

67402-1

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NO. 67402-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CODY HIATT,

Appellant,

v.

AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC.,

Respondent.

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE CASE

A. On a Clear June Morning Cody Hiatt, Going at Least 50 m.p.h. on Interstate 5, Smashed His Motorcycle into the Back of AMR's Stationary Ambulance.

On Monday morning, June 1, 2009, on Interstate 5, Cody Hiatt, going at least 50 miles an hour,¹ drove a motorcycle into the right door on the back of a stationary AMR ambulance. The weather was clear and the highway was dry.²

B. The Ambulance Had Been Lawfully Stopped for Ten Minutes in the HOV Lane of I-5, and Its Emergency Lights Were Flashing.

The AMR ambulance had been stopped for ten minutes,³ with its emergency lights flashing,⁴ in the northbound HOV lane on Interstate 5 just north of Northgate.⁵ As explained below, ambulances are expressly allowed, by statute, to stand or park within highway traffic lanes when responding to emergencies if their emergency lights are flashing.⁶

The AMR ambulance crew had been enroute to AMR's Shoreline base office and had happened by a multiple-vehicle accident in the southbound lanes.⁷ The ambulance driver had pulled over and stopped, notified AMR's dispatcher that the crew was going to respond to an

¹ CP 12-30 (Dep. 29-30, 32, 36).

² CP 65 (left-side margin boxes 1, 2; see codes on CP 63); CP 173, line 16.

³ CP 144 (Dep. 13-14); CP 161 (Dep. 7).

⁴ CP 144 (Dep. 14); CP 148 (Dep. 28); CP 161-62 (Dep. 11-12).

⁵ The spot is just south of where 117th St. N. passes over I-5. CP 38(5); CP 166.

⁶ RCW 46.61.035(1)-(2) and RCW 46.61.212(1)(a)(i).

⁷ CP 149 (Dep. 33).

accident, and she and her fellow crew member became the first responders to triage and attend to occupants of wrecked vehicles, at least one of whom was in a car that had rolled over.⁸

In that area, the two sides of I-5 are separated by a low concrete barrier wall.⁹ AMR's driver parked the ambulance on the left side of the HOV lane, leaving enough space between the ambulance and the barrier so that she could exit the ambulance through the driver's side door; the ambulance thus occupied slightly more than half the HOV lane.¹⁰ At that hour, shortly before 7:00 a.m.,¹¹ northbound traffic was very light, but inbound commuters made for heavier southbound traffic.¹²

As Hiatt, driving with iPod buds in his ears at what he estimates was 50 m.p.h.,¹³ approached the stationary AMR ambulance, he saw "damaged cars, backed up traffic, [and] the flashing lights of ambulances and fire trucks."¹⁴ As Hiatt admits, "when you see flashing lights, you

⁸ CP 161 (Dep. 7), CP 142 (Dep. 6-7), CP 144 (Dep. 14), CP 145 (Dep. 17-19), CP 148 (Dep. 32-33). Hiatt asserts that the accident victims' injuries were not major. *Opening Br. at 9*. The AMR driver's uncontroverted testimony is that at least two persons were transported to hospitals by ambulances and that her fellow crew member applied a c-spine support to one of them. CP 148-49.

⁹ CP 165-67.

¹⁰ CP 69; CP 165-67; CP 119, Ex. E (TV helicopter film).

¹¹ Hiatt estimated the time as between 7:00 and 8:00 in his deposition, CP 127 (Dep. 22), but the State Patrol report indicates a time of 6:54 a.m., CP 65.

¹² CP 150 (Dep. 39).

¹³ CP 12-30 (Dep. 29-30, 32, 36).

¹⁴ CP 19.

generally look at them.”¹⁵ He apparently looked for enough time to count six cars in the accident.¹⁶ Hiatt asserts that once he had rounded a curve in I-5 and was able to “visualize the accident scene” and “process what I was seeing” and realize there was something ahead of him, he was left with only five seconds to act and had no time to brake or avoid the ambulance.¹⁷

AMR’s driver had just returned to fetch a “backboard” and was holding the handle of the left door on the back of the ambulance when Hiatt’s motorcycle struck the right rear of the ambulance.¹⁸ A TV helicopter happened to record the crash.¹⁹ The ambulance driver, her right hand bruised, went to Hiatt’s aid; he was conscious, and she told him “an ambulance” when he asked “what did I hit?”²⁰

¹⁵ CP 130 (Dep. 34).

¹⁶ CP 173, line 18.

¹⁷ CP 22; CP 130 (Dep. 35); CP 173, line 7; *Opening Br. at 5-6*.

¹⁸ CP 143 (Dep. 8-9); CP 146 (Dep. 21).

¹⁹ CP 119, Ex. E. The segment of film that captures the actual collision does so at long range. Hiatt’s personal statement refers to the TV film, CP 173 (last two lines), and Hiatt testified in his deposition that the film accurately depicts what occurred, CP 131 (Dep. 37).

²⁰ CP 143 (Dep. 9); CP 151 (Dep. 42-43). Shortly after Hiatt’s motorcycle hit AMR’s ambulance, a firetruck stopped behind the ambulance in the HOV lane. CP 155 (Dep. 56-57).

The impact fractured Hiatt's left tibia, fibula and wrist, and dislocated his right thumb.²¹ The State Patrol investigator attributed the crash to inattention and excessive speed on Hiatt's part.²²

C. Hiatt Sued AMR Seeking Damages for His Personal Injuries; AMR Counterclaimed for the Cost to Repair Its Ambulance.

Hiatt sued AMR, alleging that its crew had parked the ambulance in the northbound HOV lane negligently. CP 1-2. AMR counterclaimed for the cost to repair the damage to the back of its ambulance. CP 4-5.

D. In Summary Judgment Rulings, the Trial Court Held AMR Not Negligent and Held Hiatt Negligent and Liable for Damage to AMR's Ambulance as a Matter of Law, and Entered Judgment Against Hiatt for \$9,219.42.

AMR moved for summary judgment, seeking dismissal of Hiatt's injury claim. CP 8-17. AMR pointed out that RCW 46.61.212 allows an "authorized emergency vehicle" to be "stationary" in "a lane or shoulder" of a highway having at least four lanes, and provides that, if the ambulance is "making use of . . . visual signals," any vehicle coming within 200 feet must yield. CP 10-14.

In response, Hiatt argued that a jury could find that, rather than park where she did, AMR's ambulance driver could and should have passed by the accident scene, taken the next I-5 exit, and gone to the accident scene via the (more crowded) southbound lanes; or that the

²¹ CP 132 (Dep. 41-42).

²² CP 65 (right-side margin boxes 27, 28; see codes on CP 63).

ambulance crew should have placed flares behind the ambulance and/or left the ambulance's brake lights on, or had a crew member stand behind the ambulance to "alert" him, CP 21-26; and that fault must be apportioned, CP 28. Hiatt did not offer any expert testimony identifying an ambulance-parking standard that AMR's driver had breached.²³

The superior court granted AMR's motion and dismissed Hiatt's personal injury negligence claim against AMR. CP 77-78.

AMR then moved for partial summary judgment of liability on its property-damage claim against Hiatt. CP 83-94.²⁴ The court granted that motion as well, thus holding Hiatt negligent and liable as a matter of law for damage to AMR's ambulance. CP 95-96. Hiatt stipulated AMR's damages are \$9,219.42. CP 98.²⁵ The court entered final judgment against Hiatt for that amount plus interest and costs. CP 99-102.

²³ Hiatt offered a sentence from an AMR driver's manual, CP 33, stating: "[w]hen arriving on-scene, company vehicles should be parked out of the line of traffic and shielded from the rear by other vehicles or objects whenever possible." CP 20, 25-26. Hiatt did not show that the ambulance could have been parked more out of the line of traffic than it was, or shielded from the rear.

²⁴ Hiatt did not include his response among his designated clerk's papers, but all it did was renew assertions made in his response to AMR's motion to dismiss.

²⁵ As the Clerk's Papers reflect, Hiatt twice moved unsuccessfully for "revision" and or reconsideration of both summary judgment rulings, CP 97, CP 103-04, but Hiatt does not assign error to or mention either order denying such relief or his motions for such relief.

II. ARGUMENT

The superior court's rulings were correct based on common sense alone, but also based on Washington traffic laws. Hiatt was negligent and AMR's ambulance driver was not. There was no fault to apportion.

A. The Trial Court Correctly Held Hiatt Negligent as a Matter of Law.

1. Hiatt ran into, in broad daylight, an ambulance that was stationary, directly in front of him, with its emergency lights flashing.

It is, or should be, axiomatic that a driver has one basic responsibility that accounts for most of the written "rules of the road," *i.e.*, don't run into what's directly ahead when going forward or what's directly behind when backing up. That means maintaining a speed-separation ratio between one's vehicle and vehicles in one's path that enables one to stop in time to avoid a collision, even if the other vehicle isn't a stationary ambulance flashing red emergency lights.

Nothing swerved or jumped into Hiatt's path; no vehicle ahead of Hiatt that had been blocking blocked his view of the ambulance's flashing lights suddenly changed lanes ahead of him; no sudden downpour or reflection momentarily blinded Hiatt; he doesn't claim a bee got inside his helmet. Hiatt didn't see the AMR ambulance directly ahead of him because he let himself be distracted by the sight of wreckage and EMT drama ahead and to his left as he approached the AMR ambulance, and he

returned his attention too late to what was in his own path, and he knew it. Thus, Hiatt's first words after the collision were "what did *I hit?*," not "what *hit me?*"²⁶ No reasonable juror could find Hiatt free of negligence.

2. Hiatt violated state traffic statutes and has no excuse.

Washington traffic statutes give expression and legal force to the common sense proposition that it is negligent to run into something in one's path when operating a motor vehicle. RCW 46.61.400(1) provides:

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. ***In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway*** in compliance with legal requirements and the duty of all persons to use due care [Emphases added].

RCW 46.61.145(1) provides:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

What happened in that day in June 2009 speaks for itself: Hiatt obviously let the multiple-car wreckage in the southbound lanes distract him and failed to drive his motorcycle slowly enough and/or with enough control to avoid colliding with what was directly ahead of him, in plain sight on a

²⁶ CP 151 (Dep. 43). Hiatt was violating RCW 46.37.480(2) by driving with iPod buds in his ears.

clear morning. Instead, Hiatt smashed into, at 50 m.p.h., a stationary ambulance that was displaying its emergency lights.

RCW 46.61.212 speaks directly to what the presence of a stationary ambulance on a roadway means:

(1) ***The driver of any motor vehicle, upon approaching an emergency zone, which is defined as the adjacent lanes of the roadway two hundred feet before and after . . . a stationary authorized emergency vehicle that is making use of audible and/or visual signals meeting the requirements of RCW 46.37.190 . . . , shall:***

(i) On a highway having four or more lanes, at least two of which are intended for traffic proceeding in the same direction as the approaching vehicle, ***proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle . . .***²⁷

RCW 46.61.212(1) assumes, appropriately and necessarily, that a reasonably alert driver will notice an object directly ahead of him in plenty of time to yield if the object is an ambulance flashing emergency lights.

3. No reasonable jury could absolve Hiatt of negligence.

Hiatt does not cite it, but RCW 5.40.050, enacted in 1986, provides in pertinent part that “[a] breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence. . . .”

²⁷ The statute goes on provide for enhanced fines and potential criminal prosecution for endangering emergency zone workers. RCW 46.61.212(3)-(5).

Nonetheless, in a proper case – and this is one – the question of whether a party was negligent may be decided by a judge as a matter of law.

Although violation of a statute/duty is no longer negligence per se under RCW 5.40.050, this does not mean RCW 5.40.050 necessarily bars a trial court from finding negligence as a matter of law.

Pudmaroff v. Allen, 138 Wn.2d 55, 68, 977 P.2d 574 (1999).

If all reasonable minds would conclude that the defendant failed to exercise ordinary care, the judge can find negligence as a matter of law. If no reasonable mind could find that the defendant failed to exercise ordinary care, the judge can find the absence of negligence as a matter of law.

Mathis v. Ammons, 84 Wn. App. 411, 418-19, 928 P.2d 431 (1996), *rev. denied*, 132 Wn.2d 1008 (1997).

A case similar to this one in which the court of appeals affirmed a trial court's ruling holding a driver negligent as a matter of law notwithstanding RCW 5.40.050 is *Yurkovich v. Rose*, 68 Wn. App. 643, 847 P.2d 925, *rev. denied*, 121 Wn.2d 1029 (1993). In that case, a school bus driver had "failed to activate the bus' stop bar and warning lights prior to letting [the plaintiff parents' daughter] off, as required by former RCW 46.61.370(2)." He had also "failed to keep her within his view at all times, and did not require her to cross in front of the bus, as required by WAC 392-145-020(4)." *Yurkovich*, 68 Wn. App. at 646. Both the trial court and court of appeals held that the driver had been negligent as a matter of law. The court of appeals explained:

[W]here there is no evidence or reasonable inference therefrom to sustain a verdict against the nonmoving party should be decided as a matter of law. [Citation omitted.] . . . This fundamental tenet does not lose its force simply because the evidence of negligence includes evidence of violations of statutes. . .

In this case, the violation of the applicable statutes . . . cannot be denied. RCW 5.40.050 permits a defendant shown to have violated the literal requirements of a statute, ordinance, or administrative rule to present evidence of excuse or justification and leaves it to the trier of fact to determine whether the violation should be treated as evidence of negligence. The defendants' efforts at showing excuse or justification failed in this case. This left the trial court no choice but to rule that negligence had been established as a matter of law.

Yurkovich v. Rose, 68 Wn. App. at 653-54.

In this case, there is no question that Hiatt failed to yield to a stationary ambulance that was displaying its emergency lights. Hiatt offered no tenable excuse for failing to avoid what was standing still in the left part of the lane directly ahead of him.²⁸

²⁸ Indeed, the only point of fact on which there arguably was any dispute is whether the highway was curved too much for Hiatt to have seen the ambulance sooner than he did. See CP 129 (Dep. 31); CP 173, lines 6-7; *Opening Br. at 5-6*. But any dispute about the curvature of the highway (*compare* Hiatt's testimony with CP 119, Ex. E and CP 166) is immaterial because, even accepting Hiatt's testimony as true, Hiatt admits he still had at least five seconds to react to the ambulance upon realizing it was in his path. CP 129 (Dep. 31-32); CP 173, line 7. Thus, even using Hiatt's self-serving estimates of his speed and of how long he had to "visualize" or "process" the situation ahead of him, an object traveling 50 m.p.h. covers 366.65 feet in five seconds, meaning Hiatt more than the length of a regulation football field *including* both end zones, in which to avoid the ambulance. So Hiatt either was traveling much faster than 50 m.p.h. or spent most of the five seconds looking in a direction other than the one in which he was going.

The trial court correctly held Hiatt negligent as a matter of law. As explained next, the trial court also correctly held that Hiatt alone was negligent and declined to have a jury apportion fault for purposes of his personal injury claim or AMR's property damage claim.

B. The Trial Court Correctly Rejected Hiatt's Claim that AMR Could Be Found Negligent, Too, and Correctly Refused to Have a Jury Apportion Fault Between Hiatt and AMR.

1. AMR was not negligent because Washington law expressly allows ambulance drivers to park or leave their ambulances standing in a highway traffic lane when responding to an emergency.

There is no basis under Washington law for charging an ambulance company with negligence under any of Hiatt's theories as to what AMR's crew failed to do. Hiatt's contention has been that AMR's ambulance driver should not have parked the ambulance in the northbound HOV lane, even with its emergency lights flashing, *Opening Br. at 9-10*, or that AMR's ambulance crew should also have put flares or cones behind it. *Op. Br. at 10.*²⁹ Washington law, however, does not require ambulance crews to have or deploy flares or cones, or to use flaggers, even at night. Washington law specifically *allows* ambulance drivers to stop and park their ambulances in traffic lanes of highways in order to respond to emergencies, and expressly exempts them from the ordinary rules of the

²⁹ Hiatt asserts that no "flagger" was stationed behind the ambulance, *Op. Br. at 1*, but does not mention the absence of a "flagger" in his argument.

road under such circumstances, as long as they activate their emergency lights. RCW 46.61.035 provides that:

(1) *The driver of an authorized emergency vehicle, when responding to an emergency call . . . , may exercise the privileges set forth in this section, but subject to the conditions herein stated.*

(2) *The driver of an authorized emergency vehicle may:*

(a) *Park or stand, irrespective of the provisions of this chapter;*

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the maximum speed limits so long as he or she does not endanger life or property;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) *The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that: (a) An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle; (b) authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.*

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others. [Emphases added.]

This statute applied. The AMR ambulance was an authorized emergency vehicle responding to an emergency. It was making use of proper visual signals. (It was not making use of *audible* signals, but it was not required to do so because it was “parked or standing”). Hiatt disputed none of these points. “This chapter,” referred to in RCW 46.71.035(2)(a), is to RCW Title 46, ch. 61, “rules of the road.” The ambulance was exempt from the rules of the road because its “visual signals” were flashing.

RCW 46.61.212(1) also recognizes that ambulance drivers may leave their ambulances stationary not only on the shoulder of a highway but within a lane of a highway. It provides that a driver of a motor vehicle “who approaches *a stationary authorized emergency vehicle that is making use of . . . visual signals . . . shall* [o]n a highway having four or more lanes. . . , proceed with caution and, if reasonable, with due regard for safety and traffic conditions, *yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle . . .*” [Emphases added.]

Interstate 5 has five lanes where Hiatt’s motorcycle slammed into AMR’s ambulance, *see* CP 69 and CP 119, Ex. D, so RCW 46.61.212(1) applied. In light of RCW 46.61.212, there is no basis for an argument that parking an ambulance in a lane of I-5 was negligent, because AMR’s driver made sure to activate the ambulance’s flashing emergency lights.

Hiatt argues that the AMR ambulance crew could be second-guessed for failing to pass by the accident scene, proceed north to an exit, and reenter I-5 southbound to get to the accident scene, or for failing to deploy flares or cones, but he cites nothing in RCW Title 46 or any other Washington statute or regulation that requires ambulance crews to take detours to the accident scenes or stop to help victims of highway accidents only when in the same lane or direction of travel, or to deploy flares or cones behind an ambulance before going to aid accident victims. Nor did Hiatt offer expert testimony or other evidence that a standard of ambulance-driving care separate from RCW Title 46 required any such measures.³⁰ Alerting other drivers to the ambulance's presence and location is what an ambulance's red flashing emergency lights are for.

2. No reasonable jury could find that AMR's ambulance driver was negligent.

Just as *Yurkovich*, 68 Wn. App. at 653-54, establishes that a vehicle driver who violates a traffic statute may be held negligent as a matter of law despite RCW 5.40.050, so may a vehicle driver be absolved of negligence as a matter of law. *See Mathis*, 84 Wn. App. at 418-19.

³⁰ There is a statute requiring the carrying of flares by vehicles of certain types, *see* RCW 46.37.440, and a statute requiring disabled vehicles on roadways to deploy flares at times when lighting devices are required (a half hour after sunset to a half hour before dawn, *see* RCW 46.37.020), *see* RCW 46.37.450, but those statutes do not apply to ambulances, and section .450 does not apply in daytime.

Walker v. King County Metro, 126 Wn. App. 904, 109 P.3d 836 (2005), which affirmed the dismissal of a lawsuit brought by a bus passenger who allegedly fell because the bus stopped or jerked suddenly, illustrates that the driver of a specialized type of vehicle must be absolved of negligence as a matter of law when the plaintiff fails to identify a way in which the driver failed to comply with a standard of care applicable to such a vehicle. As the *Walker* court explained:

Breach of duty is ordinarily a factual question. If there is any evidence tending to show that the carrier failed to comply with the required standard of care, then the question of negligence must be left to the jury.

Many cases brought by injured passengers have been dismissed for insufficient proof of negligence where the only allegation is that the bus came to a stop described as sudden or even violent. As *Walker* acknowledges, a carrier is not liable for injuries received . . . unless there is evidence of physical facts from which operator negligence might reasonably be inferred.

* * *

[A decision cited by *Walker*] does not establish that the standard of care for a streetcar or bus always requires the driver to wait for passengers to be seated before the bus can move. No statute or regulation prohibits buses from operating while passengers are standing.

Walker, 126 Wn. App. at 908-909 (footnotes omitted).

The AMR ambulance crew in this case was doing what ambulance crews are supposed and expected to do – go to an accident scene, stop their ambulance off the roadway if practicable, making sure to activate the

ambulance's flashing red emergency lights, and go to the aid of any accident victims. Washington traffic laws – RCW 46.61.035(2)(a) and (3), and RCW 46.61.212(1)(a)(i) – exempt ambulances from the rules of the road and allow ambulances to be stopped or parked in a highway lane, provided only that their emergency lights are activated, which those on AMR's ambulance had been *for ten minutes* before Hiatt approached.³¹

No statute, regulation, or standard of care of which Hiatt offered evidence requires an ambulance crew to delay going to the aid of car-wreck victims by exiting a divided highway and re-entering it on the other side despite heavier commuter traffic on the other side, or by deploying flares or cones, or by having a crew member act as a “flagger” to “alert” drivers who fail to heed the ambulance's red flashing emergency lights.³²

3. The part of AMR's driver manual that Hiatt quotes does not establish a standard of ambulance-parking care that supports his claim.

At pages 2 and 5 of his opening brief, Hiatt quotes, as what he contends is evidence of negligence on AMR's ambulance driver's part, one sentence from a single page from an AMR company manual, CP 33, that says “[w]hen arriving on-scene, company vehicles should be parked out of the line of traffic and shielded from the rear by other vehicles or

³¹ CP 144 (Dep. 13-14); CP 161 (Dep. 7).

³² Hiatt's assertion that the ambulance's *brake* lights were not on, CP 21, which he makes but does not develop on appeal, *Opening. Br. at 1*, is meaningless; brake lights are not activated unless the brake pedal is being depressed.

objects *whenever possible* [italics added].” Hiatt has never even attempted to explain how AMR’s driver could have parked the ambulance out of the line of traffic, or shielded from the rear by other vehicles or objects, given the proximity of the median barrier to the left edge of the HOV lanes along that section of I-5 and the fact that the AMR ambulance was the first emergency vehicle to stop and could not have pulled over ahead of other, shielding, vehicles. Hiatt also fails to appreciate that, as indicated by the sentence in AMR’s manual that follows the one he quotes,³³ the point of the company manual is protect ambulance crews, patients, and ambulances, not to hold AMR ambulance drivers to a standard of care toward other motorists that is more exacting than what Washington law requires and that would slow their aid and rescue efforts.

Thus, like the plaintiff in *Walker v. King County Metro*, 126 Wn. App. 904, Hiatt failed to identify any respect in which AMR’s ambulance crew breached a standard of care applicable to ambulance crews first-responding to a highway accident scene. As was the case with the school bus driver in *Yurkovich*, Hiatt himself indisputably violated RCW 46.61.212 by failing to yield upon approaching within 200 feet of an

³³ The manual states: “However, if the scene has not been secured prior to arrival and other traffic will pose a clear hazard to the AMR employees, patient(s), or other personnel the AMR vehicle may be parked to shield the scene.” CP 33. The context of the manual page speaks to steps to take to protect the ambulance and those driving or riding in it, including steps to prevent theft of the vehicle itself or property in it while the crew is away from the vehicle.

ambulance stopped in a traffic lane with its red emergency lights flashing. Therefore, the trial court here correctly concluded, as the court did in *Walker*, a reasonable jury could not find any fault on the part of, or assign any fault to, AMR. The trial court correctly concluded, as the courts did in *Yurkovich*, that Hiatt alone was at fault for the collision.

4. Hiatt's reliance on RCW 46.61.035(4) is misplaced because it concerns how an emergency vehicle is *driven*, not how one is *parked*, and in any event would require Hiatt to prove recklessness, which he does not allege.

Hiatt cites RCW 46.61.035(4)'s "duty to drive with due regard" language and *Brown v. Spokane County Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 192-93, 668 P.2d 571 (1983), to argue that whether AMR's ambulance driver exercised due care is one of fact. *App. Br. at 8-9*. Both *Brown* and RCW 46.61.035(4), however, concern the way an emergency vehicle was *driven*, not how it was parked. Hiatt cites no decisions involving collisions with emergency vehicles that were parked or standing.

For Hiatt's "drive with due regard" argument to be correct, the court would have to interpret RCW 46.61.035(4) to mean that the driver of an emergency vehicle is still "driving" it even after she has left it "stationary" within the meaning of RCW 46.61.035(1) and (2). That is not consistent with the legislature's use of different words. An emergency vehicle when being driven fast, and/or that is attempting to weave through

traffic, to reach an accident scene or trauma center may be difficult for other drivers to avoid because they have to assess its speed and possible changes of direction, in some cases through rear-view mirrors. It thus makes sense to impose a “due regard” duty on the driver of the emergency vehicle that is in motion and justifies some second-guessing of his or her driving decisions if collisions occur. But an ambulance that is stationary with its emergency lights flashing – and that has *been* stationary, in plain sight, for ten minutes – presents no such potential quandary for other drivers. RCW 46.61.035(4), sensibly interpreted, speaks only to how emergency vehicles are driven, not to where and how they are parked, once they are stationary and using their emergency lights.

Even if this Court were to construe RCW 46.61.035(4) as treating parking an ambulance as the same as driving one, though, subsection (4) provides that an emergency vehicle driver is not “protect[ed] . . . from the consequences of his or her *reckless* disregard for the safety of others [emphasis added],” and thus by implication establishes a recklessness standard of liability for how ambulances are parked. Hiatt did not allege or argue recklessness and, in light of RCW 46.61.035(2)(a) and RCW 46.61.212, no reasonable jury could find a first-responder ambulance driver reckless for stopping at an accident scene and leaving her

ambulance as far out of the roadway as practicable with its emergency lights flashing – much less for doing so on a clear day on a flat highway.

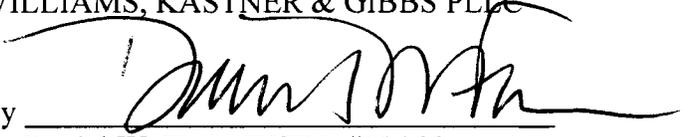
RCW 46.61.035(2) permits the driver of an authorized emergency vehicle to *park or stand* the vehicle, irrespective of otherwise applicable “rules of the road,” provided the emergency vehicle is “making use of visual signals meeting the requirements of RCW 46.37.190,” which AMR’s ambulance was. Because AMR’s driver did what the statute expressly allowed her to do, she could not be found negligent even if a standard of liability less than recklessness applied. Hiatt alone was negligent; there was no fault to apportion.

III. CONCLUSION

The trial court correctly granted summary judgment to AMR both on Hiatt’s personal injury claim against AMR and on its property damage claim against Hiatt. This Court should affirm.

RESPECTFULLY SUBMITTED this 17th day of November 2011.

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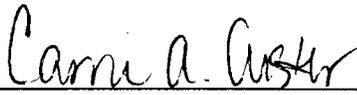
CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 17th day of November, 2011, I caused a true and correct copy of the foregoing document, "Brief of Respondent," to be delivered in the manner indicated below to the following counsel of record:

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DATED this 17th day of November, 2011, at Seattle, Washington.



Carrie A. Custer, Legal Assistant