence on the part of Tyler Davis constitute negligence on the part of Scott Davis as his parent?
(RP 712).

Once the Court received the jury question, the Trial Court's law clerk called the attorneys. During the course of the phone call, the law clerk indicated that the Court was inclined to answer the question "no." Plaintiff's counsel telephonically indicated that it was Plaintiff's position that the response should be to "read the instruction" or "re-read them." (RP 713). It was indicated that there was also a concern that by answering "no" to the question that it would constitute a "comment on the evidence." (RP 714).

Nevertheless, despite the concerns stated by Plaintiff's counsel, the Court went ahead and answered the questions "no."

Following the response to the jurors' inquiry, the jury returned a 10-2 defense verdict. (RP 706-708).

Subsequently, the Plaintiff's moved for a new trial, which was denied by the Trial Court. (RP 716-738). Thereafter, the Plaintiff herein continued to pursue this appeal.

IV. ARGUMENT

A. Relevant Standards of Review.

It has long been recognized that when a Trial Court enters an Order granting

full or partial summary judgment, such an Order is subject to de novo review by the Appellate Court. As a “de novo” review is involved, like the Trial Court, the Appellate Court must view the facts in a light most favorable to the non-moving party and make a determination as to whether or not genuine issues of material fact exist for trial, or whether all issues can simply be resolved as a matter of law. *Korslund v. DynCorp. Tri-Cities Services, Inc.*, 156 Wn.2d 168, 177, 125 P.3d 1119 (2005). Summary judgment should only be granted if reasonable minds cannot differ as to the facts and/or application of the law, and but one conclusion can be reached from the evidence presented. *Id.* See also, *Hubbard v. Spokane County*, 146 Wn.2d 699, 707-08, 50 P.3d 602 (2002).

A Trial Court’s decision to reject proposed jury instructions is generally reviewed under an abuse of discretion standard. See, *State v. Winings*, 126 Wn.App 75, 86, 107 P.3d 141 (2005). Alleged legal errors within jury instructions are reviewed de novo. *Id.*

B. Rules on Summary Judgment.

In this case, there are substantial questions as to what actually transpired due to contradicting statements of fact submitted by the parties in this suit. In order to preclude summary judgment, the issue of fact must be both genuine and material. A

genuine issue of fact exists, thus precluding summary judgment, when reasonable minds could reach different factual conclusions after considering the evidence. A material fact is one on which the outcome of the litigation depends. *Capitol Hill Methodist Church of Seattle v. Seattle*, 52 Wn.2d 359, 324 P.2d 1113 (1958). When reasonable minds could differ, the motion should be denied and the case should go to trial. *Klinke v. Famous Recipe Friend Chicken, Inc.*, 94 Wn.2d 255, 616 P.2d 644 (1980). Any doubts as to the existence of a genuine issue of material fact should be

resolved against the moving party, and in favor of allowing the case to go to trial. *See, Ely v. Hall's Motor Transit Co.*, 590 F.2d 62 (3d Cir. 1978).

The court in *Balise v. Underwood*, 62 Wn.2d 195, 199-200, 381 P.2d 966 (1993), succinctly set forth all of the rules applicable to summary judgment motions.

Those rules include in part:

(8) When, at the hearing on a motion for summary judgment, there is contradictory evidence, or the movant's evidence is impeached, an issue of credibility is present, provided the contradicting or impeaching evidence is not too incredible to be believed by reasonable minds. The court should not at such hearing resolve a genuine issue of credibility, and if such an issue is present the motion should be denied. 6 Moore's Fed.Prac. (2d ed) ¶ 56.15(4), pp. 2139, 2141; 3 Barron & Holtzoff, fed. Prac. And Proc., § 1234, p. 134.

(Balise v. Underwood, 62 Wn.2d at 199-200).

In this case, there are material issues of fact with regard to James Davis' legal responsibility for the use of his jet skis in a negligent manner. These issues shall be discussed in more detail below. In addition, with regard to Defendant Tyler Davis, there were, and continue to be, substantial issues with regard to credibility should have precluded summary judgment. As discussed above, there are substantial credibility questions regarding such matters as motive and opportunity, and the absence and/or deficiencies of an alleged alibi. Clearly, Tyler Davis was the primary user of the 1997 jet ski, which consistent with Mr. Pace's testimony had yellow detailing, and/or there were credibility issues with the existence of a yellow life vest, which also would account for Mr. Pace recognizing and recalling "yellow" when addressing the details of one of the jet skis involved in the incident (the one that sprayed the Pace boat).

Clearly, young Mr. Davis was substantially motivated to use the jet skis, despite his grandfather's directions to the contrary. Young Mr. Davis is characterized as being a rambunctious young man, and given the fact that the keys to the jet skis were maintained on life vests placed on a rack, outside of the Davis vacation property, he clearly had an opportunity to utilize the jet skis at a time when his grandfather, James Davis, was otherwise not present. Also, there are substantial

questions regarding young Mr. Davis' "alibi," in that contradictory information exists regarding his whereabouts at or around the time of the accident at issue.

It is suggested that it was error for the Trial Court to summarily dismiss such credibility issues, and grant Tyler Davis' Motion for Summary Judgment in this matter.

C. Presumed Agency.

Under Washington law, it has long been recognized that a principle is responsible for the torts of its agent, so long as actions of the agent are within the scope of the agent's actual or apparent authority. See, WPI 50.03. See also, *Titus v. Tacoma Smelterman's Union Local No. 25*, 62 Wn.2d 461, 383 P.2d 504 (1963); *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994).

It is noted that under the laws of the State of Washington, there is a presumption that a vehicle being used by another is acting as the owners' agent. See, *Williams v. Anderson*, 63, Wn.2d 645, 650-51, 388 P.2d 725 (1964). See also, *Callen v. Coca-Cola Bottling, Inc.*, 50 Wn.2d 180, 310 p2d 236 (1957)(such a presumption

is rebuttable, but in order to preclude the creation of an issue of fact, such rebuttal evidence must be “uncontradicted, unimpeached, clear and convincing”). See also, *Bradley v. S. L. Savidge, Inc.*, 13 Wn.2d 28, 123 P.2d 780 (1942).

In this case, it is undisputed that James Davis was the owner of the subject motorized vehicle. Although Mr. Davis denies his motorized vehicle was involved in an accident, he has not shown that the individual who was driving the vehicle, Scott Davis, was not operating within the scope of his agency/authority at the time in question. Thus, it is suggested that as a matter of law, James Davis can be held liable for the actions of his son (and grandson), who were operating within the scope of his presumed agency at the time in question.

The existence of this unrebutted presumption alone was sufficient to warrant a denial of summary judgment in this matter. Even if one assumes *arguendo* that the Defendants’ denials were sufficient to rebut such a presumption, such rebuttal simply creates a question of fact for the jury.

It is respectfully suggested that there is no valid reason to not apply such principles to a high-powered personal watercraft, which are essentially the boating

world's version of a motorcycle. Further, it is noted that even if we assume *arguendo* that, neither Scott Davis nor Tyler Davis were operating the subject SeaDoods at the time in question, nevertheless, Mr. Davis, under such a presumption of agency, should be held accountable for the utilization of his jet ski in a negligent manner by a yet to be identified and/or unknown individual. In other words, if presumed agency had been recognized by the Trial Court, ultimately, the actual identity of the riders of the jet skis at the time in question would not necessarily be dispositive, and had the jury concluded that the subject 2006 jet ski was in fact involved in the accident, but could not have decided on who was actually driving it, James Davis could have nevertheless been held accountable under appropriate jury instructions. ⁷

D. The “Family Purposes Doctrine” is Applicable In This Case.

What is at issue is the “Family Purposes Doctrine” which over the years have been mislabeled the “Family Car Doctrine.” See generally, 61 *C.J.S. Motor Vehicles* Sec. 842 (2009).

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It is noted that despite the fact that James Davis indicated that neither Scott nor Tyler had specific permission on the day in question to use the jet skis, he nevertheless acknowledged that Scott had general permission to use the jet skis at any time he wanted to, with or without express permission. (RP 520).

Further, although there is no case in Washington State directly on point, the “Family Purposes Doctrine” has been applied to watercraft. See, *Sanders v. Griffin*, 134 GA.app 689, 215 SE 2nd 720 (1975). In the *Sanders* case, the family of a waterskier, who was struck and killed by a boat, sued the owner of the boat and the operator for wrongful death. In that case, the trial court dismissed the defendants on a directed verdict because it was of the opinion that the “Family Purposes Doctrine” did not apply to watercraft. The Georgia Court of Appeals reversed. Applying concepts typically applicable to automobiles, the Georgia Supreme Court held that the evidence was clear that the boat was purchased for the pleasure of the owner and his family and was being used by a family member for such purposes at the time of the accident. It was noted: “Clearly under the facts of this case, the boat was being used for the convenience and pleasure of the owner and his family, and the daughter was his agent in using the boat, even though she was married and living apart from the owners’ household.”

The same rule should apply here. Clearly, the subject Sea-Doo was purchased by Mr. Davis for his own use and use of his family members. It is very

clear that his son, Scott Davis, who more probably than not was the person driving the Sea-Doo, Tyler Davis and the other Sea-Doo did not reside with his father/grandfather, such facts are not dispositive.⁸

It has been previously noted that although the “Family Purposes Doctrine” is predicated on agency principles, the underlying policy behind the rule is to ensure that injury victims receive reasonable compensation. See, *Cameron v. Downs*, 32 Wn.App 875, 881, n. 1, 650 P.2d 260 (1982). It is suggested that such underlying policy rationale is the same whether or not an automobile vs. a watercraft is involved in the injury. It is noted that as with automobiles, the operation of watercraft such as jet-skies and boats, is highly regulated. See, RCW 79A.60 et seq. If one examines the statutory scheme applicable to watercraft, many of its features are identical with those applicable to automobiles. If one fails to operate a watercraft in a responsible and prudent manner, one can be subject to misdemeanor or greater punishment.

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It has been previously held in the State of Washington that the fact that a child does not reside within the father’s household does not bar the application of the “Family Car Doctrine.” See, *Kaynor v. Fairline*, 117 Wn.App 575, 72 P.3d 262 (2003).

In addition, RCW 79A.60.030 specifically precludes the operation of watercraft in a “negligent manner.” It defines “negligent manner” as: “to operate in a negligent manner means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are not greater than is reasonable and proper under the conditions existing at the point of operation...” In addition, RCW 79A.60.040 precludes the operating of watercraft in a “reckless manner” and, among other things, there are felony penalties for “homicide by watercraft.” See, RCW 79A.60.050.

Significantly, RCW 79A.60.190 precludes the operation of a watercraft by an individual under the age of fourteen years of age, and at RCW 79A.60.190 (5) specifically prohibits the operation of a personal watercraft in a reckless manner, including recklessly weaving through congested vessel traffic, **recklessly jumping the wake of another vessel unreasonably or unnecessarily close to the vessel or when visibility around the vessel is obstructed, or recklessly swerving at the last possible moment to avoid a collision.**” (Emphasis added).

Based upon Mr. Pace’s testimony, clearly the actions of the person operating

the Sea-Doo at issue in this case, Scott Davis, violated RCW 79A.60.190 (5), and such a violation was the proximate cause of injury sustained by Mr. Pace.

In sum, there is substantial policy justification for applying the “Family Purposes Doctrine” to watercraft within the State of Washington.

As discussed in the *Cameron* case, at 880-81, and recently reiterated in *Kaynor*, at 584-85, the “Family Purposes Doctrine” has the following elements:

1. *The car is owned, provided or maintained by the parent;*
2. *For the customary conveyance of family members and other family business;*
3. *At that time of the accident the car is being driven by a member of the family for whom the car is maintained; and*
4. *With the express and implied consent of the parent.*

Stated another way, the “Family Purposes Doctrine” provides that one who owns a vehicle for the customary conveyance of the members of his/her family, **whether for business or solely for pleasure**, makes the transportation of such persons by that vehicle his affair, that is, his business, and anyone driving the vehicle for that purpose is with his consent express or implied, whether that person is a

member of his family or another, and under the law is treated as “his agent.” *Id.* See also, *Davis v. Browne*, 20 Wn.2d, 219, 229, 147 P.2d 263 (1944).

It is noted that the “purposes” for which the vehicle is maintained makes a determination as to whether or not it is for a “family purpose.” See, *Cameron v. Downs*, 32 Wn.App at 880-81. In other words, one must look at the nature of the vehicle involved and make a determination as for what purpose it would be maintained by a family. In this case, clearly a Sea-Doo would be maintained by a family for the purposes of recreation, the law does not require that the vehicle is being utilized for some undefined business purpose. See also, 61 *CJS Motor Vehicles* Sec. 842 (2009) (for “the ‘Family Purposes Doctrine’ to be applicable, the head of the household must maintain the automobile **for the purposes of providing pleasure or comfort for his or her family, and the family purpose driver must have been using the motor vehicle at the time of the injury for which a recovery is sought in furtherance of that purpose...**”). See also, WPI 72.05.

In addressing each of these elements which are succinctly set forth in the *Kaynor* opinion, it has long been recognized that registration of the vehicle in the

name of the parent establishes a rebuttable presumption of ownership. *Id.* See also, *Coffman v. McFadden*, 68 Wn.2d 954, 958, 416 P.2d 99 (1966).

In this case, it is clear that James Davis purchased the subject Sea-Doos which were involved in this incident. He had accepted delivery of the vehicles and was maintaining them on his premises. With respect to this element, nothing more need be shown.

To establish the element of “customary conveyance of family members and other family business,” all that needs to be shown is that the vehicle was made available to family members “for the general use, pleasure and convenience of the family.” Clearly, a Sea-Doo located at a parent-owned vacation property would be and was something generally made available to Scott Davis and Tyler Davis on a regular and routine basis. It is also clear that James Davis (the father) maintained clear control over the use of the Sea Doos and had set down some “rules.” Nevertheless, one can assume that there was an implied and/or express consent that

Scott Davis and Tyler Davis would be allowed to use the Sea-Doos for their intended recreational purposes. It is noted that there is no question that the Sea-Doo was being utilized in a manner consistent with its intended purposes, i.e. recreational activity. Further, as discussed in *Kaynor*, it is unnecessary that the family member actually reside with the parent in order for the Doctrine to be applicable.

While James Davis denies that at the time of the incident anyone was using his Sea-Doo, it is clear that generally the Sea-Doos were made available to his son and grandson, and the keys were readily accessible at the location where the life vests were stored outside, hanging on a rack.

In addition, there is an absence of a public policy basis for denying recognition of the application of the "Family Purposes Doctrine" to watercraft, such as jet skis. As the statistical data set forth within Appendix "1" indicates, even though recreational in nature, personal watercraft such as jet skis, are highly dangerous instrumentalities that have the potential of causing significant injuries, including those which are fatal.

It is suggested that the application of the “Family Purposes Doctrine” to watercraft, such as jet skis, would only serve to aid the over-riding public policies of this State that ensure that individuals do not engage in acts of negligence, which cause significant injury to others. The application of such doctrine to the facts of this case, would have the salutary effect of encouraging those who own watercraft, such as jet skis, to ensure that they are used in a responsible manner, and would only encourage the owner of such jet skis to take measures to ensure that other family members do not engage in acts of negligence and/or recklessness.

Thus whether under basic agency principles, or agency principles as defined under the “Family Purposes Doctrine” it is clear that there were outstanding factual issues that precluded the summary resolution of this case.⁹ On retrial, such an error can be corrected.

E. Negligent Entrustment.

A party in control of a vehicle or other instrumentality may be held liable for damages resulting from the use of that instrumentality when it is supplied or

entrusted to someone who is intoxicated or otherwise incompetent. See, *Hulse v. Driver*, 11 Wn.App 509, 524 P.2d 255 (1974). Generally, in the automobile context, negligent entrustment is most often applicable when one loans a vehicle to an intoxicated person, or loans a vehicle to an otherwise incompetent driver. See, *Parrilla v. King County*, 138 Wn.App 427, 441, 157 P.2d 879 (2007). As noted in

Cameron, an “incompetent” driver would be someone who is known to be “reckless, heedless, or incompetent.” Citing to *Jones v. Harris*, 122 Wn 69, 210 P.22 (1922).

Principles of negligent entrustment has been applied to other “dangerous instrumentalities.” For example, in *Hickle v. Whitney Farms, Inc.*, 148 Wn.2d 911, 664 P.3d 1244 (2003), the Supreme Court found that negligent entrustment principles were applicable to a fruit juice producer who entrusted industrial quantities or organic waste to a contractor, who were subsequently negligent in the method and manner in which such waste was disposed. Further, our Supreme Court long ago recognized that one could be held accountable for negligently entrusting a gun to an intoxicated individual, who later used the pistol to kill the plaintiff’s decedent. See,

Bernethy v. Walt Failor's, Inc., 97 Wn.2d 929, 653 P.2d 280 (1982).

In this case, James Davis admitted that he knew his son and grandson wanted to use the Sea-Doos on the day in question, after their initial morning session. He knew that he had previously admonished Scott Davis not to engage in, for lack of a better word, stupid actions, and both he and Scott were well aware that Tyler was capable of rambunctious behavior. Yet, despite the fact that James Davis knew that his son and grandson wanted to use the Sea-Doos on the day in question, and like a teenager, had to be admonished not to engage in stupid actions, nevertheless James Davis left the keys to the Sea-Doos hanging off of a life vest on the family property, easily accessible to his son and grandson, who no doubt had a strong desire to use the Sea-Doos, which were new to the family.

From these facts, a reasonable jury could have concluded that James Davis was negligent in his entrustment of the Sea-Doos to Scott Davis and Tyler Davis by providing easy access to the keys. By his own admission, James Davis was aware that there were potential dangers on the river during the July 4th weekend. He also knew that his son and grandson wanted to use the Sea-Doos, despite his concerns. His

response was to admonish them, but nevertheless leave the keys readily available. A reasonable jury should have been allowed to consider whether or not such actions were negligent.

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F. The Trial Court Committed An Error of Law By Failing to Instruct the Jury With Regard to Statutory Violations Which Were Supported By the Evidence.

In this case, Plaintiff submitted Plaintiffs' Proposed Jury Instructions Nos. 13 and 17, which addressed the statutory law applicable to watercrafts, including Sea-Doos and jet skis, within the State of Washington. The failure to give these instructions were subject to exceptions. Generally, it is considered to be reversible error to not give a proposed instruction with regard to statutory violations, when the giving of such an instruction is otherwise supported by the facts presented at the time of trial. See, *Trueax v. Earnst Home Center*, 70 Wn.App 381, 853 P.2d 491 (1993), reversed on other grounds, 124 Wn.2d 334, 878 P.2d 1208 (1994).

When a court fails to instruct a jury that a violation of a standard may be considered by them in assessing negligence, when the giving of such an instruction is supported by the evidence, it is deemed to be a failure of providing instructions sufficient to allow a party to argue their theory of the case. *Id.* Further, the existence of such statutes dealing with watercraft safety go directly to the question of what standard of care could have been violated by these defendants. See, *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 951 P.2d 749 (1998); see also, *Joyce v. State*, 155 Wn.2d 306, 324, 119 P.3d 825 (2005). Without such instructions or guidance, the jury easily could have been misled and/or confused, or left to their own devices, as to what rules are applicable to watercraft navigating waterways within the State of Washington, which is not a matter of general knowledge.

It is respectfully suggested that it is not necessarily within the average juror's knowledge that there are specific statutory standards of care applicable to the use of watercraft within the State of Washington. Plaintiff's proposed instruction No. 13 simply tracks the statutory language set forth at RCW 79A.60.030, and was and is a correct statement of the law. Further, although the Court characterized such an

instruction as being confusing, because it includes matters such as “speed,” nevertheless the giving of such an instruction was supported by the evidence. If the “speed” language was a concern, it is noted that traveling at a high rate of speed on a collision course with another watercraft is operating at a rate of speed which is greater than that which is “reasonable and proper under the conditions existing at the point of operation” as set forth within the subject statutory language and the proposed jury instruction. In other words, excessive rate of speed under the then-existing conditions **was** an issue at trial.

It is noted that the instruction proposed by the Plaintiff regarding the statutory standards of conduct and/or standard of care applicable to watercraft within the State of Washington, was an instruction akin to those instructions regularly provided under WPI 70 et seq, relating to statutory violations involving motor vehicles. The Court’s failure to instruct the jury regarding the relevant statute would be akin and analogous to a Trial Court’s refusal to instruct with WPI 7.01 (general duty - drivers or pedestrians), or such matters as WPI 7.06 (right to assume others will obey law -

streets or highways). It is noted that it has been found to be reversible error to fail to give such instruction. See, *Kelsey v. Pollock*, 59 Wn.2d 796, 730 P.2d 598 (1962). It is suggested that in such instances, even though the addition of any instructions beyond general negligence could be potentially “confusing.” Not only is the utilization of such instructions encouraged, but in fact may very well be mandatory.

Here, the Trial Court’s failure to provide the proposed instruction prejudiced Plaintiff’s ability to argue his theory of the case, which is that under the circumstances of this case, the Defendant violated the standards of care specifically set forth by a legislature within the statutory scheme set forth in RCW 79.A.60 et seq.

Thus, this error of law alone warrants the grant of a plenary new trial in this matter.

In any event, it is suggested that the failure to give such instructions was an error of law warranting the grant of a new trial.

G. The Trial Court Commented On Its Evidence When It Responded to the Jury Inquiry Regarding Scott Davis' Liability for the Actions of Tyler Davis.

CR 51 (i) governs.

In addition, CR 51 (j) provides, under the heading of *Comments Upon the Evidence*, that “judges shall not instruct with respect to matters of fact, nor comment thereon.”

In this matter, Plaintiff does not dispute that the trial court has substantial discretion in how it should appropriately address jury questions which occur during the course of deliberations. It is suggested that it is preferred that the Court address such issues in Open Court, after a full opportunity for a colloquy with counsel. However, the rule does suggest that all that is required is that the Court provide the parties notice of the content of the jury question, and provide an opportunity to comment, and that it occur by communications between court personnel and counsel, but apparently Plaintiff's concerns that the response to the question could be deemed a comment on the evidence was garbled in transmission. Generally, an instruction

which conveys to the jury the Judge's personal opinion as to the truth or falsity of any evidence is considered a comment on the evidence in violation of Washington State's Constitution, Article IV, Sec. 16. See, *Miesen v. Insurance Co. Of North America*, 1 Wn.App 185, 187, 460 P.2d 292 (1969). The above-referenced Constitutional provision prohibits a trial judge from any action or word which would convey to the jury his personal opinion as to the truth or falsity of any evidence. See, *State v. Brown*, 19 Wn.2d 195, 142 P.2d 257 (1943). See also, *Juneau v. Watson*, 68 Wn.2d 877, 416 P.2d 75, 1966).

In this matter, the Court, by answering the question by the jury regarding Scott Davis' responsibility for Tyler Davis, should have been answered with the direction to consider the instructions that were already given. By answering "no" to such a query, the jury likely viewed the matter as being a ruling on the part of the Judge that Tyler Davis was not present at the scene of the incident. As the evidence established, Scott and Tyler Davis would often ride the Sea-Doos together, thus, the jury could have construed the Court's answer to mean that the Court had determined in its own mind that Scott Davis was not present, and as such, Tyler Davis was not

present as well.

It is suggested that although clearly not intended to be as such, in light of the matters which were in factual dispute in this case, and the hotly contested nature of such factual disputes, any indication by the trial court as to who was or was not present at the incident, was a comment on the evidence violative of the above-referenced Constitutional provision, warranting the grant of a new trial.

H. The Trial Court's Approach to Juror Questions to Witnesses Was Erroneous.

Apparently, the Trial Court's view of how jury questions should be appropriately handled was based on the most recent version of WPI 1.01, which provides in part:

You will be allowed to proposed written questions to witnesses after the lawyers have completed their questioning. You may ask questions in order to clarify the testimony, but you are not to express any opinion about the testimony or argue with the witness. If you ask any question, remember that your role is that of a neutral fact-finder, not an advocate. (Emphasis added).

Initially, it is noted that the “clarifying” language set forth in WPI 1.01 does not exist within the actual language of the applicable Court Rule, i.e., CR 43 (k). Thus, it reasonably could be argued that the language set forth in this WPI contradicts the Court Rule, and as such is erroneous. See generally, *Keller v. City of Spokane*, 146 Wn.2d 237, 44 P.3d 845 (2002) (finding an error of law existing within a WPI, the giving of which warranted reversal and the grant of a new trial). Generally, Court Rules are interpreted the same way as statutes. See, *State v. Chhom*, 162, Wn.2d 451, 458, 173, P.3d 234 (2007). When interpreting a Court Rule, the Court should strive to give effect to its plain meaning as an expression of legislative intent. *Id.*

In examining CR 43 (k), there is nothing within its terms that necessarily limits jury’s questions to witnesses to “clarifying questions.” Indeed, as noted within the comments section to WPI 1.01, the adoption of CR 43 (k) in 2002 was predicated upon a 2000 study by the Jury Commission, which recommended amending the Court Rules to allow jurors to propose questions in all civil cases. Recommendation number 33, provides in part the following:

Jurors should be allowed to ask questions during civil and criminal trials, subject to careful judicial supervision. Permitting jurors' questions acknowledges the importance of the role of jurors of active learners and active participants in the search for the truth, promotes efforts to focus on the merits of the case rather than speculation, and avoids the real possibility of an erroneous verdict based on confusion or misunderstanding.

Given the context of the first comment, i.e., the purpose of jury questions, the method and manner in which the Trial Court in this instance interpreted the word “clarifying” was unduly restrictive because it served to preclude the jury from becoming active learners and participants in the search for truth. Clarifying matters such as dates and times standing alone does not provide for such participation, nor the intended jurors’ role in the trial process.

For example, although the one juror question at issue in this case was inappropriate because the witness had already been dismissed, and was asked at the time a different witness was on the stand, nevertheless the substance of the question was appropriate if it had been procedurally correct. In this case, the jurors simply wanted to clarify whether or not a witness that had already been called would be a supportive of a new proposition that was first heard from the witness who was presently before it. In other words, the question proposed was clarifying in a sense

that it was calculated to provide the jurors information which was apparently important to that juror with respect to making an informed decision.

Given the contradiction between the Court Rule and the jury instruction, and the apparent misinterpretation and/or confusion evidenced by the Trial Court's position on this matter, it is respectfully and humbly submitted that this matter should be subject to review, even if it is contended by the defense that the issue was not properly preserved before the Trial Court.

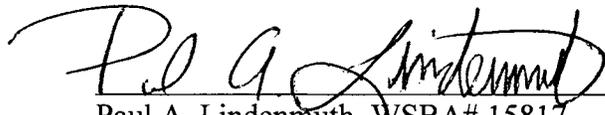
As this Court is no doubt aware, the application of RAP 2.5 (a), which generally requires that before an issue is subject to review it must be raised within the Trial Court, it is ultimately a matter of the reviewing Court's discretion. See, *Bennett v. Hardy*, 113 Wn.2d 912, 918, 784 P.2d 1258 (1990). It is humbly suggested that, as this is a subject that is likely to recur and cause future mischief, there would be substantial justification for the Court to consider this issue. In addition, even if it could be argued that the issue is not properly before the Appellate Court, it is respectfully urged that given the above-stated justifications for the grant of a new trial in this matter, that the Court should nevertheless provide guidance on this issue

to ensure that error does not recur during the course of re-trial.

VI. CONCLUSION

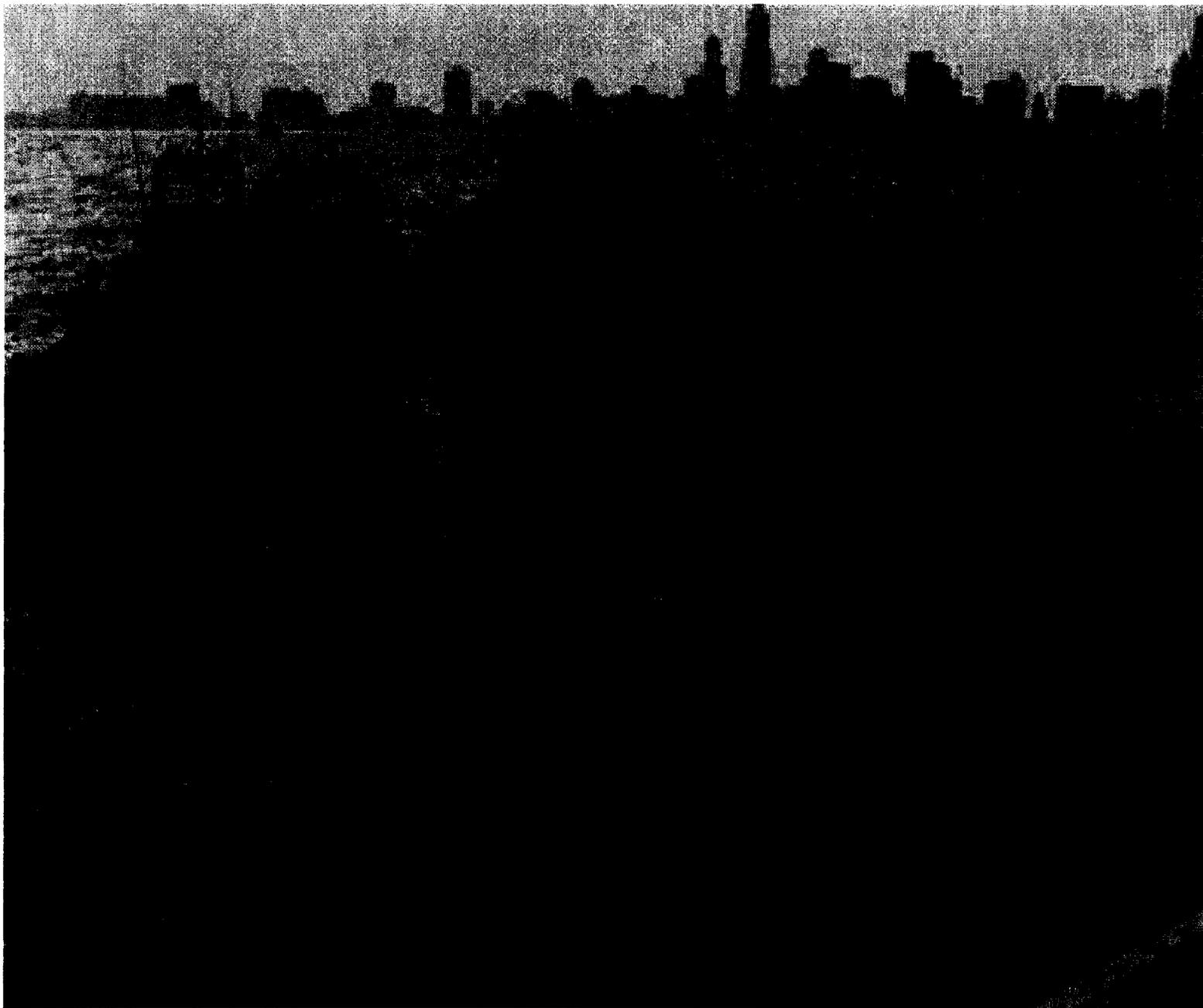
For the reasons stated above, summary judgment was erroneously granted to James and Tyler Davis, and reversible trial error occurred. This case should be subject to reversal and remanded so the case can be fairly tried as to all Defendants on all claims.

DATED this 6 day of July, 2010.


Paul A. Lindenmuth, WSBA# 15817
Attorney for Plaintiff

APPENDIX "1"

RECREATIONAL BOATING STATISTICS 2008



COMDTPUB P16754.21



U.S. Department of Homeland Security
U.S. Coast Guard
Office of Auxiliary and Boating Safety



Table 1 - TOP FIVE PRIMARY ACCIDENT TYPES

TOP FIVE PRIMARY ACCIDENT TYPES				
Accident Rank	Accident Type	Number of Accidents	Number of Deaths	Number of Injuries
1	Collision with Vessel	1237	60	856
2	Flooding/swamping	475	89	179
3	Collision with Fixed Object	446	53	328
4	Falls Overboard	431	188	257
5	Skier Mishap	383	10	397

VESSEL TYPES WITH THE TOP CASUALTY NUMBERS

Casualty Rank	Type of Boat	Drownings	Other Deaths	Total Deaths	Total Injuries	Total Casualties
1	Open Motorboat	252	101	353	1669	2022
2	Personal Watercraft	17	28	45	920	965
3	Cabin Motorboat	27	32	59	296	355
4	Canoe/Kayak	100	14	114	129	243
5	Rowboat	39	4	43	48	91

LIFE JACKET WEAR BY CAUSE OF DEATH

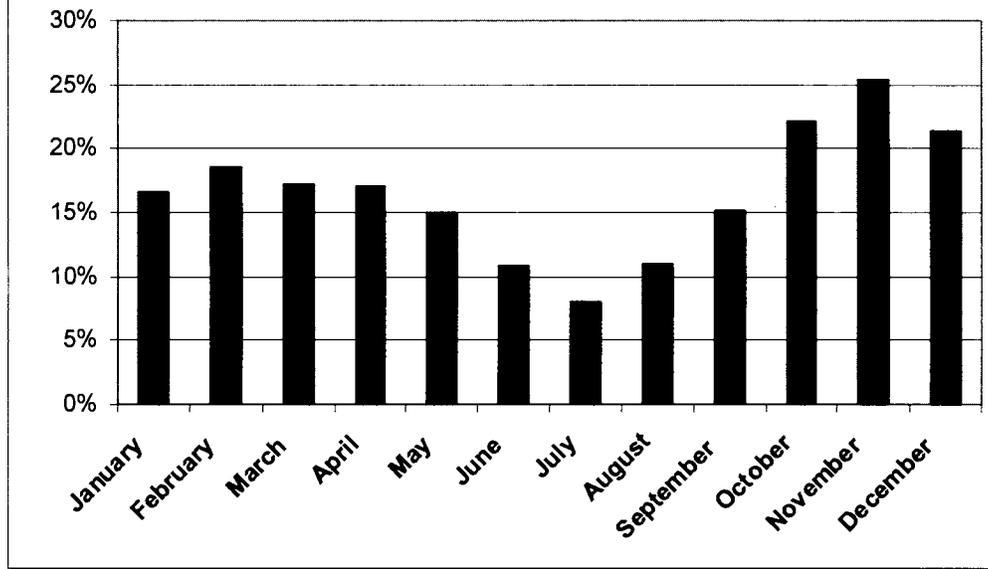
Cause of Death Rank	Cause of Death	Number of Deaths	Life Jacket		
			Worn	Not Worn	Unknown if worn
1	Drowning	510	46	459	5
2	Trauma	124	33	90	1
3	Hypothermia	12	7	5	0
4	Carbon Monoxide Poisoning	11	0	11	0
5	Other	8	1	7	0
6	Cardiac Arrest	7	1	6	0
	Unknown	37	2	32	3

TOP TEN KNOWN PRIMARY CONTRIBUTING FACTORS OF ACCIDENTS

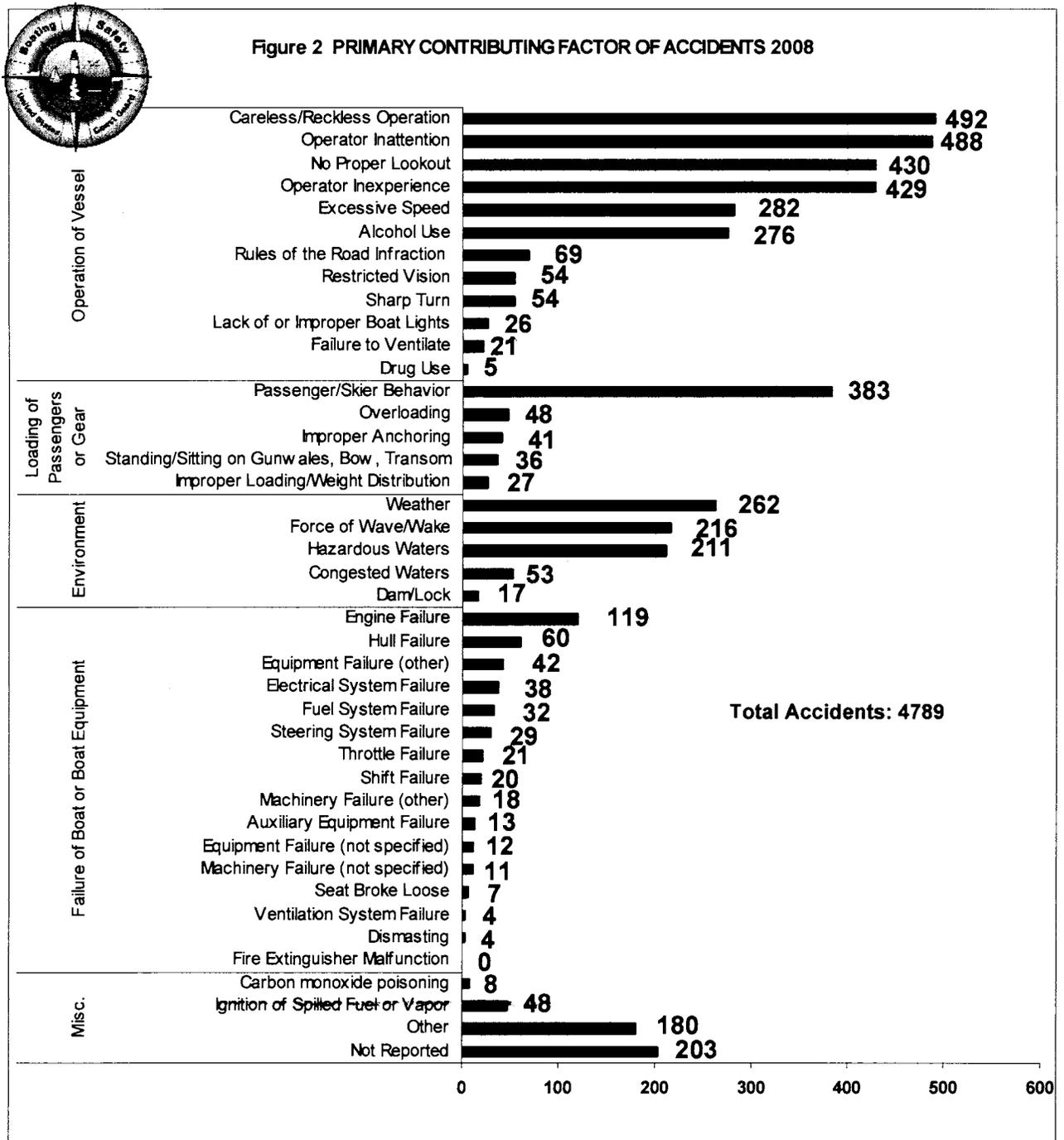
Accident Rank	Contributing Factor	Number of Accidents	Number of Deaths	Number of Injuries
1	Careless/Reckless Operation	492	32	390
2	Operator Inattention	488	28	329
3	No Proper Lookout	430	24	331
4	Operator Inexperience	429	40	315
5	Passenger/Skier Behavior	383	57	335
6	Machinery Failure	292	24	117
7	Excessive Speed	282	29	268
8	Alcohol Use	276	124	246
9	Weather	262	54	131
10	Force of Wave/Wake	216	4	193



Figure 1 PERCENT OF ACCIDENTS THAT ARE FATAL BY MONTH 2008



Month	Fatal Accidents	Non-Fatal Accidents	Total Accidents	Accidents Resulting in Deaths	Total Deaths
January	14	70	84	17%	16
February	18	79	97	19%	23
March	38	182	220	17%	53
April	41	199	240	17%	49
May	84	477	561	15%	94
June	79	654	733	11%	91
July	91	1045	1136	8%	100
August	104	844	948	11%	112
September	52	290	342	15%	56
October	48	169	217	22%	58
November	31	91	122	25%	36
December	19	70	89	21%	21
Total	619	4170	4789	13%	709





	Unknown	Other	Weather	Standing/sitting on Bow, Gunwale, Transom	Sharp Turn	Rules of the Road Infraction	Restricted Vision	Passenger/Skier Behavior	Overloading	Operator Inexperience	Operator Inattention	No Proper Lookout	Machinery Failure	Lack of or Improper Use of Lights	Improper Loading	Improper Anchoring	Ignition of Spilled Fuel or Vapor	Hull Failure	Hazardous Waters	Force of Wave/Make	Failure to Vent	Excessive Speed	Equipment Failure	Drug Use	Dam/Lock	Congested Waters	Careless/reckless Operation	Carbon monoxide Exposure	Alcohol use	All Contributing Factors
All Vessels	261	194	311	36	62	133	76	392	48	599	690	678	380	53	29	54	55	61	221	248	22	405	83	8	17	92	775	8	356	6347
Airboat	0	2	0	0	2	0	2	0	0	6	0	1	2	0	0	0	0	1	2	0	0	4	0	0	0	0	10	0	1	33
Auxiliary Sail	20	3	22	0	1	6	4	4	0	16	32	48	28	0	0	11	3	5	2	5	0	8	11	0	0	19	0	8	258	
Cabin Motorboat	55	27	51	2	1	8	6	31	0	65	129	119	145	5	2	12	19	14	13	29	8	27	26	3	0	19	3	54	940	
Canoe	13	3	12	2	0	3	1	13	3	26	4	5	0	0	1	0	0	4	26	0	0	1	0	0	5	0	8	0	11	138
Houseboat	8	1	12	0	0	0	0	1	0	5	8	5	11	0	0	1	0	1	1	2	1	0	4	0	0	0	2	1	4	68
Inflatable	1	0	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	7	0	0	0	0	0	2	1	0	0	0	17
Kayak	8	2	6	0	0	0	0	0	0	15	8	1	0	1	0	0	0	0	26	0	0	0	0	0	1	2	0	0	3	73
Open Motorboat	80	111	163	23	21	38	47	279	34	152	301	290	154	32	19	22	23	32	93	144	10	187	35	3	3	38	4	198	2763	
Personal Watercraft	19	27	11	0	0	5	75	26	0	251	155	157	16	4	0	0	4	1	12	51	3	154	4	2	13	0	390	0	42	1459
Pontoon	6	4	6	6	2	5	3	21	1	23	24	19	12	8	0	1	1	3	2	3	0	14	1	0	0	25	0	25	221	
Raft	1	2	0	0	0	1	0	2	0	9	0	0	0	0	0	0	0	0	16	0	0	0	0	0	1	0	2	0	3	37
Rowboat	8	6	3	2	0	0	0	6	9	6	9	2	1	0	5	1	0	11	0	0	0	0	0	0	2	1	0	1	74	
Sail Only	5	0	17	0	1	1	3	1	0	7	5	6	0	1	0	4	0	0	1	0	0	1	1	0	1	1	0	0	56	
Sail (unknown)	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	
Other	5	2	3	1	0	0	1	0	0	5	7	7	5	1	1	2	1	2	5	1	0	3	0	0	0	5	0	2	60	
Unknown	31	4	4	0	0	3	5	5	1	3	9	17	6	2	0	0	5	0	1	16	0	6	1	0	6	16	0	4	148	

Casualty Data

Jurisdiction	Number of Accidents				Persons Involved			Property Damage
	Total Accidents	Fatal Accidents	Non-Fatal Injury Accidents	Property Damage Accidents	Deaths	Injured	Property Damage	
Totals	4789	619	2379	1791	709	3331	\$54,282,587	
Alabama	76	11	25	40	16	44	\$2,226,628	
Alaska	44	11	12	21	14	24	\$743,719	
Arizona	158	5	99	54	6	116	\$463,031	
Arkansas	66	13	30	23	14	42	\$259,021	
California	520	39	279	202	45	376	\$5,554,554	
Colorado	39	7	17	15	7	33	\$111,338	
Connecticut	53	9	20	24	11	31	\$1,133,366	
Delaware	11	3	4	4	3	6	\$280,765	
Dist. of Columbia	2	0	1	1	0	2	\$3,000	
Florida	616	50	267	299	55	371	\$22,715,343	
Georgia	150	16	85	49	18	104	\$425,433	
Hawaii	21	5	0	16	5	0	\$189,441	
Idaho	65	15	29	21	15	34	\$241,298	
Illinois	119	14	52	53	19	79	\$449,550	
Indiana	55	7	28	20	8	38	\$256,988	
Iowa	38	0	25	13	0	30	\$357,200	
Kansas	38	4	14	20	5	16	\$175,737	
Kentucky	46	5	23	18	6	32	\$707,302	
Louisiana	110	31	55	24	38	98	\$685,780	
Maine	32	8	15	9	9	26	\$96,226	
Maryland	159	8	102	49	9	135	\$872,979	
Massachusetts	64	11	33	20	11	46	\$510,118	
Michigan	187	30	94	63	34	116	\$858,762	
Minnesota	86	12	50	24	12	59	\$690,837	
Mississippi	24	4	13	7	5	22	\$364,800	
Missouri	135	19	75	41	20	101	\$706,889	
Montana	31	12	14	5	14	20	\$102,200	
Nebraska	20	2	9	9	2	11	\$98,650	
Nevada	80	6	40	34	6	49	\$367,937	
New Hampshire	28	2	15	11	2	17	\$53,087	
New Jersey	140	7	64	69	10	97	\$141,002	
New Mexico	30	2	21	7	3	28	\$77,845	
New York	160	17	62	81	24	98	\$1,789,950	
North Carolina	148	16	89	43	18	121	\$1,018,695	
North Dakota	15	0	10	5	0	12	\$47,990	
Ohio	125	12	71	42	15	112	\$902,722	
Oklahoma	54	10	26	18	11	37	\$716,700	
Oregon	53	11	23	19	13	36	\$465,563	
Pennsylvania	59	8	37	14	8	54	\$191,489	
Rhode Island	35	4	10	21	4	15	\$377,700	
South Carolina	107	25	41	41	29	59	\$1,603,152	
South Dakota	16	3	5	8	3	10	\$78,750	
Tennessee	130	18	68	44	20	91	\$1,493,851	
Texas	218	55	104	59	61	167	\$1,340,402	
Utah	80	5	61	14	5	78	\$172,800	
Vermont	8	5	3	0	5	4	\$21,600	
Virginia	95	15	43	37	17	56	\$370,168	
Washington	*18 98	18	*18 46	34	22	*17 72	\$849,200	
West Virginia	11	1	5	5	1	8	\$28,000	
Wisconsin	110	19	56	35	20	82	\$345,964	
Wyoming	11	2	6	3	2	7	\$96,000	
Guam	1	1	0	0	1	0	\$0	
Puerto Rico	1	0	1	0	0	3	\$1,000	
Virgin Islands	0	0	0	0	0	0	\$0	
Am. Samoa	0	0	0	0	0	0	\$0	
N. Marianas	1	0	0	1	0	0	\$200	
*Atlantic Ocean	6	3	1	2	3	5	\$398,865	
*Gulf	1	1	0	0	1	0	\$0	
*Pacific Ocean	3	2	1	0	4	1	\$51,000	

*1997 was the first year statistics were compiled for accidents that occurred three or more miles offshore in the Atlantic Ocean and Pacific Ocean and nine or more miles in the Gulf (of Mexico, Alaska, etc.). NJ did not submit property damage estimates to boats in 2008. However, NJ noted that accidents submitted to the Coast Guard that did not have an injury or death were considered to have \$2000 or more in damages. The Coast Guard adjusted NJ's property damages to boats such that each accident without an injury or death had \$2000 damages.

Casualty Data



Primary Injury	# of Injuries	Airboat	Auxiliary Sailboat	Motorboat	Cabin Motorboat	Canoe	Houseboat	Inflatable	Kayak	Open Motorboat	Personal Watercraft	Pontoon Boat	Raft	Rowboat	Sailboat	Sail (unknown)	Other	Not Reported
Abrasion	8	0	0	1	1	0	0	0	1	3	1	0	0	0	0	0	1	0
Amputation	46	0	1	4	0	0	0	1	0	25	11	3	0	0	0	0	0	1
Back Injury	215	1	3	14	1	0	0	0	0	131	55	6	1	0	0	0	1	2
Broken Bones	610	4	6	40	3	2	1	4	282	256	5	4	0	0	0	0	1	2
Burns	87	0	3	33	0	3	0	0	37	6	1	0	0	1	0	1	0	2
Carbon Monoxide	40	0	0	18	0	8	0	0	14	0	0	0	0	0	0	0	0	0
Contusion	428	7	5	31	5	1	1	4	186	167	10	3	1	2	1	0	0	4
Dislocation	64	0	1	4	1	0	0	2	33	19	0	1	0	2	0	1	0	0
Electrocution	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Head Injury	432	2	3	37	1	0	0	1	235	137	12	2	1	0	0	0	0	1
Hypothermia	357	2	6	22	77	2	9	14	150	4	0	4	41	11	2	3	0	10
Internal Injuries	100	0	0	6	3	0	1	1	40	44	1	4	0	0	0	0	0	0
Laceration	604	6	8	57	1	0	0	2	329	153	24	4	3	7	1	2	0	7
Neck Injury	85	2	0	7	0	0	0	0	55	17	3	0	0	1	0	0	0	0
Shock	9	0	0	0	0	0	0	0	5	2	0	1	1	0	0	0	0	0
Spinal Injury	29	0	0	2	0	0	0	0	23	4	0	0	0	0	0	0	0	0
Sprain/Strain	102	1	0	10	0	0	1	1	63	24	1	0	0	0	0	0	0	1
Teeth and Jaw	20	0	0	2	2	0	0	0	7	9	0	0	0	0	0	0	0	0
Other	19	0	0	1	0	0	0	0	14	2	0	1	1	0	0	0	0	0
Unknown	76	0	6	7	1	0	0	3	37	9	6	0	0	2	0	0	0	5
All Injuries	3331	25	42	296	96	16	14	33	1669	920	72	25	48	26	4	10	35	



Cause of Death	Life Jacket Worn?	Number of Deaths	Airboat	Auxiliary Sailboat	Motorboat	Cabin Motorboat	Canoe	Houseboat	Inflatable	Kayak	Open Motorboat	Personal Watercraft	Pontoon Boat	Raft	Rowboat	Sailboat	Sailboat	Other	Not Reported
Carbon Monoxide	No	11	0	0	5	0	5	0	0	0	1	0	0	0	0	0	0	0	0
Cardiac Arrest	Yes	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Cardiac Arrest	No	6	0	0	1	0	0	0	0	4	0	0	0	1	0	0	0	0	0
Drowning	Yes	46	0	1	3	6	0	2	9	14	4	0	2	1	2	0	0	0	2
Drowning	No	459	2	6	23	64	0	6	21	236	13	15	10	38	7	0	15	0	3
Drowning	Unk	5	0	1	1	0	0	0	0	2	0	0	0	0	0	1	0	0	0
Hypothermia	Yes	7	0	0	0	4	0	0	1	1	0	0	0	1	0	0	0	0	0
Hypothermia	No	5	0	0	2	1	0	0	0	1	0	0	0	1	0	0	0	0	0
Other	Yes	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Other	No	7	0	0	1	2	0	0	0	2	0	1	1	0	0	0	0	0	0
Trauma	Yes	33	0	0	0	0	0	0	1	10	21	0	0	0	0	0	0	1	0
Trauma	No	90	0	3	18	0	0	0	0	60	7	1	0	0	0	0	0	1	0
Trauma	Unk	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Unknown	Yes	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0
Unknown	No	32	0	3	4	3	0	0	2	18	0	0	0	1	0	0	1	0	0
Unknown	Unk	3	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
All Causes		709	2	15	59	80	5	8	34	353	45	17	14	43	9	1	18	6	

Registration Data

	Rank	2008	2007	Scope of Current Boat Registration System
Nationally		12,692,892	12,875,568	
AL	16	272,558	274,176	All motorboats, sailboats and rental boats
AK	45	47,534	47,548	All undocumented powerboats
AS	56	27	106	All watercraft
AZ	30	140,291	144,570	All watercraft, except inflatables 12 feet in length or less
AR	22	199,104	206,195	All motorboats and sailboats
CA	3	858,853	964,881	All motorboats; sailboats over 8 feet in length
CO	34	95,330	98,055	All watercraft powered by motor or sail - sailboats exempt
CT**	31	110,650	108,539	All motorboats; sailboats 19.5 feet or more in length
DE	42	56,669	61,569	All motorboats
DC	54	2,922	2,866	All watercraft
FL	1	974,553	991,680	All motorboats
GA	12	350,479	344,597	All motorboats; sailboats 12 feet or more in length
GU	53	3,277	3,278	All watercraft (estimated)
HI	51	15,404	15,094	All motorboats; sailboats over 8 feet in length
ID	36	89,026	91,612	All motorboats and sailboats
IL	10	378,208	379,454	All watercraft, except non-profit org. owned canoes and kayaks
IN	17	271,532	241,474	All motorboats
IA	21	231,333	213,767	All watercraft with exceptions (a)
KS	35	91,067	93,900	All motorboats and sailboats
KY	28	173,981	176,716	All motorboats, except electric motors 1 hp or less
LA	15	302,753	301,249	All motorboats; sailboats more than 12 feet in length
ME	32	109,657	112,818	All motorboats
MD	23	199,087	202,892	All motorboats
MA	29	145,113	145,496	All motorboats
MI	4	816,752	830,743	All watercraft with exceptions (b)
MN	2	867,446	866,496	All motorboats with exceptions (c)
MS	25	191,312	180,356	All motorboats and sailboats
MO	14	322,253	321,782	All motorboats; sailboats over 12 feet in length
MT	37	84,988	79,651	All motorboats; sailboats 12 feet or more in length
NE	38	83,280	83,722	All motorboats
NV	41	57,519	59,895	All motorboats, sailboats, rowboats
NH	33	96,205	100,261	All motorboats; sailboats 20 feet or more in length
NJ	26	185,359	183,147	All watercraft with exceptions (d)
NM	48	33,304	38,100	All motorboats and sailboats
NY	7	485,541	494,020	All motorboats
NC	11	371,879	375,815	All motorboats; sailboats more than 14 feet in length
ND	46	46,067	53,519	All watercraft
CNMI	55	330	380	All motorboats
OH*	9	416,586	415,228	All watercraft; *5576 livery vessels included in '08; 5522 livery vessels not included in '07
OK	24	196,052	223,758	All watercraft
OR	27	180,063	184,147	All motorboats; sailboats 12 feet or more in length
PA	13	338,316	342,427	All motorboats and certain non-powered craft (e)
PR	40	59,580	62,360	All motorboats; vessels adapted to hold a motor
RI	47	42,524	43,665	All watercraft except canoes, kayaks & rowboats < 12 feet
SC	8	436,844	442,040	All watercraft
SD	43	56,604	53,570	All motorboats; all other boats over 12 feet in length
TN	18	271,475	274,914	All motorboats and sailboats
TX	6	597,428	599,567	All motorboats and sailboats 14 feet or more in length
UT	39	73,009	76,921	All motorboats and sailboats
VT	49	30,429	31,482	All motorboats
VI	52	6,915	5,455	All watercraft
VA	20	249,312	251,440	All motorboats
WA	19	264,393	270,789	All motorboats with exceptions (f); sailboats >16 ft in length
WV	44	49,930	63,064	All motorboats
WI	5	634,546	617,366	All motorboats; sailboats over 12 feet in length
WY	50	27,243	26,956	All motorboats and sailboats

(a) Iowa excludes inflatables under 7 feet in length and canoes/kayaks under 13 feet in length. (b) Michigan excludes manually propelled boats 16 feet or less in length, and nonmotorized rafts, canoes, and kayaks. (c) Minnesota excludes nonmotorized boats nine feet or less in length, duckboats during duckhunting season, and riceboats during harvest season and seaplanes. (d) New Jersey excludes non-motorized boats 12 feet or less in length and canoes, kayaks, racing shells and rowing sculls. (e) Pennsylvania registers non-powered craft using lakes or access areas owned by the State Fish & Boat Commission. (f) Washington excludes motorboats < 16 feet with motors 10 horsepower or less used solely on exclusive state waters. *OH included 5576 livery vessels in their 2008 figures; they did not include 5522 livery vessels in their 2007 figure; **CT reported that their 2007 number should have been 112,163. Totals for 2007 have not been updated to reflect this revision.

APPENDIX “2 ”

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

RONALD PACE, individually,

Plaintiff,

vs.

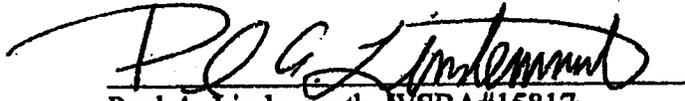
SCOTT DAVIS and KENDAL DAVIS,
individually and the marital community
comprised thereof,

Defendants.

NO. 09-2-06363-8

PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS

DATED this 14 day of Oct., 2009.



Paul A. Lindenmuth, WSBA#15817
Attorney for Plaintiff

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INSTRUCTION NO. 13

A statute provides that:

A person shall not operate a vessel in a negligent manner. To "operate in a negligent manner" means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead, effects of vessel wake, and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters.

WPI 60.01

RWCA 79A.60.030 (modified)

INSTRUCTION NO. 17

A statute provides that:

The violation, if any, of a statute is not necessarily negligence, but may be considered by you as evidence in determining negligence.

WPI 60.03 (modified)