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No. 67245-2-I

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COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON

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REBECCA LAWRENCE,

Respondent,

vs.

CARMELO BALTAZAR ALEJO, and JANE DOE ALEJO, As Husband  
and Wife and the Marital Community composed thereof, and TRUGREEN  
LANDCARE, LLC, a Washington Business,

Appellants.

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On Appeal from Snohomish County Superior Court  
No. 09-2-03652-5  
Honorable Kenneth L. Cowser

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**RESPONDENT'S BRIEF OF REBECCA LAWRENCE**

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**The Pearson Law Firm, P.S.**  
Jerald D. Pearson, WSBA #8970  
Michele G. Pearson, WSBA #33304  
35131 SE Douglas Street, Suite 103  
Snoqualmie, WA 98065  
Telephone 425.831.3100  
Facsimile 425.831.3105

**Harper Law PLLC**  
Edward Harper, WSBA #24644  
826 6th Street South, Suite 101  
Kirkland, WA 98033  
Telephone 425.284.3333  
Facsimile 425.284.4286

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

I. INTRODUCTION.....1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

III. STATEMENT OF THE CASE.....6

IV. ARGUMENT.....10

A. THE FOLLOWING ARGUMENTS PERTAIN TO  
MULTIPLE ASSIGNMENTS OF ERROR ITEMIZED IN  
THE ALEJO / TRUGREEN BRIEF.....10

1. Nature and Extent of Injury.....12

2. Limiting Instruction.....13

3. Pre-Existing Condition.....17

4.1 Police Report.....19

4.2 Identity of Driver.....20

4.3 Mechanics of Crash.....21

5. Inconsistent Reports.....22

6. Updated Information.....23

B. VERDICT WAS NOT EXCESSIVE.....24

V. CONCLUSION.....24

**TABLE OF AUTHORITIES**

**Cases**

*Seth v. Dep't of Labor and Industries*,  
21 Wn.2d 691, 152 P.2d 976 (1944).....11

*Snyder v. General Electric Co.*,  
47 Wn.2d 60, 287 P.2d 108 (1955).....5, 21, 22

*State v. Garcia*,  
45 Wn. App. 132, 724 P.2d 412 (1986).....11

**RULES**

CR 46.....11

ER 612.....3, 19

ER 703.....Passim

ER 801.....3, 19

ER 803(a)(4).....3, 19

**OTHER AUTHORITIES**

Fed. R. Evid. 703 Advisory Committee's note.....15, 16

Karl B. Tegland,  
*5 Wash. Prac., Evidence Law and Practice* § 105.3 (5th ed.).....16

Karl B. Tegland,  
*5B Wash. Prac., Evidence Law and Practice* § 703 (5th ed.).....14

Karl B. Tegland,  
*5B Wash. Prac., Evidence Law and Practice* § 703.1 (5th ed.)....14

Karl B. Tegland, <i>5B Wash. Prac., Evidence Law and Practice</i> § 703.2 (5th ed.)....	15
Karl B. Tegland, <i>5B Wash. Prac., Evidence Law and Practice</i> § 703.5 (5th ed.)....	15
WPI 30.04.....	2, 12, 13
WPI 30.17.....	17, 18
WPI 30.18.....	17, 18
WPI 30.18.01.....	3, 17, 18

## **I. INTRODUCTION**

After seven days of trial, a Snohomish County jury returned a verdict in favor of plaintiff Rebecca Lawrence against a negligent truck driver (Alejo) and his employer, TruGreen, as separate defendants (hereafter Alejo/TruGreen). The trial involved a violent rear end crash and permanent personal injuries to a young woman, with more than \$250,000.00 in past treatment expenses, including two spinal surgeries.

The jury awarded past and future treatment expenses and only \$60,000.00 in non-economic damages. The defendant driver and his employer have appealed claiming that the trial court denied defendants a fair trial and abused its discretion by relying on Washington Rules of Evidence and Washington Pattern Instructions.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

### **A. The following issues pertain to the multiple Assignments of Error itemized in the Alejo/TruGreen Brief:**

1. Regarding Appellants' First Assignment of Error: After Alejo/TruGreen asked the trial court to change Washington law and adopt the Alejo/TruGreen perspectives on legal authorities from Texas, Alabama, Kentucky, Missouri, Mississippi and Illinois, including consideration of a 1978 scholarly article pertaining to Pattern Jury

Instructions, did the Washington trial court deny Alejo/TruGreen a fair trial by using Washington Pattern Jury Instructions (WPI 30.04) identifying “nature and extent of injury” as an element of potential harm? This issue *was* preserved for appeal at RP pages 12-14, March 16, Arguments On Instructions, in a manner consistent with Washington state legal standards.

2. Regarding Appellants’ Second Assignment of Error: Did the Washington trial court abuse its discretion or deny Alejo/TruGreen a fair trial by using Washington Evidence Rule 703 to allow expert witnesses to testify regarding opinions where part of the foundation for the expert opinion was information that they reasonably relied upon, and by refusing to use the limiting instruction Alejo/TruGreen proposed at the conclusion of the trial? This issue *was not* properly preserved for appeal by any objection during any testimony at issue, in any manner consistent with Washington state legal standards. The limiting instruction at issue was proposed by the appellants at the end of the trial at RP pages 309-311, March 16, Verbatim Report of Proceedings, Volume II.

3. Regarding Appellants’ Third Assignment of Error: Based on evidence that Rebecca Lawrence suffered from no prior diagnosed or symptomatic psychological or physical conditions, and considering evidence that pain can be perceived and processed “emotionally”, along

with testimony about emotional “stressors” that can effect perceptions of pain, did the Washington trial court deny Alejo/TruGreen a fair trial by using WPI 30.18.01 pertaining to “susceptibility” and pre-existing conditions? This issue *may have been* preserved for appeal (at RP pages 312-315, March 16, Verbatim Report of Proceedings, Volume II) in a manner consistent with Washington state legal standards; however, at RP 322:11-16, March 16, Verbatim Report of Proceedings, Volume II, counsel confirmed Alejo/TruGreen had no objection to WPI 30.18.01.

4. Regarding Appellants’ Fourth Assignment of Error (where appellants raise three separate subtopics/evidence issues, separated later in Argument Section 4 as 4.1, 4.2 and 4.3), did the Washington trial court abuse its discretion under the following circumstances:

4.1. At RP pages 28:11-29:8, March 9, Verbatim Report of Proceedings, Opening Statements, when counsel for Alejo/TruGreen asserted that Rebecca Lawrence did not complain of injury to her back at the scene of the crash, did the Washington trial court abuse its discretion under ER 612 (pertaining to refreshed recollections), ER 801 (pertaining to hearsay), and ER 803(a)(4) (pertaining to symptoms of injury) by allowing investigating officer Cornett to “refresh” his recollection and confirm Rebecca Lawrence reported back and neck pain at the

scene of the crash? At RP pages 7-8, March 9, Transcript of Proceedings, Cornett, the “hearsay” objection *was* preserved for appeal in a manner consistent with Washington state legal standards.

**4.2.** Considering the facts of the violent rear end crash and the violation of community safety standards / state law / “rules of the road”, and considering the employee driver as a personally named defendant appearing through counsel in a joint defense with TruGreen, did the Washington trial court abuse its discretion by allowing counsel for Rebecca Lawrence to refer to negligent driver Alejo by name, and then to confirm that there was no evidence that Alejo did not know how to drive? Although there was an objection *before* Alejo was referred to by name, *after* Alejo was referenced by name this issue *was not* properly preserved for appeal in a manner consistent with Washington state legal standards.

**4.3.** Considering the violent rear end crash caused by the commercial truck, and the dispute regarding the nature and extent of any injury and the Alejo/TruGreen claims that the crash related injuries, treatments and surgeries were really caused by early childhood sexual abuse, did the Washington trial court abuse its discretion by following the holdings of Washington Supreme Court

case law in *Snyder v. General Electric Co.*, 47 Wn.2d 60, 287 P.2d 108 (1955), by allowing plaintiff's counsel to reference the mechanics of the crash, and the property damage, as the factual context for the trauma and harms suffered by Rebecca Lawrence? This issue *was not* properly preserved for appeal in a manner consistent with Washington state legal standards, and not briefed by appellants.

**5. Regarding Appellants' Fifth Assignment of Error:** In the absence of any objection (required to preserve error for appeal) did the Washington trial court abuse its discretion by failing to halt the testimony of a qualified expert witness, and by deferring to counsel for Alejo/TruGreen to cross examine experts about any inconsistencies or contradictions in their opinions or reports? The testimony of experts Bellerive and Moss, at RP pages 210-305, March 15, Verbatim Report of Proceedings, Volume II, confirms there were no objections by counsel, and therefore this issue *was not* preserved for appeal in any manner consistent with Washington state legal standards.

**6. Regarding Appellants' Sixth Assignment of Error:** In the absence of any objection, did the Washington trial court abuse its discretion by failing to unilaterally intervene to prevent expert testimony regarding updated information, not reflected in pre-trial reports, and by

deferring to counsel for Alejo/TruGreen to cross examine experts about any inconsistencies or contradictions in their opinions or reports, and by allowing Alejo/TruGreen to offer the conflicting reports into evidence, with no objection by opposing counsel? This issue *was not* properly preserved for appeal in a manner consistent with Washington state legal standards.

### **III. STATEMENT OF THE CASE**

On June 29, 2007, plaintiff Rebecca Lawrence was thirty years old (DOB 6/4/77). Rebecca was married and the mother of two young children. She was employed full time as a manager in the restaurant industry, and on this day she was driving her small family car in stop and go traffic, returning with her children from a visit to a local beach. Rebecca was stopped in traffic when a commercial landscaping truck crashed into the rear of the Lawrence car. The truck was owned by TruGreen and was driven by TruGreen employee Carmelo Baltazar Alejo.

At the scene of the crash an investigating officer named Greg Cornett documented various factors, including: the violation of safety rules, the roles of TruGreen and its employee, extensive property damage, and the officer as part of his official duties recorded that Rebecca reported neck and back pain.

Over the next several years Rebecca received conservative treatment and surgical care from a wide array of qualified health care providers including numerous specialists. The consensus of treating providers, from multiple disciplines, was that the injuries caused by the crash were life altering in character. Facing permanent chronic pain and disability after extended conservative care, Rebecca eventually underwent two spine surgeries. The last surgery involved the implantation of a battery and spinal cord stimulator – an implanted technology that requires lifelong medications, monitoring and management.

The law enforcement investigative report – authored by officer Cornett – documented the rear end crash, the employment relationship of Alejo with TruGreen, the admissions of driver Alejo, and the injury-related statements by Rebecca Lawrence. All parties received copies of the report, and a true and correct copy of the police report was attached to the summons and complaint, which was served and filed for public record when this litigation was commenced in March 2009, naming the truck driver Alejo and his employer TruGreen as defendants (hereafter Alejo/TruGreen). Plaintiff's complaint included allegations that the negligence of driver Alejo was a proximate cause of serious personal injuries and harms to Rebecca Lawrence. Plaintiff's allegations also included agency-based claims alleging that at all material times

driver/employee Alejo was acting within the scope of his employment by TruGreen, and that the defendants were subject to joint and several liability for the harms caused.

In spite of the clear and undisputed facts documenting the rear end crash, Alejo/TruGreen accepted no responsibility, and denied fault, denied causation, and denied causing any harm. These denials continued until shortly before trial when Alejo/TruGreen filed an admission of fault. Alejo/TruGreen admitted fault only. Defendants continued to dispute causation and any level of harm other than minimal damages. Alejo/TruGreen proceeded with a discovery and trial strategy denying the nature and extent of injury, claimed that the injuries were related to pre-existing conditions, challenged the good faith and competency of treating providers, and claimed that treatment was not reasonable and not necessary.

As permitted by the Washington State Rules of Civil Procedure and our adversarial process, Alejo/TruGreen employed two CR 35 examiners to argue that at a young age Rebecca Lawrence was a victim of childhood sexual abuse. Alejo/TruGreen argued, through its examiners, that such abuse may not have caused the crash itself, but more probably than not the childhood sexual abuse was an emotional susceptibility, a pre-

existing condition, the natural progression of which was the cause of Rebecca's chronic symptoms and need for spinal surgeries.

Including the spinal surgeries, by the time of trial (which ran from March 7 through March 17<sup>th</sup>, 2011) Rebecca Lawrence had incurred reasonable and necessary treatment expenses exceeding \$250,000.00, and had projected future treatment needs over her remaining forty five year life expectancy.

On March 17, 2011 a Snohomish County jury rendered its verdict rejecting the Alejo/TruGreen arguments and, as confirmed on the four line items on the WPI Verdict Form, the jury found for plaintiff Rebecca Lawrence as follows: past economic damages in the amount of \$253,655.35; future economic damages in the amount of \$1,070,071.00; past non-economic damages in the amount of \$50,000.00; and future non-economic damages in the amount of \$10,000.00.

Alejo/TruGreen now request a new trial claiming multiple reversible errors, including 6 Assignments of Error, and as many as 8 separate criticisms of the trial court proceedings; with 3 grounds for reversible error pertaining to Washington Pattern Jury Instructions (subject to de novo review); and 5 issues pertaining to Washington evidentiary questions and related rules (subject to review for abuse of discretion).

In this appeal, Alejo/TruGreen often rely on authorities from Texas, Alabama, Kentucky, Missouri, Mississippi and Illinois, including a scholarly article on Pattern Jury Instructions from 1978, to support broad claims and assertions. At the same time, Alejo/TruGreen too often misrepresent the trial court record or disregard authoritative Washington state standards pertaining to jury instructions and evidence rules, standards that were prudently applied at trial by Judge Cowsert in a manner that is consistent with standards required of all Washington state trial courts.

Rebecca Lawrence asserts that the trial court in this matter committed no reversible error.

#### **IV. ARGUMENTS**

##### **A. The following issues pertain to the multiple Assignments of Error itemized in the Alejo/TruGreen Brief:**

As counsel for litigants, we all must acknowledge that during lengthy trials it is often challenging to create an adequate record to preserve issues for appeal. In this context, we are mindful of the principles applicable to preservation of error and we agree that appellate determination of reversible error is based on the presence of three interrelated circumstances: specific rulings, acts or omissions by the trial court constituting error, which follow an objection by counsel or the grant

or denial of an oral or written motion or submission, accompanied by a proper and appropriate course of action recommended by the appellants that was rejected by the trial court. When all 3 elements are present, the issue has been properly preserved for review in a manner that is consistent with Washington state legal standards.

Objections in the trial court must be timely. *See, e.g., Seth v. Dep't of Labor and Industries*, 21 Wn.2d 691, 693, 152 P.2d 976 (1944). This Court should not consider an objection that was not timely raised. Moreover, objections must be properly preserved. "A party seeking review has the burden of perfecting the record so that the appellate court has before it all the evidence relevant to the issue." *State v. Garcia*, 45 Wn. App. 132, 140, 724 P.2d 412 (1986). On multiple fronts the appellants in the instant case did not meet the mandatory burden to properly preserve objections. This Court, therefore, should not rely on references to non-existent evidence. The Washington State Civil Rules undergird case law requiring that a party must make a properly preserved objection at the time the ruling or order of the court is made or sought. CR 46.

**1. Regarding Appellants' Assignment of Error No.1 – Nature and Extent of Injury (and the Alejo/TruGreen Argument at pages 6-10 under heading V-A-2):**

The Washington trial court *did not* deny Alejo/TruGreen a fair trial by using Washington Pattern Jury Instructions identifying “nature and extent of injury” as an element of potential harm. Contrary to the Alejo/TruGreen assertions, there was no “duplicative” award. As previously stated under Issues, this issue *was* preserved for appeal at RP pages 12-14, March 16, Arguments On Instructions.

Under valid constitutional authority the Washington State Supreme Court established, authorized, and has long supported the continuing work of the Washington State Jury Commission and its publication of Washington Pattern Jury Instructions. WPI 30.04, along with related instructions (WPI 30.01, 30.02, 30.03, and 30.05, among others) and the extensive commentary and case authorities that establish the context and standards for instructions pertaining to personal injury claims, confirms that it is appropriate to consider the "nature and extent of injury" as an element of harm in personal injury cases such as the present matter. This is an acknowledged legal standard in Washington state and use of this instruction did not deny Alejo/TruGreen a fair trial.

Contrary to the appellants' briefing, the jury verdict form does not provide a separate line item for dollar amounts for “nature and extent of

injury”, so the instruction cannot result in any “duplicative” award. This is additionally obvious when we consider the awards for non-economic damages in this case, which were minimal.

Respectfully, Washington legal standards pertaining to WPI 30.04 should not be set aside based on Alejo/TruGreen references to case law from Texas, Alabama, Kentucky, Missouri, Mississippi and Illinois or a scholarly law review article published in 1978. The Alejo/TruGreen contentions are not supported by the record or by the law, and the argument by Alejo/TruGreen must be rejected as without merit.

**2. Regarding Appellants’ Assignment of Error No. 2 – Limiting Instruction (and the Alejo/TruGreen Argument at pages 10-14 under heading V-A-3):**

The Washington trial court *did not* abuse its discretion, nor did it deny Alejo/TruGreen a fair trial, by using Washington Evidence Rule 703 to allow expert witnesses to testify regarding opinions where part of the foundation for the expert opinion was information that the expert reasonably relies upon, and by refusing to use a confusing limiting instruction proposed by Alejo/TruGreen at the conclusion of the trial. As previously stated, this issue *was not* properly preserved for appeal by any objection during the testimony at issue, in any manner consistent with Washington state legal standards; although the limiting instruction at issue was proposed by the appellants and rejected by the trial court at the end of

the trial at RP pages 309-311, March 16, Verbatim Report of Proceedings, Volume II.

At page 11 of their brief, Alejo/TruGreen assert that Alejo/TruGreen had no opportunity to depose Dr. Lynch. This assertion is patently false as documented in the Bellerive testimony on redirect examination and the colloquy with the court. RP 261-264, March 15, Verbatim Report of Proceedings, Volume II.

This issue needs to be viewed in the context of ER 703, and related citations to Washington Practice and Tegland On Evidence. Karl B. Tegland, *5B Wash. Prac., Evidence Law and Practice* § 703 (5th ed.). ER 703 (Bases of Opinion by Experts) provides as follows:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. ER 703.

To the extent Alejo/TruGreen asserts that a limiting instruction was required in the context of expert testimony, Alejo/TruGreen ignores the principles embodied in Tegland On Evidence and ER 703, which confirm that an expert is not restricted to testify only from first-hand knowledge. Tegland, *5B Wash. Prac.* at § 703.1.

Frequently, the opinion of an expert will be helpful to the trier of fact even though it is not based on first-hand observations. ER 703 allows the expert to base an opinion or inference upon facts or data "perceived by or made known to the expert at or before the hearing." ER 703. Further, the facts or data need not be admissible in evidence so long as they are of a type that is "reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject". Tegland, 5B *Wash. Prac.* at § 703.2 and § 703.5. The term "reasonably" gives the trial court discretion in determining whether the underlying information is sufficiently reliable to form the basis of an expert's opinion. *Id.* at § 703.2.

So long as the requirements of ER 703 are met, an expert opinion will not be objectionable on the ground that it is based upon facts outside the record, neither is it objectionable on the ground that it is based upon hearsay. *Id.* The expert may, within reason, refer to authoritative sources of information and explain the reasons for his or her opinion to the jury. *Id.*

Obviously, weaknesses in the expert's testimony on direct examination can be brought out on cross-examination, if the issue is important to the opposing party. The scope and latitude allowed for cross examination are the primary tools for challenging the foundation and final opinions of the expert witness. The Advisory Committee on Washington

Evidence Rules notes that the corresponding Federal Rule observes that Rule 703 is intended to "bring the judicial practice into line with the practice of the experts themselves when not in court." *Fed. R. Evid. 703*, Advisory Committee's Note.

Regarding the timeliness of a limiting instruction as a separate concern, in the present case the trial court did not abuse its discretion in denying the untimely Alejo/TruGreen limiting instruction. Requesting a limiting instruction long after the testimony has been completed encourages speculation, confusion and ambiguity. *See* the trial court comment at RP 309:22-310:11, March 16, Verbatim Report of Proceedings, Volume II. On the subject of limiting instructions generally, the issue of whether a limiting instruction is appropriate has frequently been referenced as asking the jury to engage in impossible "mental gymnastics" or seeking to "unring a bell". *See* Karl B. Tegland, 5 *Wash. Prac., Evidence Law and Practice* § 105.3 (5th ed.).

The law in Washington State is deliberately imprecise about when a limiting instruction may be sufficient to protect a party against the dangers of evidence admitted for a limited purpose, and when it is not. Some commentators have suggested elaborate guidelines for making the decision, but Washington cases do not appear to mandate any particular formula by which the decision is made. This approach permits the trial

court to decide the question on a case-by-case basis, taking into account all the facts and circumstances presented, commonly referred to as judicial discretion.

**3. Regarding Appellants' Assignment of Error No. 3 – Pre-Existing Condition (and the Alejo/TruGreen Argument at pages 15-18 under heading V-A-4):**

The evidence at trial showed that Rebecca Lawrence did not suffer from any pre-crash symptomatic psychological or physical conditions. She had no diagnosed pre-crash conditions. A single chiropractic record confirmed that the patient indicated back and neck symptoms after the crash but before that appointment. The Washington trial court *did not* deny Alejo/TruGreen a fair trial by allowing its counsel to argue causation and damages under WPI 30.18.01 and without the use of WPI 30.18 and/or WPI 30.17 related to pre-existing conditions.

Throughout this litigation, including the current appeal, Alejo/TruGreen used the indifference of the adversarial process to argue liability, causation, damages, and nature and extent of injury, and to challenge the necessity and reasonableness of treatment. Why would they seek to blame spinal injuries requiring surgery on early childhood sexual abuse....other than to reduce civil damage awards? Based on evidence that pain can be perceived and processed “emotionally”, along with testimony about emotional “stressors” that can effect perceptions of pain,

the Washington trial court did not deny Alejo/TruGreen a fair trial by using WPI 30.18.01 pertaining to “susceptibility” and pre-existing conditions.

WPI 30.18.01 allowed Alejo/TruGreen to argue causation and damages, and argue that any symptoms caused by the natural progression of the prior condition were not to be considered as caused by the crash. The single chiropractic record confirming that the patient noted back and neck symptoms as the reason she sought the chiropractic appointment was clarified on the stand by treating chiropractor Macaulay at RP pages 175-177, March 14, Verbatim Report of Proceedings.

Counsel for Alejo/TruGreen confirmed that Alejo/TruGreen had no objection to WPI 30.18.01, at RP 322:11-16, March 16, Verbatim Report of Proceedings, Volume II; and no prejudice to Alejo/TruGreen arose from the absence of WPI 30.17 or WPI 30.18 in this context.

4. **Regarding the Appellants' Assignment of Error No. 4 (and the Alejo/TruGreen Arguments at pages 18-26, under headings V-B-2 and V-B-3), this 4th Assignment distinguishes three evidentiary issues, which we will separate by subject:**
  - 4.1 the police report;
  - 4.2 the identity of driver Alejo; and
  - 4.3 the mechanics of the crash (*although we find no separate specific briefing on this topic*).

**4.1 Police Report Issues:** The Alejo/TruGreen opening statement asserted inaccurately that Rebecca Lawrence did not complain of back injury at the scene of the crash. RP pages 28:11-29:8, March 9, Verbatim Report of Proceedings, Opening Statements. This was blatantly false and contradicted by the police report that was well known to Alejo/TruGreen because the report was attached to the Summons and Complaint. The trial court, under ER 612 (pertaining to refreshed recollections), ER 801 (pertaining to hearsay), and ER 803(a)(4) (pertaining to symptoms of injury) did not abuse its discretion by allowing investigating officer Cornett to "refresh" his recollection at RP pages 7-8, March 9, Transcript of Proceedings, Cornett, and confirm Rebecca Lawrence reported back and neck pain at the scene of the crash. Although counsel for Alejo/TruGreen objected based on hearsay, these issues had been thoroughly discussed during pre-trial motions, and it was clear to the trial court that the testimony was admissible, and not offered to prove the truth of any out of court statement. The proof was offered simply to respond to

the “open door” the defense had created, and to prove the injury related information provided to the investigating authority at the time of the crash. Indeed the report itself was never offered or admitted, and Alejo/TruGreen claims to the contrary are inaccurate.

The trial court was well within its discretion in allowing the subject testimony, on multiple grounds. The efforts of Alejo/TruGreen to obscure and obstruct are particularly revealing in light of the fact that Alejo/TruGreen actually withheld the accident report notation from both CR 35 examiners...all to preserve an argument that was contradicted by other reliable, readily available and admissible evidence. Alejo/TruGreen later referenced the officer’s testimony in its direct examination of its own CR 35 experts. RP 43:1-4, March 14, Verbatim Report of Proceedings.

**4.2 Driver Identity Issues:** Considering the facts of the violent rear end crash and the violation of community safety standards / state law / “rules of the road”, and considering the employee driver as a personally named defendant appearing through counsel in a joint defense with TruGreen, the trial court did *not* abuse its discretion by allowing counsel for Rebecca Lawrence to refer to driver Alejo by name and to confirm that there was no evidence that Alejo did not know how to drive. *For context, see*, RP pages 18-19, March 16, Excerpts of Proceedings, Plaintiff’s Closing Arguments.

The trial court record confirms there was an unspecified objection by defense counsel that interrupted counsel for plaintiff when he was arguing that the legal process is about accountability and responsibility of drivers who have a duty to obey the “rules of the road”. The initial objection was *before* Alejo was referred to by name...and then, as plaintiff’s counsel resumed argument without any reference to Alejo, there was a second objection...and then a side bar conference with the trial court. When argument resumed plaintiff’s counsel offered a clarifying comment, in accordance with the trial court’s direction. After Alejo was referenced by name (*see also* the Verdict) there was no objection and no “driver identity” issue was properly preserved for any appeal in a manner consistent with Washington state legal standards. Nothing at the trial court was done in violation of the principles embodied in *Snyder*, 47 Wn.2d 60, 287 P.2d 108, which imposes some discretionary limitations on the scope of evidence in admitted liability cases.

The Washington trial court at no time instructed plaintiff’s counsel he could not refer to a defendant by name. RP 320:3-11, March 16, Verbatim Report of Proceedings, Volume II.

**4.3 Mechanics of Crash Issues:** Considering the violent rear end crash caused by the commercial truck, and the dispute regarding the nature and extent of any injury and the Alejo/TruGreen claims that the

crash related injuries, treatments and surgeries were really caused by early childhood sexual abuse, the Washington trial court did not abuse its discretion or ignore the holdings of Washington Supreme Court case law, by allowing counsel for Rebecca Lawrence to reference the mechanics of the crash, and the property damage as the factual context for the trauma and harms suffered by Rebecca Lawrence. Rebecca Lawrence testified regarding the facts of the crash at RP 31:5-33:4, March 9, Transcript of the Proceedings – Trial Testimony of Rebecca Lawrence.

This issue *was not* properly preserved for appeal in a manner consistent with Washington state legal standards. The trial court rulings in all crash related matters were consistent with *Snyder*, 47 Wn.2d 60, 287 P.2d 108, which specifically authorizes evidence of the physics, angles and mechanics of damage in personal injury cases.

**5. Regarding Assignment of Error No. 5 – Inconsistent Reports (and the Alejo/TruGreen Arguments at pages 26-27 under heading V-B-4):**

In the absence of any objection, the Washington trial court did not abuse its discretion by allowing testimony of qualified expert witnesses, and by deferring to counsel for Alejo/TruGreen to cross examine experts about any inconsistencies or contradictions in their opinions or reports. This issue *was not* preserved for appeal in any manner consistent with Washington state legal standards. The testimony of experts Bellerive and

Moss confirms there were no objections by Alejo/TruGreen. RP pages 210-305, March 15, Verbatim Report of Proceedings, Volume II.

**6. Regarding Assignment of Error No. 6 – Updated Information (and the Alejo/TruGreen Arguments at pages 27-28 under heading V-B-5):**

In the absence of any objection, the Washington trial court did not abuse its discretion by allowing expert testimony regarding updated information exchanged between and among the parties. The updates were largely a function of ongoing treatment and the trial court, in the absence of any objection, deferred to counsel for Alejo/TruGreen to cross examine experts about any new information, inconsistencies or contradictions in their opinions or reports. This issue *was not* preserved for appeal in a manner consistent with Washington state legal standards.

The trial court did not abuse its discretion by allowing Alejo/TruGreen to offer in evidence what Alejo/TruGreen viewed as conflicting reports. At page 28 of their brief, Alejo/TruGreen reference the fact that Alejo/TruGreen offered the reports as exhibits, which were admitted by the trial court with no objection by counsel for Lawrence. RP 289:24-25, March 14, Cross-Examination of Moss. At the same time, Alejo/TruGreen argue that the trial court abused its discretion by accepting the offered exhibits. This argument is without merit.

**B. The Jury Verdict Was Not Excessive:**

The closing section of the Alejo/TruGreen brief suggests the jury verdict was excessive in light of the evidence. This specious assertion disregards evidence of life changing harm to a young woman, more than a quarter million dollars in treatment expenses prior to trial, and expert evidence of life-long treatment expenses that will extend over the next forty five years. The verdict was not a function of prejudice; rather, it was a community effort to hold Alejo/TruGreen accountable for the harm caused by negligent driving.

**V. CONCLUSION**

Respondent respectfully requests that the trial court decisions be sustained as within the trial court's discretion and that this Court confirm that Alejo/TruGreen received a fair trial, consistent with the applicable legal standards. Respondent further requests that the verdict of the jury be confirmed and all appeals be denied, and that costs and fees be awarded to the Respondent.

Dated this 15<sup>th</sup> day of February, 2012.

THE PEARSON LAW FIRM, P.S.

By:   
JERALD D. PEARSON, WSBA #8970  
Counsel for Respondent