

79976-8

NO. 58515-1

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

PIERCE COUNTY, Petitioner

v.

CURTIS A. BEAUPRE, Respondent

**APPENDIX TO PETITIONER PIERCE COUNTY'S
MOTION FOR DISCRETIONARY REVIEW
(Appeal from King County Cause No. 04-2-23610-0 SEA)**

GERALD A. HORNE
Prosecuting Attorney

By
DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Petitioner

955 Tacoma Avenue South
Suite 301
Tacoma, WA 98402
PH: (253) 798-7746

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RISK MANAGEMENT

JOHN P. ERLICK

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

CURTIS A. BEAUPRE,)
Plaintiff,)

vs.)

PIERCE COUNTY,)
Defendant.)

No.: **04 - 2 - 23610 - 0** SEA
COMPLAINT FOR DAMAGES

Comes now the plaintiff, Curtis A. Beaupre, and for cause of action against the defendant, Pierce County, complains and alleges as follows:

**I.
PARTIES**

1.1 At all times material hereto, Curtis A. Beaupre, the plaintiff above named, was a single man, employed as a Deputy Sheriff by the Pierce County Sheriff's Department, and holding the rank of Sergeant.

1.2 At all times material hereto, the defendant, Pierce County, was and is a local governmental entity, organized and existing under the laws of the State of Washington. In such capacity it operates the Pierce County Sheriff's Department in which Curtis A. Beaupre was employed as a Deputy Sheriff and Sergeant.

COMPLAINT FOR DAMAGES - 1

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II.
JURISDICTION AND VENUE

2.1 The defendant, Pierce County, is a local governmental entity, and a county of the State of Washington. Although all of the acts and omissions forming the basis of this action occurred within Pierce County, venue is properly laid in King County Superior Court pursuant to RCW 36.01.050, which permits an action against Pierce County to be laid in either Thurston County or King County.

2.2 A Claim for Damages was timely served on Pierce County, in appropriate form, and in accordance with RCW 36.45.010, Chapter 4.96 RCW, and the applicable Pierce County Ordinances, on July 2, 2004, more than sixty (60) days prior to the filing of the Complaint in this matter.

III.
FACTUAL ALLEGATIONS

3.1 On or about November 1, 2003, at approximately 4:00 AM, deputies of the Pierce County Sheriff's Department responded to a possible domestic violence call at 509 - 112th St. Ct. E. involving one Christopher Jenkins. As they approached the residence, the responding Deputies observed the suspect's vehicle leaving the scene and attempted to stop it, but were unable to do so.

3.2 Being advised by LESA radio that Pierce County Deputies were engaged in the pursuit of a possible domestic violence suspect, and that the pursuit was headed his way, Sgt. Beaupre responded from the Lakewood Station and joined the pursuit along I-5.

COMPLAINT FOR DAMAGES - 2

1 3.3 The incident occurred in the north-bound lanes of I-5, at about
2 84th Street. At said time and place, the suspect's vehicle was southbound in
3 the northbound lanes of I-5 at a very slow speed with Sgt. Beaupre on foot,
4 running along side of the vehicle with his sidearm drawn and pointed at the
5 suspect while ordering him to stop.

6 3.4 While engaged in this attempt to apprehend the suspect, Sgt.
7 Beaupre was struck from behind by the rear end of another patrol car being
8 driven by Deputy Win Sargent, while Deputy Sargent was in the process of
9 backing up his vehicle to perform a maneuver called a "J" turn.
10

11 3.5 The rear end of Deputy Sargent's patrol vehicle struck Sgt.
12 Beaupre so hard that it knocked him some five or ten feet, causing him to
13 land immediately and directly in front of the suspect's vehicle, which then
14 ran over his pelvis with its two passenger-side wheels before he could move
15 out of the way.

16 3.6 Christopher Jenkins was then shot by other Pierce County
17 Deputies, and died at the scene.
18

19 **IV.**
CAUSE OF ACTION - NEGLIGENCE

20 4.1 Plaintiff does hereby re-allege each and every allegation
21 heretofore set forth in paragraphs 1.1 through 3.6 of this Complaint.
22

23 4.2 Deputy Win Sargent was, at all times material hereto, a Deputy
24 Sheriff acting within the scope of his authority as an agent and employee of
25 the Pierce County Sheriff's Department. His acts and omissions are the acts
26 and omissions of the defendant, Pierce County.

COMPLAINT FOR DAMAGES - 3

1 4.3 Deputy Win Sargent, while acting in his capacity as a Deputy
2 Sheriff and as an agent and employee of the Pierce County Sheriff's
3 Department, has acted negligently and unlawfully towards the plaintiff in
4 numerous ways, which include, but are not necessarily limited to, the
5 following acts and omissions:

- 6 A. In choosing to back-up his patrol vehicle while on the freeway;
- 7 B. In performing the "J" turn incorrectly;
- 8 C. In striking Sgt. Beaupre with the rear end of his patrol vehicle
9 while backing-up;
- 10 D. In failing to look where he was backing, in the manner he had
11 been taught during EVOC training;
- 12 E. In failing to see Sgt. Beaupre who was dressed in a police
13 uniform with "POLICE" emblazoned across the back in large,
14 clearly visible, white letters;
- 15 F. In failing to exercise reasonable care to avoid hitting Sgt.
16 Beaupre while backing his patrol vehicle.

17 4.4 Pierce County, by and through the acts and omissions of other
18 agents and employees of the Pierce County Sheriff's Office whose identity is
19 not presently known has acted negligently in numerous additional ways
20 which include, but are not necessarily limited to the following acts and
21 omissions:

- 22 A. In failing to properly train Deputy Sargent in how, when, and
23 where to perform a reasonably safe "J" turn;
- 24 B. In failing to equip their patrol vehicles with back-up alarms to
25 warn those in the way that the vehicle is backing-up;
- 26 C. In failing to equip their patrol vehicles with back-up proximity
alarms to alert the vehicle driver that the vehicle is about to hit
something or someone behind it.

1
2 4.5 As a direct and proximate result solely of the tortuous conduct
3 and the negligent acts and omissions of Pierce County, the Pierce County
4 Sheriff's Office, and its agents, employees, and supervisors, including Deputy
5 Win Sargent; the plaintiff, Curtis A. Beaupre, has sustained career ending
6 injuries which are permanent, progressive, and disabling, and which include:
7 a crushed pelvis with numerous fractures of his pelvic bones; a right leg
8 which is now shorter than the left leg; torn, strained, or otherwise damaged
9 muscles, tendons, and ligaments; abdominal and lower back injuries; various
10 cuts, bruises, and abrasions to his arms, elbows, legs, knees, inner left thigh,
11 and right shin; as well as other soft tissue injuries; a loss of the ability to
12 concentrate; and other psychological and psychiatric trauma and injury.

13
14 4.6 All of these injuries have caused plaintiff to suffer permanent
15 disability and disfigurement, and to endure in the past, now, and in the
16 future, great physical and mental pain, anguish, and suffering. In addition,
17 it is likely that his pelvic injuries will require major surgery in the relatively
18 near future to correct, in so far as possible, a progressive worsening of his
19 condition and a shifting of the bones in his pelvis. In addition, plaintiff has
20 been informed by his doctors that his condition will continue to degrade
21 through his life and that he can expect to develop increasing levels of
22 arthritis in the areas of his injuries.

23
24 4.7 As a further direct and proximate result solely of the tortuous
25 conduct and the negligent acts and omissions of Pierce County, the Pierce
26

1 County Sheriff's Office, and its agents, employees, and supervisors, including
2 Deputy Win Sargent; the plaintiff, Curtis A. Beaupre, has incurred and will
3 continue to incur into the foreseeable future, hospital, medical, healthcare,
4 and various other miscellaneous expenses; all to his damage in amounts
5 which are presently unknown, but which will be proved at time of trial.

6 4.8 In addition, plaintiff has suffered permanent and disabling
7 injuries which will diminish his earning capacity, significantly lessen his
8 quality of life, and effectively end his ability to engage in his chosen career.

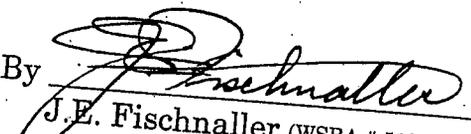
9 V.

10 PRAYER FOR RELIEF

11 WHEREFORE, plaintiff prays for judgment against the defendant,
12 Pierce County, in an amount which is presently unknown to the plaintiff, but
13 which will be proved at time of trial, together with plaintiff's costs and
14 disbursements herein incurred and such other and further relief as the Court
15 deems just and equitable.

16 DATED this 7TH day of SEPTEMBER, 2004.

17 Law Offices of
18 J.E. FISCHNALLER

19 By 
20 J.E. Fischnaller (WSBA # 5132)
21 Of Attorneys for Plaintiffs

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Honorable John P. Erlick

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J.E. FISCHNALLER*

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

CURTIS A. BEAUPRE,

vs.

Plaintiff,

NO. 04-2-23610-0 SEA

PIERCE COUNTY,

Defendant.

DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES

In answer to plaintiffs' Complaint for Damages ("complaint"), defendant Pierce
County answers as follows:

1. PARTIES

1.1 Admit.

1.2 Admit.

1.3 Admit.

2. JURISDICTION AND VENUE

2.1 Defendant admits that the court has jurisdiction but deny that the Seattle area case
assignment is appropriate because it creates an unnecessary and unreasonable burden to the
defendant and its witnesses.

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1 2.2 Defendant admits that venue is proper in King County.
2

3 3. STATEMENT OF FACTS

4 3.1 Admit that the incident in question occurred on November 1, 2003. Defendant has
5 insufficient knowledge to admit or deny the events leading up to the departure of the Jenkins
6 vehicle, and it is therefore denied.

7 3.2 Admit.

8 3.3 Admit that the incident occurred in the north-bound lanes of I-5 at about the 84th Street
9 Exit. Defendant lacks sufficient knowledge to admit or deny that the plaintiff was running
10 alongside the suspect's vehicle, and therefore the remaining allegations are denied.

11 3.4 Defendant lacks sufficient knowledge to admit or deny these allegations, and they are
12 therefore denied.

13 3.5 Defendant lacks sufficient knowledge to admit or deny these allegations, and they are
14 therefore denied.

15 3.6 Admit.
16

17 IV. Cause of Action-Negligence

18 4.1 Defendant admits or denies as set out above.

19 4.2 Defendant admits that it is responsible for Deputy Win Sargent's conduct under the
20 doctrine of respondeat superior. Defendant reserves the right to amend this answer if further
21 investigation reveals that Deputy Win Sargent was not acting within the scope of his authority
22 as an employee of Pierce County.

23 4.3 Defendant denies that Deputy Win Sargent acted negligently and unlawfully toward
24 the plaintiff in any way.

25 4.4 Denied.

1 4.5 Denied.

2 4.6 Defendant has insufficient information to evaluate plaintiff's injuries, and it is
3 therefore denied.

4 4.7 Denied.

5 4.8 Defendant has insufficient information to evaluate plaintiff's injuries, and it is
6 therefore denied.

7
8 **V. AFFIRMATIVE AND OTHER DEFENSES**

9 Further and by way of affirmative defense, defendants allege as follows:

10 5.1 IMMUNITY: These defendants acted in good faith and are immune from suit
11 herein.

12 5.2 COMPARATIVE FAULT: The injuries and damages, if any, claimed by the
13 defendant were proximately caused or contributed to by the negligence and/or fault of the
14 plaintiff.

15 5.3 INTENTIONAL ACTS OF OTHERS: The injuries and damages claimed by
16 the defendant were proximately caused or contributed to by the intentional acts of third parties
17 over whom defendant did not exercise control.

18 5.4 SETOFF: This answering defendant is entitled to an offset from any awards to
19 plaintiff herein and/or recovery of back monies paid to plaintiff.

20 5.5 MITIGATION OF DAMAGES: If the plaintiff suffered any damages,
21 recovery therefore is barred or reduced by plaintiff's failure to mitigate said damages.

22 5.6 NEGLIGENCE OF THIRD PARTY: The damages and/or injuries sustained,
23 if any, were proximately caused by the negligent actions or omissions of third persons over
24 whom defendant does not have control, including Christopher Jenkins and any entity which
25 over served Christopher Jenkins the night of these incidents. Upon information and belief,

1 defendant asserts that The Bridgeport Bar and Grill served liquor to Christopher Jenkins when
2 he was obviously intoxicated and that his intoxication contributed to his intention/negligent
3 acts which were the proximate cause of the plaintiff's injuries.
4

5 5.7 ASSUMPTION OF RISK: Plaintiff assumed the risk of the injuries and
6 damages, if any, sustained herein.

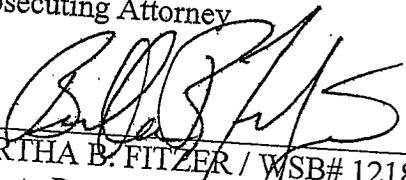
7 5.8. Defendant reserves the right to assert additional affirmative defenses as
8 discovery may warrant.

9 Wherefore, having fully answered plaintiffs' complaint, defendant Pierce County
10 prays for relief as follows:

- 11 a. For judgment dismissing plaintiffs' complaint against Pierce County with
12 prejudice.
13 b. For Pierce County's costs, reasonable attorney's fees, and disbursements.
14 c. For such other relief as the Court deems just and equitable.
15

16 DATED this 7th day of October 2004.

17 GERALD A. HORNE
18 Prosecuting Attorney

19 By 
20 BERTHA B. FITZNER / WSB# 12184
21 Deputy Prosecuting Attorney
22 Attorneys for Pierce County
23 PH: 253-798-3339 / FAX: 253-798-6713
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendant's Answer and Affirmative Defenses was delivered this 7th day of October, 2004, to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to counsel for Plaintiff as follows:

J.E. Fischnaller
Attorney at Law
10900 Northeast Fourth Street, Suite 2300
Bellevue, WA 98004

Christina M. Duren
CHRISTINA M. DUREN

Hon. John P. Erlick

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**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

CURTIS A. BEAUPRE,
Plaintiff,

vs.

PIERCE COUNTY,
Defendant.

No.: 04-2-23610-0 SEA

**DECLARATION OF
J.E. FISCHNALLER**

The undersigned, J.E. Fischnaller, under penalty of perjury under the laws of the State of Washington, does hereby declare as follows.

1. I am the attorney representing the plaintiff, Curt Beaupre, in the above-entitled action; make this Declaration in opposition to Pierce County's Motion in Limine and for Pre-Trial Order; am competent, in all respects, to give testimony in this matter; and have personal knowledge of the facts herein recited.

2. Attached hereto as Exhibit 1 is a true and correct copy of the first page of Defendant's First Interrogatories and Requests for Production along with plaintiff's complete Response to Interrogatory No 8.

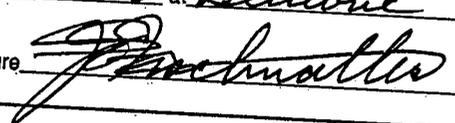
3. Plaintiff has recently served a supplemental response to the afore-mentioned Interrogatory No 8 removing his objection to it.

DECLARATION OF J.E. FISCHNALLER - 1

1 I certify and declare under penalty of perjury under the laws of the
2 State of Washington that the foregoing is true and correct to the best of my
3 knowledge.

4 DATED at Bellevue, this 27TH day of FEBRUARY, 2006.

5
6 
7 J.E. Fischnaller
8

9 **DECLARATION OF SERVICE BY MAIL**
10 The undersigned certifies that, on this date, he deposited in
11 the mails of the United States of America a properly stamped
12 and addressed envelope containing a true and correct copy
13 of the document on which this certificate appears, addressed
14 to counsel of record for each of the parties to this action.
15 I certify under penalty of perjury under the laws of the State of
16 Washington that the foregoing is true and correct.
17 Dated 2-27-06 at Bellevue
18 Signature 

24
25
26 DECLARATION OF J.E. FISCHNALLER

Honorable John P. Erlick

CIVIL DIVISION
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SEP 14 2005

GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

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

CURTIS A. BEAUPRE,

Plaintiff,

vs.

PIERCE COUNTY,

Defendant.

NO. 04-2-23610-0 SEA

DEFENDANT'S FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION

AND RESPONSES THERETO

TO: CURTIS BEAUPRE, Plaintiff above named

AND TO: J.E. FISCHNALLER, Attorney for Plaintiff

Pursuant to the Rules of Civil Procedure ("CR") Rules 26, 33, and 36, defendant requests plaintiff to answer the following interrogatories in writing and under oath and serve his answers on the undersigned counsel for defendant within thirty (30) days after service hereof. If any part of the following interrogatories cannot be answered in full, please answer to the extent possible, specifying the reasons for your inability to answer the remainder, and state whatever information or knowledge you have concerning the unanswered portion.

Pursuant to Rule of Civil Procedure 34, defendant requests the plaintiff to produce and permit the defendant to inspect and copy the documents and other items designated in the following requests for production at the offices of the Pierce County Prosecuting Attorney, Civil Division, 955 Tacoma Avenue South, Suite 301, Tacoma, Washington, within thirty (30) days of the date of service of these requests for production.

MATTERS OF GENERAL APPLICATION AND DEFINITION

1. The answer to each interrogatory shall include such knowledge of plaintiff as is within plaintiff custody, possession or control, including, but not limited to, knowledge and documents in plaintiff custody, possession or control or that of associated or related

1 **INTERROGATORY NO. 8:** If you contend you were a victim of retaliation for filing this
2 lawsuit, please state all facts supporting your contention of retaliation. For each fact, list the
3 names of any and all witnesses, what information those witnesses possess, and how those
witnesses may be contacted.

4 **ANSWER:**

5 Objection is made to this interrogatory upon the grounds and for the reason that
6 harassment and retaliation are not yet a part of this action, the information
7 concerning such harassment and retaliation incidents is neither relevant nor
8 material, and the interrogatory neither seeks nor is reasonably calculated to
9 discover admissible evidence with regard to incidents of harassment and
retaliation. Without waiving the foregoing objection, the plaintiff provides the
following response.

10 There is no doubt that I have been the victim of retaliation and harassment as a
11 result of the filing of this lawsuit. The contact information for those with
12 knowledge is known to the defendant better than to the plaintiff.
13 A relatively abbreviated discussion of some of the harassment and retaliation
14 which I have suffered as a direct result of the filing of this lawsuit is set out
below:

15 **1. Harassing and Retaliatory conduct committed by Sheriff Pastor.**

16 July 7th, 2005 - Sheriff Pastor waits fifteen months after the I/A harassment
17 complaint is initiated before disciplining me. Sheriff Pastor demotes me two
18 business days before I sign the final paper work to leave the Sheriffs Dept.

19 The Sheriffs Dept. notifies the Pierce County Human Resources Dept. that they
20 plan to demote me knowing this will prevent me from getting a job as a Legal
21 Assistant IV Supervisor in the Dept. of Assigned Counsel. Prior to even telling
22 me the outcome of the I.A.

23 **2. Harassing and Retaliatory conduct committed by Sheriff Pastor.**

24 July 7th, 2005 - In my disciplinary meeting with Sheriff Pastor I ask him "why
25 are you demoting me, what are your reasons?" Sheriff Pastor says "I'm not going
to discuss that with you". It is simply outrageous that Sheriff Pastor will not tell
me why he is demoting me.

It is obvious that if Sheriff Pastor had a legitimate reason for demoting me he
would have told me what it was. On the personnel order it says he (Sheriff
Pastor) "would be glad to answer any questions regarding this matter". This is a
perfect example of Sheriff Pastor's lack of integrity. He says one thing but does
not follow through on his word.

1
2 **3. Threatened and physically assaulted by SWAT Deputy Rich Hecht while we are both working.**

3 April 1st, 2005 - I was the incident commander on a major call where a man was
4 walking down the road with a rifle threatened to kill the police. This turned into
5 a brief hostage standoff and unfortunately the suspect pointed the rifle at us
forcing us to fatally shoot him.

6 I had to make numerous life and death decisions without hesitation in order to
7 protect the deputies, the public and also the suspect. Just moments after the
8 suspect is killed, Deputy Rich Hecht a member of the SWAT team assaults me.
9 Deputy Hecht walks directly up to me and begins cursing me out and hitting me
in the chest with the palm of his hand. It should be noted that Deputy Hecht was
armed at the time of the assault and is a highly trained SWAT officer and former
Army Ranger.

10 I believe that Deputy Hecht saw and heard how the Sheriffs Dept. Command
11 staff or other supervisors were treating me. Because of this he felt that he could
12 yell, scream and assault me and nothing would be done to him because the
13 Sheriffs Dept. was engaging in harassing behavior and no one would put a stop to
it. It appears he was right because nothing has been done about him assaulting
me.

14 **4. Improper conduct by Lt. Cropp and Lt. Mielcarek.**

15 Approximately the third week of April 2005 - Part of the assault on me is
16 witnessed by Lt. Cropp who says "he'll handle it, we'll deal with it later".
17 Three weeks go by until Lt. Mielcark (my direct supervisor) calls me up and tells
18 me to write a statement on Deputy Hecht assaulting me. Lt. Mielcarek is very
19 snotty about the assault and makes the remark "I guess I have to do something
about this since you're telling people about it". I did bring this up when I was
interviewed after the incident.

20 This incident was witnessed by numerous deputies, fire fighters, and citizens who
21 were at the scene. I was the victim yet Lt. Mielcarek makes me feel that I am the
22 person at fault. I can guarantee you that if Lt. Mielcarek was assaulted by a
lower ranking deputy immediately following an officer involved shooting he
would have taken immediate disciplinary action against the deputy.

23 Over the past thirteen years with the Sheriffs Dept. I do not know of one other
24 incident where one deputy physically assaults another.
25 About a month after I was assaulted I was finally interviewed by Detective
Tom Lind who is an internal affairs investigator. Four months have pasted since
I was assaulted and no disciplinary action has been taken against Deputy Hecht.
He is still on the SWAT team and works his regular shift.

1 I strongly believe that for my safety Deputy Hecht should have immediately been
2 put on administrative leave and had his department issued weapons taken from
3 him. Pierce County Policy clearly states that this is what should have been done;
but since it was me complaining, nothing happened.

4 **5. Hostile Work Place.**

5 I was not nominated for a medal of Valor even though I was the second deputy on
6 scene of the above listed officer involved shooting incident. This is highly unusual
7 because I nominated six other deputies who assisted with the call for medals of
merit and valor for their heroic action.

8 I was within fifty feet of an enraged suspect armed with a rifle for approximately
9 ten minutes without cover. I could have easily been shot and yet I held off on
10 shooting the suspect even though I would have been 100% justified in doing so.
This was one of the most dangerous calls of my career and I am not being
11 recognized for my heroic actions.

12 I had numerous (20-25) deputies, several sergeants, several SWAT team
13 members and detectives congratulate me on the amazing job I did in handling
this incident. Had any other deputy risked their life like I did they would have
14 been nominated for a medal of valor.

15 **6. Improper comments by Sgt. Dave Perry.**

16 On March 10th, 2005 - I learned from Deputy Joe McDonald that Sergeant Perry
17 had told the swing shift squad of officers that he supervises that "I (Sergeant
18 Beaupre) am still a Sergeant and because of that they need to respect and listen
to me". This indicates to me that a number of the deputies had been talking
19 about not listening to me, following my commands or were not going to back me if
I called for assistance.

20 On a side note Sgt. Perry's wife (Connie) is Pierce County Executive John
21 Ladenburg personal assistant. Sgt. Perry was very active in John Ladenburg's
campaign to get him elected to this position.

22 **7. Harassing behavior by Lt. Mielcarek.**

23 March 9th, 2005 - I am ordered by Lieutenant Mielcarek via email to write an
24 Incident Performance Report (I.P.R.) on a reserve deputy for a minor policy
violation. This is highly unusual request because I had already documented and
25 verbally counseled the reserve deputy. I know of no other incident where a Sgt. is
seconded guessed and told to write an I.P.R. on a minor violation.

8. Harassing behavior by Major Ceccanti.

1 February 2005 - Major Ceccanti assigns me to work as the swing shift traffic
2 supervisor even though I had bid to be the graveyard shift patrol supervisor. This
3 is clearly a violation of our guild contract, department policy and past practice.
4 There are two Sergeant's on the grave shift who are below me in seniority and
5 one of them actually wanted the traffic Sergeant position.

6 I ask both Major Ceccanti and Lt. Mielcarek if I could please work the graveyard.
7 I informed them that the swing shift traffic shift is the absolute worse shift they
8 could place me in because I would never be able to see my wife (she is a police
9 dispatcher working the graveyard shift) or continue with my physical therapy. I
10 was entitled to the graveyard shift patrol supervisor position for which I had bid,
11 Instead I was given a position which was extremely prejudicial to me.

12 Major Ceccanti and Lt. Mielcarek both ignored my request and I was assigned to
13 work as the swing shift traffic Sgt. Major Ceccanti "created" this position
14 specifically for me. Prior to me being assigned to be the swing shift traffic Sgt.
15 this position did not exist. After I left on medical leave this position once again
16 "did not exist". Major Ceccanti "created" this swing shift traffic position solely for
17 the purpose of harassing me knowing it would effect my personal life and my
18 ongoing therapy.

19 Major Ceccanti and Lt. Mielcarek instructed me to contact Sgt. Lawrence before
20 calling out additional traffic units for major incidents. They basically stripped me
21 of any authority and judgment by making me contact another Sgt. before I can
22 call out needed resources.

23 **9. More harassing behavior by Major Ceccanti.**

24 February 2005 - I was placed in charge of the swing shift traffic deputies even
25 though I have never worked as a traffic deputy, never attended a traffic
enforcement or accident collision investigating course. I am simply not qualified
to be supervising a squad of traffic deputies because I have not had any training
in this area of police work. I was not even qualified to operate the BAC machine
(used to process DUI's) or to operate a radar gun. Major Ceccanti was clearly
setting me up for failure by assigning me to be a traffic unit supervisor.

10. **Even more harassing behavior by Major Ceccanti.**

February 2005 - Major Ceccanti sustains the discriminatory harassment
complaint without explaining why. He further more recommends that I be
demoted from the rank of Sergeant to that of Deputy because "he (Major
Ceccanti) does not get the sense that I understand the role of a supervisor as it
relates to the interaction with my subordinates". Major Ceccanti has never
worked with me since I was promoted to Sgt. My evaluations show that I am an
excellent Sgt.

1
2 Major Ceccanti does not recommend any suspension time which is highly
3 unusual because he is skipping a step in the discipline process that is usually
4 taken before demotion is recommended. Surely if there were evidence that I
5 harassed Deputy Lindt he would have stated what it was. Instead he chose to
6 simply sustain the complaint without any factual evidence.

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12 **11. Still more harassing behavior by Major Ceccanti.**

13 February 2005 - Major Ceccanti accuses me of being untruthful in a search
14 warrant probable cause statement in a disciplinary meeting. I pointed out to him
15 that what he thought I was lying about was really written in the search warrant
16 statement I wrote. I received no apology after it became entirely clear that I was
17 not lying and the information was in the report. Major Ceccanti simply did not
18 read the report thoroughly.

19 Leann Paluck was a witness to Major Ceccanti accusing me of lying in a police
20 report.

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23 **12. Yet another incident of harassing behavior by Major Ceccanti.**

24 March 2005 - Major Ceccanti refuses to issue me a dept. cellular phone. Every
25 other Sergeant, Detective and officer in a specialized unit has a dept. issued
phone. After repeated requests by Sgt. Lawrence to obtain a cellular phone for me
he is told by Major Ceccanti "that we are going to hold off on that, he won't be
needing one for very long".

This is another example that the Sheriffs Dept. is treating me differently and
failing to provide the necessary equipment to do my job effectively. As a patrol
Sergeant a cellular phone is a necessity. I had to use my own personal phone for
several months each and every day I worked, at my own expense.

The statement made by Major Ceccanti to Sgt. Lawrence is a strong indicator
that the decision to demote me had already been made five months before Sheriff
Pastor demoted me. Clearly the decision to demote me was made before I was
ever given a chance to explain my side of things to Sheriff Pastor in a Loudermill
hearing.

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32 **13. Harassing and threats by Sergeant Dave Perry.**

33 February 2005 - Sergeant Perry (Senior Patrol Sergeant) harasses me by telling
34 me "you're a brave, brave man for coming back here after filing a lawsuit against
35 the Sheriff Dept. and another officer". Sergeant Perry then goes on to say "how do
you expect to be a Sergeant after filing a lawsuit, no one likes you and no one will
back you up on calls".

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2 See attached email that was provided to Major Ceccanti, Lt. Cropp and Lt.
3 Mielcarek. These threats were not properly investigated nor was the human
4 resources dept. notified of this incident. The Command staff of the Sheriffs Dept.
5 totally disregarded Pierce County Policy.

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12 **14. Failure by Major Ceccanti to properly investigate the threats and
13 inappropriate comments made to me by Sgt. Perry.**

14 No internal affairs investigation was conducted regarding this matter. Major
15 Ceccanti was informed via email that Sgt. Perry had told me that no one would
16 assist me and that "I was a brave, brave man for returning to work". I was afraid
17 for my safety each day that I went to work.

18 I hardly went to any calls and did not do any traffic stops because of Sgt. Perry's
19 comments to me. This can easily be a matter of life and death for a law
20 enforcement officer.

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The basis for my lawsuit is that I was hit from behind by a patrol car backing up

1 the wrong way on the freeway making a u-turn. The patrol car knocked me in
2 front of another car which ran over me with both tires fracturing and crushing
3 my pelvis in three spots.

4 After I was run over, deputies shot and killed the driver of the other car who ran
5 over me. This person would have never been shot and killed had the patrol car
6 not hit me. Which resulted in a series of events which caused me to be seriously
7 injured, and in a man being unnecessarily shot to death.

8 Ironically the fatal shot to the back of the suspects head who ran over me was
9 fired by the deputy who knocked me down and under the tires of the vehicle that
10 ran over me in the first place. This person was a father of two small children and
11 would still be alive today had the patrol car not knocked me down. The Sheriffs
12 Dept. may yet be sued by the dead man's family for his unnecessary death.

13 **17. Harassment by the Sheriffs Dept.**

14 Internal affairs investigator Det./Sergeant Kobel is a twenty four year veteran of
15 the department. In my first meeting with him he tells me that this is the first
16 time since he has been with the department that one deputy (me) has had three
17 internal affairs investigations occurring at the same time.

18 Prior to this point in my career I have only had a total of three I/A investigations.
19 One of which I was cleared of any wrong doing. The second one I sustained a one
20 day suspension for improper record keeping (I was never trained in the correct
21 way to do it). The third I/A investigation resulted in a one day suspension for a
22 dating relationship with someone the Sheriffs Dept. did not approve of.

23 **18. Unfair Treatment by Det./Sgt. Kobel.**

24 Det./Sgt Kobel fails to properly investigate IPR # 04-058. (1 of the 3 IA's launched
25 after talk of me filing a lawsuit) Possible manual violation of Unlawful Arrest.
This investigation focused on whether or not I had probable cause to make an
arrest for possession of stolen property.

Superior Court Judge Cuthbertson authorized me to arrest the suspect for
possession of stolen property. Judge Cuthbertson found that I had probable
cause to make the arrest based on the information that I had at the time that I
applied for the warrant. Det./Sgt. Kobel interviewed about ten different officers
in an unsuccessful attempt to find fault with my investigation.

Surprisingly Det./Sgt. Kobel did not interview Judge Cuthbertson and question
his authority as to why he granted me the arrest/search warrant. I can guarantee
you that Judge Cuthbertson would have been outraged at Det./Sgt. Kobel and
the Sheriffs Department for telling him that he did not know how to do his job as
a Superior Court judge. Instead Det./Sgt. Kobel as usual does a poor investigative

1 job. He purposely and maliciously sustains the complaint against me.

2 This whole incident occurred because I tried to help a man who is paralyzed from
3 the chest down get his service dog back after the suspect refused to return it.
4 This is a prime example of me trying to be a good police officer and help out
5 someone who could not defend themselves, and being harassed for it.

6 **19. Harassment by Det./Sgt. Kobel reference I/A Investigation #04-079.**

7 May 2005 - (Just prior to me formally filing a lawsuit against the Sheriff's
8 Department). In the discriminatory harassment investigation which Det./Sgt.
9 Kobel conducts against me he once again is biased from the start.

10 Both my Guild attorney, Leann Paluck, and I requested that this investigation be
11 handed over to Human Resources to be handled since they were initially claiming
12 sexual harassment. But the Sheriff's Dept. said no they wanted to handle this
13 one "in house". I believe this was done so they could manipulate the outcome to
14 what they wanted.

15 After my interview I make allegations that Deputy Lindt is lying and I volunteer
16 to take a polygraph test. Det./Sgt. Kobel does not allow me to take a polygraph
17 test to show that I am not lying. Had I failed the polygraph I would have been
18 terminated from the Sheriff's Dept. for truthfulness. I can guarantee you that I
19 would not jeopardize my career and volunteer to take a polygraph test if I was
20 not telling the truth.

21 Det./Sgt. Kobel informs me "that the outcome of the polygraph test would not
22 really change things". This is an unbelievable statement to make. The bottom
23 line is that I was being truthful and Deputy Lindt is lying. I am the one who
24 volunteers to take a polygraph test and the Sheriff's Dept. does not allow me to.

25 Det./Sgt. Kobel did not want the truth in this investigation he simply wanted to
sustain the allegation against me any way he could.

**20. Harassing, retaliatory and numerous untruthful/libelous statements
written by Lt. Jim Andrews in an official disciplinary document.**

August 2004 - Lieutenant Andrews, while acting commander of the City of
Lakewood chose to review the discriminatory harassment internal affairs file.
(This was done after the lawsuit was formally filed)

Lt. Andrews violated my right of due process and department policy which clearly
states "I am allowed to speak to each person in my chain of command who
reviews the I/A complaint". Lt. Andrews failure to allow me the opportunity to

1 present my side of the situation to him (Laundermill Hearing) is a blatant
2 violation of Sheriffs Dept. policy.

3 Considering that Lt. Andrews had just left his position as the Lieutenant of the
4 internal affairs unit (he was Det./Sgt. Kobel's partner in the I/A unit). Lt.
5 Andrews is very much aware of the fact that I was entitled to meet with him
6 (Laundermill Hearing) to give him my side of the accusation. Lt. Andrews
violated 3.02.092 Disciplinary Process for Internal Investigations specially
section 11.

7 I believe Lt. Andrews purposely sustained this complaint and wrote untruthful
8 statements in his disciplinary recommendation against me for a number of
9 unethical reasons. Lt. Andrews has engaged in work place harassment against
me because he is good friends with Deputy Lindt.

10 Just prior to sustaining the complaint against me Lt. Andrews invites Deputy
11 Lindt to a party which he hosted at his house. That same summer Lt. Andrews
allowed Deputy Lindt to use his time share condominium for a week in Mexico.

12 **21. Harassing and retaliatory behavior by Lt. Jim Andrews.**

13 Lt. Andrews is still bitter against me from a previous internal investigation
14 regarding a use of force accusation against me which I was eventually found
15 innocent of any wrong doing. Lt. Andrews was made to look like a fool in this
investigation to his peers because of his poor investigation skills.

16 A review of Lt. Andrews training file shows that he has not even attended a
17 Defensive Tactics training class since 1996. This is a clear violation of dept. policy
18 because he is required to attend a yearly defensive class. This is another clear
19 violation of Sheriffs Dept. policy because all deputies are required to attend a
20 Defensive Tactics training class every year. Nine years have passed since he
attended a yearly required class. This proves he does not have the knowledge to
judge someone else's use of force skills, when he is not current in the practice or
trained in the use of them.

21 Lt. Andrews did not even know that all deputies in the Sheriffs Dept. are trained
22 yearly to use defensive kicks against a suspect as a means of self defense. Lt.
23 Andrews would have known this had he followed dept. policy and attended a
defensive tactics class in the past ten years.

24 Deputy Brian Anderson (a D.T. Instructor) wrote a scathing rebuttal against Lt.
25 Andrews for his total lack of understanding of use of force situations, his
knowledge of department policy and made him look quite foolish.

Because Lt. Andrews sustained this investigation against me. It was reviewed by
my chain of command. When Lieutenant Bomkamp reviewed this use of force

1 investigation, he wrote a scathing report on Lt. Andrews' conclusion and the
2 investigation which he conducted on me. Ultimately, I was able to prove that Lt.
3 Andrews poor investigative skills and complete misunderstanding of the Sheriff's
4 Dept. use of force policy led him to an inappropriate conclusion.

5 **22. Unfair Treatment By the Sheriff's Department Administration.**

6 I also find it interesting that the Sheriff's Dept. does not approve of me doing
7 things with my squad. Then why is it acceptable for Lt. Andrews to have Deputy
8 Lindt over to his house for a party? Lt. Andrews also allowed Deputy Lindt to
9 use his condominium for a week long vacation in Mexico in October 2004.

10 Lt. Andrews should have never reviewed the I/A file let alone made a
11 recommendation of disciplinary action because of his personal relationship with
12 Deputy Lindt.

13 I find Lt. Andrews behavior to be extremely inappropriate and unethical for the
14 simple fact that he should have removed himself from the investigation due to
15 the obvious conflict of interest in being Deputy Lindt's friend. But in this case,
16 because it was me, the department did everything it could to retaliate against me
17 for the filing of this lawsuit.

18 **23. Unfair Treatment By the Sheriff's Department Administration.**

19 When Major Ceccanti was interviewing me with reference to the harassment
20 complaint, it was brought to his attention that Lt. Andrews has a friendship with
21 Deputy Lindt and should not have reviewed the file. Major Ceccanti shook his
22 head in disbelief, but yet no action was taken about it. Guild attorney Leann
23 Padluck was a witness to this.

24 It's apparent that if you file suits against the department, the "Good Ole Boy"
25 system will punish you.

It is very clear that Lt. Andrews has a personal relationship with Deputy Lindt
and he used his position as Acting Chief of Lakewood to "help her out and do her
a personal favor" by reviewing the internal affairs file and recommending
discipline against me.

24. Harassment By Lt. Andrews

At the same time the harassment internal affairs investigation was going on so
was the unlawful arrest internal affairs investigation. Lt. Andrews did not review
that I/A file or make any disciplinary action against me in that investigation.
Why did Lt. Andrews purposely choose to only review the harassment internal
affairs investigative file involving his friend Deputy Lindt and recommend I be
demoted?

1
2 Yet at the same time Lt. Andrews totally ignores the unlawful arrest I/A file. The
3 only conclusion you can draw from this is that Lt. Andrews purposely chose to
4 engage in work place harassment against me as a favor to his friend Deputy
5 Lindt. Lt. Andrews clearly abused his position of authority solely for the purpose
6 of harassing me.

6 25. Harassment By Lt. Andrews

7 **Lieutenant Andrews blatantly lies in his recommended findings against**
8 **me.** Lt. Andrews writes "...the record also shows several sustained complaints,
9 one which deals with improper conduct with a Pierce County youth cadet while a
10 program advisor". This is simply not true. Lt. Andrews writes this statement in
11 an inflammatory fashion giving the impression that I dated an underage person
12 or a "youth" as he calls it, when in fact the person I dated was over twenty years
13 of age (I was only a few years older than her) and that I had known her before
14 she became a Cadet.

12 Lt. Andrews fails to mention that this person was an office assistant in Superior
13 Court and was enrolled in community college taking classes to become a police
14 officer at the time that I met her.

14 Lt. Andrews purposely fails to mention that I had known this person for almost
15 one year prior to us dating. I was also the person who encouraged her to become a
16 cadet because it would provide her with excellent training and experience in her
17 goal of becoming a police officer.

17 Lt. Andrews fails to mention that I dated this person for over three years, that we
18 lived together and that we had a very serious adult relationship.

19 Lieutenant Andrews states in his disciplinary recommendation dated August
20 10th, 2004 that I was a "cadet program advisor". This is once again a flat out lie
21 by Lt. Andrews done solely for the purpose of making me look bad.

21 This investigation occurred in July of 1996 (nine years ago) and the I/A summary
22 clearly states that "Deputy Beaupre is not a direct supervisor of the cadet
23 program". Lt. Andrews however chooses to make up false statements and says
24 that I was a "cadet program supervisor". Lt. Andrews is clearly lying and writing
25 down false statements in an official disciplinary report to slander and harass me.

25 This is just another example of Lt. Andrews incompetence and his complete
failure and inability to do his job properly. Lt. Andrews simply wanted to give the
impression that I had a prior history of improper conduct. Lt. Andrews twists the
original findings around in order to justify that I be demoted from my position as
Sergeant and suspended for fifteen days without pay.

1
2 In the cadet internal affairs investigation, I was disciplined (in 1996) with a one
3 day suspension for violation of Law Enforcement Code of Ethics. Specifically for
4 "I will keep my private life unsullied as an example to all and will behave in a
5 manner which does not bring discredit to me or my agency". **To this day I still
feel strongly that I did not violate any written department policy, and
should not have been disciplined in this investigation.**

6 **26. Harassment by the Sheriffs Department Administration**

7 The cadet investigation is a perfect example of how the Sheriffs Dept. will impose
8 their personal morals and beliefs upon deputies. The command staff of the
9 Sheriffs Dept. can not by law impose their moral beliefs upon me and dictate who
I can and can not date.

10 The Sheriffs Dept. disciplined me, suspended me for pay for one day simply
11 because they did not approve of a personal dating relationship that I was
12 engaging in. This is an example of the blatant discriminatory action which the
Sheriffs Dept. routinely engages in.

13 The Sheriffs Dept. simply chose to discipline me for having an adult relationship
14 with a consenting female outside of work, which they did not approve of. April
15 Hillis (person who I dated) went on to become a Seattle Police Officer after
graduating from college. The Sheriffs Dept. simply had no business investigating
me or telling me who I could date.

16 **27. False statements made by Lt. Andrews.**

17 August 2004 - It is shocking to me that Lt. Andrews in his findings, states that
18 "My recommendation is based on the fact that it appears that Sergeant Beaupre
19 over his career has a continuing pattern of disregard for the policy and
20 procedures of the Pierce County Sheriffs Department". This again is not a factual
21 statement and is simply an untrue inflammatory and libelous statement. There
22 is absolutely no documentation that I have a continuing disregard for Dept.
policy. Actually the exact opposite is true. It is the Sheriffs Dept. command staff
who does not follow there own policies. I cite example after example of this
throughout this document.

23 Lt. Andrews states in his recommended findings that " Sergeant Beaupre allowed
24 his personal feelings towards his squad members to influence his decisions in the
day to day operations and the good order of the Department". Once again there
25 is absolutely no factual evidence to this outrageous statement made by Lt.
Andrews. I would be glad to provide a list of the deputies that I have supervised
over the past four years so that each of them can be interviewed. Yet, Lieutenant
Andrews can violate this by reviewing the file, with the propose of "helping" his
friend (Deputy Lindt). I would like to know what evidence or justification Lt.

1 Andrews actually has to make such an outrageous comment. My personnel file
2 and evaluations are excellent. Nowhere in my evaluations does it say I am
3 unable to provide the supervision and leadership that the position of a Sergeant
4 requires.

4 Taken together, these incidents make it clear that if you file lawsuits against the
5 department, you will be harassed, discriminated against, threatened, attacked
6 both physically and mentally, inappropriately charged and disciplined at every
7 opportunity, treated unfairly, and have your life placed at greater risk by a lack
8 of backup when you need it most.

8 **INTERROGATORY NO. 9:** Please describe all conversations you have had with Pierce
9 County current and former employees regarding the issues raised in your lawsuit. For each
10 conversation, state the name and position of the person with whom you spoke, when the
11 conversation(s) occurred, where it occurred, and whether any other people were present.

11 **ANSWER:**

12 I have spoken to Deputy Tom Catey who was my roommate in college in
13 depth about the lawsuit.

14 I have spoken to Deputy Glenn Carpenter who is a personal friend in
15 depth about the lawsuit.

16 I have spoken briefly to the following Deputies about the lawsuit:

17 Deputy Dave Butts, Deputy Mark Rickerson, Sgt. William Pebley, Deputy
18 Curt Filleau, Deputy Corey Olsen, Sgt. Cynthia Fajardo, Deputy Joseph
19 Mc Donald, Mark Berry, Trent Stephens, Deputy Winson Waterman and
20 Deputy Andrew Guerrero.

21 The conversations with these people were brief. These people asked me
22 questions about the lawsuit. My response to most of them was "basically
23 it was nothing personal against Deputy Win Sargent (the deputy who
24 knocked me down) and it was against the Sheriffs Department for
25 negligence of one of their employees". I added that it was nothing personal
against Deputy Sargent and if the County settled the lawsuit it was not
going to cost Deputy Sargent his job or any money out of his pocket.

24 **REQUEST FOR PRODUCTION NO. 2:** Please provide copies of all notes, memorandum,
25 or other documentation of any conversations referred to in Interrogatory No. 9.

RESPONSE:

There are no notes relating to my answer to Interrogatory No. 9

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Honorable John P. Erlick

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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

CURTIS A. BEAUPRE,

Plaintiff,

NO. 04-2-23610-0 SEA

vs.

PIERCE COUNTY,

Defendant.

PIERCE COUNTY'S MOTION FOR
SUMMARY JUDGEMENT
(With Oral Argument: LR 56(c)(2))

NOTE ON CALENDAR:
MAY 19, 2006

I. RELIEF REQUESTED

Pierce County moves pursuant to CR 56 for an order of summary judgment dismissal.

II. STATEMENT OF FACTS

Curtis Beaupre has brought a personal injury action against his employer Pierce County for damages allegedly in excess of the amounts already provided and to be provided under the Workers' Compensation program as a deputy sheriff. See RCW 41.26.281. Specifically, plaintiff claims that when he ran at night in front of a patrol car that was repositioning itself to apprehend a felon and stop a fleeing vehicle from colliding head-on with on-coming I-5 traffic, the patrol car (driven by Deputy Win Sargent) bumped Beaupre into the fleeing vehicle and plaintiff

1 thereafter was injured when the suspect vehicle did not stop but "ran over his pelvis" in his
2 continued flight. See Complaint, p. 3 ¶'s 3.3-3.5; Ex. "A:" 3/7/06 Beaupre Dep., p. 176 ln 9-12.
3 In addition to claiming liability for the backing maneuver used by Deputy Sargent, the com-
4 plaint also alleges negligence in "failing to properly train Deputy Sargent, ... to equip their [sic]
5 patrol vehicles with back-up alarms to warn those in the way that the vehicle is backing up, ...
6 [and] to equip their [sic] patrol vehicles with back-up proximity alarms to alert the vehicle driver
7 that the vehicle is about to hit something or someone behind it." Complaint, p. 4 ¶ 4.3-4.4.
8 Finally, discovery revealed plaintiff also intends to allege various supposed omissions by other
9 deputies earlier in the pursuit. See 3/6/06 Supp. Hamilton Aff., Ex. "E:" Ginter Report, p. 2.
10

11 However, the facts of record uniformly disprove any claim that inadequate equipment,
12 negligent training of Deputy Sargent, or any supposed omission by other pursuing officers
13 breached any duty or caused plaintiff's injury, while the "professional rescuer doctrine/fire-
14 man's rule" would preclude such liability as a matter of law in any case. Indeed, that latter
15 doctrine alone entirely precludes liability either for the harm caused by the Jenkins vehicle or
16 allegedly caused by Deputy Sargent's patrol car while responding to the emergency in question.
17

18 III. STATEMENT OF THE ISSUE

- 19 1. Should the Court dismiss all claims of liability against Pierce County for inadequate
20 equipment, negligent training and omissions of officers other than Deputy Sargent?
21 2. Should all claims against Pierce County for damages arising out of the harm caused by
22 the suspect's car be dismissed?
23 3. Should all claims against Pierce County for damages arising out of the harm allegedly
24 caused plaintiff by Deputy Sargent's car be dismissed?
25

IV. EVIDENCE RELIED UPON

1. April 19, 2006 Hamilton Affidavit in support of Summary Judgment and exhibits

1 "A"- "D" attached thereto.

2 2. March 6, 2006 Supplemental Hamilton Aff., Ex. "E:" Ginter Report, p. 2.

3 3. February 27, 2006 Fischnaller Declaration, Ex. "1" p. 12 (item 6), p. 14 (item 13).

4
5 V. ANALYSIS

6 A. PIERCE COUNTY IS NOT LIABLE FOR DEFECTIVE EQUIPMENT, NEGLIGENT
7 TRAINING OR SUPPOSED OMISSIONS BY OTHER DEPUTIES.

8 As previously noted, in addition to asserting liability for the interdiction efforts of Deputy
9 Sargent, plaintiff also asserts other theories alleging that supposedly insufficient patrol car
10 equipment, inadequate training of Deputy Sargent and the failure of other deputies to take dif-
11 ferent actions prior to the injury somehow create County liability. However, as demonstrated
12 below, these latter additional negligence theories are supported by neither fact nor law.

13 1. Elements Of Negligence Absent

14 To state a cause of action for negligence, plaintiff must demonstrate: "a duty to the plain-
15 tiff, breach of that duty, and injury to the plaintiff proximately caused by the breach." Aba
16 Sheikh v. Choe, 156 Wn.2d 441, 448 (2006)(citing Degel v. Majestic Mobile Manor, Inc., 129
17 Wn.2d 43, 48 (1996)). Here, as a matter of law, these elements are absent as to any claim of
18 inadequate patrol car equipment, insufficient training of Deputy Sargent or any failure of other
19 deputies to take different actions during the pursuit in question.

20 a. No Basis for Claim of Inadequate Patrol Car Equipment

21 Though the complaint alleges Deputy Sargent's patrol vehicle should have had "back-up"
22 and "proximity alarms," Complaint, p. 4 ¶ 4.4, neither of plaintiff's police procedure experts
23 know of any legal requirement for such equipment, any law enforcement agency that uses such
24 devices, or any reason why such devices would be used. See Ex. "B:" 3/9/06 Van Blaricom
25 Dep., p. 26 lns 9-18; Ex. "C:" 3/9/03 Ginter Dep., p. 37 ln 22-p. 38 ln 14, p. 118 lns 20-25.

1 Indeed, as to the utility here of a proximity alarm, plaintiff's patrol vehicle training expert testi-
2 fied it "has nothing to do with the situation" here because Deputy Sargent at the time was pre-
3 paring to pin the suspect vehicle and any electronic warning of contact would have been ex-
4 pected and not made any difference -- much less warned him that plaintiff was running into his
5 path on I-5. See Ex. "C:" p. 119 lns 1-8. In that plaintiff's own evidence shows the absence of
6 any such alarms breached no duty that caused injury, this claim should be dismissed.
7

8 b. No Basis For Claim of Inadequate Driver's Training

9 Plaintiff's claim of negligent training appears to be based on the allegation that Deputy
10 Sargent had three previous backing accidents -- all occurring before or during 1998, at least five
11 years prior to the 2003 incident in question -- and that such should have led the County in 1998
12 to provide him training on proper back-up driving techniques. See Ex. "C:" Ginter Dep., p. 104
13 ln 22-p. 106 ln 25; 3/6/06 Supp. Hamilton Aff., Ex. "E:" Ginter Report, p. 2. However, discov-
14 ery has revealed this "training" claim is simply a ruse to submit to the jury otherwise inadmissi-
15 ble evidence of the deputy's past accidents so plaintiff can improperly claim he acted in confor-
16 mity therewith five years later. See ER 403, 404(b).
17

18 Indeed, as his supervisor, plaintiff testified Deputy Sargent "was adequately trained" and
19 that he had personally evaluated the deputy's driving as reflecting "excellence" during this time.
20 See Ex. "A:" Beaupre Dep., p. 43 ln 12-p. 44 ln 20, p. 47 lns 2-25. More importantly, plaintiff's
21 own police vehicle training expert admits that in the intervening five years between the earlier
22 backing accidents and the incident in question, Deputy Sargent had attended at least three sub-
23 sequent driver's courses that would have evaluated and trained him concerning back up maneu-
24 vers¹ and which the expert could not dispute would have addressed any supposed lack of back
25

¹ In fact, Deputy Sargent attended vehicle training courses involving backing techniques every year -- not just every other year as assumed by plaintiff's expert -- and indeed had undergone such training the very year of the incident in question. See Hamilton Aff., Ex. "D:" Sargent Dep., p. 69 ln 15-p. 70 ln 5.

1 up skill as of 1998. See Ex. "C:" Ginter Dep., p. 108 ln 18-p. 110 ln 7. Further, plaintiff's
2 expert admitted he could not testify that more training in backing would have prevented the
3 injury in question. See Id., p. 110 lns 8-24. Hence, plaintiff's own evidence also demonstrates
4 Deputy Sargent's training as of 2003 breached no duty that caused his injury, and therefore this
5 claim also should be dismissed.

6
7 c. No Basis For Claim Of Negligence By Other Deputies

8 One of plaintiff's police experts lists various actions he believes other deputies could
9 have taken during the pursuit that in hindsight might have been more successful in containing
10 the fleeing suspect before he harmed plaintiff. See 3/6/06 Supp. Hamilton Aff., Ex. "E:" Ginter
11 Report, p. 2. However, the expert also admits the choices actually taken by those deputies were
12 not unreasonable at the time and breached no standard of care. See Ex. "C:" Ginter Dep., p. 43
13 ln 1-p. 55 ln 15. Accordingly, once more, plaintiff's own evidence demonstrates the choices of
14 other deputies during the pursuit breached no duty that proximately caused any injury.

15
16 2. Professional Rescuer Doctrine Bars Liability For Creating Hazard

17 Under RCW 41.26.281, plaintiff may bring suit "as otherwise provided by law" against
18 his employer for damages in excess of those received or receivable under the Workers Compen-
19 sation Act. Accordingly, all defenses "otherwise provided by law" are available to a municipal
20 defendant. See e.g. Hansen v. City of Everett, 93 Wn.App. 921, 925 (1999) (because LEOFF
21 member's suit is "as otherwise provided by law," the "comparative fault statute applies to the
22 [plaintiffs'] lawsuit based on fault under LEOFF's 'excess damages' provision.") Here, in addi-
23 tion to the absence of the necessary elements of negligence, plaintiffs' allegations of insufficient
24 equipment, inadequate training and failure of other deputies to act differently also are barred by
25 the common law "Professional Rescuer Doctrine/Fireman's Rule."

Division One of the Court of Appeals explained in Ward v. Torjussen, 52 Wn.App. 280,

1 286-87 (1988):

2
3 The professional rescuer doctrine, often called the "fireman's rule,"
4 prohibits a fireman, police officer, or other official from recovering
5 damages for injuries sustained when responding in an official capacity
6 from the one whose negligence or conduct brought the injured official
7 to the scene. Sutton v. Shufelberger, 31 Wn.App. 579, 587, 643 P.2d
8 920 (1982). Our Supreme Court stated that the test for determining
9 when the doctrine would prohibit recovery includes an evaluation of
10 whether the hazard is generally recognized as being within the scope
11 of the particular rescue operation.

12 The doctrine is based on the principle of assumption of risk because, as Division One notes in
13 Black Indus., Inc. v. Emco Helicopters, Inc., 19 Wn.App. 697, 699 (1978) (citing Strong v.
14 Seattle Stevedore Co., 1 Wn.App. 898, 904 (1970)), "the paid professional rescuer has know-
15 ingly and voluntarily confronted a hazard and cannot recover from the one whose negligence
16 created the hazard, so long as the particular cause of the rescuer's injury was foreseeable and not
17 a hidden, unknown, or extra hazardous danger which could not have been reasonably foreseen."
18 Indeed, the professional rescuer/fireman's rule is "deeply rooted in the common law," Kreski v.
19 Modern Electric, 415 N.W. 2d 178 (1987), and "has been almost universally accepted by juris-
20 dictions confronted with the choice." See Waggoner v. Troutman Oil Co., 320 Ark. 56, 58 (Ark.
21 1995). See also Moody v. Delta W., Inc., 38 P.3d 1139, 1140 (Ala. 2002) ("Nearly all of the
22 courts that have considered whether or not to adopt the Firefighter's Rule have in fact adopted
23 it."); Chapman v. Craig, 431 N.W.2d 770, 771 (Iowa 1988) ("the majority of states have either
24 adopted or affirmed the application of the fireman's rule.")

25 In upholding a dismissal on summary judgment under this doctrine, our state Supreme
Court emphasized in Maltman v. Sauer, 84 Wn.2d 975, 978-79 (1975) that the basic principle
behind the rule is that:

Those dangers which are inherent in professional rescue activity, and
therefore foreseeable, are willingly submitted to by the professional
rescuer when he accepts the position and the remuneration inextrica-

1 bly connected therewith. Stated affirmatively, it is the business of
2 professional rescuers to deal with certain hazards, and such an indi-
3 vidual cannot complain of the negligence which created the actual ne-
4 cessity for exposure to those hazards.

5 Otherwise, as another court notes, "[r]equiring members of the public to pay for injuries in-
6 curred by officers in such responses asks an individual to pay again for services the community
7 has collectively purchased" when in fact "negligence is a common factor in emergencies that
8 require the intervention of public safety officers" and "[a]llowing recovery would cause a prolif-
9 eration of litigation aimed at shifting to individuals or their insurers costs that have already been
10 widely shared." Moody, 38 P.3d at 1142. Hence, as our Division One states: "Public policy
11 demands that recovery be barred whenever a person, fully aware of a hazard created by another's
12 negligence, voluntarily confronts the risk for compensation." Black Indus., Inc., 19 Wn.App. at
13 699-700 (affirming summary judgment based on professional rescuer doctrine) (emphasis
14 added). Accordingly, based on this doctrine, Washington courts bar suits by officers against a
15 police agency for injuries caused when the agency's negligence allegedly created the necessity
16 for the officer's exposure to a hazard. See 1-1 Premises Liability--Law and Practice § 1.05, n.
17 1.11 (Mathew Bender, 2006)(citing Lowry v. Auburn, 111 Wn.App. 1026, 2002 WL 844832,
18 rev. denied, 147 Wn.2d 1025 (2002)).

19 Here, plaintiff claims the choices of other deputies earlier in the pursuit, the supposed in-
20 adequacy of Deputy Sargent's training and the absence of back up and proximity alarm equip-
21 ment, all constitute negligence which created the actual necessity for exposure to the hazard of
22 being run over. However, plaintiff knew that police work entailed taking risks and was specifi-
23 cally aware that one of those risks is that officers can be hit by other patrol cars during foot
24 pursuits. See Ex. "A:" Beaupre Dep., p. 63 ln 7-p. 64 ln 4. Indeed plaintiff immediately after
25 his injury acknowledged the obvious -- that, in getting out of his patrol car on I-5 and confront-

1 ing on foot the escaping suspect vehicle in the dark, he knew he had to take precautions "so that
2 it couldn't easily run over me" See Ex. "A:" Beaupre Dep., ex. "2" p. 4. See also e.g.
3 Woods v. Warren, 482 N.W. 2d 696 (Mich. 1992)(fireman's rule precluded officer's suit of city
4 for accident during pursuit); McGhee v. Michigan State Police Dept., 459 N.W. 2d 67, 68
5 (Mich. App. 1990) (state not liable for suspect vehicle's collision with officer because "a police
6 officer's injury resulting from a high-speed chase constitutes a foreseeable occurrence stemming
7 from the performance of the officer's police duties"). Because plaintiff was "fully aware" of the
8 allegedly County caused "hazard" of being hit by a fellow officer's car or run over by the fleeing
9 suspect, yet voluntarily confronted "the risk for compensation," 19 Wn.App. at 699-700, he
10 "cannot complain of the negligence which created the actual necessity for exposure to those
11 hazards." Maltman v. Sauer, 84 Wn.2d at 979. Accordingly, public policy and the professional
12 rescuer doctrine/fireman's rule bar claims of earlier omissions by other officers, defective
13 equipment and inadequate training.

14
15 **B. COUNTY NOT LIABLE FOR DEPUTY SARGENT'S BACKING MANEUVER**

16 An action for negligence does not lie if a plaintiff cannot establish that the defendant
17 owed a duty of care, McCluskey v. Handorff-Sherman, 125 Wn.2d 1, 6 (1994), and such is a
18 question of law for the court to decide. Hertog v. City of Seattle, 138 Wn.2d 265, 275 (1999).

19 As demonstrated below, Pierce County owed plaintiff no duty to prevent his injury by the flee-
20 ing Jenkins car -- a risk plaintiff assumed when he left his car on I-5 and chased after the sus-
21 pect on foot in the dark. Further, as demonstrated below, the law also precludes plaintiff from
22 recovering for injuries sustained solely as an alleged result of contact with the patrol car.

23
24 1. Professional Rescuer's Doctrine Bars Liability For Injuries Caused By Jenkins

25 In Sutton v. Shufelberger, 31 Wn.App. 579, 580 (1982), a policeman sued the driver of a
truck that struck him while he was preparing to ticket another vehicle on the roadway. Division

1 One of the Court of appeals -- citing various California authority -- held that the professional
2 rescuer doctrine did not bar the suit against the truck driver that struck and injured the officer
3 because it normally "does not apply to the third party whose intervening negligence injures the
4 official while he is in the performance of his duty." Id. at 588. Hence, Jenkins -- as the assail-
5 ant who directly ran over plaintiff -- could not argue the protection of the professional rescuer
6 doctrine for the harm he directly inflicted on Beaupre after the latter arrived on the scene.² See
7 Sutton, 31 Wn.App. at 588. On the other hand, Sutton made clear the "rule denies recovery by
8 the injured official from the one whose sole connection with the injury is that his act placed the
9 fireman or police officer in harm's way." Id. at 587 (emphasis added).

11 Here, it is alleged Deputy Sargent's operation of his patrol car supposedly bumped plain-
12 tiff into the path of the Jenkins vehicle which then ran over him rather than stop. Hence, the
13 professional rescuer doctrine precludes County liability for the injury caused directly by the
14 suspect car. This is so because Deputy Sargent's sole connection to that injury is that his act
15 "placed the . . . police officer in harm's way." Indeed, plaintiff's experts expressly agree the
16 only connection of Deputy Sargent to plaintiff's injury by Jenkins was that the operation of the
17 deputy's vehicle allegedly put plaintiff "in harms way." See Ex. "B:" Van Blaricom Dep., p. 46
18 Ins 17-22; Ex. "C:" Ginter Dep., p. 112 ln 22-p. 113 ln 1. Accordingly, under the professional
19 rescuer doctrine, Pierce County cannot be liable for the injury caused by Jenkins.

21 2. Existence of "Joint Operation" Precludes All Alleged County Liability

22 Plaintiff may claim there is County liability at least for a minor and temporary bruise
23 caused by the supposed direct contact with the patrol vehicle because Sutton and later Washing-
24

25 ² Indeed, an injury caused by a suspect during a pursuit is intentional as a matter of law, see e.g. Board of County Commissioners of Teton County v. Bassett, 8 P.3d 1079 (Wyo. 2000)(willful driving of fleeing criminal suspect not properly compared with negligence of pursuing police), and the fireman's rule is "inapplicable to intentional torts." McQuillin, The Law of Municipal Corporations, §45.13.50 at p.130 (2002 Rev. ed.).

1 ton cases adopted California authority that the professional rescuer doctrine "does not apply to
2 the third party whose intervening negligence injures the official while he is in the performance
3 of his duty." Sutton v. Shufelberger, 31 Wn.App. at 588. However, the California rule also
4 recognizes that "the common law exception for independent [intervening] acts ... is inapplicable
5 and does not allow a personal injury action by a public safety officer against a fellow safety
6 officer for actions taken in furtherance of a joint public safety operation" because the interven-
7 ing negligence exception "should apply only to negligent and intentional acts of the victim and
8 other third parties that are not in furtherance of a rescue operation." City of Oceanside v. Super-
9 rior Court, 96 Cal. Rptr. 2d 621 (Cal. App. 2000) (reversing denial of summary judgment and
10 suit dismissed when lifeguard was injured by other lifeguards during a rescue)(emphasis added).
11 See also e.g. Hamilton v. Martinelli & Associates, 2 Cal. Rptr. 3d 168, 178 (Cal. App. 2003)
12 ("the independent acts exception does not apply" where plaintiff officer was injured by fellow
13 officer during training because she "assumed the risk that she would be injured during the
14 course of the training."); Seibert Security Services, Inc. v. Superior Court, 22 Cal. Rptr.2d 514,
15 522 (Cal. App. 1993)("Unless the police officer or firefighter has come to a specific location to
16 perform a specific immediate duty, and the defendant's unrelated negligent or intentional con-
17 duct increases the risks inherent in performing that duty [citations omitted], this exception is
18 similarly inapplicable.") (emphasis added).

21 Hence, as a matter of law the professional rescuer doctrine/fireman's rule bars suit where
22 an officer is injured by the negligence of a fellow officer during a joint emergency operation.

23 See e.g. also Calatayud v. State of California, 959 P.2d 360.(Cal. 1998) (reversing and requiring
24 summary judgment dismissal where officer was accidentally shot by fellow officer during arrest
25 attempt); McElroy v. State of California, 122 Cal.Rptr.2d 612 (Cal. App. 2002)(affirming sum-
mary judgment where officer's patrol car collided with another during a pursuit); Farnam v.

1 State of California, 101 Cal.Rptr.2d 642 (Cal App. 2000) (affirming summary judgment dis-
2 missing policeman's suit against fellow officer and his employer for dog bite during attempted
3 arrest). This is simply common sense because "the same public policy considerations underly-
4 ing the application of the firefighter's rule to exonerate the victim should also apply to exonerate
5 a fellow [safety official] whose presence and actions are in furtherance of the joint rescue opera-
6 tion." City of Oceanside, 96 Cal.Rpt. at 631. Where our Division One of the Court of Appeals -
7 - again following California precedent -- recognizes that the person who caused the emergency
8 is protected because "[p]ublic policy demands that recovery be barred whenever a person, fully
9 aware of a hazard created by another's negligence, voluntarily confronts the risk for compensa-
10 tion," Black Indus., Inc., 19 Wn.App. at 699-700 (citing inter alia Walters v. Sloan, 142 Cal.Rpt.
11 152 (1977)), this same policy also demands protection of a fellow officer who responds to assist
12 in the emergency. Indeed, it "would be anomalous to exonerate the victim but not the fellow
13 [official] from a personal injury action by an injured [official]." See 96 Cal.Rpt. at 631.

14
15 More importantly, the Courts recognize that public safety is the greatest policy reason
16 for the doctrine's application to such "joint operations" with fellow officers. First, a peace offi-
17 cer's primary duty is to protect the public and the "discharge of these duties takes precedence
18 over avoiding injury to fellow officers, particularly when responding to a rapidly developing
19 emergency or crisis," so that imposing a duty of care as to other officers creates the potential for
20 conflicting duties. Calatayud, 959 P.2d at 367-68. Indeed, here the injury occurred at the pre-
21 cise point when the rapidly developing emergency had reached its most critical stage and dic-
22 tated that Jenkins be stopped before his car collided with on-coming I-5 traffic and killed or
23 seriously injured others. See e.g. Ex. "B:" Van Blaricom Dep., p. 32 lns 7-25; Ex. "C:" Ginter
24 Dep., p. 57 lns 5-22. Second, Courts recognize it would "seriously compromise public safety
25 during joint operations if the threat of a lawsuit accompanied every failure to exercise due care

1 in effecting an arrest, quelling a disturbance, extinguishing a fire, or handling any of the other
2 functions public safety members routinely discharge." Id. at 368. See also Galapo v. City of
3 New York, 744 N.E.2d 685, 688 (NY 2000) (affirming dismissal of suit against fellow police-
4 man because failure to apply fireman's rule to fellow officers during emergency carries "the
5 potential for impairing discipline and the teamwork values that are vital to effective firefighting
6 and law enforcement.") Indeed, here plaintiff expressly admits that as a result of this suit fellow
7 deputies thereafter might not "back him up" in the field. See 2/27/06 Fischnaller Declaration,
8 Ex. "1" p. 12 (item 6), p. 14 (item 13). Third, the courts have noted that "difficult problems" of
9 causation would be "multiplied in cases turning on the propriety of chosen police tactics or
10 emergency procedures" when what is at issue is often simply a "judgment call on the part of an
11 officer who inadvertently inflicts injury." Id. at p. 369.

12 Here, the complaint clearly attempts to state a cause of action by one police officer for
13 decisions made by a fellow officer in furtherance of a joint public safety operation. See Com-
14 plaint. As another court explained in a similar situation:

15 Here, there was an attempt to apprehend a felon, an activity that poses
16 danger not only to the officer but also to the public. Plaintiff and defendant
17 shared the objective to effect an arrest under these dangerous conditions.
18 The duty of care the officers owed to the public under these circumstances
19 precludes their owing a duty of care to each other. The hazard posed ... is
20 inherent in the activity the public hired plaintiff to perform.

21 Farnam, 101 Cal.Rptr.2d at 647. Because the law and public policy bars any duty under the
22 undisputed facts of this joint attempt to apprehend a dangerous suspect, any claim for injury
23 allegedly caused by plaintiff's supposed contact with his fellow officer's patrol car is barred as a
24 matter of law because it was "inherent in the activity the public hired plaintiff to perform."

25 VI. CONCLUSION

A party moving for summary judgment meets its burden "by `showing' -- that is point-

1 ing out ... that there is an absence of evidence to support the nonmoving party's case." Young v.
2 Key Pharmaceuticals, 112 Wn.2d 216, 225 n. 1 (1989). See also Carlyle v. Safeway Stores,
3 Inc., 78 Wn.App. 272, 275, rev. denied, 128 Wn.2d 1004 (1995). A trial court properly grants
4 judgment where a plaintiff thereafter "fails to make a showing sufficient to establish the exist-
5 tence of an element essential to that party's case, and on which that party will bear the burden of
6 proof at trial." Id. Hence:

8 A defendant in a civil action is entitled to summary judgment when that
9 party shows that there is an absence of evidence supporting an element
10 essential to the plaintiff's claim. The defendant may support the motion
11 by merely challenging the sufficiency of the plaintiff's evidence as to
12 any such material issue. In response the nonmoving party may not rely
13 on the allegations in the pleadings but must set forth specific facts by
14 affidavit or otherwise that show a genuine issue exists.

12 Las v. Yellow Front Stores, 66 Wn.App. 196, 198 (1992).

13 Here the County has "pointed out" the facts of record and that such uniformly disprove
14 any claim that inadequate equipment, negligent training of Deputy Sargent or any supposed
15 omission by other pursuing officers breached any duty or caused plaintiff's injury. Further,
16 defendant affirmatively has shown as a matter of law that the "professional rescuer doctrine/fire-
17 man's rule" preclude all of plaintiff's claims. Accordingly, Pierce County respectfully requests
18 the Court grant summary judgment and dismiss plaintiff's complaint so as to avoid a useless trial
19 and the resulting needless further waste of taxpayer resources.

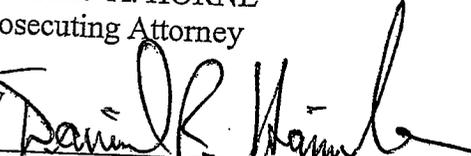
21 DATED THIS 19th DAY OF APRIL, 2006.

22 **CERTIFICATE**

22 I hereby certify on 4-20-06
23 I delivered a true and accurate
24 copy of the attached document
25 to ABC LEGAL MESSENGERS, INC. for
delivery to:

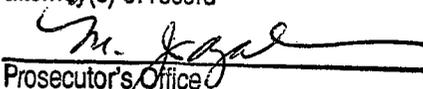
GERALD A. HORNE
Prosecuting Attorney

By


DANIEL R. HAMILTON

Deputy Prosecuting Attorney


attorney(s) of record

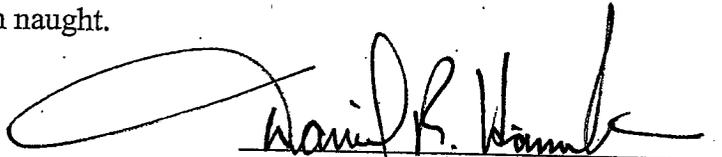

Prosecutor's Office

Attorneys for Defendant Pierce County
PH: 798-7746 / WSBA #14658

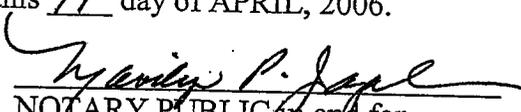
1 4. That attached as Exhibit "C" are true and accurate copies of pages 37-38, 43-
2 55, 57, 104-106, 108-110, 112-113 and 118-119 from the March 9, 2006 deposition of
3 Donald Ginter.

4 5. That attached as Exhibit "D" are true and accurate copies of pages 69-70 from
5 the March 22, 2006 deposition of Deputy Winthrop Sargent.

6 Further your affiant sayeth naught.

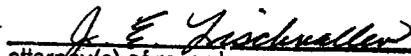
7
8 
9 DANIEL R. HAMILTON

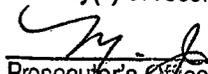
10 SUBSCRIBED and SWORN to before me this 19th day of APRIL, 2006.

11 
12 NOTARY PUBLIC and for
13 the State of Washington,
14 Residing at Tacoma
15 Commission Expires: 6-13-09

16 **CERTIFICATE**

17 I hereby certify on 4-20-06
18 I delivered a true and accurate
19 copy of the attached document
20 to ABC LEGAL MESSENGERS, INC. for
21 delivery to:

22 
23 attorney(s) of record

24 
25 Prosecutor's Office

IN THE SUPERIOR COURT OF KING COUNTY, WASHINGTON

CURTIS A. BEAUPRE,
Plaintiff,

vs.

PIERCE COUNTY,
Defendant.

NO. 04-2-23610-0SEA

COPY

DEPOSITION OF CURTIS BEAUPRE
TUESDAY, MARCH 7, 2006

CIVIL DIVISION
COPY RECEIVED

MAR 20 2006

APPEARANCES

GERALD A HORNE

PIERCE COUNTY PROSECUTING ATTORNEY

For Plaintiff:

J.E. FISCHNALLER
Attorney at Law
10900 NE 4th Street, Ste 2300
Bellevue, Washington 98004

For Defendant:

DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Pierce County Prosecuting
Attorney's Office
955 Tacoma Avenue, Ste 301
Tacoma, Washington 98402-2160

Court Reporter:

VICKY L. PINSON, RPR-CSR
License No. 2559

Page 1

James, Sanderson & Lowers Court Reporters

253-627-8543

800-507-8273

MR. HAMILTON:

And then there's performance degrees, but I'm talking about the box there. There's factors and then the rating. Do you see that?

Yes.

Excellence, the first category of dependability, where I see the very last part of in that block, No. 1, part of the factors in No. 1 is observes officer safety concerns.

Yes.

And you rated him under the degree of excellence?

Yes.

And excellence, by definition above that block, means exceeds expectations, results show achievements which contributed to organizational goals beyond the primary objectives and which exceed what is reasonably expected of a well-trained individual in this classification.

That was what you understood excellence meant when you put excellence as far as dependability which observes officer safety concerns?

Yes.

Turn to page three there. No. 6 deals with Performs All Duties. The last item there that you are grading is operates motor vehicle as trained, and you rated him in the category of excellence. Is that correct?

Let me just read it real quick.

Sure.

(Pause.) Yes.

At this time you certainly didn't think that Deputy --

MR. FISCHNALLER: At this time what?

MR. HAMILTON:

At this time that you performed this --

MR. FISCHNALLER: Yes.

MR. HAMILTON: Counsel, let me finish the question, and if you think it's inadequate, then I guess you can object.

MR. FISCHNALLER: I can, yes.

MR. HAMILTON:

At the time that you wrote this review, you certainly didn't think that Deputy Win Sargent was an unsafe driver, or you wouldn't have described him in these categories as the grade of excellence. Is that correct?

To a degree. From what I seen, no, he was a safe driver.

But, again, I don't know what all his accident background was in that. But my observations when I worked with him was yes, he was a safe driver.

And had you heard anyone describe him as being an unsafe driver prior to November 1, 2003?

Well, yes and no. And I can elaborate if you want. It's a hard one to answer.

Go ahead and answer the best you can.

1 A No, I don't believe so.

2 Q I'm sorry?

3 A No, I don't believe I have.

4 Q Are you aware -- you were with the Sheriff's Department for
5 how many years?

6 A Almost 14.

7 Q You've been with the police -- the Sheriff's Department for
8 14 years. Are you aware of other instances where police
9 vehicles were struck by other police vehicles? 63

10 A Yes.

11 Q And were you aware of other cases where policemen were
12 struck by other police vehicles?

13 A One.

14 Q And what was that one?

15 A That was Officer Butts, and he was struck by Deputy Corey
16 Olson.

17 Q Do you remember the circumstances of that?

18 A Deputy Butts was chasing a person on foot, and I believe
19 they ran right in front of the other deputies. He came into
20 a parking lot, and the vehicle knocked Deputy Butts down.
21 And he was transported to the hospital, but not injured.

22 Q As a policeman, one of his duties is to pursue, if
23 appropriate, and arrest people who are believed to have
24 committed crimes.

25 Whenever you engage in pursuit or any attempt to arrest

1 someone, you're aware that you're engaging in an activity
2 that entails some risk to your own personal safety. Is that
3 a correct statement?

4 A To a degree. Any time we go to work that can happen.

5 Q Sure. And presumably -- strike that.

6 Do you recall the last pursuit you were in prior to
7 November 1, 2003?

8 A Yes, I do.

9 Q Why don't you describe that one for me.

10 A It was on the same night that I got injured. And I believe
11 it was Tacoma officers and maybe one of our County units.
12 And it started in Tacoma, and the suspect vehicle went the
13 wrong way on the freeway. And our officer Trent Stephens
14 said, He's going the wrong way on the freeway, I'm not
15 getting involved in it.

16 And I was heading that way, and I was actually down by
17 Communications Center because I was going to stop in and say
18 hi to my wife, and the vehicle passed right by me. And I
19 thought, Oh, that's the vehicle we were just chasing.

20 Q On I-5?

21 A No. It had exited I-5. And it was right off of 38th
22 Street, near the Costco. I don't remember the street. So I
23 said on the radio, I see the vehicle.

24 And I turned around on it, and flipped on my lights;
25 and he took off, and I was in pursuit. And we went up into

1 a factual statement as a matter of physics, if you hadn't
2 been running next to the Jenkins' car, you wouldn't have
3 been in line with the other car that you believe came in
4 contact with you.

5 A I'm not trying to be difficult. One more time.

6 MR. FISCHNALLER: The question is if you were in
7 someplace else, would you have been in line with --

8 BY MR. HAMILTON:

9 Q But for your running next to the car, you would not have
10 been in line with the other car to have contact with it.
11 Right?

12 A That's correct.

13 Q Have you described for me as best you can the conversation
14 you had with the other officers at the scene?

15 A For the most part, yes. Again, it's a blur.

16 Q Sure.

17 A So, yeah. They were just comforting me. And I remember
18 asking to call my wife, and someone grabbed my phone.

19 Q Have you described for me all the conversations you've had,
20 to the extent that you can recall them, with Deputy Win
21 Sargent about this incident and any supposed admissions he
22 made?

23 A Seems like there's several questions there. Just break it
24 up.

25 Q It's a specific question. Did you have any other

Incident Classification: **OFFICER-INVOLVED SHOOTING** att Incident Classification: _____
 Incident Address: _____
 Name: LAST, First Middle (Maiden): _____ Incident Name / Location: _____
 Check if New District / Sector: **Exh. 2**
 Census / Grid: **Beaupre**
 3 58-06

CASE STATUS
 Property Recovery: Full Partial
 Pending: New Leads Child Interview Warrant Issued
 Investigation Continued Unfounded
 Exceptional: Resolved Referred: Summons Requested
 Arrest: Arrest Summons Issued:
 Total: _____ Total Offenses: _____

Code: **W** NAME: Last: **BEAUPRE** First: **CURTIS** Middle (Maiden): **ANDREW**
 Address: Street: _____ City: _____ State: _____ Zip: _____ Home Phone: _____ Business Phone: _____ Other Address/Phone: _____
PIERCE COUNTY SHERIFF'S DEPARTMENT

DOB: _____ Race: _____ Sex: _____ Ethnicity: _____ Height: _____ Weight/Build: _____ Hair: _____ Eyes: _____
 Descriptors (Clothing, Scars, Marks, Tattoos): _____ Type of Victim: _____ Hate/Bias: _____

Involved in Incident (Classification(s)): _____ Involved With Suspect (Name): _____ Relationship To Suspect: _____
 Number: _____ Charge Details (include Ordinance or R.C.W. Number): _____ Felony Misdemeanor Warrant
 On View Arrest: Yes No Statement: Oral Written Charges: Admitted Denied Subject Armed With: _____

Null Clear Drivers License Number / ID Card Number: _____ Alias Name(s) / Moniker(s): _____ Affiliations: _____
 JUV Parent / Guardian Notified? Yes No Name / Relationship of Person Notified: _____ State: _____ Other ID Type / SSN: _____ Criminal ID Number / Type: _____
 Date & Time of Notification: _____ Notified By: _____ Disposition of Juvenile: _____

Code: _____ NAME: Last: _____ First: _____ Middle (Maiden): _____
 Address: Street: _____ City: _____ State: _____ Zip: _____ Home Phone: _____ Business Phone: _____ Other Address/Phone: _____
 Res. State: _____ Occupation: _____ Place of Employment/School: _____
 DOB: _____ Race: _____ Sex: _____ Ethnicity: _____ Height: _____ Weight/Build: _____ Hair: _____ Eyes: _____ Type of Victim: _____ Hate/Bias: _____

Involved in Incident (Classification(s)): _____ Involved With Suspect (Name): _____ Relationship To Suspect: _____
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Null Clear Drivers License Number / ID Card Number: _____ Alias Name(s) / Moniker(s): _____ Affiliations: _____
 JUV Parent / Guardian Notified? Yes No Name / Relationship of Person Notified: _____ State: _____ Other ID Type / SSN: _____ Criminal ID Number / Type: _____
 Date & Time of Notification: _____ Notified By: _____ Disposition of Juvenile: _____

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 INFORMATION RESTRICTED TO CRIMINAL JUSTICE AGENCIES. SECONDARY RELEASES RESTRICTED PURSUANT TO RCW 4A.10.010. DATE PREPARED: _____ BY: _____

Additional Persons / Businesses / Subjects Continued on Attached Sheet

NARRATIVE:
 SEE NARRATIVE ON PAGE 3

Time & Date: **11-3-03** Signature & I.D. No. of Reporting Officer(s): **DET. D. DeVAULT #202**
 Employee # **18225** Employee # _____ Approval: _____
 County Proc. Atty. Juvenile Other CPS DSHS Trauma Military

VALIDATION PROCESSING: _____ DATE: _____ BY: _____
 INDEXED: _____ DATE: _____ BY: _____

SUPPLEMENTARY REPORT
(CONTINUED)

Suspected Type of Drug / Narcotic Seized		(Estimated) Quantity / Measurement		Insurance Company	
Item 1 Code		Item		Theft Inventory	
Description Code		Description (Weapon: Barrel Length / Action / Finish; Jewelry: Metal Color / Metal / Stone / # Stones)		<input type="checkbox"/> Left at Scene <input type="checkbox"/> Attached <input type="checkbox"/> Mailed	
Item 2 Code		Item		Est. Total Loss	
Description Code		Description (Weapon: Barrel Length / Action / Finish; Jewelry: Metal Color / Metal / Stone / # Stones)		Policy #	
Year		Make		Model	
ORI & Case Number		Registered Owner's Name		Home Phone	
Vehicle Disposition		Registered Owner's Address		Policy #	
<input type="checkbox"/> Left at Scene <input type="checkbox"/> Recovered <input type="checkbox"/> Driven Away		<input type="checkbox"/> Impound <input type="checkbox"/> Abandoned <input type="checkbox"/> Seized		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Hold	
<input type="checkbox"/> Yes <input type="checkbox"/> No Locked?		<input type="checkbox"/> Yes <input type="checkbox"/> No Keys in Vehicle?		<input type="checkbox"/> Yes <input type="checkbox"/> No Delinquent Payment?	
<input type="checkbox"/> Yes <input type="checkbox"/> No Victim Consent?		<input type="checkbox"/> Yes <input type="checkbox"/> No Drivable?		<input type="checkbox"/> Yes <input type="checkbox"/> No Estimated Damage	
<input type="checkbox"/> A <input type="checkbox"/> B Hold Requested By:		Plates: <input type="checkbox"/> Yes <input type="checkbox"/> No		Damage: <input type="checkbox"/> Interior <input type="checkbox"/> Underbody <input type="checkbox"/> Window <input type="checkbox"/> Top	
<input type="checkbox"/> Yes <input type="checkbox"/> No Check Damaged Areas		<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 Top <input type="checkbox"/> 10 Bottom			

INDEX

NARRATIVE

D.D.

This is Detective DeVault, ID Number 202. The purpose of this recording is to get a taped statement regarding a officer involved shooting. Investigative case number is 03-3050183. Today's date is November the 3rd, 2003 and the time now is approximately 1615 hours. The location of the taped statement is St. Joseph's Hospital and the person that will be providing the statement is CURTIS ANDREW BEAUPRE, spelling of the last name is B-E-A-U-P-R-E. MR. BEAUPRE is a sergeant with the Pierce County Sheriff's Department currently assigned with the Lakewood Detachment. Also in the room is Detective Sergeant Michael Portman from the Pierce County Sheriff's Department, Frank Clark from the Pierce County Prosecutor's Office and Detective Jeff Mazierski from the Pierce County Sheriff's Department. CURTIS, are you aware this statement is being recorded?

C.B.

Yes.

D.

And do we have your permission to record it?

C.B.

Yes you do.

D.D.

Okay. And off tape we had a preliminary interview. Is that correct?

C.B.

Yeah.

D.D.

And so you're aware of what I'm referring to with the investigative case number?

C.B.

Yes.

D.D.

Why don't you go ahead and just narratively tell us your involvement with what occurred out on the freeway on November the 1st, 2003.

C.B.

Okay. I was the Patrol Supervisor for the Lakewood Detachment Office. I heard East Side units behind a vehicle that was failing to yield, involved in a domestic dispute. Um, the location was westbound 512 moving onto I-5. As I was en route that direction, I heard that the suspect vehicle ran over some spike strips that were deployed and that it was continuing northbound I-5 at low speeds. I arrived in the area, with multiple units behind the vehicle, all spread out, blocking all lanes of traffic.

INDEX NARRATIVE

for safety reasons. We continued on northbound for about a mile. The suspect vehicle was doing maybe 15 miles per hour. We simply could not get any compliance with the gentleman to pull over, stop. I gave the authorization for a vehicle with pit bumpers to move up and do a pit maneuver on the vehicle in order to try to get it to stop to protect the public. I had several concerns. One of, he may accelerate and take off on us. He may take the 84th Street exit and go into the city where there's a lot of pedestrians and vehicles on roadway. After I gave the order for a vehicle to pull up and pit the car, one of the patrol units moved up and initiated a pit maneuver, spun the vehicle out (unintelligible). The vehicle spun out, then it came back around. Now it's heading northbound... heading the wrong direction on the freeway, against the traffic. There were other patrol cars trying to pin him in and I also tried to pin him in. I thought he was gonna stop. I exited my patrol car, got behind cover of my door, drew my gun out to begin a felony stop on the suspect vehicle. At about the time suspect vehicle comes to the front of my car. I step back out of my door frame so I will not get knocked over or get pinned into my door frame. Suspect vehicle continues the wrong direction on the freeway. I ran around the back of my car. I ended up slightly in front of the suspect car. Paused, to wait for it to get parallel to me so that it couldn't easily run over me, and I continued to follow it kind of parallel on the passenger side door. Had my gun drawn and I was giving multiple verbal commands for the driver to stop, pull the car over. I probably went about 20 feet on foot, when I believe I was struck by another officer's patrol car, knocked me underneath the suspect's car. When I went underneath the suspect's car then the front passenger side tire went right over my mid-section, my pelvic/groin area, over my duty belt. As soon as that happened, I thought, that's not good. I was trying to crawl my way out. The rear tire also went right over the top of me. Just as I popped out from underneath the car, I heard a shot being fired. I heard several shots being fired. After the vehicle passed by me, I could see my handgun upon the ground. Tried to reach out for it and I hadn't been

INDEX NARRATIVE

to grab it. And then I put my police radio that we had an officer down, myself. Several of the officers came over to me and started administering first-aid. That's about it. Does that answer your questions.

D.D. Yes, thank you. Just a few things. Do you know which officers applied the pit maneuver?

C.B. I believe TRENT STEVENS and he had a rookie officer with him. I'm not sure who.

D.D. And do you know how many pit maneuvers were applied?

C.B. I believe two.

D.D. Okay. And on the last one, where did the pursued vehicle ended up, end up?

C.B. Suspect vehicle ended up facing the wrong direction, traveling the wrong direction on the shoulder of the road, freeway. That would be the east side shoulder of the freeway.

D.D. Over by the guardrail?

C.B. Over by the guardrail. Towards Hosmer Street.

D.D. And then, were you the only vehicle that tried to block him in?

C.B. No. There were several vehicles to my driver's side and I believe there was one to my passenger side.

D.D. And did the pursued vehicle continue to move southbound on Interstate 5?

C.B. On the shoulder.

D.D. What would you estimate the speed of that vehicle to be?

C.B. It was fairly low speed. I would guess somewhere between ten to fifteen miles per hour, at the point impacted patrol cars.

D.D. And you said that you had stopped your vehicle and exited your door and took a position as of a felony stop. Is that correct?

C.B. Yes.

D.D. And you said that you believe your vehicle was struck?

C.B. Yes, I believe the passenger front corner, bumper of the car was struck by the suspect vehicle.

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D.D.	Did your vehicle move back from being struck?
C.B.	It did.
D.D.	And that's when you ran around the rear and posi, positioned yourself tactively?
C.B.	Yes.
D.D.	And when you were paralleling the vehicle, running alongside of it, commanding the driver to stop, c -- you note the driver to look at you?
C.B.	As far as I can remember, he never looked at me. He was looking straight ahead and driving.
D.D.	What did he look like?
C.B.	Couldn't tell a race of him. I just know a very large man, a very large, fat, jolly face.
D.D.	Could you see any other occupants in the vehicle?
C.B.	No I could not.
D.D.	And how far away were you from the vehicle when you were paralleling it on foot?
C.B.	Approximately ten feet from the passenger side?
D.D.	And so you were facing the suspect vehicle then?
C.B.	Yeah. The, well my chest area was facing the passenger side of the car.
D.D.	And so you kind of, lack of better terminology, running sideways?
C.B.	Yeah.
D.D.	About ... Sidestepping. And it was at that position, or doing that activity that you were struck from behind?
C.B.	Yeah.
D.D.	And where were you struck?
C.B.	I believe right around the buttocks area (unintelligible).
D.D.	Was it a, a hard strike?

INDEX NARRATIVE

- B. It was enough to knock me down and it shocked me. Probably (unintelligible) and it knocked me unconscious. Just enough to knock me off balance.
- D.D. And do you know what struck you?
- C.B. I believe it was another patrol car.
- D.D. And when you fell, you say you lost control of your handgun?
- C.B. Yeah. Either as I fell to the ground or as the suspect vehicle ran over me.
- D.D. Do you know if you fired any shots?
- C.B. I can't say for sure. I may have had one shot fired as I went down under the car. Just as I did that know I did hear a shot fired, I don't know if it was me or not.
- D.D. Okay, so to make that clear is that while you were falling, you observed a shot, or heard a shot?
- C.B. Yes. As I was falling, hit the ground, going under the car was kind of all at once. I heard a shot fire
- D. And you've been with the Sheriff's Office for how long?
- C.B. Twelve years.
- D.D. And I've already indicated you're with the Lakewood Detachment and were you working by yourself when this occurred?
- C.B. Yes I was.
- D.D. That's commonly done as a supervisor?
- C.B. Yes.
- D.D. And do you remember what vehicle you were assigned and using that night?
- C.B. Um, the one I always use. I believe the car number is 22410.
- D.D. Okay. And we were, would you describe what uniform type you were wearing?
- C.B. Sure, I had the Departmental authorized jumpsuit with a cloth badge, shoulder patches.
- D. And what kind of uniform belt, duty belt did you have?
- C.B. I had a full duty belt. It had my gun and my holster, extra magazine, handcuff pouch, flashlight, ma

INDEX	NARRATIVE
D.	What kind of weapon do you carry?
C.B.	I carry the Department issue 9mm Sigsauer handgun.
D.D.	Do you carry any other weapons on you?
C.B.	No.
D.D.	Do you remember the last time you qualified with your weapon?
C.B.	It was Summer qualifications, end of quarter.
D.D.	And getting back to running, sidestepping and observing this driver of this car, did you recognize the person as someone you'd ever had to deal with before in law enforcement?
C.B.	I only got a quick look at him, but I didn't, never before.
D.D.	Well, I guess a better question, have you ever seen the person before?
C.B.	No, I have not.
D.	Okay. How about the vehicle?
C.B.	No, not that I can recall.
D.D.	Okay. Detective Portman, do you have any questions?
M.P.	Can you describe the suspect's car?
C.B.	Sure. It was large 70's, huge car, a '70's type car. I believe it was a Monte Carlo-type car. It was 4 door. Just a large 70's . . .
M.P.	Color?
C.B.	Gold in color. (unintelligible) type car.
M.P.	Was there any noise coming from the car?
C.B.	No, not, nothing sticks in my mind. No.
M.P.	The windows are rolled up?
B.	I don't remember.

INDEX	NARRATIVE
L.P.	Getting back to before the pit maneuver was deployed, did you, were you aware that they threw out stop sticks on the highway?
C.B.	Yes I was.
M.P.	Was that in your order or was that something that they normally do?
C.B.	Something they normally do. And we had units dealing with a separate incident on the freeway and they heard the failure to yield vehicle pursuit coming at them. And on their own initiative deployed spike strips.
M.P.	So that would be standard procedure to lay those out if time permitted?
C.B.	Yes. (unintelligible) just another tool that we can use (unintelligible).
D.D.	MR. CLARK, do you have any questions?
F.C.	Just want to get, make sure, get it on tape is when you, when, again, when the car is coming at your he hasn't stopped, now he's proceeding the wrong way on the freeway, it hits your car, backs your car up. You ran around behind your car. For a short period of time were you in front of the suspect car?
C.B.	Not directly in front of it. I was off to the side of the vehicle when it passed on by. I'd probably have to draw it out - I was for just two or three seconds.
F.C.	But you felt that that was not a good position for you to be in (unintelligible)?
C.B.	That's absolutely, quite honestly I ran around my car quickly paused, waited until he got even with, until I was even with the passenger side door and sized up the situation.
F.C.	And when you fell down, when you were hit from behind and fell, which direction did you fall?
C.B.	Well, my legs came out from under me, so I (unintelligible) forward. My legs came forward (unintelligible).
F.C.	And then your head was pointed in which direction?
B.	Well, it would have fallen backwards, so it would have been, my head would have been facing westbound. He would have been eastbound towards the shoulder of the freeway.

REPORT CONTINUATION SHEET
(NARRATIVE CONTINUED)

AGENCY: TPD PCSO Other

Page 10 of 10
(Continuation form only)

INDEX

NARRATIVE

F.C.

That's all I have.

M.P.

When you were out of your car, pointing the gun at the suspect's vehicle, did you hear any sirens in the background to drown your voice out?

C.B.

Yes, there were sirens. Activated. I don't particularly remember, but as we were all going up there, sirens were on.

D.D.

Detective Mazierski, do you have any questions?

J.M.

No questions.

D.D.

Okay, I don't have any further questions. The time now is approximately 1630 hours and we'll conclude this taped statement.

sm

1 IN THE SUPERIOR COURT OF KING COUNTY, WASHINGTON

2
3 CURTIS A. BEAUPRE,

4 Plaintiff,

5 vs.

6 PIERCE COUNTY,

7 Defendant.

No. 04-2-23610-0 SEA

COPY

8
9 DEPOSITION OF D.P. VAN BLARICOM
Wednesday, March 8, 2006

10 CIVIL DIVISION
COPY RECEIVED

11 APPEARANCES

MAR 20 2006

12
13 For Plaintiff:

J.E. Fischbacher
Attorney at Law
10900 NE 4th Street
Suite 2300
Bellevue, Washington 98004
PIERCE COUNTY PROSECUTING ATTORNEY

14
15
16
17 For Defendant:

Daniel R. Hamilton
Office of the Prosecuting Attorney
955 Tacoma Avenue South
Suite 301
Tacoma, Washington 98402

18
19
20
21 Also present:

Curtis A. Beaupre

22
23
24 Reported by: Lori A. Porter, CCR-RPR
License No. 299-06

25
EXHIBIT NO. 3

1

1 A. opinions relate to whether they were fulfilled or not?

2 A. Yes, sir.

3 Q. And you make no mention of any opinion regarding any
4 improper hiring decisions. That's not part of your analysis
5 either?

6 A. No, it is not. But this isn't a 1983 case anyway.

7 Q. Well, it's maybe not a lot of things, but it certainly is
8 not that.

9 Also you don't opine -- you said you looked at the
10 complaint, and you don't opine concerning the need for
11 backup alarms and proximity alarms on patrol vehicles.

12 Do you have any opinion on that?

13 A. I've never known a patrol vehicle to have a backup alarm.

14 Q. Is that a good idea do you think on patrol vehicles?

15 A. I wouldn't think it is a good idea because you wouldn't want
16 to signal people what you're doing. It's not like a truck.

17 Q. Right.

18 A. Frequently you're in a stealth mode.

19 Q. You also don't mention any opinion generically about whether
20 under -- there are proper circumstances under which it's
21 appropriate for a vehicle to -- for instance, where freeway
22 traffic ahead is stopped, for a vehicle to back up on the
23 freeway.

24 I don't see that opinion in there. Do you opine as to
25 that?

1 Q. Because it's negligence during an emergency?

2 A. Right.

3 Q. Now, on page 3, item 6(a) -- I'm going to have to refer to
4 it that way. I do appreciate your outline form as in the
5 past as well as the present. It's very helpful in speeding
6 along our questioning, and I appreciate that format.

7 You stated that Mr. Jenkins traveling the wrong way on
8 the freeway was, quote, creating an extreme danger to
9 approaching traffic, end quote.

10 A. Absolutely.

11 Q. And why was that?

12 A. Well, because when you are going the wrong way on the
13 freeway and the speed limit is 60 and normally at this time
14 of night everybody is driving about 70 or 75, the
15 opportunity for a severe accident is great.

16 Q. In fact, wasn't there a likelihood that if he wasn't
17 stopped -- if someone didn't do something about him that he
18 was going to hurt somebody?

19 A. I don't think there's any doubt about it.

20 Q. It's clear Mr. Jenkins was reckless?

21 A. Oh, yes.

22 Q. There's no dispute about that?

23 A. No, sir.

24 Q. He was proceeding from a -- with a flight from police?

25 A. Right.

Q. So he wasn't just -- earlier in your description -- and maybe it was because you were trying to be concise -- you stated that you believe that he was just turning around for the purposes of pursuing. There was no intent to your knowledge here of just pursuing him until he ran into the other cars; they were trying to interdict him, trying to stop him?

A. Yeah, exactly.

Q. So as I understand it -- is it your understanding that plaintiff's injuries were the result of being ran over by the Jenkins vehicle, not by the contact with the patrol car? Is that your understanding?

A. Oh, yeah. It's my --

Q. He says he hears things break and that sort of thing when he's under the Jenkins vehicle?

A. Right. The rims and the tires went over his hips.

Q. So is it fair to say that your testimony is that you believe that Deputy Sargent put plaintiff in harm's way, that because of his actions -- but for his actions, Mr. Beaupre would not have been put in harm's way to be injured by Mr. Jenkins?

A. I think that's a reasonable description, yes.

Q. On page 4 now, I'll bring you to section (g)1. It's right at the top there. You say: Plaintiff's conduct was a reasonable attempt to fulfill his duty to apprehend the

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Wednesday, March 8, 2006
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12 APPEARANCES

CIVIL DIVISION
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MAR 17 2006

GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

13 For Plaintiff:

14 J.E. Fischaller
15 Attorney at Law
16 10900 NE 4th Street
Suite 2300
Bellevue, Washington 98004

17 For Defendant:

18 Daniel R. Hamilton
19 Office of the Prosecuting Attorney
955 Tacoma Avenue South
Suite 301
Tacoma, Washington 98402

20 Also present:

21 Curtis A. Beaupre
22
23

24 Reported by: Lori A. Porter, CCR-RPR
25 License No. 299-06

1 A. Relative opinions?

2 Q. Relevant opinions. In other words, relevant to this case.
3 You may opine -- you may have opinions about other things
4 that aren't relevant to the case, so I'm just asking you
5 does it contain all your opinions that are relevant to this
6 case?

7 A. I believe it does, yes.

8 Q. Do you intend to produce anything in this case other than
9 your report?

10 A. Not at this time, no.

11 Q. Now, there's no mention in -- you make 13 points. Some of
12 them appear to me to be redundant, and we can talk about
13 that. But among the 13 points or headings that you give,
14 there's no mention of any criticism of County policy as it
15 exists.

Your opinion does not include criticizing any County
policy at least?

16 A. No, it does not criticize the policy. It basically
17 criticizes implementation of the policy.

18 Q. And that will come out as we ask each question here; right?

19 A. I suppose.

20 Q. Now, your opinions do not also include any opinion regarding
21 the need for a backup or proximity alarm for patrol
22 vehicles. Did you read that in the Complaint?

23 A. No.

Q. Do you think it's a good idea for patrol vehicles to have a backup alarm or a proximity alarm that gives off a loud beep when the patrol car backs up?

A. I would have to think about that, but I would say right offhand, I wouldn't want one.

Q. And why wouldn't you want one?

A. For reasons that a suspect in an alley or anyplace else would be warned that -- which way you were moving.

Q. Do you know of any law enforcement entities that have such a thing?

A. No.

Q. And as far as you know, there's certainly no requirement by law in Washington state to have one?

A. Not that I know of.

Q. And there's no opinion here regarding the propriety of police under the proper circumstance anyway of traveling backwards on I-5 if they need to and under the -- can do so safely?

A. I know in -- most agencies say that you're not to drive the wrong way on a one-way roadway. Those are policies in my estimation that can be bent in circumstances that require that. I didn't bring it up.

Q. For instance, I think I have and I think probably most people who have traveled before have seen State patrolmen backing their patrol cars up on the shoulder to get back to

1 You say first: After the spike strips were deployed and
2 the suspect vehicle left the paved portion of the roadway
3 into the median, officers failed to contain the vehicle and
4 suspect.

5 A. Can you explain to me what you were referring to there?

6 A. Well, the vehicle had just been spiked, and the reason for
7 spiking is to get this guy stopped. He lost control, went
8 off into soft dirt, into a median, a very good safe area to
9 be, and nobody kept him there.

10 Q. You read where they approached him at gunpoint and commanded
11 him to get out of the car and stop; is that correct? Did
12 you read that part?

13 A. I read that part. But is that going to hold the guy from
14 driving off?

15 Q. I guess it depends on whether you're willing to shoot him or
16 not at that point.

17 You have to answer me. You're the expert. What else
18 would you have him do?

19 A. I would have had him come up and pin the guy where he was.

20 Q. Against what?

21 A. Keep him right where he was.

22 Q. What would you pin him against in the median?

23 A. Hold him in the soft area.

24 Q. So you get a patrol vehicle now in a soft area as well and
25 maybe cause it to have problems getting in and out

maneuvering?

2 You shrugged. Yes?

3 A. If he's pinned, he isn't going anywhere.

4 Q. Is that really a pinning, or is that a blocking?

5 A. I think it's pinning myself.

6 Q. So that's what you would have them do is -- was there a
7 violation of any standard of care by not getting another
8 patrol vehicle down in the soft area where this vehicle was?

9 A. Not that I know of.

10 Q. So as far as whether that's something else that can be done,
11 whether that's -- do you believe that any of the officers
12 there breached any duty by approaching him at gunpoint and
13 commanding him to stop rather than getting their car down in
14 the median as well?

15 A. Well, like you say, getting down in the median -- they
16 didn't have to get down in the median. They could have
17 stayed on the blacktop. When he came out of the blacktop,
18 they could have been in his path.

19 Q. That would require more cars than just the ones that were
20 available, wouldn't it, because you're talking --

21 A. There's only -- it only takes one path.

22 Q. But if you're approaching him -- you would not have
23 approached him on foot then?

24 A. I'm not saying -- if he was stopped, I may have approached
25 him on foot myself. But if I thought he was going to get

out, I would position myself to keep him from getting back on the roadway.

Q. Do you have any reason to believe that the officer suspected that he was -- when you say "get out," do you mean the vehicle getting back onto the roadway?

A. That's right.

Q. Do you have any reason to believe that the officers thought that he was going to get out of this median?

A. I have no idea.

Q. So, again, do you believe that the deputies involved in the median stop in any way breached any duty?

A. No.

Q. It was just an option that they could have taken which they didn't, and because of that, he was somehow able to get back onto the roadway?

A. That was the option, yeah, that they took.

Q. Now, it's not your opinion that every time a vehicle gets by an officer that there's some sort of -- it's the result of some fault in the officer I assume?

A. No, it's not.

Q. Your next topic is No. 2. After the suspect vehicle returned to the roadway, traveling at a very low rate of speed, officers failed to contain or bring the suspect vehicle to a stop.

Could you explain that to me?

1 A. Well, there's a way to pin this guy in. He was driving on
2 the shoulder area. They could have basically got around him
3 and just slowed to a stop.

4 Q. You understand that they did make an effort and that effort
5 was to try to PIT him twice and then there was an effort to
6 pin him, but those weren't successful?

7 A. This is way before that.

8 Q. Well, all you're saying is they should have PITed him
9 earlier?

10 A. No. I said they should have pinned him in before he even --
11 maybe even got out -- or got as far as he did, before they
12 even had to start PITing.

13 Q. What difference would that have made as far as --

14 A. It would have kept him off the roadway.

15 Q. Are you talking about -- I'm talking about No. 2.

16 A. I am. I am.

17 Q. So you're saying PIT him while --

18 A. He's back on the road, he's going north towards 84th, and
19 he's driving at 5 miles an hour. Just get around him and
20 slow him to a stop.

21 Q. Was it a breach of any duty --

22 A. No.

23 Q. -- to order someone to PIT him rather than to get in front
24 of him and stop and have him run into the back of your car?

25 A. No.

1 Q. You're aware that Mr. Beaupre was the supervisor, an officer
2 in command at the scene at the time -- this time in this
3 pursuit?

4 A. Not at this time. He was still coming. I believe he was
5 getting closer, yes.

6 Q. By the time there was a PIT maneuver, you realize that
7 that's what he was?

8 A. Oh, yeah.

9 Q. So no breach of duty for No. 2; is that correct? It was
10 just an option that they could have taken?

11 A. Right. I believe it was a better option that they failed to
12 take.

13 Q. In hindsight?

14 A. Yes.

15 Q. As far as at the time, these were reasonable actions,
16 weren't they, to take by officers? There were various
17 options they could take and --

18 A. There's various options they could have taken. I think --

19 Q. And these are reasonable ones at the time?

20 A. -- these are -- all I'll say is they were -- is this was an
21 option.

22 Q. But, again, what I'm asking you is a different question.

23 As to items 1 and 2, the options that they took instead
24 were reasonable ones at the time? They may have -- in
25 hindsight maybe something better might not have worked, but

1 maybe they would have, but that's in hindsight.

2 What I'm asking is the decisions that were made, at
3 least as to 1 and 2, were reasonable at the time? They were
4 in conformance with training and standard practice?

5 A. Yes. I guess.

6 Q. Dealing with --

7 A. I don't --

8 Q. Sure.

9 Dealing with No. 3, you write: Materials reveal
10 officers kept responding to pursuit in progress when policy
11 in issue indicated -- and these are in caps -- ONLY TWO --
12 end of caps -- vehicles in a pursuit, unless requested by
13 the primary officer, which there was no request indicated.

14 Can you explain what you're referring to there?

15 A. Well, their policy says that when there's a pursuit
16 involved, there's only two cars.

17 Q. It's your understanding that when Deputy Beaupre took
18 command, that is his option to keep the cars there or tell
19 them to break off, and he was satisfied with the number of
20 cars that were there?

21 A. I'm talking before he got there.

22 Q. Well, if it -- if Sergeant Beaupre was satisfied with it
23 afterwards, would he not be satisfied with it before, number
24 of cars? In fact, his addition added more cars.

25 MR. FISCHNALLER: Object to the form of the

question. It calls for speculation.

Isn't that true?

Beaupre is the supervisor. He's not involved in the pursuit. He's the supervisor. The initiating officer is the one who says, "I need more help." He never said that. Isn't it true from the time the vehicle gets onto I-5 to the point -- well, to the point that Mr. Beaupre is injured, he is in command of the pursuit, and if he wants cars to break off, pull off to the side, he can do that?

That's right.

And he did not do that?

That's correct.

And that's within his discretion? If he feels he needs a lot of cars there perhaps to hold back other traffic, perhaps to be available to block this crazed driver in, that's his choice?

Well, at this time this is not a pursuit.

I'm sorry?

At this time it's my estimation this is not a pursuit.

What is not a pursuit?

The point where it -- he's driving on the shoulder and he's driving 4, 5 miles an hour. The cars are in the roadway basically to keep the traffic that is approaching from the rear to overtaking the suspect and the line of patrol cars.

Can you tell me where you find in the record between the

time that Mr. Beaupre became the commanding officer at the scene and the time that he is PITed and spun around that he's going 5 miles an hour? My understanding is he was going, I think, 20 to 25 miles per hour.

It was conflicting statements anywhere -- there was one I believe that said they were doing possibly that fast, but mostly it was a lot slower.

Well, so it's your -- you do not --

That's my opinion.

You believe that on I-5 there was not a pursuit because from the time they're on I-5, it's going --

He has three tires left -- I mean he has one tire left.

He's on metal rims, and he is moving at a slow rate of speed.

So there's no such thing as a slow pursuit?

Well, the officers may be pursuing this guy. It's not a pursuit.

Is that anywhere in the policy that defines a pursuit as -- I have no idea. I didn't see anything like that.

The bottom line I guess is do you find any breach of any duty by the discretion of Mr. Beaupre not to call off the other cars that are present?

Not at this time, not when he decides to have a PIT go on. He's on the freeway now, and the additional cars in his estimation are probably welcome at that point.

Let's move on then to No. 5 which is -- you say: After the PIT was implemented, officers again failed to contain the suspect vehicle or to have any plan of containment.

Can you explain that for me?

Right. The vehicle was PITed the second time, and the vehicle came to a stop.

Officer -- Sergeant Beaupre and other officers stepped from their vehicles thinking that this guy was stopped, and they approached it. At that time the vehicle, suspect vehicle started to proceed.

Instead of just sitting there facing the cars like he was, they were -- the rest of them, the ones that were still driving in the cars, they could have blocked his way. They didn't block his way. He bounced into them, pushed them out of the way, and drove around and got in behind them.

A couple things. Did you read where one of the officers in fact after the PIT attempted to pin, being Deputy Eggleston?

Did you read that where he in fact attempted to --

You brought that up earlier, yes.

Do you remember that?

I don't remember it at this time.

That would be an indication that in fact they were trying to do something pursuant to their training of PITing and pinning --

Right.

*- if that happened, if that's in the record?

Right.

Where in the record other than coming into contact with Mr. Beaupre's car is it that Mr. Jenkins' vehicle was crashing into any other car?

I read it in the -- where it went -- when he moved away, started up after the second PIT and he went around the cars, he banged into a couple cars and -- by the guardrail, went around the guardrail, and got around them.

I really do not know that that's in the record. Can you point out to me where that's in the record, or we'll just have to rely on your recollection?

I'll have to reread those.

If he did not in fact bang into any other cars and if in fact there was an attempt to pin him after the PIT, that would be different from the assumptions that you were

relying upon to reach critique No. 5; is that correct?

Well, if one person -- let's say one person tried to do this. It failed. Where were the rest of them?

Well, you only have so much -- you don't want them all trying to pin him at the same time, do you?

You like to at least get a couple in there to get him stopped.

You mentioned no plan of containment. If there was any plan to be announced, it would have to be -- you would expect it

to be announced by the officer in charge, wouldn't you, saying, "I want you guys to go now and pin him in after we PITed"?

Well --

Who's to announce the plan?

They don't -- their PIT policy doesn't indicate an after PIT. So they have no policy or training at all that I'm aware of after the PIT is done -- or I haven't read any of that.

Maybe I misunderstood. I thought you said that you established yourself the training of PIT and pin.

I did.

And that's part of the training that the officers went through?

That's right.

So they have training -- they don't have a policy that describes it, but part of their training includes pinning?

Their instructors got the training. We don't dictate what their policies are after PIT.

But as far as -- assuming that there was a PIT, assuming that there was an attempt to pin, that would be -- even if there's not a policy, that would be in accord with the training that you say you developed?

Right. We -- I developed -- or along with other people.

But in this state I developed that, the PIT training, and

with the assistance of the -- I forget what other group it is that did the officer survival part of that, in other words, the pinning part.

In the same way that later on you refer to the four rules, which we can go into, of backing up and there's not policy anywhere in the County according to you or the State Patrol regarding the four -- listing in the policy: Here are the four rules of backing up.

They rely on their training for that; right?

That's part of their basic training.

In the same way, assuming that after the PIT there was an attempt to pin, that would not be part of the policy but part of their training?

I don't know if they train it or not.

Well, it's a part of the training that you give at least? You have to understand I train only the instructors. The instructors take the program back to their department, and they develop their own program. And in this case they didn't even name it the same as we did. It's still called PIT, but it's -- that's about it.

As far as -- if there was an attempt to pin after the PIT, that would be appropriate in your evaluation?

Yes.

And as far as -- do you have any knowledge that any officer breached any duty prior to the contact of the Jenkins

vehicle with Mr. Beaupre's vehicle?

No.

Now, No. 6 is a long one. Let's read that. It says: I believe it was the sergeant's duty to respond as he did. However, when suspect vehicle proceeded, officers still in their vehicles failed to contain the suspect vehicle.

I think we talked about that. That's kind of covered in part by No. 5.

They allowed -- do you have any -- was there anything different than that? Was it --

No.

They allowed it to continue on, striking and forcing its way through the barricade of patrol cars.

I think we talked about that.

Uh-huh.

The suspect continued southbound in the northbound lanes of I-5, at a very low rate of speed without any increased physical force.

Can you tell me what you mean by "any increased physical force"?

Well, you say that they had one person there that tried to pin him.

Deputy Eggleston.

That failed --

Uh-huh.

So that's pretty clear space there?

Uh-huh.

You're nodding yes?

Yeah. It's the way I read it, yes.

And other than running alongside the car and threatening to shoot him or shooting him, the only option to stop him -- and you want to stop him before he gets to oncoming traffic, don't you?

Yes.

And that's very important because they're in danger if he's allowed to continue past Mr. Beaupre; is that correct?

That's right.

So the option that they have at that point is either to shoot him or to again block him or pin him; right?

I guess those are the options.

And if the vehicles are either adjacent to Mr. Beaupre or ahead of him, the only cars that are going to do that are those cars and they're going to have to get back to south now to get ahead of or adjacent to the Jenkins vehicle and pin that vehicle. That's their only other option other than shooting. Is that a fair statement?

Yes.

So isn't it fair to say that any of the officers out on I-5 should anticipate that there are other officers involved, and those other officers are going to try to pin or block

1 None of your accidents were preventable?

2 A. Preventable, that's correct.

3 Q. I didn't think that you meant that. I wanted to make sure
4 that the record didn't show both of our confusion and then a
5 contrary answer to what you meant to say.

6 So you can have an accident and it not be something that
7 reflects -- like your 15 accidents or so -- reflects any
8 kind of defect in your driving ability?

9 A. That's correct.

10 Q. If you are making your living in your car, most of the time
11 while you're on duty, you're going to eventually get into
12 some accidents, aren't you?

13 A. That's correct.

14 Q. And isn't it fair that most officers, unlike yourself,
15 are -- at some point they're going to get in an accident
16 that's preventable?

17 A. Well, we hope not, but yeah.

18 Q. You've got a human being that's driving a car.

19 A. The factor is in there that you're going to have a
20 preventable accident.

21 Q. And the problem I'm having -- but let's go on beyond that.

22 You believe that bells should be going off in 1998
23 because of two accidents, the accident in 1998 and the
24 accident in 1996, just because of the fact it's a backing
25 accident.

1 Did I summarize your testimony --

2 A. That's correct.

3 Q. What should they have done in 1998?

4 A. They should have -- in my estimation they should have used
5 that information to come up with a decision. Their decision
6 most likely in my estimation should have been more points
7 deducted. They should have gave him some training.

8 Q. Let's assume they -- is it your understanding -- what is
9 your understanding of how long these points last? If you
10 take away some points -- or rather you give --

11 A. I understand that they go away pretty fast.

12 Q. Two years or three years?

13 A. Two years. That's --

14 Q. And you had no criticism of the policy of the County before.
15 Has anything changed there?

16 A. I don't understand your question.

17 Q. You said at the beginning of the deposition that you had no
18 criticism of the County policy.

19 A. I don't agree with it all, but, yes, I don't -- it's their
20 policy.

21 Q. So let's assume -- how many points do you think they should
22 have awarded before 1998?

23 A. I don't go on a point system. I think they should have
24 given him some training.

25 Q. Well, then we'll talk about -- although -- not talk about

1 the points, although you mentioned it earlier about giving
2 him more points. So we'll take that off the table since you
3 said so.

4 A. Uh-huh.

5 Q. Let's talk about training. So in 1998 he would have gone
6 through backing training, backup training, a special course
7 on dealing with backing? Is that what you would do?

8 A. The first thing I would have done is had his eyes tested.

9 Q. Do you have any reason to believe that he has eye problems
10 other than a '96 backup accident and a '98 backup accident?

11 A. That's reason enough.

12 Q. Do you have any reason to believe other than that that
13 there's any eye problems?

14 A. No, but that's where I start.

15 Q. Let's assume there's not any eye problems. They do the
16 test, and there's no eye problems. What else? The first
17 step is an eye test, and then I think you said some
18 training; is that correct?

19 A. Training.

20 Q. What kind of training?

21 A. Backing training, make sure he knows how to back, backs
22 right or properly according to Hoyle, does all those things.

23 Q. Backing training, is that included in either the EVOC or the
24 slow speed driving?

25 A. Yes.

1 especially this person according to the PR -- in pursuit.
2 That's an indication too that you see -- that's an
3 opportunity to gauge a person's skill in driving, isn't it?

4 A. Right.

5 Q. And here -- since you haven't seen it, I'm asking you to
6 accept for purposes of this discussion that the performance
7 review by Sergeant Beaupre, the last one that he did prior
8 to this of 2002, rated him as excellence, having excellence
9 in driving.

10 A. To that, all I would say is I don't know what --

11 Q. I'm not arguing with you. I'm trying to lay that as a
12 foundation for my next question.

13 A. All right.

14 Q. Did you have some -- but if you want to comment on it,
15 you're free to. It wasn't a question. Go ahead.

16 A. I understand that his evaluation of Sargent was excellent.
17 I have no idea what he based that on.

18 Q. Now, in dealing back with the question of the training, is
19 there any special training class dealing just with backing
20 that's different from the slow maneuver training and -- or
21 the -- and I think you said EVOC doesn't cover backing at
22 all.

23 A. No. EVOC is the --

24 Q. Emergency driving?

25 A. It's the whole thing. Everything is under EVOC.

1 Q. Okay. So you have the high speed EVOC, and you have the low
2 speed EVOC?

3 A. Right.

4 Q. Only in the low speed EVOC, which happens every other year,
5 would you have any training on backing; correct?

6 A. Apparently. I don't know.

7 Q. Well, if it's -- it's through the Washington State --

8 A. It's only on our grounds -- or on the State Patrol's track.

9 Q. You would assume though that backing is part of the slow --
10 it would be for the Washington State Patrol, wouldn't it?

11 A. Refresher training should be directed towards the problems
12 that the department experiences.

13 Q. You don't know when Deputy --

14 MR. FISCHNALLER: I don't think he finished.

15 Q. I'm sorry. Were you finished?

16 A. That's fine.

17 Q. You were unaware of apparently the details of the slow part
18 of the EVOC training that Deputy Win Sargent and all
19 deputies went through; right?

20 A. I have no paperwork or material to read what they did during
21 their training.

22 Q. So as far as whether the training that Deputy Win Sargent
23 would have had either two or three times or maybe even -- at
24 least three times -- yeah, three times prior to 2003 from
25 1998, you don't know if it would be any different than a

1 course specifically on backing, in other words, where they
2 drive; they back up; oh I see you have some problems; We
3 need to work on this?

4 You don't know if that's in fact exactly what he had
5 three times before, between 1998 and 2003, because you don't
6 know what kind of program they had?

7 A. That's right.

8 Q. So even beyond that, assuming they would do something
9 different and better in 1998, can you say on a more -- do
10 you have any basis to say that if he had been trained five
11 years before specifically on backing that this injury
12 wouldn't have happened as you understand it happened?

13 A. I'm not saying the accident wouldn't have happened. I would
14 hope that through training and through discipline he would
15 have thought a little bit better when he went to back up on
16 this occasion.

17 Q. But as to whether that kind of a reaction in 1998 would have
18 made any difference in the decision five years later under a
19 tense situation -- and this was a tense situation; correct?

20 A. Right.

21 Q. Whether that would have made any difference, that thing that
22 happened back five years ago, you have no way of knowing one
23 way or the other?

24 A. That's right.

25 Q. Now, on No. 13 -- essentially No. 12 and 13 is dealing with

1 Q. Okay.

2 A. This is a drawn out thing.

3 Q. Sure.

4 A. It's got several parts.

5 Q. You said two negative things in your statement. I just want
6 to make it clear on the record.

7 Are you saying that you don't believe that the impact
8 with the patrol vehicle in and of itself caused him great
9 injury?

10 A. That's correct. But the --

11 Q. Go ahead.

12 A. -- force that he got hit back by knocked him to the ground
13 in such a manner that it's -- it makes me believe that when
14 he hit the ground, he was somewhat incoherent and was --

15 Q. Surprised all the sudden from behind?

16 A. I don't know if he was surprised or if he was actually
17 unconscious for a short -- for a short period of time.

18 Q. Is there any indication that he was unconscious?

19 A. No. There's an indication that he didn't move -- or he
20 wasn't totally aware of what was going on right at the point
21 until he -- until that he knew that he was getting run over.

22 Q. So if I understand your testimony right, although the
23 backing up of the car didn't itself cause injury, it placed
24 him into harm's way so that he -- where he could be injured
25 by the Jenkins vehicle. That's your testimony?

1 A. That's right. He was --

2 Q. Do you have any other opinion or ground for opinion other
3 than what's in your report and what we've talked about?

4 A. Not that I know of.

5 Q. And we've pretty much explored probably more than you wanted
6 to the points that you made in your report. Is that a fair
7 statement?

8 A. That's fair.

9 Q. Do you anticipate making any exhibits to illustrate your
10 testimony at the present time?

11 A. Not at the present time.

12 Q. Whether you do in the future, you just don't have any plans
13 at the moment?

14 A. No plans at the moment.

15 MR. HAMILTON: I don't think I have any further
16 questions. Thank you very much, sir.

17 Counsel, do you want to take a break for a minute so the
18 witness can get up and walk around while you're looking
19 through your materials?

20 MR. FISCHNALLER: Sure.

21 (Deposition at recess.)

22 EXAMINATION

23 BY MR. FISCHNALLER:

24 Q. Mr. Ginter, let me show you the book which I just took from
25 you a moment ago which contains, among other things,

1 City of Tacoma, it certainly happened within Pierce County,
2 and doesn't the State Patrol also have jurisdiction under
3 those circumstances?

4 MR. HAMILTON: Objection. No foundation as to
5 arrangements between municipalities to do accident reports.
6 No foundation. Form of the question.

7 A. Yeah. I know the State Patrol has jurisdiction or part or
8 whatever agreement they've come up with on I-5 and all state
9 routes leading off of it. I was surprised that this wasn't
10 investigated by the State Patrol.

11 Q. And doesn't the State Patrol in your experience guard that
12 jurisdiction pretty jealously?

13 A. Well, it -- that's what part of my opinion came from, yes.
14 They're pretty strict about that.

15 MR. FISCHNALLER: That's it -- thank you very
16 much -- for me anyway.

17 MR. HAMILTON: A real quick follow-up hopefully.

18 FURTHER EXAMINATION

19 BY MR. HAMILTON:

20 Q. You were asked about interior, very quiet, only the driver
21 hears alarms that, you know, apparently are in newer cars.

22 Do you know of any police vehicles, any agencies that
23 have such proximity alarms that go off that only the driver
24 can hear in their patrol cars?

25 A. No, I don't.

Q. And if one is in the prospect -- and I think you implied this in your answer -- of going about pinning a car or ramming a car, they're going to be expecting that proximity alarm, if they had one, to go off. It's not going to change anything that they were going to do because they were expecting to make contact with something. That's their whole point, isn't it?

A. Yeah, that has nothing to do with the situation.

Q. And as to the speed, again, if, as you pointed out, at this point maybe what you really want to do is ram. You want the car, whatever its posture, front end or rear end, but if your intent is to ram -- and you said at this point that might be justified -- that an increase in force -- because the pinning wasn't working, you'd expect the vehicle ramming to be at a pretty good clip to have the increase in force to make sure this time it does stop the Jenkins car?

A. Right. You want to be very accurate.

Now, things have escalated to the point where now it's not just dangerous, it's extremely dangerous, and we've got to get things -- we've got to end this. It's gone on too long.

Q. And one of the problems with being a slow speed pinning or ramming is that this is a late model -- a 1979 Cadillac Coup DeVille. That's a pretty hefty car, isn't it?

A. That's correct.

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GERALD A HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

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

CURTIS A. BEAUPRE,

Plaintiff,

vs. Case No. 04-2-23610-0SEA

PIERCE COUNTY,

Defendant.



DEPOSITION OF WINTHROP SARGENT
Taken on behalf of the Plaintiff
March 22, 2006

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of Winthrop Sargent was taken before Katherine Ferguson, a Certified Shorthand Reporter, #3058, on March 22, 2006, commencing at the hour of 9:16 a.m., the proceedings being reported at 955 Tacoma Avenue, Suite 301, Tacoma, Washington.



1 A. I'd have to look at my training records to be
 2 sure. I believe I had already gone that year. We go
 3 once a calendar year and I'd have to look to be sure. I
 4 believe I had already gone that year since there wasn't
 5 much of the year left.

6 Q. What are the four rules of backing?

7 MR. HAMILTON: Objection, no foundation.

8 BY MR. FISCHNALLER:

9 Q. What are the four rules of backing?

10 MR. HAMILTON: Same objection.

11 A. The four --

12 BY MR. FISCHNALLER:

13 Q. Rules of backing.

14 A. Police rules?

15 Q. Uh-huh.

16 MR. HAMILTON: Maybe you should ask does he
 17 know there are four rules.

18 MR. FISCHNALLER: I'll ask the questions I
 19 want to ask. You can object.

20 MR. HAMILTON: I do. I object to the form of
 21 the question. It assumes facts not in evidence --

22 MR. FISCHNALLER: Good.

23 MR. HAMILTON: Counsel, let me finish before you
 24 say good. Form of the question, lack of foundation, assumed
 25 facts not in evidence. Now I'm done.

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Hon. John P. Erlick

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MAY 05 2006

GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

CURTIS A. BEAUPRE,
Plaintiff,

vs.

PIERCE COUNTY,
Defendant.

No.: 04-2-23610-0 SEA

**PLAINTIFF'S RESPONSE TO
PIERCE COUNTY'S MOTION
FOR SUMMARY JUDGMENT**

I.
STATEMENT OF FACTS

Until recently, the plaintiff, Curtis Beaupre, was a career police officer and a sergeant with the Pierce County Sheriff's Department. In the early morning hours of November 1, 2003, deputies of the Pierce County Sheriff's Department responded to a domestic violence call involving one Christopher Jenkins. As they approached the residence, the responding Deputies observed the suspect's vehicle leaving the scene and attempted to stop it, but failed to do so. Being advised by radio that Pierce County Deputies were engaged in the pursuit which was headed his way, Sgt. Beaupre responded from the Lakewood Station and joined the pursuit along I-5.

1 The incident occurred in the north-bound lanes of I-5, at about 84th
2 Street. At said time and place, the suspect's vehicle was southbound in the
3 northbound lanes of I-5 at a very slow speed. Several officers had exited their
4 patrol vehicles, believing that the suspect's vehicle was going to stop. Sgt.
5 Beaupre was one of the officers on foot, and was running along side of the
6 suspect's vehicle with his sidearm drawn and pointed at the suspect while
7 shouting commands at him.

8 While engaged in this attempt to apprehend the suspect, Sgt Beaupre
9 was struck from behind by the rear end of another patrol car being driven by
10 Deputy Win Sargent, while Deputy Sargent was in the process of backing up
11 his patrol vehicle perhaps to ram the suspect's vehicle, or to perform a
12 maneuver called a "J" turn, to turn around and pursue the suspect's vehicle.
13

14 The rear end of Deputy Sargent's patrol vehicle struck Sgt. Beaupre so
15 hard that it knocked him some five or ten feet, causing him to land
16 immediately and directly in front of the suspect's vehicle, which then ran
17 over his pelvis before he could move out of the way. (See Complaint ¶¶ 3.1
18 through 3.5). As a result, plaintiff sustained permanent and disabling pelvic
19 injuries which have ended his career. (See Complaint ¶¶ 4.5 through 4.8).
20

21 Sgt. Beaupre brought suit solely against his employer, Pierce County,
22 pursuant to RCW 41.26.281 and *Fray v. Spokane County*, 134 Wash.2d 637,
23 952 P.2d 601 (1998), alleging a number of specific acts of negligence against
24 the Pierce County Sheriff's Department and against Deputy Win Sargent, a
25 Deputy Sheriff also in the employ of Pierce County.

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II.
STATEMENT OF ISSUES

The defendant, Pierce County, has filed a Motion for Summary Judgment which would appear to have two bases. The first of defendant's claims is that, at least as to some of plaintiff's theories of liability, there is insufficient evidence to go to the jury. Defendant's second contention is that the "Professional Rescuer Doctrine/Fireman's Rule" entirely precludes any liability for the acts or omissions of the defendant County or Win Sargent.

These contentions present two primary issues for consideration in deciding the present Motion for Summary Judgment:

1. Whether or not there exists a genuine issue of material fact with regard to each of the allegations of negligence set forth in paragraphs 4.3 and 4.4 of the Complaint; for each allegation of negligence is entitled to go to the trier of fact if, as to it, there exists a genuine issue as to any material fact.
2. Whether the "professional rescuer doctrine/fireman's rule" entirely precludes any liability for the acts or omissions of the defendant County or Deputy Win Sargent.

III.
RELIEF REQUESTED

Plaintiff requests that defendant's Motion for Summary Judgment be denied. Plaintiff has, however, long since abandoned its allegation contained in ¶ 4.4 B relating backup alarms, and ¶ 4.4 C relating to proximity alarms, and would agree that subparagraphs B and C, and only subparagraph B and C, of paragraph 4.4 should be dismissed. In addition, defendant's concern that the "plaintiff also intends to allege various supposed omissions by other deputies earlier in the pursuit" is misplaced. No such allegations have or will

1 be made. The Complaint is entirely devoid of any such allegations. The
2 allegations which plaintiff continues to pursue at the present time relate to
3 the County's negligent failure to properly train Deputy Sargent, and Deputy
4 Sargent's negligence in backing into the plaintiff and knocking him directly
5 under the wheel of the suspect vehicle, thus causing plaintiff's injuries.

6
7 **IV.**
EVIDENCE RELIED UPON

8 Plaintiff relies upon the Declaration of J.E. Fischaller in Opposition
9 to Defendant's Summary Judgment Motion, together with all attachments
10 and exhibits thereto; and generally upon the files and records herein.

11
12 **V.**
AUTHORITY AND ARGUMENT

13 **5.1 STANDARD FOR SUMMARY JUDGMENT**

14 While it is true that the purpose of summary judgment is to avoid a
15 useless trial; a trial is never useless, but absolutely necessary, when there
16 exists a genuine issue as to any material fact. *Preston v. Duncan*, 55 Wn.2d
17 678, 349 P.2d 605 (1960).

18 In deciding a motion for summary judgment, the Court must consider
19 all of the material evidence and all reasonable inferences which can be drawn
20 from the evidence in the light most favorable to the nonmoving party.
21 *Mountain Park Homeowners Ass'n. v. Tydings*, 125 Wn.2d 337, 883 P.2d 1383
22 (1994). If reasonable persons considering the evidence and inferences could
23 reach different conclusions, summary judgment should be denied. *Scott v.*
24 *Pacific West Mountain Resort*, 119 Wn.2d 502, 834 P.2d 6 (1992). Summary
25

1 judgment must be denied if the record shows even a reasonable hypothesis
2 that would create a genuine issue of material fact. *Mostrom v. Pettibon*, 25
3 Wn.App. 162, 607 P.2d 864 (1980).

4 Summary judgment is generally not well suited to actions, like the
5 present one, where the issues of fact include the intent, knowledge, good
6 faith, or negligence of a party or other person. *See, e.g., LaPlante v. State*, 85
7 Wn.2d 154, 159, 531 P.2d 299 (1975); *Preston v. Duncan, Supra* at 681.
8 Courts are not entirely precluded from granting summary judgment in cases
9 involving issues of negligence and proximate cause, but these cases are
10 generally not susceptible to adjudication on a summary judgment motion. *Id.*
11 The reasonableness of a persons acts is a question of fact, and if material to
12 the action, it is improper to grant a summary judgment. *Morris v. McNicol*,
13 83 Wn.2d 491, 512 P.2d 7 (1974).

15 **5.2 MATERIAL ISSUES OF FACT PRECLUDE SUMMARY JUDGMENT**

16 As previously indicated, the allegations which plaintiff continues to
17 pursue at the present time relate to ¹the County's negligent failure to
18 properly train Deputy Sargent, and ²Deputy Sargent's negligence in backing
19 into the plaintiff and knocking him directly under the wheel of the suspect
20 vehicle, thus causing plaintiff's injuries.

22 **5.2.1 Negligent Failure to Properly Train Dep. Sargent**

23 The evidence shows that Deputy Sargent was first employed as a
24 Deputy Sheriff by Pierce County on May 10th, 1993, and that in his 13 years
25 of service with the defendant County, he has been involved in at lease 12

1 collisions while on duty, and he can't remember how many while off duty and
2 operating a private vehicle. It is certainly true that two of these collisions
3 were intentional in nature, and that two of them rather clearly could not
4 have been prevented by Deputy Sargent. The remaining eight appear to
5 have been reasonably preventable. (See generally Exhibit A to the JEF Dec.).

6 Deputy Sargent's on duty driving record shows two collisions in 1995,
7 one in 1996, two in 1997, one in 1998, one in 1999, three in 2000, one in
8 2001, and one in 2003. These are, of course, in addition to the collision which
9 forms the basis of the present complaint, where Deputy Sargent backed into
10 the plaintiff.

11
12 Of these 12 additional collisions, one involved hitting a parked car
13 while making a left turn. Another occurred when he took his eyes off the
14 road while making a left turn and hit a lady in the crosswalk, who had to be
15 taken to the hospital. In another instance, Deputy Sargent hit a car that had
16 pulled off the road and stopped to stay out of his way while he was pursuing a
17 suspect. Another time, Deputy Sargent collided with another patrol car at an
18 intersection. In yet another incident, he failed to negotiate a corner while
19 chasing a traffic violator and crashed into a post, completely off of the street.
20

21 In addition to these collisions, in just over a three year period from
22 September 1, 1995 to October 28, 1998, Deputy Sargent was responsible for
23 no less than three backing accidents, in addition to the one in which he
24 backed into the plaintiff, causing the injuries which are the subject of this
25 action. (For specifics of any of these collisions see Exhibit A to the JEF Dec.).

1 Certainly a jury could conclude from these facts that Deputy Sargent
2 was a poor driver who, among other problems, had a great deal of difficulty in
3 backing a patrol vehicle safely; that Pierce County should have provided him
4 with some remedial training in how to back a patrol vehicle safely, but failed
5 to do so or to do so effectively; and that the County's failure in this regard
6 was a proximate cause of plaintiff's injuries.

7 Donald W. Ginter, the plaintiff's Emergency Vehicle Operations and
8 driving expert, testified at his deposition, taken by Pierce County, that even
9 if Deputy Sargent, had only two backing accidents, before backing into the
10 plaintiff, Pierce County should have provided him with training in the proper
11 method of backing, including some one-on-one training on the street. There
12 is certainly no evidence that any such one-on-one training took place; and if it
13 did, it certainly was not adequate. A jury could certainly conclude that
14 Pierce County knew or should have known that Deputy Sargent was in need
15 of some remedial driver's training, particularly in backing maneuvers; that
16 the County negligently failed to provide such training; and that its failure to
17 do so was a proximate cause of plaintiff's injuries.
18

19 Summary judgment must be denied if the record shows even a
20 reasonable hypothesis that would create a genuine issue of material fact.
21 *Mostrom v. Pettibon*, 25 Wn.App. 162, 607 P.2d 864 (1980).
22

23 In the present case, questions of what action should have been taken
24 by Pierce County to correct Deputy Sargent's poor driving and whether the
25 County's actions, given their knowledge, were reasonable, are for the jury.
26

1 It is true, that authorized emergency vehicles, when responding to an
2 emergency call or engaged in an actual pursuit of a suspected violator are
3 granted certain privileges by RCW 46.61.035. They may park in ways that
4 would otherwise be illegal; proceed through a stop sign or signal, if they slow
5 down; exceed the legal speed, so long as they do not endanger life or property;
6 or drive the wrong way on a street or road.

7 RCW 46.61.035 goes on to require that emergency vehicles "use
8 audible signals when necessary to warn others," and further provides that:

9 The foregoing provisions shall not relieve the driver of an
10 authorized emergency vehicle from the duty to drive with due
11 regard for the safety of all persons, nor shall such provisions
12 protect the driver from the consequences of his reckless
disregard for the safety of others.

13 There is no evidence that Deputy Sargent was using an "audible
14 signal" (his siren) as he backed up to travel in the wrong direction on the
15 freeway that night; he cannot remember. In either event, it is clear that the
16 emergency vehicle privilege statute does not relieve him from "the duty to
17 drive with due regard for the safety of all persons." Whether Deputy Sargent
18 drove his vehicle "with due regard for the safety of all persons" on the night
19 in question is also certainly a question for the jury and not susceptible to
20 determination as a matter of law.

21 It is also true that RCW 46.61.264 requires pedestrians to yield the
22 right of way to an emergency vehicle, so long as the emergency vehicle is
23 using the audible signals required by RCW 46.61.035(3). Again, there is no
24 evidence that Deputy Sargent was using his siren at the time in question.
25

1 While RCW 46.61.264 does give the right of way to emergency vehicles
2 employing their sirens, it is careful to caution such drivers that:

3 This section shall not relieve the driver of an authorized
4 emergency vehicle from the duty to drive with due regard for the
5 safety of all persons using the highway nor from the duty to
6 exercise due care to avoid colliding with any pedestrian.

7 What is clear from these statutes is that, with or without using his
8 siren, Deputy Sargent was not free to operate his emergency vehicle in a
9 careless or negligent manner, endangering the lives of his fellow officers.
10 Whether he acted negligently under all of the circumstances is a question of
11 fact which is not susceptible to summary determination.

12 "Due care" is that care that is required by the circumstances of the
13 particular case. *Anthoney v. C. D. Amende Company*, 31 Wn.App. 21, 27, 639
14 P2d. 231 (1982). The Court in *Anthoney* went on to indicate that:

15 Where there is a greater possibility of danger, of course, an
16 increased AMOUNT of care is required. *Morehouse v. Everett*,
17 141 Wash. 399, 414, 252 P. 157, 58 A.L.R. 1482 (1926). This is
18 not the same as imposing a higher standard; the standard of
19 care remains the same, while the amount changes to meet each
20 specific situation. *Ulve v. Raymond*, 51 Wn.2d 241, 317 P.2d 908
21 (1957); *Hubbard v. Embassy Theatre Corp.*, 196 Wash. 155, 82
22 P.2d 153 (1938); W. Prosser, Torts 34, at 181. Whether the
23 defendant has acted sufficiently to meet this amount is a
24 question of fact for the jury. (Capitalization by the Court;
25 underlining supplied).

26 There was certainly a "greater possibility of danger" in the present
case, due to the darkness, the presence of numerous other emergency vehicles
with their emergency lights flashing, several officers out of their vehicles and
on foot, and the existence of an emergency situation. The AMOUNT of care
required under these circumstances is also a question for the jury.

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5.2 THE PROFESSIONAL RESCUER DOCTRINE AND FIREMAN'S RULE
ARE NOT APPLICABLE TO THE FACTS OF THIS CASE

2 In spite of the fact that Washington's case law more than adequately
3 encompasses the situation presented by the present case, Pierce County's
4 opening brief cites some 18 foreign law cases, primarily but not exclusively
5 from California, in an attempt to persuade this Court to extend the reach of
6 the Professional Rescuer Doctrine and the Fireman's Rule not only well
7 beyond the boundaries created for these doctrines by Washington courts, but
8 in direct contravention of the case law of this State.

10 The Rescue Doctrine, Professional Rescue Doctrine, and the Fireman's
11 Rule are all somewhat intertwined and related. In *Ballou v. Nelson*, 67
12 Wn.App. 67, 834 P.2d 97 (1992) Division I discusses, as some length, each of
13 these doctrines, beginning at page 70, as follows:

14 The rescue doctrine is intended to provide a source of
15 recovery to one who is injured while undertaking a reasonable
16 rescue of a person who has negligently placed himself in a
17 dangerous position.

18 The professional rescuer doctrine imposes a restriction on
19 the rescue doctrine by denying its benefits to professional
20 rescuers who are paid to assume risks inherent in their work.

21 The "fireman's rule" is similar to the professional rescuer
22 doctrine in that it limits application of the rescue doctrine.
23 However, the fireman's rule has a separate history and
24 theoretical basis. . . . The fireman's rule per se has never been
25 applied in Washington.

26 Even though the Fireman's Rule has not, as far as I can tell, ever been
applied in Washington, it is extremely similar to the Professional Rescuer
Doctrine, and there is no need to distinguish it for purposes of this discussion.

1 There are at least three reasons why the Professional Rescuer Doctrine
2 is simply not applicable to the facts of the present case. Each will be
3 discussed separately below.

4 **5.2.1 Neither the Professional Rescuer Doctrine Nor the**
5 **Fireman's Rule was Pled as an Affirmative Defense in**
6 **Defendant's Answer or Elsewhere**

7 Rule 12 of the Civil Rules for Superior Court requires that:

8 Every defense, in law or fact, to a claim for relief in any
9 pleading, whether a claim, counterclaim, cross claim, or third
10 party claim, shall be asserted in the responsive pleading thereto
11 if one is required, . . .

12 An Answer is a required response to a Complaint. CR 7(a). In the
13 present case, the defendant's Answer, though pleading many different
14 affirmative defenses, completely fails to plead either the Fireman's Rule or
15 the Professional Rescuer Doctrine. (Exhibit C to the JEF Dec.). At no time
16 during the almost two years that this case has been pending, has defense
17 counsel ever indicated that either the Fireman's Rule or the Professional
18 Rescuer Doctrine would be raised as an affirmative defense in this case. The
19 present Motion for Summary Judgment is the first and only time that the
20 issue has even come up. This amounts to an attempt at trial by ambush.

21 It is far too late to allow a completely new affirmative defense. All
22 witnesses have been designated by both parties; the discovery cutoff date has
23 come and gone, and all discovery has been completed; and the parties are
24 engaged in their final trial preparation. Any allowance of this new
25 affirmative defense at this late date would severely prejudice the plaintiff
26 who has not previously contemplated either of these affirmative defenses.

1 **5.2.2 It is Only the Person Whose Negligence Brought the**
2 **Rescuer to the Scene Who is Shielded by the Professional**
3 **Rescuer Doctrine or the Fireman's Rule**

4 *Ward v. Torjussen*, 52 Wn.App. 280, 758 P.2d 1012 (1988), was an
5 action by a police officer for personal injuries sustained in an automobile
6 collision which occurred while the officer was responding, with red light and
7 siren, to a request to back up another officer in searching for a prowler. The
8 trial Court dismissed Ward's claim on summary judgment, and she appealed.
9 One of the two primary issues on appeal was the proper application of the
10 Professional Rescuer Doctrine and whether it barred her cause of action
11 against Torjussen for running into her while she was performing her duties.
12 The Court reversed, holding, at page 286, that:

13 The professional rescuer doctrine, often called the
14 "fireman's rule," prohibits a fireman, police officer, or other
15 official from recovering damages for injuries sustained when
16 responding in an official capacity **from the one whose**
17 **negligence or conduct brought the injured official to the**
18 **scene**. *Sutton v. Shufelberger*, 31 Wn.App. 579, 587, 643 P.2d
19 920 (1982). (Emphasis added).

20 On the following page, 287, the Court went on to say:

21 Moreover, **the professional rescuer rule only relieves the**
22 **perpetrator of the act that caused the rescuer to be at the scene;**
23 **it does not relieve a party whose intervening negligence**
24 **injures the rescuer**. (Emphasis added).

25 In *Sutton v. Shufelberger*, 31 Wn.App. 579, 643 P.2d 920 (1982) a
26 Seattle motorcycle officer who had made a traffic stop parked his motorcycle
27 directly behind the vehicle that he had stopped. As he dismounted his
28 motorcycle, a truck ran into the motorcycle, injuring the officer. A jury
29 returned a verdict in his favor and the defendant appealed.

1 The defendant truck driver asserted the Professional Rescuer Doctrine
2 and the Fireman's Rule (which the Court treats as one in the same) as a
3 defense to the action. Division I affirmed the trial Court, stating that:

4 The defendants concede that the "fireman's rule" has never been
5 applied to police officers in Washington State, but urge us to do
6 so as a matter of policy. We find it unnecessary to determine
7 whether the rule should be adopted in this state because it
8 would not apply to the facts of this case in any event.

9 The so-called "fireman's rule" negates liability to the fireman,
10 police officer or other official by the one whose negligence or
11 conduct brought the injured official to the scene. The rule denies
12 recovery by the injured official from the one whose sole
13 connection with the injury is that his act placed the fireman or
14 police officer in harm's way.

15 In the present case, either doctrine can only operate to prevent a
16 recovery by plaintiff Beaupre from "the one whose negligence or conduct
17 brought the injured official to the scene," and that would be Christopher
18 Jenkins, the driver of the suspect vehicle. Neither doctrine will serve to
19 prevent the plaintiff from recovering from Pierce County. It is not the one
20 whose negligence brought Sergeant Beaupre to the scene. Rather, Pierce
21 County is liable for its own negligence and for the negligent actions of its
22 employee and servant, Deputy Sargent, whose intervening negligence caused
23 the plaintiff to be thrown immediately beneath the wheels of another vehicle.

24 Neither doctrine serves to prevent the plaintiff from recovering from
25 Pierce County for the negligence of Deputy Sargent. He is not the one whose
26 negligence brought the plaintiff to the scene; rather, he is the truck driver
27 who ran into the Seattle motorcycle officer, or the automobile driver who hit
28 Officer Ward on her way to assist on a prowler call.

1 See also *Ballou v. Nelson, supra*, where the Court also considered the
2 proper application of the Professional Rescuer Doctrine and the Fireman's
3 Rule, holding that:

4 While the fireman's rule prevents a fireman recovering for
5 negligently or recklessly caused fire, it does not provide
6 protection to one who commits independent acts of misconduct
7 after fire fighters have arrived on the premises.

8 Deputy Sargent's negligence cannot be said to have been what brought
9 the plaintiff to the scene; rather, his were "independent acts of misconduct"
10 which occurred after the plaintiff arrived at the scene.

11 Both the *Sutton* and *Ballou* Courts used an illustration from a
12 California case to make the point clear, pointing out that a police officer
13 struck by a speeding vehicle while placing a ticket on an illegally parked car
14 may maintain an action against the speeder, but not against the owner of the
15 parked car, whose actions brought the officer to the scene in the first place.
16 Deputy Sargent is the speeding vehicle, so to speak.

17 **5.2.3 The Professional Rescuer Doctrine and the Fireman's**
18 **Rule are applicable only to risks which are Inherent in**
19 **and Unique to the particular Rescue Effort.**

20 While the case of *Maltman v. Sauer*, 84 Wn.2d 975, 530 P.2d 254
21 (1975), in discussing the Professional Rescuer Doctrine, makes it clear that a
22 professional rescuer is generally within the intended scope of the "rescue
23 doctrine," it also opines that professional rescuers assume "certain hazards"
24 which are not assumed by the voluntary rescuer; but this does not include all
25 hazards that may be present at the scene. At page 978, the *Maltman* Court
26 goes on to say that:

1 We believe that a professional rescuer, in making a deliberate
2 attempt at saving a life, and under the correct factual setting, is
3 within the intended scope of the "rescue doctrine." The doctrine
4 does not necessitate that an individual be prompted by purely
5 altruistic motives. This is not to say the doctrine applies in the
6 same exact fashion to both voluntary and nonvoluntary
7 rescuers. In the case of a professional rescuer certain hazards
8 are assumed which are not assumed by a voluntary rescuer. The
9 professional rescuer, however, does not assume all the hazards
10 that may be present in a particular rescue operation.

11 Unfortunately the *Maltman* Court fails to give us much direction as to
12 exactly which risks a professional rescuer assumes in a given case. In
13 *Maltman*, the question was relatively straight forward, and certainly nothing
14 like the situation with which we are here confronted. There have, however
15 been cases in Washington which are quite analogous, and which should give
16 us some direction.

17 In *Ballou, supra*, two officers were found not to have assumed the risks
18 that they would be attacked by two intoxicated, abusive, and obnoxious
19 patrons that they were ejecting from a bar, in spite of fact that one officer
20 testified that "he always anticipates a physical altercation when asked to
21 remove an intoxicated person from a bar," and the second officer testified that
22 "he always has in the back of his mind an assumption that 'things could get
23 physical.'" (*Ballou, supra* at page 69).

24 In *Ward, supra*, it will be remembered that Officer Ward was
25 operating her patrol vehicle with her light bar and siren both working while
26 on the way to back up another officer on a prowler call. Another vehicle hit
her at an intersection. The Court held that the risk of having a collision is
not inherent in responding at high speeds in a police vehicle.

1 In *Sutton, supra*, the possibility of being struck by another vehicle
2 while parked at the edge of the road to write a ticket for a violator was
3 apparently not a risk which was inherent in the duty to stop violators and
4 write tickets. If none of the hazards responsible for the injuries in these
5 three Washington cases is inherent in the police duties being conducted at
6 the time of the injuries, then it is very difficult, indeed, to imagine what risks
7 are inherent in police work.

8 What does seem quite clear, however, is that having another patrol car
9 back into an officer on foot and knock him under the wheels of a suspect
10 vehicle is not an inherent risk of engaging in the pursuit of a violator.

11 Only if having a fellow police officer back into you while you and other
12 officers are out of your vehicles and engaged in making an arrest can be said
13 to be a hazard which is inherent in and unique to the operation of making the
14 arrest, will it prevent the injured officer from recovering for his injuries; but
15 then, only as to the person whose conduct caused the officer to be at the
16 scene, in the first place; not as against another whose active negligence
17 harms the officer after he has arrived at the scene.
18

19
20 **VI.**
CONCLUSION

21 There are material issues of fact which preclude the entry of summary
22 judgment in the present case, both as to the liability of Pierce county for its
23 own negligence in failing to properly train Deputy Sargent, as well as for
24 Deputy Sargent's negligent operation of his emergency vehicle on November
25 1, 2003 resulting in the plaintiff's injuries.

1 The Professional Rescuer Doctrine and the Fireman's Rule are simply
2 not applicable to the present case because the defendant failed to plead the
3 affirmative defense in its Answer; because the doctrine protects only the one
4 whose conduct brought the injured officer to the scene; and because the
5 Doctrine is applicable only as to risks which are inherent in and unique to
6 the particular rescue effort.

7 The Court should deny all aspects of the defendant's Motion for
8 Summary Judgment except for the allegations contained in paragraphs 4.4 B
9 relating backup alarms, and 4.4 C relating to proximity alarms which should
10 both be dismissed.

11
12 Respectfully submitted this 4TH day of May, 2006.

13 Law Offices of
14 **J.E. FISCHNALLER**

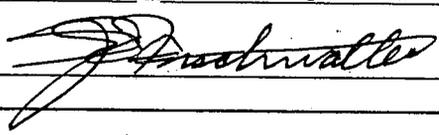
15 By 
16 J.E. Fischnaller (WSBA # 5132)
17 Of Attorneys for Plaintiffs

18 **DECLARATION OF SERVICE BY MAIL**

19 The undersigned certifies that, on this date, he deposited in
20 the mails of the United States of America a properly stamped
21 and addressed envelope containing a true and correct copy
22 of the document on which this certificate appears, addressed
23 to counsel of record for each of the parties to this action.

24 I certify under penalty of perjury under the laws of the State of
25 Washington that the foregoing is true and correct.

26 Dated 5-4-06 at BELLEVUE

Signature 

Honorable John P. Erlick

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

CURTIS A. BEAUPRE,

Plaintiff,

NO. 04-2-23610-0 SEA

vs.

PIERCE COUNTY,

Defendant.

PIERCE COUNTY'S REPLY TO
PLAINTIFF'S OPPOSITION TO
SUMMARY JUDGEMENT

NOTED ON CALENDAR:
MAY 19, 2006

I. INTRODUCTION

In response to Pierce County's summary judgment motion, plaintiff abandons both his complaint's allegations of inadequate equipment and his expert's claim that other deputies made omissions during the pursuit. See P's S.J. Resp., pp. 3-4. Indeed, plaintiff "agree[s] that subparagraphs B and C ... of paragraph 4.4" of his complaint "should be dismissed," *id.*, and nowhere contests granting the County's motion also as to any claim of supposed omissions by other deputies. However, plaintiff does oppose the County's motion to dismiss his negligent training claim in particular and his suit in general. As shown below, as to these two remaining claims, plaintiff still fails to demonstrate a genuine issue of material fact, fails to demonstrate the elements of negligence and fails to overcome the professional rescuer/fireman's rule.

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II. ANALYSIS

A. NO CLAIM FOR NEGLIGENT TRAINING.

Plaintiff's only argument opposing dismissal of the negligent training claim is his assertion that the County must have negligently trained Deputy Sargent because over his career he supposedly had 12 previous accidents. See P's S.J. Resp., pp. 5-7. In so doing, plaintiff not only overlooks his own sworn testimony confirming the adequacy of Deputy Sargent's training and the "excellence" of his driving, 4/19/06 Hamilton Aff.: Ex. "A:" Beaupre Dep., p. 43 ln 12-p. 44 ln 20, p. 47 lns 2-25, but ignores the actual evidence and abandons his expert's testimony.

First, the majority of the supposed "12 accidents" listed by plaintiff instead were either the authorized use of a patrol car to intentionally ram suspect vehicles during pursuits or else were collisions found to be the unpreventable fault of others. See e.g. Fischnaller Dec., ex "A," pp. 83 ln 13-p. 84 ln 3, p. 88 lns 10-19, p. 89 lns 20-24, p. 98 ln 7-p. 100 ln 9, p. 105 ln 1 - p. 107 ln 24. Second, plaintiff produces nothing to show that even 12 real "accidents" over a patrolman's career would somehow be proof of a failure to train. Even plaintiff's "driving expert" never so testified and had 15 accidents himself while with the Washington State Patrol. See 5/11/05 Supp. Hamilton Aff., ex. "E:" Ginter Dep., pp. 99 ln 22-p. 100 ln 1. Indeed, the record confirms that such on the job accidents as those of Sargent, Ginter -- and even those of plaintiff, see, id., ex. "F:" Beaupre Dep., pp. 51 lns 11-23 and exhibit "8" thereto -- are the inevitable result of patrol officers spending most of their work life driving patrol cars. See 4/19/06 Hamilton Aff.: ex. "C:" Ginter Dep., p. 104 lns 6-20. Third, plaintiff ignores that his expert could not testify that any additional driver's training would have prevented the injury in question. See id., p. 110 lns 8-24.

In contrast to the argument now made in opposition, plaintiff's driving expert testified there were only three supposedly relevant accidents -- i.e. backing incidents that occurred between 1995 and 1998. See id.: Ex. "C:" Ginter Dep., p. 104 ln 22-p. 106 ln 25; 3/6/06 Supp.

1 Hamilton Aff., Ex. "E:" Ginter Report, p. 2; 5/11/05 Supp. Hamilton Aff., ex. "F:" p. 100 lns 4-5.
2 Plaintiff now nowhere even mentions his expert -- presumably because he later admitted that in
3 the intervening five years between the earlier backing accidents and the incident in question,
4 Deputy Sargent had attended at least three subsequent driver's courses that would have evaluated
5 and trained him concerning back up maneuvers -- none of which his expert claimed were in any
6 way inadequate. See 4/19/06 Hamilton Aff.; Ex. "C:" Ginter Dep., p. 108 ln 18-p. 110 ln 7. In
7 fact, the undisputed record confirms Deputy Sargent actually was provided backing training
8 every year -- not just every other year as assumed by plaintiff's expert -- and had undergone such
9 training the very year of plaintiff's injury. See id., Ex. "D:" Sargent Dep., p. 69 ln 15-p. 70 ln 5.

11 Any negligent training claim therefore fails to demonstrate the essential elements of neg-
12 ligence -- i.e. "a duty to the plaintiff, breach of that duty, and injury to the plaintiff proximately
13 caused by the breach." Aba Sheikh v. Choe, 156 Wn.2d 441, 448 (2006) (citing Degel v. Majestic
14 Mobile Manor, Inc., 129 Wn.2d 43, 48 (1996)). Hence the County has not just met its burden of
15 "pointing out ... that there is an absence of evidence to support the nonmoving party's case,"
16 Young v. Key Pharmaceuticals, 112 Wn.2d 216, 225 n. 1 (1989), but affirmatively demonstrated
17 Deputy Sargent's training as of 2003 neither breached any duty nor caused any injury. Because
18 no genuine issue exists as to this claim, it should be dismissed as a matter of law.

20 B. ENTIRETY OF PLAINTIFF'S CLAIM IS BARRED BY HIS ASSUMPTION OF RISK

21 As to the remainder of his suit, plaintiff initially argues only a jury can determine if Dep-
22 uty Sargent breached some duty of care as plaintiff ran into the path of his patrol car. See P's S.J.
23 Resp., pp. 8-10. However, the County's motion to dismiss what is left of plaintiff's suit is based
24 instead on the purely legal ground it owed plaintiff no duty of care because he had assumed the
25 risk of that injury under the "professional rescuer/fireman's rule." See 4/19/06 Cy S.J. Motion,
pp. 5-12. See also Hertog v. City of Seattle, 138 Wn.2d 265, 275 (1999)(the existence of a duty

1 of care is question of law for the court); McCluskey v. Handorff-Sherman, 125 Wn.2d 1, 6 (1994)
2 (negligence action does not lie if plaintiff cannot establish defendant owed him a duty).

3
4 Though plaintiff concedes there is no meaningful distinction between the professional res-
5 cuer doctrine and the fireman's rule, see P's S.J. Resp., pp. 11-12, he argues "three reasons why
6 the Professional Rescuer Doctrine is simply not applicable:" 1) it supposedly was not plead; 2) it
7 allegedly would only protect "the driver of the suspect vehicle;" and 3) being run over was some-
8 how not a risk inherent in conducting a foot pursuit on I-5 of a fleeing vehicle in the dark. See
9 P's S.J. Resp., pp. 12-17. These "reasons" are devoid of either factual or legal support.

10 1. County Answer Asserts Defense Despite Absence Of Any Requirement It Do So

11 First, the County's prior brief noted that the professional rescuer doctrine/fireman's rule:

12 ... is based on the principle of assumption of risk because, as Division
13 One notes in Black Indus., Inc. v. Emco Helicopters, Inc., 19 Wn.App.
14 697, 699 (1978) (citing Strong v. Seattle Stevedore Co., 1 Wn.App. 898,
15 904 (1970)), "the paid professional rescuer has knowingly and voluntar-
16 ily confronted a hazard and cannot recover from the one whose negli-
17 gence created the hazard, so long as the particular cause of the rescuer's
18 injury was foreseeable and not a hidden, unknown, or extra hazardous
19 danger which could not have been reasonably foreseen."

20 See 4/19/06 Cy S.J. Motion, p. 6 (emphasis added). See also 1-1 Premises Liability--Law and
21 Practice § 1.05 (citing Lowry v. City of Auburn, 111 Wn.App. 1026, 2002 WL 844832, *9, rev.
22 denied, 147 Wn.2d 1025 (2002)(dismissing officer's claim because the professional rescuer doc-
23 trine "is based on a broad policy of assumption of risk.") The County's Answer has always ex-
24 pressly stated in capital letters and underlined: "ASSUMPTION OF RISK: Plaintiff assumed the
25 risk of the injuries and damages, if any, sustained." See 10/7/04 Answer, p. 4 ¶ 5.7. Hence, if
such is an affirmative defense, it was pled from the outset. See e.g. Malgarini v. Wash. Jockey
Club, 60 Wn.App. 823, 826 (1991)(summary judgment affirmed because pleading affirmative
defense of "discretionary immunity" included subcategory of "quasi-judicial immunity.")

1 Second, in point of fact, though the professional rescuer/fireman's rule is "stated in
2 terms of 'assumption of risk,'" such is used "in the so-called 'primary' sense of the term and mean-
3 ing that the defendant did not breach a duty owed" so that "[p]rimary assumption of the risk is not
4 really an affirmative defense; rather, it indicates that the defendant did not even owe the plaintiff
5 any duty of care." Armstrong v. Mailand, 284 N.W.2d 343, 348 (Minn. 1979) (emphasis added).
6 See also Krause v. U.S. Truck Co., 787 S.W.2d 708, 712 (Mo. 1990)("A fireman assumes, in the
7 primary sense, all risks incident to his firefighting activities" and "[p]rimary assumption of the
8 risk is not really an affirmative defense; rather, it indicates that the defendant did not even owe
9 the plaintiff any duty of care.") Hence, the defense that defendant owed no duty under the pro-
10 fessional rescuer doctrine/fireman's rule did not have to be pled because a defendant "need not
11 plead as an affirmative defense those elements which [the plaintiff] must prove." Sprague v.
12 Sumitomo Forestry Co., 104 Wn.2d 751, 757 (Wash. 1985). Nevertheless, the County did allege
13 "ASSUMPTION OF RISK" and therefore plaintiff has long been on notice it was claiming he
14 had knowingly and voluntarily confronted a hazard. See Black Indus., Inc., supra; Strong, supra.

15
16
17 **2. Professional Rescuer/Fireman's Rule Protects The County, Not Plaintiff's Assailant**

18 Plaintiff next argues the professional rescuer/fireman's rule here protects only "the driver
19 of the suspect vehicle," see P's S.J. Resp., p. 14, because it protects "the one whose sole connec-
20 tion with the injury is that his act placed the fireman or police officer in harm's way" and does not
21 "relieve a party whose intervening negligence injures the rescuer."¹ Id., pp. 13-14 (quoting Sut-
22 ton v. Shufelberger, 31 Wn.App. 579, 287 (1982)). In so arguing, plaintiff ignores that even his

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24
25 ¹ As a matter of law "the driver of the suspect vehicle" would not be liable because he "placed the ... police of-
ficer in harm's way" by requiring police to pursue, but because after his crime required Beaupre's arrival at the
scene he actively drove his car over plaintiff and directly caused the injury in question. See e.g. Complaint, p. 3
¶ 3.5. Indeed, an injury caused by a suspect during a pursuit is intentional as a matter of law, see e.g. Board of
County Commissioners of Teton County v. Bassett, 8 P.3d 1079 (Wyo. 2000), and the fireman's rule is "inappli-
cable to intentional torts." McQuillin, The Law of Municipal Corporations, §45.13.50 at p.130 (2002 Rev. ed.)

1 artificially constricted view of the professional rescuer/fireman's rule would still bar both his
2 claims for negligent training and for the supposed driving of Deputy Sargent. This is so because
3 any "intervening negligence" exception to the fireman's rule for acts occurring after a plaintiff
4 arrives on the scene would not stop dismissal of his claim for prior negligent training. Similarly,
5 plaintiff's acknowledgement that the doctrine protects those "whose sole connection with the
6 injury is that his act placed the ... police officer in harm's way" requires dismissal of his driving
7 claim also because his own experts concede Deputy Sargent's driving did nothing more than
8 place Beaupre "in harm's way" of the suspect car. See Ex. "B:" Van Blaricom Dep., p. 46 lns 17-
9 22; Ex. "C:" Ginter Dep., p. 112 ln 22-p. 113 ln 1.

11 Further, plaintiff not only articulates an artificially narrow view of the doctrine that does
12 ~~nothing to defeat summary judgment, but makes no attempt to supply any underlying rationale~~
13 for it. Indeed, plaintiff nowhere attempts to confront the County's actual summary judgment
14 analysis, the case law cited by the County, or its underlying public policy rationale. Rather,
15 plaintiff only states vaguely that the County somehow seeks "to extend the reach of the Profes-
16 sional Rescuer Doctrine and the Fireman's Rule not only well beyond the boundaries created for
17 these doctrines by Washington courts, but in direct contravention of the case law of this State."
18 P's S.J. Resp., p. 11. However, plaintiff nowhere explains how the County supposedly seeks to
19 "extend" the doctrines beyond the authority it cites or how such would contravene -- "directly" or
20 otherwise -- Washington law. Indeed, plaintiff can cite no Washington authority that applies the
21 "intervening negligence" exception to the professional rescuer/fireman's rule to anything beyond
22 the negligent or intentional acts of third parties that were not in furtherance of a rescue operation.
23 Plaintiff flatly refuses to address the overwhelming cited authority holding to the contrary that
24 "the common law exception for independent [intervening] acts" upon which he bases his opposi-
25 tion "is inapplicable and does not allow a personal injury action by a public safety officer against

1 a fellow safety officer for actions taken in furtherance of a joint public safety operation" and
2 therefore the intervening negligence exception applies "only to negligent and intentional acts of
3 the victim and other third parties that are not in furtherance of a rescue operation." City of
4 Oceanside v. Superior Court, 96 Cal. Rptr. 2d 621 (Cal. App. 2000) (reversing denial of summary
5 judgment and dismissing suit concerning acts of a fellow rescuer)(emphasis added).²
6

7 Plaintiff fails not only to confront opposing authority, but also its policy grounds for ap-
8 plying the fireman's rule to "joint operations" -- which are the same grounds used for Washing-
9 ton's analysis of the doctrine. Our Division One of the Court of Appeals -- following California
10 precedent -- recognizes that the professional rescuer/fireman's rule bars suit by public officials
11 because "[p]ublic policy demands that recovery be barred whenever a person, fully aware of a
12 ~~hazard created by another's negligence, voluntarily confronts the risk for compensation.~~" Black
13 Indus., Inc., 19 Wn.App. at 699-700 (citing inter alia Walters v. Sloan, 142 Cal.Rpt. 152 (1977)).
14 Courts recognize these "same public policy considerations underlying the application of the
15 firefighter's rule to exonerate the victim should also apply to exonerate a fellow [rescuer] whose
16 presence and actions are in furtherance of the joint rescue operation" because it "would be
17 anomalous to exonerate the victim but not the fellow [official] from a personal injury action by
18 an injured [official]." City of Oceanside, 96 Cal.Rpt. at 631.
19

20 In addition to offering no authority or any good countervailing rationale to oppose the
21

22 ² See also e.g. Calatayud v. State of California, 959 P.2d 360 (Cal. 1998) (reversing and requiring summary
23 judgment dismissal where officer was accidentally shot by fellow officer during arrest attempt); Hamilton v.
24 Martinelli & Associates, 2 Cal. Rptr. 3d 168, 178 (Cal. App. 2003) ("the independent acts exception does not
25 apply" where plaintiff officer was injured by fellow officer during training because she "assumed the risk that
she would be injured during the course of the training."); McElroy v. State of California, 122 Cal.Rptr.2d 612
(Cal. App. 2002)(affirming summary judgment where officer's patrol car collided with another during a pursuit);
Farnam v. State of California, 101 Cal.Rptr.2d 642 (Cal App. 2000) (affirming summary judgment dismissing
policeman's suit against fellow officer and his employer for dog bite during attempted arrest); Seibert Security
Services, Inc. v. Superior Court, 22 Cal. Rptr.2d 514, 522 (Cal. App. 1993) ("Unless the police officer or fire-
fighter has come to a specific location to perform a specific immediate duty, and the defendant's unrelated negli-
gent or intentional conduct increases the risks inherent in performing that duty [citations omitted], this exception
is similarly inapplicable.") (emphasis added).

1 County's authority and analysis, plaintiff nowhere disputes the courts' conclusion that imposing a
2 duty to fellow officers during "joint operations" compromises public safety. Courts repeatedly
3 note that imposing a duty of care toward other officers during a crisis creates the potential for
4 conflicting duties because a peace officer's primary duty is to protect the public and the "dis-
5 charge of these duties takes precedence over avoiding injury to fellow officers, particularly when
6 responding to a rapidly developing emergency or crisis." Calatayud, 959 P.2d at 367-68. Here it
7 is uncontested plaintiff's injury occurred precisely when the rapidly developing emergency dic-
8 tated that the suspect vehicle be stopped before it collided with and killed on-coming I-5 drivers.
9 See e.g. Ex. "B:" Van Blaricom Dep., p. 32 lns 7-25; Ex. "C:" Ginter Dep., p. 57 lns 5-22. Courts
10 further recognize that a failure to apply the fireman's rule to fellow officers during an emergency
11 carries "the potential for impairing discipline and the teamwork values that are vital to effective
12 firefighting and law enforcement." Galapo v. City of New York, 744 N.E.2d 685, 688 (NY
13 2000) (affirming dismissal of suit against fellow policeman). See also 959 P.2d at 368 (it would
14 "seriously compromise public safety during joint operations if the threat of a lawsuit accompa-
15 nied every failure to exercise due care in effecting an arrest, quelling a disturbance, extinguishing
16 a fire, or handling any of the other functions public safety members routinely discharge"). So too
17 here, plaintiff likewise admits this suit made him fear fellow officers might not "back him up" in
18 the field. See 2/27/06 Fischnaller Declaration, Ex. "1" p. 12 (item 6), p. 14 (item 13).

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20
21 Because plaintiff offers neither legal authority nor policy rationale opposing the County's
22 authority or analysis, and because the public policy concerns raised by this suit are a textbook
23 example of why the professional rescuer/fireman's rule exists, the doctrine protects the County
24 and its officers -- not the driver of the suspect vehicle who actually ran plaintiff over.

25 3. Being Run Over Was A Known Risk Of Beaupre's Nighttime I-5 Foot Pursuit

Finally, citing Maltman v. Sauer, 84 Wn.2d 975, 978 (1975) for the principle that "the

1 professional rescuer ... does not assume all the hazards that may be present in a particular rescue
2 operation," see P's S.J. Resp., pp. 15-16, plaintiff claims Ballou v. Nelson, 67 Wn.App. 67
3 (1992), Ward v. Torjussen, 52 Wn.App. 280 (1988), and Sutton v. Shufelberger, 31 Wn.App. 579
4 (1982), supposedly applied this principle to preclude the application of the professional rescuer
5 doctrine/fireman's rule. Plaintiff therefore argues this Court for some reason should do so as
6 well. See P's S.J. Resp., pp. 15-17. However, even a cursory analysis reveals none of the cited
7 cases support plaintiff's argument or his opposition to summary judgment.

9 First, the scope of the hazard assumed by an officer responding to an emergency was not
10 the basis for two of plaintiff's three cited decisions. Contrary to plaintiff's assertion, the Ballou
11 court held only that the professional rescuer doctrine did not apply there because its "elements are
12 absent" since in that case "there was no rescue" and "the officers were not injured by the defen-
13 dants' negligence; rather they were injured by the defendant's criminal assaults." 67 Wn.App. at
14 73-74. See also supra, p. 5 n. 1. Here, of course, it is undisputed plaintiff was responding to an
15 emergency and that his claim against the County is expressly for "negligence." See Complaint, p.
16 3 ¶ IV. Similarly, Ward nowhere discusses the scope of a hazard assumed by an officer respond-
17 ing to an emergency, but is based -- as earlier noted by plaintiff himself, see P's S.J.Resp., p. 14 --
18 on the previously discussed and here inapplicable principle that usually "the rule does not apply
19 to the third party whose intervening negligence injures the official while he is in the performance
20 of his duty." 31 Wn.App. at 588. See also discussion supra at pp. 5-8.

22 Second, though the last cited case of Ward v. Torjussen at least actually addresses the
23 scope of the hazard assumed by a professional rescuer, it too provides plaintiff no support. This
24 is shown simply by applying the test set out by our Supreme Court in Maltman v. Sauer, 84
25 Wn.2d 975, 979 (1975), to the facts of Ward and then to those of the instant case. Contrary to
plaintiff's claim that Maltman "fails to give us much direction as to exactly which risks a profes-

1 sional rescuer assumes in a given case," P's S.J. Resp., p. 16, our highest state court in fact ex-
2 pressly explained "the proper test ... is whether the hazard ultimately responsible for causing the
3 injury is inherently within the ambit of those dangers which are unique to and generally associ-
4 ated with the particular rescue activity." 84 Wn.2d at 979. See also Ward, 52 Wn.App. at 286-87
5 ("the test for determining when the doctrine would prohibit recovery includes an evaluation of
6 whether the hazard is generally recognized as being within the scope of the particular rescue
7 operation.") Hence, in Ward the Court appropriately noted that "a prowler assist call does not
8 inherently involve the hazard encountered here" of a collision with an uninvolved citizen before
9 having even arrived at the scene.

11 In contrast, the instant injury occurred at the scene of a foot pursuit on I-5 at night when
12 ~~plaintiff was run over by the very suspect he was trying to arrest for eluding.~~ Unlike Ward, here
13 the "hazard ultimately responsible for causing the injury" was that of being supposedly bumped
14 by another pursuing patrol car or run over by the suspect while pursuing him on foot on a dark-
15 ened freeway. That such an injury is "inherently within the ambit of those dangers which are
16 unique to and generally associated with the particular rescue activity" of pursuing and arresting
17 an eluding suspect is confirmed by plaintiff's admission he knew a risk of foot pursuits included
18 the chance of being hit either by other pursuing patrol cars or the suspect's car. See Ex. "A:"
19 Beaupre Dep., p. 63 ln 7-p. 64 ln 4 (prior knowledge another deputy had been struck by patrol car
20 during a foot pursuit); id., ex. "2" p. 4 (statement immediately after injury that, in getting out of
21 his patrol car on I-5 and confronting on foot the escaping suspect vehicle in the dark, he knew he
22 had to take precautions "so that it couldn't easily run over me"). Because when plaintiff left
23 his patrol car and ran on I-5 he was "fully aware" of the "hazard" of being hit by a fellow officer's
24 patrol car or run over by the fleeing suspect, yet voluntarily confronted "the risk for compensa-
25 tion," Black Indus., Inc., 19 Wn.App. at 699-700, he "cannot complain of the negligence which

1 created the actual necessity for exposure to those hazards." Maltman, 84 Wn.2d at 979.

2 Third, as plaintiff candidly admits, if his standardless analysis of the scope of the hazard is
3 correct, it will be "very difficult, indeed, to imagine what risks are inherent in police work." See
4 P's S.J.Resp., p. 17. Fortunately his difficulty is not shared by our state courts which have had no
5 problem dismissing suits where professional rescuers have assumed the risk. See e.g. Maltman,
6 supra.; Black Indus., Inc., supra; Strong, supra; 1-1 Premises Liability § 1.05 (citing Lowry,
7 supra). Similarly, decisions -- previously cited by defendant but ignored by plaintiff -- that have
8 specifically addressed injuries occurring during a pursuit or at the scene of an attempted arrest
9 likewise have no problem finding the professional rescuer doctrine/fireman's rule bars suit
10 against fellow responding officers. See e.g. Woods v. Warren, 482 N.W. 2d 696 (Mich. 1992)
11 (~~fireman's rule precluded officer's suit of city for accident during pursuit~~); McGhee v. Michigan
12 State Police Dept., 459 N.W. 2d 67, 68 (Mich. App. 1990) (state not liable for suspect vehicle's
13 collision with officer because "a police officer's injury resulting from a high-speed chase consti-
14 tutes a foreseeable occurrence stemming from the performance of the officer's police duties");
15 Calatayud, 959 P.2d 360 (reversing and requiring summary judgment dismissal where officer was
16 accidentally shot by fellow officer during arrest attempt); McElroy v. State of California, 122
17 Cal.Rptr.2d 612 (affirming summary judgment where patrol car collided with another during
18 pursuit); Farnam v. State of California, 101 Cal. Rptr.2d 642 (Cal App. 2000)(affirming summary
19 judgment dismissing suit against fellow officer and his employer for dog bite during an arrest).

22 III. CONCLUSION

23 In upholding a summary judgment dismissal under the professional rescuer's doctrine,
24 Maltman explained that "it is the business of professional rescuers to deal with certain hazards,
25 and such an individual cannot complain of the negligence which created the actual necessity for
exposure to those hazards." 84 Wn.2d at 978-79. This is so, as another court notes, because

1 "[r]equiring members of the public to pay for injuries incurred by officers in such responses asks
2 an individual to pay again for services the community has collectively purchased" and "[a]llow-
3 ing recovery would cause a proliferation of litigation aimed at shifting to individuals or their
4 insurers costs that have already been widely shared." Moody, 38 P.3d at 1142. Hence, as Divi-
5 sion One explains: "Public policy demands that recovery be barred whenever a person, fully
6 aware of a hazard created by another's negligence, voluntarily confronts the risk for compensa-
7 tion." Black Indus., Inc., 19 Wn.App. at 699-700 (affirming summary judgment based on profes-
8 sional rescuer doctrine) (emphasis added). Accordingly, as was explained in a similar case where
9 a policeman sued for being harmed by a fellow officer during an arrest:

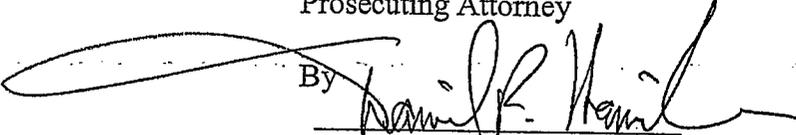
11 Here, there was an attempt to apprehend a felon, an activity that poses
12 danger not only to the officer but also to the public. Plaintiff and de-
13 fendant shared the objective to effect an arrest under these dangerous
14 conditions. The duty of care the officers owed to the public under
15 these circumstances precludes their owing a duty of care to each other.
16 The hazard posed ... is inherent in the activity the public hired plain-
17 tiff to perform.

18 Farnam, 101 Cal.Rptr.2d at 647 (affirming summary judgment dismissing suit).

19 Having shown no genuine issue of material fact exists and that the law and public policy
20 bar any duty for this joint attempt to apprehend a dangerous suspect, plaintiff's claim for negli-
21 gent training and for his supposed contact with his fellow officer's patrol car is barred as a matter
22 of law because it was "inherent in the activity the public hired plaintiff to perform."

23 DATED THIS 11 DAY OF MAY, 2006.

24 GERALD A. HORNE
25 Prosecuting Attorney

By 

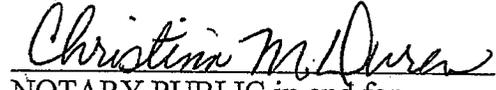
DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Defendant Pierce County
PH: 798-7746 / WSBA #14658

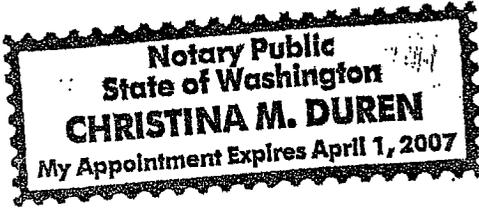
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Further your affiant sayeth naught.


DANIEL R. HAMILTON

SUBSCRIBED and SWORN to before me this 11 day of MAY, 2006.


NOTARY PUBLIC in and for
the State of Washington,
Residing at Tacoma.
Commission Expires: 4-1-07.



IN THE SUPERIOR COURT OF KING COUNTY, WASHINGTON

CURTIS A. BEAUPRE,)
)
 Plaintiff,)
) No. 04-2-23610-0 SEA
 vs.)
)
 PIERCE COUNTY,)
)
 Defendant.)

DEPOSITION OF DONALD W. GINTER, JR.
Wednesday, March 8, 2006

APPEARANCES

For Plaintiff: J.E. Fischnaller
 Attorney at Law
 10900 NE 4th Street
 Suite 2300
 Bellevue, Washington 98004

For Defendant: Daniel R. Hamilton
 Office of the Prosecuting Attorney
 955 Tacoma Avenue South
 Suite 301
 Tacoma, Washington 98402

Also present: Curtis A. Beaupre

Reported by: Lori A. Porter, CCR-RPR
License No. 299-06

1 Q. "This accident here" being --

2 A. They should have considered it.

3 Q. Hold on. "This accident here," do you mean the 2003
4 accident?

5 A. No.

6 Q. The '98 accident?

7 A. Right.

8 Q. How do you know they didn't do that? How do you know they
9 didn't look at the '96 accident in 1998 and make whatever
10 decision they made?

11 A. Well, first of all, if he would have -- it says here that he
12 was found preventable. His second accident was found
13 preventable, and he was awarded one point.

14 Q. All right.

15 A. He just had a prior backing accident, and they're going to
16 give him the lowest degree of discipline there is on their
17 schedule. Besides that, they're not giving him any
18 retraining.

19 Q. Let me ask a question. The prior accident was -- you said
20 "just." That was two years difference between '96 and '98?

21 A. Okay. Two years.

22 Q. How many accidents were you in when you were in the State
23 Patrol?

24 A. I had quite a few.

25 Q. How many?

- 1 A. It could have been 15. I don't know.
- 2 Q. How many of those were backing accidents?
- 3 A. None.
- 4 Q. So there's something special about backing accidents?
- 5 A. Yes, there is.
- 6 Q. What's that?
- 7 A. Because it's a deliberate act by the driver to control his
- 8 vehicle.
- 9 Q. Wasn't that the same with any -- I mean just because they're
- 10 going backwards doesn't make it any more or less deliberate
- 11 than when it's going forward, does it?
- 12 A. Yes, it does. In my estimation it does.
- 13 Q. I would hope that any movement of the car is deliberate.
- 14 You've lost me there as to why going backwards is somehow
- 15 more deliberate than going forward.
- 16 A. Because, first of all, you're not supposed to be driving
- 17 very fast. There shouldn't be any damage. This -- in this
- 18 case right here --
- 19 Q. Again, you're talking about '98 when you say "this"?
- 20 A. Right.
- 21 Bells should have rang.
- 22 Q. What makes bells ring because of a backing accident in '98?
- 23 A. The previous backing accident that he had --
- 24 Q. Of '96?
- 25 A. That's right.

IN THE SUPERIOR COURT OF KING COUNTY, WASHINGTON

CURTIS A. BEAUPRE,

Plaintiff,

vs.

PIERCE COUNTY,

Defendant.

NO. 04-2-23610-0SEA

COPY

DEPOSITION OF CURTIS BEAUPRE
TUESDAY, MARCH 7, 2006

CIVIL DIVISION
COPY RECEIVED

MAR 20 2006

APPEARANCES

GERALD A HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

For Plaintiff:

J.E. FISCHNALLER
Attorney at Law
10900 NE 4th Street, Ste 2300
Bellevue, Washington 98004

For Defendant:

DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Pierce County Prosecuting
Attorney's Office
955 Tacoma Avenue, Ste 301
Tacoma, Washington 98402-2160

Court Reporter:

VICKY L. PINSON, RPR-CSR
License No. 2559

Page 1

James, Sa
253-627-8543

Page 128

Court Reporters

800-507-8273

EXHIBIT NO. P

C sure.

Q Do you know of anyone in Washington state who has ever recommended that a Washington agency adopt either proximity alarms or backup alarms for police vehicles?

A No, I do not.

Q Now, you've had --

THE WITNESS: Do you mind if we take a break?

MR. HAMILTON: Yeah, I was just going to say that.

(Break in proceedings.)

BY MR. HAMILTON:

Q You've had driving accidents while you were on the job. Is that correct?

A Yes.

Q You've had at least seven accidents during your career?

A I don't know.

(Exhibit No. 8 was marked for identification.)

Q Showing you what's been marked Exhibit 8, I'll give you a moment to look at that.

Does that appear to be a record of your total points accumulated to date vis-a-vis the accident case log or the Accident Review Board?

A I really don't know what it is. It says, Total Points Accumulated to Date.

Q Your name on the side, Beaupre Curtis?

A Yes.

TOTAL POINTS ACCUMULATED TO DATE

	ID #	Date Boarded	Case #	Preventable	Non-Preventable	Points	Comments	Total Points
Beaupre, Curtis	91-018	6/29/92	92-253-0520	✓		5		
Beaupre, Curtis	91-018	6/29/92	92-305-0905	✓		1		
Beaupre, Curtis	91-018	11/13/95	95-207-0425	✓		1		
Beaupre, Curtis	91-018	10/17/97	97-174-0152		✓	0	was reassigned to Sheriff Shields from 2 to 1 points	
Beaupre, Curtis	91-018	1/11/02	01-313-0079		✓	0		
Beaupre, Curtis	91-018	6/7/02	02-116-0056		✓	0		
Beaupre, Curtis	91-018	11/20/03	03-286-0011		✓	0		

Exh. 8
Beaupre
3-7-06

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**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

CURTIS A. BEAUPRE,
Plaintiff,

vs.

PIERCE COUNTY,
Defendant.

No.: 04-2-23610-0 SEA

**ORDER ON MOTION FOR
SUMMARY JUDGMENT**

~~[Proposed]~~

This matter having come on regularly for hearing this day before the undersigned judge of the above entitled Court upon Pierce County's Motion for Summary Judgment; the Court having reviewed the files and records herein, and being otherwise fully advised in the premises, and having specifically reviewed and considered:

1. Pierce County's Motion for Summary Judgment;
2. The Affidavit of Daniel R. Hamilton in support of Summary Judgment, together with all exhibits attached thereto;
3. Exhibit "E" (Ginter report) to the March 6, 2006 Supplemental Hamilton Affidavit;
4. Exhibit "1" to the February 27, 2006 Fischnaller Declaration;
5. The Table of Authorities of foreign law cited by the defendant, together with all authorities thereunto attached;

ORDER ON MOTION FOR SUMMARY JUDGMENT - 1

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6. The defendant's proposed Order on Pierce County's Motion for Summary Judgment;

7. The Declaration of J.E. Fischnaller in Opposition to Defendant's Summary Judgment Motion, together with all exhibits thereunto attached;

8. Plaintiff's Response to Pierce County's Motion for Summary Judgment;

7. Plaintiff's proposed Order on Pierce County's Motion for Summary Judgment;

8. 

9. 

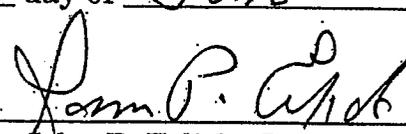
10. The oral argument of counsel for both parties;

NOW THEREFORE, it is hereby

ORDERED, ADJUDGED, AND DECREED that the defendant Pierce County's Motion for Summary Judgment be, and the same is hereby, denied in all respects except that the allegations of the Complaint set forth in ¶ 4.4 B, relating to backup alarms, and in ¶ 4.4 C, relating to proximity alarms, both of which plaintiff has previously abandoned, are hereby dismissed.

DONE IN OPEN COURT this 15th day of JUNE, 2006.

SEE ATTACHED


Hon John P. Erlick, Judge
of the above entitled Court

Presented by:

Law Offices of
J.E. FISCHNALLER

By 
J.E. Fischnaller (WSBA # 5132)
Of Attorneys for Plaintiff

ORDER ON MOTION FOR SUMMARY JUDGMENT - 2

ATTACHMENT TO ORDER ON SUMMARY JUDGMENT

ORDERED, ADJUGED, AND DECREED that this Court certifies that the instant order involves controlling questions of law as to which there is substantial ground for a difference of opinion and that immediate review of this order may materially advance the ultimate termination of the litigation, pursuant to RAP 2.3(b)(4). This matter is STAYED until further action by the Court of Appeals on the Court's certification

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

CURTIS A. BEAUPRE,

Plaintiff,

vs.

PIERCE COUNTY,

Defendant.

No. 04-2-23610-0 SEA

MEMORANDUM OPINION

The issue presented to this Court is whether Washington courts extend the "fireman's rule" or professional rescuer doctrine to the alleged negligent acts of fellow officers or rescuers. This issue has not previously been addressed and resolved in established Washington law.

Washington courts have long recognized the "fireman's rule" or professional rescuer doctrine shields the rescued person from liability to a professional rescuer. *See Maltman v. Sauer*, 84 Wn.2d 975, 979, 530 P.2d 254 (1975); *Ward v. Torjussen*, 52 Wn. App. 280, 287 (1988). Traditionally, the rescue doctrine applied to a rescued person's liability, not a third party's liability, to an injured rescuer. *Maltman*, 84 Wash. 2d at 976-77. The professional rescuer doctrine protected the rescued person from liability to a professional rescuer, but a professional rescuer may collect damages from a third party if that party's negligent intervening actions are not a reason for the rescuer being at the scene. *Ward v.*

1 *Torjussen*, 52 Wash. App. 280, 287-88, 758 P.2d 1012 (1988). The test is the third party's lack of
2 connection to the need for rescue. In general, in order for a party to be liable to a professional rescuer,
3 the party must have had nothing to do with the reason why the professional rescuer was at the scene. *See*
4 *Ward*, 52 Wash. App. 280 at 288, 758 P.2d 1012. In other words, the professional rescuer assumes the
5 risks involved with the need for the rescue.

6 The professional rescuer doctrine developed as an exception to the rescue doctrine and is based
7 on a broad policy of assumption of risk. A professional rescuer assumes certain risks inherent in his or
8 her job and may not collect damages from one whose negligence brings about those known risks.
9 *Maltman v. Sauer*, 84 Wash. 2d 975, 979, 530 P.2d 254 (1975) (holding that a professional rescuer may
10 not collect damages from a negligent imperiled person when the "hazard ultimately responsible for
11 causing the [rescuer's] injury is inherently within the ambit of those dangers which are unique to and
12 generally associated with the particular rescue activity"). Washington courts have applied this doctrine
13 to bar recovery for anyone who is fully aware of a hazard caused by another's negligence and who
14 voluntarily confronts the risk for compensation. *See, e.g., Black Indus., Inc. v. Emco Helicopters, Inc.*,
15 19 Wash. App. 697, 699-700, 577 P.2d 610 (1978). As noted by our Supreme Court in *Maltman v.*
16 *Sauer*:

17 Stated affirmatively, it is the business of professional rescuers to deal with
18 certain hazards, and such an individual cannot complain of the negligence
19 which created the actual necessity for exposure to those hazards. When the
20 injury is the result of a hazard generally recognized as being within the
21 scope of dangers identified with the particular rescue operation, the doctrine
22 will be unavailable to that plaintiff.

23 84 Wn.2d 975, 979, 530 P.2d 254 (1975)

Courts from other jurisdiction have divided over the scope of the assumption of risk analysis. *Compare*
Cooper v. City of New York, 81 N.Y.2d at 598, 619 N.E.2d at 376-77, 601 N.Y.S.2d at 439-40 (1993)
and *City of Oceanside v. Superior Court*, 81 Cal. App. 4th 269, 277-279 (2000) (barring recovery from
MEMORANDUM OPINION - 2

John P. Erlick, Judge
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 296-9345

1 other agency providing professional rescue) with *Vasquez v. N. County Transit Dist.*, 292 F.3d 1049,
2 1056 (9th Cir. 2002) (applying independent cause exception to product liability injury).

3 California, in particular, has developed considerable case law determining whether the doctrine
4 should bar recovery by professional rescuers from professional rescuers from other agencies. However,
5 California courts have focused largely on interpretation of a California statute, section 1714.9(a)(1) that
6 reimposes a duty of ordinary care (see Civ. Code, § 1714), which would otherwise be abrogated by the
7 firefighter's rule. In construing the meaning and scope of that statute, California courts have considered
8 the intent of its legislature and public policy considerations. In *Calatayud v. State of California*, 18 Cal.
9 4th 1057 (1998), the California court concluded that any person," as used in section 1714.9(a)(1), does
10 not include fellow public safety officers jointly engaged in a public safety operation and the statutory
11 exception to the firefighter's rule is inapplicable to actions between public safety officers arising out of
12 conduct during a joint public safety operation. Relying on *Calatayud*, the California Court of Appeals,
13 in a leading case of *City of Oceanside v. Superior Court*, 81 Cal. App. 4th 269, 277-279 (Cal. Ct. App.
14 2000), noted the four public policy considerations set out by the *Calatayud* court for disallowing
15 recovery from fellow professional rescuers:

16 First, public safety members, however, have a primary responsibility for the protection of the
17 public they serve. Sound policy mandates that the discharge of these duties takes precedence over
18 avoiding injury to fellow officers, particularly when responding to a rapidly developing emergency or
19 crisis. The expansive reach of the statute could seriously compromise public safety during joint
20 operations if the threat of a lawsuit accompanied every failure to exercise due care in effecting an arrest,
21 quelling a disturbance, extinguishing a fire, or handling any of the other functions public safety
22 members routinely discharge.

1 A second public policy consideration cited by the court was "the cost-spreading rationale . . .
2 underlying the firefighter's rule: 'to permit firefighters to bring actions for injury caused by responding
3 to a fire would involve the parties in costly litigation over rights of subrogation without substantially
4 benefiting the firefighter, who is compensated either by the retirement system or the worker's
5 compensation system. The public will pay the bill, whether the firefighter is compensated by public
6 benefits derived from taxation, or from insurance proceeds that must be purchased.'"

7 A third public policy consideration cited by the court was efficient judicial administration. The
8 court stated: "Extending section 1714.9(a)(1) to fellow officers jointly discharging their duties would
9 impair efficient judicial administration, another policy served by the firefighter's rule. The 'difficult
10 problems' of determining causation [citation] are multiplied in cases turning on the propriety of chosen
11 police tactics or emergency procedures and in reality may simply involve a judgment call on the part of
12 the officer who inadvertently inflicts injury.

13 A fourth public policy consideration cited by the court was the exclusivity of California's
14 worker's compensation system. The court stated: "Construing section 1714.9(a)(1) as extending to
15 jointly engaged fellow officers would also create serious anomalies in the law because section 1714.9
16 preserves the exclusivity of the Workers' Compensation Act. (Civ. Code, § 1714.9, subd. (d).) Thus, an
17 injured officer would be allowed to sue when the negligent officer was employed by another agency but
18 not by his own employer.

19 *City of Oceanside v. Superior Court*, 81 Cal. App. 4th 269, 277-279 (Cal. Ct. App. 2000).

20 These public policy arguments are persuasive under California's statutory scheme. However,
21 Washington has no corollary to California Civ. Code, § 1714. To the contrary, the Washington
22 legislature enacted R.C.W. § 41.26.281, which provides:
23

1 Cause of action for injury or death, when:

2 If injury or death results to a member from the intentional or negligent
3 act or omission of a member's governmental employer, the member, the
4 widow, widower, child, or dependent of the member shall have the
5 privilege to benefit under this chapter and also have cause of action
6 against the governmental employer as otherwise provided by law, for
7 any excess of damages over the amount received or receivable under this
8 chapter.

9 Thus, many of the policy considerations outlined by the California courts seem inapplicable in light of
10 this statute: the cost-spreading rationale, the exclusivity of workers' compensation, and the anomaly of
11 being allowed to sue when the negligent officer was employed by another agency but not by his own
12 employer. Rather, the intent of our Legislature appears to be to provide broader protection to law
13 enforcement officers by expanding recovery beyond the workers' compensation limitation. Thus,
14 application of the professional rescuers' doctrine in emergency responses would create its own anomaly
15 in this state. An officer leaving the station parking lot and struck by a fellow officer's vehicle could
16 recover under R.C.W. § 41.26.281, but an officer responding to a call struck by the same officer's
17 vehicle at the scene could not. Courts should interpret statutes to avoid absurd or strained results so as
18 not to render any language superfluous: *Fray v. Spokane County*, 134 Wn.2d 637, 648 (1998); *Wright v.*
19 *Engum*, 124 Wn.2d 343, 351-52, 878 P.2d 1198 (1994).

20 Moreover, there is an equally compelling policy reason for not expanding the assumption of risk
21 doctrine to the negligent acts of fellow officers. In *Cooper v. City of New York*, the dissenting judge
22 disagreed with the majority on a public policy standpoint. He noted the paradoxical situation created by
23 limiting recovery as to fellow officers:

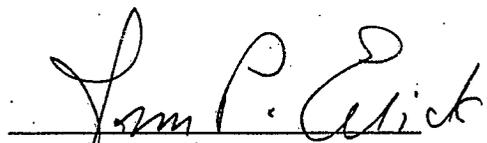
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1 As between a negligent member of the general public and a trained
2 police officer or firefighter, losses due to negligence at the scene of the
3 emergency should be assumed by the trained expert. However, no
4 similar policy consideration justifies application of [the Firefighter's]
5 rule where the plaintiff and the tortfeasor are presumably equally
6 trained, and where the plaintiff, a passenger in a negligently driven
7 police car, had no more opportunity than a member of the general
8 public would have had to employ any special skills to avoid injury.

9 Cooper v. City of New York, 81 N.Y.2d at 598, 619 N.E.2d at 376-77, 601 N.Y.S.2d at 439-40.

10 For the foregoing reasons, this Court denies defendant Pierce County's motion for summary
11 judgment on the issue of the professional rescuer doctrine. The Court also finds genuine issues of
12 material fact with respect to the alleged negligent training of Deputy Sargent and denies defendant's
13 motion for summary judgment on that issue. For the reasons stated at oral argument on this motion, the
14 Court concludes that the issue of the applicability of the professional rescuers doctrine to the facts of this
15 case is a controlling issue of law as to which there is a substantial ground for difference of opinion and
16 that immediate review of the order may materially advance the termination of the litigation, and agrees
17 to certify this issue pursuant to RAP 2.3(b)(4) in its summary judgment order entered
18 contemporaneously with this opinion.

19 DATED this 15^h day of June, 2006.

20 

21 _____
22 JOHN P. ERLICK, Judge
23

Honorable John H. Erickson
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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 CURTIS A. BEAUPRE,

10 Plaintiff,

NO. 04-2-23610-0 SEA

11 vs.

12 PIERCE COUNTY,

13 Defendant.

14 PIERCE COUNTY'S MOTION FOR
15 RECONSIDERATION OF ORDER
16 DENYING SUMMARY JUDGEMENT

17 NOTED ON CALENDAR:
18 JULY 11, 2006

19
20 **I. RELIEF REQUESTED**

21 Pierce County moves pursuant to CR 59(a)(7) and CR 59(a)(9) for reconsideration of the
22 Court's order denying its motion for summary judgment.

23 **II. STATEMENT OF FACTS**

24 On June 15, 2006, Pierce County's motion for summary judgment was denied on
25 grounds not raised in plaintiff's brief and therefore on grounds which the Court was denied the
benefit of a full discussion and legal analysis. Compare generally Mem. Op. with P's S.J. Resp.
For the reasons stated below, Pierce County respectfully requests the Court grant reconsider-
ation pursuant to CR 59(a)(7) and CR 59(a)(9) and dismiss plaintiff's complaint as a matter of
law.

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III. STATEMENT OF THE ISSUES

1. Should the Court reconsider its denial of summary judgment and dismiss plaintiff's claims against Pierce County because the common law and Washington's statutory scheme do not reject, but instead require, protection of police and their employers against liability to other officers for injuries incurred during their joint response to an emergency?

2. Should reconsideration be granted because the proposed exception to the professional rescuer doctrine for defendants who are professional rescuers is unprecedented, factually inapplicable and violates both statute and public policy?

3. Should the Court reconsider its denial of partial summary judgment on alleged negligent training because plaintiff did not meet his summary judgment burden on that claim?

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IV. EVIDENCE RELIED UPON

1. April 19, 2006 Hamilton Affidavit in support of Summary Judgment and exhibits "A"- "D" attached thereto.
2. February 27, 2006 Fischnaller Declaration, Ex. "1" p. 12 (item 6), p. 14 (item 13).

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V. ANALYSIS

A. PLAINTIFF'S COMPLAINT IS BARRED IN ITS ENTIRETY AS A MATTER OF LAW

1. Barring Liability For Harm Caused By Fellow Emergency Responder Is Consistent With Washington's Statutory Scheme And Case Law

In rejecting precedent finding no duty exists between fellow officers in an emergency operation, the instant Court concluded such was based on an interpretation of California Civ. Code § 1714.9 which "has no corollary" in Washington. Mem. Op., p. 4. However, a closer examination reveals the fireman's rule protects emergency operations regardless of the California statute.

First, other courts outside California -- which like Washington are not bound by that state's statutes -- nevertheless also hold that the common law professional rescuer doctrine/fireman's rule precludes the existence of a duty between emergency responders. See e.g. Galapo v.

1 City of New York, 744 N.E.2d 685, 688 (NY 2000) (affirming dismissal of suit against fellow
2 policeman); Cooper v. New York, 619 N.E.2d 369 (N.Y. 1993)(affirming dismissal of suit for
3 fellow police officer's negligence related to the dangers in responding to emergency call); Woods
4 v. Warren, 482 N.W. 2d 696 (Mich. 1992) (fireman's rule precluded officer's suit of city for
5 accident during pursuit); McGhee v. Michigan State Police Dept., 459 N.W. 2d 67, 68 (Mich.
6 App. 1990) (state not liable for suspect vehicle's collision with officer because "a police officer's
7 injury resulting from a high-speed chase constitutes a foreseeable occurrence stemming from the
8 performance of the officer's police duties").

9
10 Second, even California's case law does not support a conclusion that in finding no duty is
11 owed to fellow professional rescuers during an emergency operation, "California Courts have
12 focused largely on interpretation of a California statute, section 1714.9(a)(1)" Mem. Opp.,
13 p. 3. Rather, California courts have expressly held that "[a]ll of the policy reasons advanced to
14 support the court's refusal to apply the statutory exception [of §1714] to the firefighter's rule
15 support with equal force to a determination that the rule applies in the first instance" under the
16 common law. See Farnam v. California, 101 Cal.Rptr.2d 642, 647 (Cal. App. 2000)(emphasis
17 added). See also e.g. City of Oceanside v. Superior Court, 96 Cal. Rptr. 2d 621, 630 (Cal. Ct.
18 App. 2000)("rationale for holding the section 1714.9(a)(1) statutory exception inapplicable to
19 actions between safety officers engaged in a joint operation applies equally to the common law
20 independent acts exception.")

21
22 Third, that "Washington has no corollary to California Civ. Code, 1714.9" actually sup-
23 ports -- not undermines -- the application in Washington of the professional rescuer doctrine for
24 emergency operations. As this Court correctly notes -- California's §1714 actually "reimposes a
25 duty of ordinary care . . . , which would otherwise be abrogated by the firefighter's rule." Mem.
Opp., p. 3. Despite this California statute specifically attempting to limit the fireman's rule, its

1 courts nevertheless still hold that it "does not allow a personal injury action by a public safety
2 officer against a fellow safety officer for actions taken in furtherance of a joint public safety
3 operation." City of Oceanside, supra. Where California legislation expressly limiting the profes-
4 sional rescuer doctrine does not limit the doctrine in an emergency operation, it certainly does not
5 support a holding that Washington's statutes -- containing no such express limit -- somehow does.
6

7 Indeed, Washington's statutory scheme affirmatively supports the application of the pro-
8 fessional rescuer doctrine to LEOFF member suits against their employer. Though the Court's
9 memorandum opinion correctly notes RCW 41.26.281 "expand[s] recovery beyond the workers'
10 compensation limitation," that same statute also expressly provides such "excess damages" suits
11 are available only "as otherwise provided by law." RCW 41.26.281. In that this statute has been
12 held to allow an employer's legal defenses against such suits by employees, see e.g., Hansen v.
13 City of Everett, 93 Wn. App. 921, 925 (1999) (the "comparative fault statute applies to the [plain-
14 tiffs'] lawsuit based on fault under LEOFF's 'excess damages' provision" because suits under
15 RCW 41.26.281 are only "as otherwise provided by law"), it cannot be held to sub silentio pre-
16 clude the specific defense of the professional rescuer doctrine. This is especially so because, as a
17 matter of law, "[s]tatutes in derogation of the common law are always strictly construed." See
18 State ex rel. McDonald v. Whatcom County Dist. Court, 92 Wn.2d 35, 37 (1979). See also State
19 v. Grant, 89 Wn.2d 678, 683 (1978)("This statute, being in derogation of the common law, must
20 be strictly construed."); Marble v. Clein, 55 Wn.2d 315, 318 (1959). Because of this principle of
21 construction, even statutes that expressly limit the fireman's rule in other states have been nar-
22 rowly interpreted and found not to abrogate the vital common law fireman's rule. See e.g. Kelly
23 v. Ely, 764 A.2d 1031 (N.J. App. Div. 2001), cert. denied, 772 A.2d 937 (2001)(court "decline[d]
24 to construe the statute [as abrogating the fireman's rule], absent a clearer declaration of the legis-
25 lative intent to achieve such an end."); Galapo v. City of New York, 95 N.Y.2d 568, 575 (N.Y.

1 2000)(statute limiting common law fireman's rule narrowly construed, especially considering "the
2 specter of massive civil liability" to municipalities otherwise); Calatayud v. State of California,
3 959 P.2d 360, 368 (Cal. 1998) (requiring dismissal where officer accidentally shot fellow officer
4 because state Supreme Court "decline[d] to ascribe to the Legislature any intent to generate con-
5 flicting duties on the part of peace officers ... or to undermine their primary commitment to the
6 public's essential safety and protection for fear of personal liability for injury to fellow officers.")
7
8 In that Washington has repeatedly recognizes the persuasiveness of the decisions of these same
9 state courts on the issue of the professional rescuer doctrine, see e.g. Maltman v. Sauer, 84 Wn.2d
10 975, 978 (1975)(following New Jersey and New York precedent on the fireman's rule); Black
11 Indus., Inc. v. Emco Helicopters, Inc., 19 Wn.App. 697, 699-700 (following California precedent
12 on the fireman's rule), there is no reason to believe our state would reach a different conclusion.

13 Further, a statutory scheme that makes liability dependent on the existence or absence of
14 an emergency is not an "anomaly in this state." See Mem. Op., p. 5. Rather, emergency vehicles
15 are expressly privileged from complying with rules of the road only "when responding to an
16 emergency call or when in the pursuit of an actual or suspected violator of the law" RCW
17 46.61.035. Similarly, "except as provided" under the Emergency Management Act, an emer-
18 gency worker "shall have no right to receive compensation ... from the agency ... for an injury or
19 death arising out of and occurring in the course of his activities as an emergency worker." RCW
20 38.52.190 (emphasis added). Indeed, this later statute not only confirms that Washington's stat-
21 utes are no obstacle to finding the existence of an emergency operation determinative of liability,
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1 but is itself an independent statutory basis for dismissing plaintiff's claim.¹

2 2. Assumption Of Risk And Public Policy Require Emergency Response Protection Even
3 In Absence Of Listed Worker's Compensation Considerations

4 The Court concluded the professional rescuer doctrine does not apply to injuries allegedly
5 caused by fellow officers during emergency operations because two out of the four listed policy
6 reasons for applying the rule to such suits were absent in Washington -- i.e. cost spreading and
7 exclusivity of worker's compensation remedy. Mem. Opp., p. 5. A closer examination however
8 reveals the contrary is true.

9 First, though the professional rescuer's doctrine is supported by numerous public policy
10 grounds, it is also independently based on the doctrine of assumption of risk. See e.g. Black
11 Indus., Inc., 19 Wn.App. at 699 ("the paid professional rescuer has knowingly and voluntarily
12 confronted a hazard and cannot recover from the one whose negligence created the hazard, so
13 long as the particular cause of the rescuer's injury was foreseeable and not a hidden, unknown,
14 or extra hazardous danger which could not have been reasonably foreseen.")(citing Strong v.
15 Seattle Stevedore Co., 1 Wn.App. 898, 904 (1970)). See also Maltman, 84 Wn.2d at 978-79
16 (professional rescuer's doctrine recognizes that "[t]hose dangers which are inherent in profes-
17 sional rescue activity, and therefore foreseeable, are willingly submitted to by the professional
18 rescuer when he accepts the position and the remuneration inextricably connected therewith").

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21 ¹ By definition, plaintiff was an "emergency worker" under RCW 38.52.190 because he was "an employee of the
22 state of Washington or any political subdivision thereof who is called upon to perform emergency management
23 activities," RCW 38.52.010(4), was involved in "emergency management" activities at the time of his injury
24 because he was "carrying out ... emergency functions, ... to ... respond to ... emergencies," RCW 38.52.010(1),
25 and is now suing the "public agency" of a "county ... which provides or may provide fire fighting, police, ... or
other emergency services." RCW 38.52.010(14). Accordingly, he has "no right to receive compensation" from
Pierce County "for an injury ... arising out of and occurring in the course of his activities as an emergency
worker" other than "as otherwise provided" by the Emergency Management Act. RCW 38.52.190. Hence, the
County's liability for plaintiff's injuries is statutorily limited to worker's compensation. See RCW 38.52.290.
Whether this statute applies to emergency responders actually employed by municipalities has yet to be ad-
dressed by our Court however. See Hauber v. Yakima County, 147 Wn.2d 655 (2002)(plaintiff's status as a vol-
unteer for another agency precluded need to determine if he may have had a LEOFF "excess damages" claim).

1 Indeed, the fireman's rule reflects the "[p]ublic policy [that] demands that recovery be barred
2 whenever a person, fully aware of a hazard created by another's negligence, voluntarily con-
3 fronts the risk for compensation." See Black Indus., Inc., 19 Wn.App. at 699-700. Here it is
4 undisputed that when plaintiff left his patrol car and ran on I-5 he was fully aware of the hazard
5 of being hit by a fellow officer's patrol car or run over by the fleeing suspect, see Ex. "A:"
6 Beaupre Dep., p. 63 ln 7-p. 64 ln 4, ex. "2" p. 4, and still voluntarily confronted "the risk for
7 compensation." Hence assumption of the risk alone -- without need for any other policy basis --
8 requires dismissal. See e.g. Maltman, supra.; Black Indus., Inc., supra.; Strong, supra

10 Second, it does not follow that unless all the various policy rationales for the doctrine are
11 present in a case, the underlying doctrine cannot apply. The memorandum opinion presumably
12 accepts that two of the four policies listed as supporting the doctrine's application for emergency
13 operations -- public safety and efficient judicial administration -- are present here. See Mem.
14 Op., pp. 4-5. As such, it has been recognized that "[t]he primary public policy reason for barring
15 such actions is public safety" because a "peace officer's primary duty is to protect the public and
16 imposing a duty of care as to other officers creates the potential for conflicting duties ... and the
17 threat of lawsuits could 'seriously compromise public safety.'" Terry v. Garcia, 109 Cal. App. 4th
18 245, 253 (Cal. Ct. App. 2003)(emphasis added). See also McElroy v. California, 100 Cal. App.
19 4th 546, 548 (Cal. Ct. App. 2002)("The rationale for the decision is that liability would need-
20 lessly impair ...the individual officers involved to make 'judgment calls when responding to a
21 rapidly developing emergency or crisis'" and therefore dismissal was upheld because the underly-
22 ing policy meet by fact defendants were "satisfying 'their primary commitment to the public's
23 essential safety and protection" Here the record is undisputed that these grounds are pre-
24 sent in the case at bar. Indeed, here the allegedly negligent action was taken precisely when the
25 rapidly developing emergency had reached its most critical stage and dictated that the suspect be

1 stopped before his car collided with on-coming I-5 traffic and killed or seriously injured innocent
2 citizens, see e.g. Ex. "B:" Van Blaricom Dep., p. 32 lns 7-25; Ex. "C:" Ginter Dep., p. 57 lns 5-
3 22, while the harm such suits can have on public safety was demonstrated by plaintiff's admission
4 that as a result of his suit he feared fellow deputies might not "back him up" in the field. See
5 2/27/06 Fischnaller Declaration, Ex. "1" p. 12 (item 6), p. 14 (item 13).

7 Third, the conclusion that in Washington two policy grounds are absent -- i.e. cost spreading
8 and exclusivity of worker's compensation remedy -- was based on a LEOFF member's ability to
9 sue his employer for damages in excess of worker's compensation benefits. See Mem. Op., p. 5.
10 However, failing to enforce the common law bar of suits by officers for emergency operations is
11 part of "cost spreading" in Washington because -- in exchange for assuming the risks of a dan-
12 gerous job -- a LEOFF member receives at public expense a higher salary, better retirement and
13 worker's compensation benefits and such other special privileges as the right to sue employers for
14 injuries unrelated to emergency operations "as otherwise allowed by law." The "cost spreading
15 policy supports a conclusion that the common law exception to the firefighters rules should ap-
16 ply" because the additional proposed benefit at public expense of a right to sue law enforcement
17 agencies for injuries incurred by professional rescuers for emergency operations "would only
18 increase the cost ultimately borne by the public fisc." See City of Oceanside, 96 Cal.Rptr.2d at
19 281. That professional rescuers harmed in the very emergency operations they are hired to per-
20 form only have the above special benefits -- as well as the same rights as their fellow citizens to
21 worker's compensation benefits and suits against responsible tortfeasors who are not their em-
22 ployers -- is not a public policy basis for ignoring common law and imposing an additional public
23 financed benefit. As another Court has explained, allegations of "[i]nadequate compensation is
24 not a sufficient reason to preclude application of the firefighter's rule" Id. at 285.

25 Finally, the "exclusivity of worker's compensation" and the "anomaly of being allowed to sue

1 when the negligent officer was employed by another agency but not by his own employer" --
2 given by California courts as an additional reason for applying the fireman's rule to emergency
3 operations, see Mem. Op., p. 5 -- are not reasons to reject the application of the fireman's rule to
4 emergencies in Washington. Though in Washington there is no need to avoid this "anomaly"
5 because it does not exist for policeman under our state's statutory scheme, the failure to apply the
6 fireman's rule to emergency operations creates a far more serious "anomaly" that the California
7 courts also hold justifies its application -- i.e. the anomaly that the fireman's doctrine would
8 exonerate the person creating the emergency "but not the fellow [official] from a personal injury
9 action by an injured [official]." See City of Oceanside, 96 Cal.Rpt. at 631. See also P's S.J.
10 Resp., p. 14 (Beaupre admits his interpretation of the professional rescuer/fireman's rule would
11 protect only "the driver of the suspect vehicle" that actually harmed plaintiff). Instead, "[t]he
12 same public policy considerations underlying the application of the firefighter's rule to exonerate
13 the victim should also apply to exonerate a fellow [rescuer] whose presence and actions are in
14 furtherance of the joint rescue operation for that victim." City of Oceanside, supra.

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17 3. Exception Creating Liability When Defendant Is A Fellow Officer Is Unprecedented,
18 Factually Inapplicable And Violates Of Both Statute And Public Policy

19 The memorandum opinion found "an equally compelling policy reason" for not applying
20 the common law rule to emergency operations was the dissent in Cooper v. City of New York,
21 619 N.Ed.2d 369, 376-77 (N.Y. 1993)(Titone, J., dissenting), wherein it was argued the fireman's
22 rule should not apply as between two trained officers where the plaintiff officer "had no more
23 opportunity than a member of the general public would have had to employ any special skills to
24 avoid injury." See Mem. Op., 5-6. However, had this argument been discussed prior to denial of
25 summary judgment, the Court would have had the benefit of the following case law and analysis.

First, commentators have noted that Washington's courts have had no difficulty applying

1 the professional rescuer doctrine to dismiss claims against other professional rescuers such as
2 police agencies. See 1-1 Premises Liability--Law and Practice § 1.05, n. 1.11 (citing Lowry v.
3 City of Auburn, 111 Wn.App. 1026, 2002 WL 844832, *9, rev. denied, 147 Wn.2d 1025 (2002)
4 and noting it applied the professional rescuer doctrine to dismiss "defendant municipality's police
5 force.") Indeed, in the more than 10 years since the publication of the Cooper dissent, it has
6 never been cited or used by any court to bar emergency responders the benefit of the fireman's
7 rule -- including the courts of the dissent's own state of New York. See e.g. Galapo, 744 N.E.2d
8 at 688 (affirming dismissal of wrongful death suit against fellow policeman for accidental shoot-
9 ing); Soto v. Ortiz, 680 N.Y.S. 2d 552 (N.Y. App. 1998)(affirming dismissal of suit for injury
10 caused by driving of fellow officer); Smullen v. City of New York, 625 N.Y.S. 2d 545 (N.Y.
11 App. 1995)(reversing failure to dismiss where officer hit by car as result of partner's negligence);
12 Dimiani v. City of Buffalo, 603 N.Y.S.2d 1006 (N.Y. App. 1993)(affirming dismissal of suit for
13 shooting by fellow officers); Morrisey v. County of Erie, 603 N.Y.S.2d 1009 (N.Y. App.
14 1993)(reversing failure to dismiss suit for correctional officer's accidental shooting of police-
15 man). See also e.g. Woods, supra. (precluding officer's suit of city for accident during pursuit);
16 McGhee, supra (barring suit against state police where it caused suspect vehicle to collide with
17 officer); Calatayud, supra (officer accidentally shot by fellow officer during arrest attempt);
18 McElroy, supra (patrol car collided with that of another officer during pursuit); Farnam, supra.
19 (dog bite during an arrest).
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22 Second, the adoption of the Cooper dissent for the first time here would create an anomaly
23 whereby citizens who do not have an officer's training and experience in emergencies to protect
24 themselves would be barred from suing under the professional rescuer's doctrine, see 619 N.E.2d
25 at 377 (dissent) -- but an officer who is trained to protect himself would not be barred. In any
case, the Cooper dissent's analysis would not apply here because plaintiff was not injured as a

1 passive "passenger in a negligently driven car, [who] had no more opportunity than a member of
2 the general public would have had to employ any special skills to avoid injury." Cooper, 619
3 N.Ed.2d at 376-77 (dissent). Rather, the face of the complaint confirms plaintiff was injured
4 precisely while he was exercising his "special skills" and placing himself in harm's way on foot
5 on I-5 at night as an emergency responder. See Complaint.

6
7 Finally, common law assumption of risk and the public policies served by application of
8 the fireman's rule to emergency operations -- especially its "primary public policy reason" of
9 public safety -- cannot be overcome by a more than decade old dissent from another state that has
10 not been followed by its own or any other court. Rather, our state recognizes assumption of the
11 risk and requires dismissal where the professional rescuer's doctrine is met. See e.g. Maltman,
12 supra.; Black Indus., Inc., supra.; Strong, supra. Such requires dismissal here also.

13 B. NO REASONABLE INFERENCE SUPPORTS PLAINTIFF'S TRAINING CLAIM

14 The Court also denied the County's alternative motion for partial summary judgment on
15 plaintiff's claim of negligent training. See Mem. Op., p. 6. However, plaintiff nowhere met his
16 burden of setting forth specific facts to establish a genuine issue of material fact on this claim.
17 Once a party moving for summary judgment makes an initial showing that there is no genuine
18 issue of material fact, the nonmoving party must demonstrate the existence of such an issue by
19 setting forth specific facts that go beyond mere unsupported allegations. See Young v. Key
20 Pharmaceuticals, 112 Wn.2d 216, 225 n. 1 (1989); Tokarz v. Frontier Fed. Sav. & Loan Ass'n, 33
21 Wn. App. 456, 466, 656 P.2d 1089 (1982). Here, the record shows only unsupported allegations.

22
23 In responding to the motion concerning his training claim, plaintiff relied on opinion
24 testimony from his expert witness that the County should have provided one-on-one training to
25 Deputy Sargent in 1998 after Sargent's last backing accident and argued "[t]here is certainly no
evidence that any such one-on-one training took place; and if it did, it certainly was not ade-

1 quate." P's Resp., p. 7. However, as matter of law, it was plaintiff's burden on summary judg-
2 ment to demonstrate both that such one-on-one training did not occur (i.e. "breach of duty") and
3 that it caused the accident (i.e. "proximate cause"). A plaintiff may not rely on mere speculation
4 or unsupported assertions in responding to a motion for summary judgment, Molsness v. Walla
5 Walla, 84 Wn. App. 393, 397 (1996), but must affirmatively present the factual evidence upon
6 which he relies. Mackey v. Graham, 99 Wn.2d 572, 576, cert. denied, 464 U.S. 894 (1983).
7 Here, the only evidence was instead that plaintiff's expert admitted he did not know whether the
8 training he proposed had been provided or if it would have made any difference. See 4/19/06
9 Hamilton Aff.; Ex. "C:" Ginter Dep., p. 108 ln 18-p. 110 ln 24.

11 Having failed to present any factual evidence showing inadequate training or that such
12 caused the accident, plaintiff as a matter of law failed to establish the County breached any duty
13 with regard to the training of Deputy Sargent. Accordingly, this decision should also be recon-
14 sidered.

15 VI. CONCLUSION

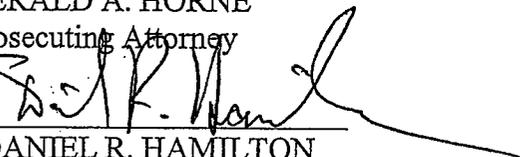
16 For the above stated reasons Pierce County respectfully requests the Court reconsider
17 and grant its motion for summary judgment.

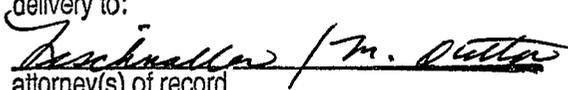
18 DATED THIS 26th DAY OF JUNE, 2006.

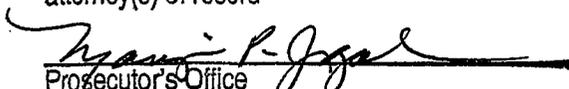
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20 GERALD A. HORNE
Prosecuting Attorney

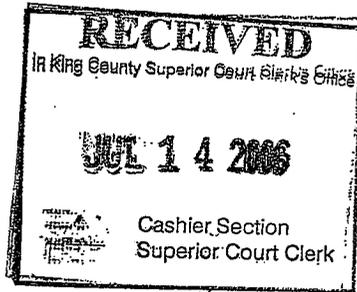
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22 **CERTIFICATE**

I hereby certify on 6-26-06
I delivered a true and accurate
copy of the attached document
to ABC LEGAL MESSENGERS, INC. for
delivery to:


23 DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Defendant Pierce County
PH: 798-7746 / WSBA #14658

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25 
attorney(s) of record


Prosecutor's Office



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KING COUNTY
SUPERIOR COURT

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

CURTIS A. BEAUPRE,

Plaintiff,

NO. 04-2-23610-0 SEA

vs.

PIERCE COUNTY,

NOTICE OF DISCRETIONARY REVIEW

Defendant.

Pierce County, Defendant in the above-captioned matter, seeks review by Division I of the Court of Appeals, of King County Superior Court's Order of June 15, 2006, denying Defendant's motion for dismissal.

DATED this 14th day of July, 2006.

GERALD A. HORNE
Prosecuting Attorney

By

DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Defendant Pierce County
PH: (253) 798-7746 / WSBA # 14658

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CERTIFICATE OF SERVICE

I hereby certify I delivered a true copy of the foregoing NOTICE OF DISCRETIONARY REVIEW this 14th day of July, 2006, to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to attorneys for Plaintiff as follows:

J.E. Fischmaller
Attorney at Law
10900 Northeast Fourth Street, Suite 2300
Bellevue, WA 98004

Michael Scott Dutton
Attorney at Law
2423 East Valley Street
Seattle, WA 98112-4131


CHRISTINA M. DUREN

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

CURTIS A. BEAUPRE,

Plaintiff,

NO. 04-2-23610-0 SEA

vs.

PIERCE COUNTY,

NOTICE OF DISCRETIONARY REVIEW

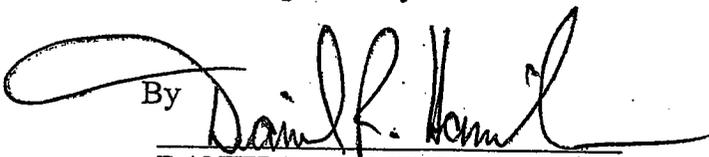
Defendant.

Pierce County, Defendant in the above-captioned matter, seeks review by Division I of the Court of Appeals, of King County Superior Court's Order of July 25, 2006, denying Defendant's motion for reconsideration.

DATED this 27th day of July, 2006.

GERALD A. HORNE
Prosecuting Attorney

By



DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Defendant Pierce County
PH: (253) 798-7746 / WSBA # 14658



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Attorney at Law
10900 Northeast Fourth Street, Suite 2300
Bellevue, WA 98004

Michael Scott Dutton
Attorney at Law
2423 East Valley Street
Seattle, WA 98112-4131


Marilyn Joyal

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Honorable John P. Erlick

CIVIL DIVISION
COPY RECEIVED

JUL 27 2006

GERALD A HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

CURTIS A. BEAUPRE,

Plaintiff,

NO. 04-2-23610-0 SEA

vs.

PIERCE COUNTY,

Defendant.

ORDER ON PIERCE COUNTY'S
MOTION FOR RECONSIDERATION

~~(PROPOSED)~~

THIS MATTER coming on to be heard before the undersigned Judge of the above-entitled Court based upon the motion of Defendant Pierce County for reconsideration; plaintiff being represented by his attorney J.E. Fischnaller; defendant Pierce County being represented by Deputy Prosecuting Attorney Daniel R. Hamilton, and the Court having reviewed the files and records herein, and having heard oral argument and being otherwise fully advised in the premises it is hereby;

ORDERED, ADJUDGED AND DECREED that that the motion of Pierce County for reconsideration is ~~GRANTED~~, and plaintiff's complaint is hereby ~~DISMISSED~~ with prejudice.

CO ORIGINAL

1 DONE IN OPEN COURT this 25th day of July 2006.

2
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4 JUDGE

5 Presented by:

6 GERALD A. HORNE
Prosecuting Attorney

7 By

8 DANIEL R. HAMILTON
Deputy Prosecuting Attorney
9 Attorneys for Pierce County
WSBA #14658

10
11 APPROVED AS TO FORM AND NOTICE
12 OF PRESENTMENT WAIVED:

13
14 J.E. FISCHNALLER
Law Offices of J.E. FISCHNALLER
15 Attorney for Plaintiff Beaupre
16 PH: (452) 990-1007/WSBA # 5132
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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2006 JUL 28 PM 1:47

CERTIFICATE

I hereby certify on 7-28-06
I delivered a true and accurate
copy of the attached document (*Appendix*)
to ABC LEGAL MESSENGERS, INC. for
delivery to:

J. E. Zischner
attorney(s) of record

Marie P. J. [Signature]
Prosecutor's Office