

74655-3

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Court of Appeals  
Division I  
State of Washington  
No. 74655-3

74655-3

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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ANNETTE ANDERSON,

Appellant,

vs.

THYSSENKRUPP ELEVATOR CORPORATION,

Respondents.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE VERONICA GALVAN

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. ASSIGNMENTS OF ERROR..... 1

III. ISSUE RELATED TO ASSIGNMENTS OF ERROR..... 2

IV. FACTS..... 2

A. In the year leading up to Ms. Anderson’s injury, the elevators in her office building repeatedly malfunctioned. .... 2

B. Ms. Anderson suffered debilitating spinal injuries that required two spine surgeries when one of the four elevators abruptly stopped. TKE determined that a failed CPT board caused her incident. .... 4

C. The trial court dismissed Ms. Anderson’s suit alleging TKE negligently maintained Elevator #2 on summary judgment. .... 5

V. ARGUMENT ..... 6

A. A jury could find that the elevator’s CPT board’s failure was foreseeable and avoidable had TKE exercised reasonable care. .... 6

1. The problems with Elevator #2 in the months before Ms. Anderson’s accident gave TKE notice of a potential defect in its CPT board. .... 9

2. The problems with the entire bank of elevators gave TKE constructive notice of a problem with Elevator #2’s CPT board. .... 13

3. The State’s inspection of Elevator #2 does not – as a matter of law – preclude a finding that TKE negligently maintained the elevator..... 16

VI. CONCLUSION ..... 19

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Adams v. Western Host, Inc.</i> , 55 Wn. App. 601, 779 P.2d 281 (1989) .....	11, 16
<i>Ayers v. Johnson &amp; Johnson Baby Prods. Co.</i> , 117 Wn.2d 747, 818 P.2d 1337 (1991) .....	19
<i>Camaj v. East 52nd Partners</i> , 215 A.D.2d 150, 626 N.Y.S.2d 110 (1995).....	13
<i>Coffel v. Clallam County</i> , 58 Wn. App. 517, 794 P.2d 513 (1990) .....	7
<i>DeYoung v. Cenex Ltd.</i> , 100 Wn. App. 885, 1 P.3d 587 (2000), <i>rev. denied</i> , 146 Wn.2d 1016 (2002) .....	17
<i>Drew v. Harrison Cty. Hosp. Ass’n</i> , 20 S.W.3d 244 (Tex. App. 2000) .....	18
<i>Fischer v. Crossard Realty Co., Inc.</i> , 63 A.D.3d 540, 880 N.Y.S.2d 479 (2009).....	10
<i>Gleeson-Casey v. Otis Elevator Co.</i> , 268 A.D.2d 406, 702 N.Y.S.2d 321 (2000) .....	18
<i>Harrison v. Otis Elevator Co.</i> , 935 F.2d 714 (5th Cir. 1991) .....	12
<i>J.N. v. Bellingham Sch. Dist. No. 501</i> , 74 Wn. App. 49, 871 P.2d 1106 (1994) .....	12
<i>Keck v. Collins</i> , 184 Wn.2d 358, 357 P.3d 1080 (2015).....	7
<i>Kimball v. Otis Elevator Co.</i> , 89 Wn. App. 169, 947 P.2d 1275 (1997) .....	14

<i>Kleinert v. Kimball Elevator Co.</i> , 905 P.2d 297 (Utah Ct. App. 1995), <i>cert. denied</i> , 913 P.2d 749 (1996) .....	10
<i>M.H. v. Corp. of Catholic Archbishop of Seattle</i> , 162 Wn. App. 183, 252 P.3d 914, <i>rev. denied</i> , 173 Wn.2d 1006 (2011) .....	7, 9
<i>McLeod v. Grant County Sch. Dist. No. 128</i> , 42 Wn.2d 316, 255 P.2d 360 (1953) .....	8
<i>Otis Elevator Co. v. Reid</i> , 101 Nev. 515, 706 P.2d 1378 (1985) .....	11
<i>Poletti v. Overlake Hosp. Med. Ctr.</i> , 175 Wn. App. 828, 303 P.3d 1079 (2013) .....	14
<i>Preston v. Duncan</i> , 55 Wn.2d 678, 349 P.2d 605 (1960) .....	7
<i>Raulston v. Montgomery Elevator Co.</i> , No. E2002-00216-COA-R3CV, 2002 WL 31174224 (Tenn. Ct. App. Sept. 30, 2002) .....	14
<i>Rucshner v. ADT, Sec. Sys., Inc.</i> , 149 Wn. App. 665, 204 P.3d 271, <i>rev. denied</i> , 166 Wn.2d 1030 (2009) .....	8
<i>Seeberger v. Burlington Northern R. Co.</i> , 138 Wn.2d 815, 982 P.2d 1149 (1999) .....	7-8, 19
<i>Travis v. Bohannon</i> , 128 Wn. App. 231, 115 P.3d 342 (2005) .....	8
<i>Two Two v. Fujitec America, Inc.</i> , 355 Or. 319, 325 P.3d 707 (2014) .....	15
<b>Statutes</b>	
RCW 5.40.050 .....	17
RCW 70.87.020 .....	16-17

**Rules and Regulations**

CR 56 ..... 7  
WAC ch. 296-96 .....17  
WAC 296-96-00650.....17

**Other Authorities**

Restatement of Torts § 453 cmt. a (1934).....8  
6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI  
60.03 (6th ed.).....17

## **I. INTRODUCTION**

Appellant Annette Anderson suffered debilitating spinal injuries when the elevator she was riding suddenly stopped due to the failure of its microprocessor control panel. In the year leading up to Ms. Anderson's accident, respondent ThyssenKrupp Elevator Corporation (TKE), the company responsible for maintaining the elevator, repeatedly serviced the elevator for stopping unexpectedly and trapping passengers between floors – telltale signs of a problem with its control panel. And when adjacent elevators (which had identical control panels) experienced similar problems, TKE replaced the relays to the control panel and asked the control panels' manufacturer for assistance – precautions it did not take with the elevator that injured Ms. Anderson. Because the failure of this elevator was foreseeable, this Court should reverse the trial court's grant of summary judgment and remand for a trial of Ms. Anderson's claim of negligence.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in entering its Order Granting Thyssenkrupp Elevator's Motion for Summary Judgment. (CP 319-21)
2. The trial court erred in entering its Order Denying Plaintiff's Motion for Reconsideration. (CP 322-23)

### **III. ISSUE RELATED TO ASSIGNMENTS OF ERROR**

1. In the face of expert testimony that the standard of care required checking and replacing the elevator's microprocessor control panel, did the trial court err in granting summary judgment in favor of an elevator service company on the ground that, although the elevator and other identical elevators in the same office building had repeatedly failed and trapped passengers, this specific microprocessor control panel on this specific elevator had not previously failed?

### **IV. FACTS**

**A. In the year leading up to Ms. Anderson's injury, the elevators in her office building repeatedly malfunctioned.**

It is undisputed that appellant Annette Anderson suffered debilitating spinal injuries in an elevator accident at her seven-story building at Boeing. As this case was decided on summary judgment, the facts leading up to her injuries are set forth in the light most favorable to Ms. Anderson, the non-moving party below.

Building 10-18 is served by a bank of four passenger elevators. (CP 134, 170, 231) Each of the elevators in the building are controlled by identical microprocessor units, called an ICE-CPT board, all

initially installed in 2009. (CP 18, 135, 234)<sup>1</sup> The CPT board is the control panel or “brain” of the elevator. (CP 135) The CPT boards were all manufactured by Motion Control Engineers (MCE). (CP 18, 234) A CPT board, like other electronics, can fail in two ways: 1) a “hard” failure, where it stops working completely, or 2) an “intermittent” failure, where it stops working for a time and then begins working again. (CP 83-84, 218-19, 235)

In October 2010, ThyssenKrupp Elevator Corporation (TKE) assumed responsibility for maintaining and servicing the elevators in Building 10-18. (CP 17) Beginning in November 2010 Elevator #1 repeatedly became stuck between floors, trapping passengers, eventually leading TKE to replace the “dc relay on cartop board,” *i.e.*, the relays to the CPT board. (CP 205, 207, 243-44) In February 2011 Elevator #3 had issues “jerking,” prompting TKE to work with MCE on its controller. (CP 208) Between February and June 2011, TKE responded to five incidents in which Elevator #2 became stuck; four of the incidents trapped passengers. (CP 97-98, 207-11, 236, 253-54) TKE never inspected the CPT board or contacted MCE regarding the problems with Elevator #2 even though it had the identical

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<sup>1</sup> The ICE-CPT board is often referred to simply as a “CPT board” or “control unit.”

manufacturer and design as Elevator #1, which had experienced similar problems.

In total, TKE responded to 21 “call back” service calls in Building 10-18 in 2011. (CP 242, 251, 261, 271)

**B. Ms. Anderson suffered debilitating spinal injuries that required two spine surgeries when one of the four elevators abruptly stopped. TKE determined that a failed CPT board caused her incident.**

On Friday October 21, 2011, Ms. Anderson left work on the seventh floor. She entered Elevator #2, intending to ride it down to the first floor. (CP 170, 230-31) Before reaching the first floor, the elevator dropped rapidly and then stopped abruptly. (CP 170, 230-31) Ms. Anderson was jolted forward and then whipped back, very hard, from the elevator’s sudden stop. (CP 170) The elevator then remained stuck between floors for several minutes. (CP 170, 231) Ms. Anderson hit the radio “HELP” button inside the elevator, but it did not work. (CP 170, 231) The elevator eventually resumed and carried Ms. Anderson down to the first floor, where the doors opened. (CP 171, 231)

Ms. Anderson suffered severe back injuries as a result of Elevator #2’s malfunction, causing pain that radiated from her buttocks down her leg to her right foot. (CP 177-88) After over two years of conservative treatment, ranging from chiropractic care and

physical therapy to epidural injections, that failed to provide her relief, she underwent spinal surgery on April 21, 2014, and follow-up surgery on May 19, 2014. (CP 177-88)

Because Ms. Anderson was injured in Elevator #2 at the end of the business day on a Friday, the malfunction was not immediately reported to TKE. (CP 230) TKE coincidentally had scheduled elevator maintenance over the ensuing weekend. In the course of inspection, TKE's mechanic, Richard Preszler, noticed that Elevator #2 was stopped between floors, but could not determine the cause. (CP 17) When he returned the next day, Mr. Preszler contacted MCE and determined that the CPT board atop Elevator #2 had suffered an intermittent failure. (CP 18, 78, 196, 223-24; *see also* CP 229) After being informed of Ms. Anderson's injury on Monday, October 24, 2011, TKE concluded a failed CPT board was responsible for the intermittent failure that caused Ms. Anderson's injury and replaced it. (CP 18-19, 139, 195-96 ("The incident was caused by a bad output in the car top ICE-CPT board."))

**C. The trial court dismissed Ms. Anderson's suit alleging TKE negligently maintained Elevator #2 on summary judgment.**

On October 10, 2014, Ms. Anderson sued TKE alleging negligent maintenance of Elevator #2 caused the malfunction on

October 21, 2011, and her severe spinal injuries. (CP 1-8) TKE conceded that it had a duty to maintain the elevator, that the elevator malfunctioned, and that Ms. Anderson was severely injured. TKE denied that it could have foreseen the risk of a CPT board failure on Elevator #2. (CP 12-14, 47-66) The trial court agreed, granting TKE summary judgment on December 11, 2015. (CP 319-21; RP 30) The trial court denied reconsideration on January 19, 2016. (CP 322-23) Ms. Anderson appeals. (CP 316-17)

## V. ARGUMENT

### A. **A jury could find that the elevator's CPT board's failure was foreseeable and avoidable had TKE exercised reasonable care.**

TKE knew that Elevator #2 experienced problems similar to those experienced by the other elevators in the same bank, which TKE addressed by checking their identical CPT boards. Expert testimony established that a reasonable elevator maintenance company, when confronted with the malfunctions in Elevator #2, would have checked or replaced the CPT board on Elevator #2. The trial court erroneously held that Ms. Anderson's injury was not reasonably foreseeable. This Court should reverse the summary judgment and remand for trial.

This Court reviews the trial court’s summary judgment order de novo and must view all facts and reasonable inferences in the light most favorable to the nonmoving party, Ms. Anderson. *Keck v. Collins*, 184 Wn.2d 358, 370, ¶ 27, 357 P.3d 1080 (2015). Summary judgment is proper only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). “Even if the facts are undisputed, there still may be an issue for the trier of fact when conflicting inferences may be drawn from such undisputed facts.” *Coffel v. Clallam County*, 58 Wn. App. 517, 520, 794 P.2d 513 (1990) (citing *Preston v. Duncan*, 55 Wn.2d 678, 681–82, 349 P.2d 605 (1960)).

A defendant’s liability for negligence is based on “(1) the existence of a duty, (2) breach of that duty, and (3) injury proximately caused by the breach.” *M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn. App. 183, 190, ¶ 13, 252 P.3d 914, *rev. denied*, 173 Wn.2d 1006 (2011). A defendant is liable for foreseeable risks. “The concept of foreseeability limits the scope of the duty owed”; a defendant must act to prevent foreseeable risks, but not unforeseeable ones. *Seeberger v. Burlington Northern R. Co.*, 138

Wn.2d 815, 823, 982 P.2d 1149 (1999) (quotation omitted); *Rucshner v. ADT, Sec. Sys., Inc.*, 149 Wn. App. 665, 680, ¶ 36, 204 P.3d 271, *rev. denied*, 166 Wn.2d 1030 (2009).

“Harm is foreseeable if the risk from which it results was known or in the exercise of reasonable care should have been known.” *Travis v. Bohannon*, 128 Wn. App. 231, 238, ¶ 15, 115 P.3d 342 (2005) (citations omitted). “Ordinarily, foreseeability is a question of fact for the jury unless the circumstances of the injury are so highly extraordinary or improbable as to be wholly beyond the range of expectability.” *Seeberger*, 138 Wn.2d at 823 (citation omitted) (quotation omitted); *see also McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 323, 255 P.2d 360 (1953) (“If . . . there is room for reasonable difference of opinion as to whether such act was negligent or foreseeable, the question should be left to the jury.”) (quoting Restatement of Torts § 453 cmt. a (1934)).

The trial court erred in finding Ms. Anderson’s injury unforeseeable as a matter of law. This Court should remand for a trial on Ms. Anderson’s negligence claim against TKE.

**1. The problems with Elevator #2 in the months before Ms. Anderson's accident gave TKE notice of a potential defect in its CPT board.**

The trial court erroneously accepted TKE's argument that a defendant has no duty to prevent an elevator accident unless it has prior notice of the precise malfunction in the precise part in the precise elevator that injured the plaintiff. That is not the law. It is not necessary that the particular harm that occurred be foreseen, only that it "be reasonably perceived as within the general field of danger that should have been anticipated." *M.H.*, 162 Wn. App. at 193, ¶ 22.

TKE's maintenance records prove that the failure of the CPT board was "within the general field of danger that should have been anticipated." *M.H.*, 162 Wn. App. at 193, ¶ 22. Elevator #2 had repeatedly malfunctioned, threatening passenger safety. TKE responded to five callback incidents involving Elevator #2, including four entrapments of passengers, between February and June 2011, far above the acceptable rate of callbacks and entrapments. (CP 207-11, 213, 236, 253-54)

Ms. Anderson's expert, Dr. Stephen Carr, explained that these problems were evidence of an intermittent failure of the CPT board, and thus it was not a "big surprise" when it failed and caused Ms.

Anderson's severe spinal injuries. (CP 213; *see also* CP 83-84, 235 (“the CPT board failure in this case was not a ‘spontaneous event’”)) Indeed, when TKE's mechanic inspected the elevator after Ms. Anderson's incident, he likewise concluded it was suffering “intermittent shut downs.” (CP 196, 223-24; *see also* CP 229 (“The elevator will not stay running (intermittent problem).”)) Ms. Anderson confirmed the intermittent nature of the malfunction, reporting that after the abrupt stop she remained trapped for several minutes before the elevator eventually resumed. (CP 231)

TKE's maintenance records reflecting previous intermittent malfunctions and Dr. Carr's testimony would allow a jury to find that TKE could reasonably anticipate a problem with Elevator #2's CPT board. *Kleinert v. Kimball Elevator Co.*, 905 P.2d 297, 299-300 (Utah Ct. App. 1995) (plaintiff created issue of fact on defendant's notice by “submitt[ing] testimonial and documentary evidence indicating a history of elevator problems and malfunctions,” including excessive entrapments and “yo-yoing” problems), *cert. denied*, 913 P.2d 749 (1996); *Fischer v. Crossard Realty Co., Inc.*, 63 A.D.3d 540, 880 N.Y.S.2d 479 (2009) (“An issue of fact as to whether defendant had notice of the claimed misleveling is raised by the elevator's service records”). This evidence of repeated problems and

complaints also distinguishes this case from *Adams v. Western Host, Inc.*, 55 Wn. App. 601, 604, 779 P.2d 281 (1989) (cited at CP 63-65), where the court ruled for the defendant because “there were no complaints of elevator misleveling prior to” the accident.

Dr. Carr also explained how TKE’s inadequate attempts to address the problems with Elevator #2 fell well below the standard of care because it failed to address the “intermittent problems of the CPT board on elevator #2.” (CP 235) For example, Dr. Carr highlighted a March 14, 2011, incident in which a passenger became trapped and TKE’s response was to “reset doors and check[] door operation.” (CP 88) In other words, TKE did nothing to ensure it “won’t . . . happen again,” and instead just “ran the thing a number of times and took off.” (CP 88-89)

Dr. Carr raised similar concerns to TKE’s response on February 8, 2011: “What did [the mechanic] do? He checked these things. What did he fix? What did he change? It doesn’t say.” (CP 86-87; *see also* CP 351 “he doesn’t say what he did. He just checked them. Did he find one wrong? Did he find something to fix? It doesn’t say.”) TKE’s perfunctory response to the repeated problems with Elevator #2 supports a finding of negligence. *See Otis Elevator Co. v. Reid*, 101 Nev. 515, 520, 706 P.2d 1378 (1985) (“Otis’ response

to these repeated malfunctions was to reset the switch and run the elevator up and down a few times. Otis failed to take affirmative steps to discover the source of the malfunctions. This conduct, in our view, amounts to a clear showing of negligence. . . .”).

TKE did nothing to ascertain the integrity of the CPT board after the “car top incidents or incidents with that board and its relay beforehand.” (CP 213) Its failure to take corrective action, “exposed [Ms.] Anderson to another occurrence of the problems it’s been having.” (CP 213) TKE’s expert agreed that “[i]f a mechanic heard of complaints of an elevator stopping” that “check[ing] the wires on a control box . . . would be very reasonable” and “part of your protocol when you looked at the symptoms of what happened.” (CP 216-17)

This expert testimony (from both parties) precluded summary judgment. *See J.N. v. Bellingham Sch. Dist. No. 501*, 74 Wn. App. 49, 61, 871 P.2d 1106 (1994) (“[A]dmissible expert opinion on an ultimate issue of fact is sufficient to create a genuine issue as to that fact, precluding summary judgment”); *Harrison v. Otis Elevator Co.*, 935 F.2d 714, 717 (5th Cir. 1991) (“Dr. Cosgrove testified that Otis never properly repaired the elevator despite receiving a number of complaints. Whether Otis’s inability to adequately correct the

elevator's malfunction amounted to negligence was a question for the trier of fact."); *Camaj v. East 52nd Partners*, 215 A.D.2d 150, 151, 626 N.Y.S.2d 110 (1995) ("[A]n issue of constructive notice is raised by the affidavit of plaintiff's expert engineer claiming that the high speed stop and bouncing of the elevator resulted from improper elevator maintenance over a period of time."). This Court should reverse and remand for trial.

**2. The problems with the entire bank of elevators gave TKE constructive notice of a problem with Elevator #2's CPT board.**

TKE's own course of maintenance and inspection of these elevators establishes that it should have known there was a problem with the CPT board on Elevator #2 because TKE focused on the CPT board when it addressed similar problems with Elevators #1 and #3. After Elevator #1 started malfunctioning and trapping passengers in November 2010, TKE replaced the relay to the CPT board. (CP 205, 207, 243-44) When Elevator #3 was "jerking," TKE contacted an engineer from the CPT board's manufacturer to troubleshoot the issue. (CP 208) However, when Elevator #2 failed, trapping passengers four times between February and June 2011, TKE did not check the CPT board or contact its manufacturer. A jury could reasonably find that TKE would have prevented Ms. Anderson's

injuries had it taken the same precautions with Elevator #2 that it took with Elevators #1 and #3. *See Poletti v. Overlake Hosp. Med. Ctr.*, 175 Wn. App. 828, 838, ¶ 21, 303 P.3d 1079 (2013) (defendant's failure to follow own practice was evidence of its negligence).

Dr. Carr confirmed that because the entire bank of elevators had identical CPT boards installed at the same time, the repeated problems with the elevators should have prompted TKE to take preventive measures to ensure the integrity of all the CPT boards. (CP 237) TKE twisted Dr. Carr's testimony on this point below, seizing on his statement that individual incidents *by themselves* may not have provided notice of a problem with the CPT board to argue Dr. Carr conceded that TKE had no way of knowing the CPT board on Elevator #2 would fail. (CP 237) However, TKE ignored Dr. Carr's very next statement: "the excessive number of problems with all the elevators in the bank of four[] is indicative of the negligent maintenance as performed by [TKE]. More and better testing beforehand and the Anderson accident might never have happened." (CP 237) *See Kimball v. Otis Elevator Co.*, 89 Wn. App. 169, 173, 947 P.2d 1275 (1997) (acknowledging that evidence regarding maintenance of other elevators in same bank is probative when they are maintained "as a group"); *Raulston v. Montgomery Elevator Co.*,

No. E2002-00216-COA-R3CV, 2002 WL 31174224, at \*4 (Tenn. Ct. App. Sept. 30, 2002) (average callback once every 23 days for bank of elevators with an entrapment once a quarter was an “unconscionable record” that “could only be achieved through [defendant]’s negligence”).

Even putting aside the well-documented problems with all the elevators, Dr. Carr’s assertion that TKE negligently maintained the elevators, combined with the undisputed fact that Elevator #2 malfunctioned, was enough to take the case to the jury. In *Two Two v. Fujitec America, Inc.*, 355 Or. 319, 325 P.3d 707 (2014), the Oregon Supreme Court reversed a summary judgment, rejecting defendant’s argument that because “elevators may drop ‘through no fault or negligence of anyone’” negligence could not be inferred “from the fact of the drop alone.” 325 P.3d at 714. The court held that the drop, “together with evidence that defendant was negligent in maintaining and servicing” the elevator, was enough for a reasonable jury to conclude defendant’s negligence caused the accident. *Two Two*, 325 P.3d at 714.<sup>2</sup>

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<sup>2</sup> Because it found evidence of negligence, the court declined to consider the plaintiffs’ alternative *res ipsa loquitor* argument. *Two Two*, 325 P.3d at 714 n.9.

Here, a jury could reject TKE’s identical assertion that because elevators “*can* malfunction in the absence of negligence” Elevator #2 *did* malfunction without any negligence on its part. (CP 21) (emphasis added); *see also Adams*, 55 Wn. App. at 606 (“Materials *can* wear out or break without negligence. . . . If Adams had introduced competent evidence of negligence by U.S. Elevator, the factual issues . . . would be resolved by the trier of fact.”) (emphasis added). Because Ms. Anderson opposed summary judgment with “competent evidence of [TKE’s] negligence,” the issue was one for the jury.

**3. The State’s inspection of Elevator #2 does not – as a matter of law – preclude a finding that TKE negligently maintained the elevator.**

The Legislature has not immunized service companies responsible for elevators that pass State inspection. TKE may repeat on appeal its misguided argument below that a July 21, 2011 Department of Labor and Industries inspection of Elevator #2 established as a matter of law under RCW 70.87.020(3) that the elevator was reasonably safe for public use. (CP 59-62, 105) The statute provides that “[i]n any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is *prima facie* evidence that the conveyance work, operation, and inspection is reasonably safe to persons and

property.” (emphasis added) RCW 70.87.020(3) does not provide a safe harbor or immunity on the basis of L&I inspections.

L&I’s July 21 Inspection Report, made three months before it failed on October 21, states simply that “[t]his conveyance has been inspected and no apparent deficiencies were noted.” (CP 72) Moreover, L&I’s cursory report makes no mention of “conformity with the rules of the department,” RCW 70.87.020(3), and contains no finding that TKE’s maintenance of Elevator #2 complied with the myriad of requirements set forth in WAC ch. 296-96, which incorporates the American Society of Mechanical Engineers Safety Code for Elevators. *See* WAC 296-96-00650.

Even assuming L&I’s Inspection Report established compliance with WAC ch. 296-96, RCW 70.87.020(3) provides that inspection is only *prima facie*, not conclusive, evidence. *See* RCW 5.40.050 (providing non-compliance with statute or regulation is “evidence of negligence” that can be rebutted by other evidence); *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 893, 1 P.3d 587 (2000) (same), *rev. denied*, 146 Wn.2d 1016 (2002); 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 60.03 (6th ed.) (same). Ms. Anderson rebutted any *prima facie* showing of compliance with the standard of care with evidence that intermittent CPT board failure resulted in

prior malfunctions of Elevator #2. Intermittent failures by their very nature require inspection and diligence, not reliance on isolated snapshots of performance. As Dr. Carr confirmed, “[p]assing [an inspection] does not insure that the equipment is safe for public use.” (CP 238; *see also* CP 372) *See Drew v. Harrison Cty. Hosp. Ass’n*, 20 S.W.3d 244, 249 (Tex. App. 2000) (“[S]imply inspecting for a problem does not disprove that the [defendant] knew of the problem.”).

TKE and its expert conceded that TKE could have inspected and replaced the board, as it actually did *after* Ms. Anderson suffered her injuries. (*Compare* CP 61-62, *with* CP 218 (TKE’s expert conceding TKE mechanic could “check the board with a meter”), and CP 283 (TKE conceding “replacement . . . could have prevented this incident”)) When TKE finally replaced the CPT board, it confirmed with its manufacturer that the CPT board was “chattering intermittently.” (CP 69, 78) Given its notice of the well-documented problems with Elevator #2, TKE should have undertaken this inspection *before* the accident, as it did when Elevator #3 had similar problems. A jury could find that had TKE, in the exercise of reasonable care, should have inspected and replaced the CPT board before Ms. Anderson’s injury. *See Gleeson-Casey v. Otis Elevator*

Co., 268 A.D.2d 406, 407, 702 N.Y.S.2d 321 (2000) (affirming denial of defendant’s summary judgment motion because “[t]he plaintiffs . . . submitted an affidavit of their expert to rebut the defendant’s claim that the leveling brush broke spontaneously and not due to wear and tear.”).

That TKE in fact did not predict the failure of this precise CPT board in this precise elevator does not absolve it of its negligence because “[t]he test of foreseeability is an objective test” that asks “what the actor knew or *should have known* under the circumstances.” *Seeberger*, 138 Wn.2d at 823 (quoting *Ayers v. Johnson & Johnson Baby Prods. Co.*, 117 Wn.2d 747, 764, 818 P.2d 1337 (1991)) (emphasis added). As Dr. Carr stressed, “[TKE] did not observe the problem beforehand because they did not look for it.” (CP 236) A jury could find that TKE was on notice, or in the exercise of reasonable care *should* have been on notice, that the CPT board would fail and injure innocent passengers, as it did to Ms. Anderson.

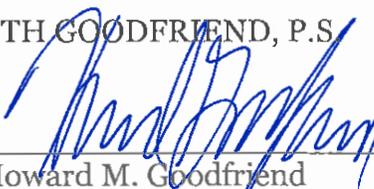
## VI. CONCLUSION

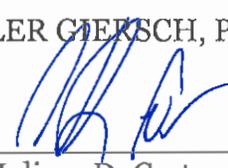
This Court should reverse and remand for trial of Ms. Anderson’s claim.

Dated this 13<sup>th</sup> day of June, 2016.

SMITH GOODFRIEND, P.S.

ADLER GIERSCH, P.S.

By: 

By: 

Howard M. Goodfriend

Melissa D. Carter

WSBA No. 14355

WSBA No. 36400

Ian C. Cairns

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Attorneys for Appellant

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 13, 2016, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Melissa D. Carter Adler Giersch, PS 333 Taylor Avenue North Seattle, WA 98109 <a href="mailto:mdcarter@adlergiersch.com">mdcarter@adlergiersch.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Whitney Smith David Jacobi Wilson Smith Cochran Dickerson 901 5th Ave Ste 1700 Seattle, WA 98164 <a href="mailto:smithw@wscd.com">smithw@wscd.com</a> <a href="mailto:Jacobi@wscd.com">Jacobi@wscd.com</a> <a href="mailto:Johnston@wscd.com">Johnston@wscd.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 13<sup>th</sup> day of June, 2016.

  
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Jenna L. Sanders

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

ANNETTE ANDERSON,

Plaintiff,

vs.

THYSSENKRUPP ELEVATOR  
CORPORATION,

Defendant.

No. 14-2-27879-9 KNT

ORDER GRANTING THYSSENKRUPP  
ELEVATOR'S MOTION FOR SUMMARY  
JUDGMENT

THIS MATTER, having come on for hearing before the Honorable Veronica Galván on ThyssenKrupp Elevator's Motion for Summary Judgment, the Court being fully advised in the premises and having reviewed the case file and pleadings contained therein, having heard oral argument from counsel, and having considered the following:

1. Defendant ThyssenKrupp Elevator's Motion for Summary Judgment;
2. Declaration of Richard Preszler in Support of ThyssenKrupp Elevator's Motion for Summary Judgment, dated March 20, 2015;
3. Declaration of Whitney Smith in Support of Defendant ThyssenKrupp Elevator's Motion for Summary Judgment, with attachments, dated November 13, 2015;

1 4. Declaration of Tim Moore in Support of ThyssenKrupp Elevator's Motion for  
2 Summary Judgment, dated November 10, 2015;

3 5. Declaration of Chuck Bigler in Support of Defendant ThyssenKrupp Elevator's  
4 Motion for Summary Judgment, with attachment, dated November 12, 2015;

5 6. Plaintiff's Response to Defendant's Motion for Summary Judgment;

6 7. Declaration of Elevator Expert, C. Stephen Carr, Ph.D. dated November 25,  
7 2015;

8 8. Declaration of Melissa D. Carter in Support of Plaintiff's Response to  
9 Defendant's Motion for Summary Judgment, with attachments, dated November 27, 2015;

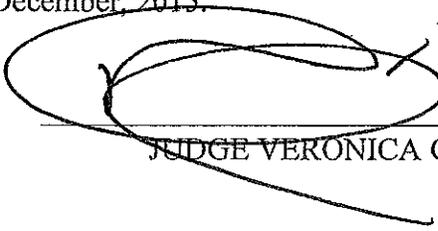
10 9. Defendant ThyssenKrupp Elevator's Reply in Support of Motion for Summary  
11 Judgment;

12 10. Reply Declaration of Whitney Smith re: ThyssenKrupp's Objections to  
13 Declaration of C. Stephen Carr, with attachments, dated December 7, 2015.

14 Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that  
15 ThyssenKrupp Elevator's Summary Judgment Motion is GRANTED.

16 It is further ORDERED, ADJUDGED and DECREED that all claims asserted by  
17 Plaintiff in this matter against ThyssenKrupp Elevator Corporation are DISMISSED with  
18 prejudice.  
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20 DATED this 11 day of December, 2015.

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JUDGE VERONICA GALVÁN

1 Presented by:

2 WILSON SMITH COCHRAN DICKERSON

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4  
5 By 

Whitney L.C. Smith, WSBA #21559

6 Of Attorneys for Defendant

7 Approved as to form:

8 ADLER GIERSCH, P.S.

9  
10  
11 By 

Melissa D. Carter, WSBA #36400

12 Of Attorneys for Plaintiff

JUDGE VERONICA ALICEA GALVÁN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

ANNETTE ANDERSON,

Plaintiff,

vs.

THYSSENKRUPP ELEVATOR  
CORPORATION,

Defendant.

No. 14-2-27879-9 KNT

ORDER DENYING PLAINTIFF'S MOTION  
FOR RECONSIDERATION

THIS MATTER, having come on for hearing before the Honorable Veronica Galván on Plaintiff's CR 59(a) Motion for Reconsideration of Entry of Summary Judgment as a Matter of Law, the Court being fully advised in the premises and having reviewed the case file and pleadings contained therein, and having considered the following:

1. Plaintiff's CR 59(a) Motion for Reconsideration of Entry of Summary Judgment as a Matter of Law;
2. Defendant ThyssenKrupp Elevator's Opposition to Plaintiff's Motion for Reconsideration;

1 Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff's  
2 CR 59(a) Motion for Reconsideration of Entry of Summary Judgment as a Matter of Law is  
3 DENIED.

4 DATED this 19 day of January, 2016.

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7 JUDGE VERONICA GALVÁN

8  
9 Presented by:

10 WILSON SMITH COCHRAN DICKERSON

11  
12  
13 By s/David M. Jacobi

14 Whitney L.C. Smith, WSBA #21559

15 David M. Jacobi, WSBA #13524

16 Of Attorneys for Defendant  
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