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STATE OF WASHINGTON
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No. 85905-1-1

SUPREME COURT
OF THE STATE OF WASHINGTON

BROUGHTON LUMBER CO.,
a Washington corporation,

Plaintiff,

v.

BNSF RAILWAY COMPANY;
and HARSCO
CORPORATION, a Delaware
corporation,

Defendants.

FIRST STATEMENT OF
ADDITIONAL
AUTHORITIES OF
DEFENDANT HARSCO
CORPORATION

Defendant Harsco Corporation submits the following
additional authorities pursuant to RAP 10.8:

Dean v. MacFarland, 81 Wn.2d 215, 500 P.2d 1244 (1972)
and ***Northlake Concrete Products, Inc. v. Wylie***, 34 Wn. App.
810, 663 P.2d 1380 (1983):

Both cases hold that the phrase "clearing, grading, filling in
or otherwise improving any real property" in the former lien statute,
RCW 60.04.040, does not broadly authorize a lien for any activities
that improve real property. "The general term 'otherwise improving'

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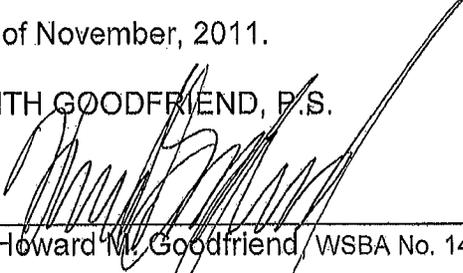
is restricted or modified in application by the words, 'clearing, grading, or filling in.'" **Northlake Concrete Products**, 34 Wn. App. at 814, *citing Dean*, 81 Wn.2d at 221. In *Dean*, this Court held that removal of debris from the demolition of a building was not "otherwise improving" real property within the meaning of the lien statute. 81 Wn.2d at 220-22. In **Northlake Concrete Products**, Division One held that construction of a side sewer did not fall within the activities for which a lien was authorized under the former lien statute. 34 Wn. App. at 813-14.

Gibson v. Dept. of Licensing, 54 Wn. App. 188, 773 P.2d 110, *rev. denied*, 113 Wn.2d 1020 (1989). A driver was subject to license revocation for refusing to submit to a breath test. The court rejected the driver's claim that an alleged psychotic condition rendered him incapable of withdrawing his implied consent to blood alcohol testing under RCW 46.20.308(4), which provides that "[a]ny person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent" to testing under the implied consent statute. The term "otherwise incapable" relates to physical conditions that "like death or unconsciousness, clearly appear to

prevent the driver from responding to the officer's request." 54 Wn. App. at 193. See Joint Brief of Defendant Harsco and BNSF at 22-24 (discussing use of term "otherwise" under *ejusdem generis* rule of statutory construction).

DATED this 18th day of November, 2011.

SMITH GOODFRIEND, P.S.

By: 

Howard M. Goodfriend, WSBA No. 14355

1109 First Avenue, Suite 500
Seattle, WA 98101-2988
(206) 624-0974

Attorneys for Defendant Harsco Corporation

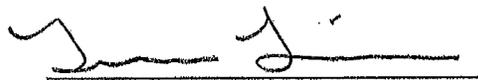
DECLARATION OF SERVICE

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

That on November 18, 2011, I arranged for service of the First Statement of Additional Authorities of Defendant Harsco Corporation, to the Court and to the parties to this action as follows:

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Seann C. Colgan Paul R. Raskin Corr Cronin Michelson Baumgardner & Preece LLP 1001 4th Ave Ste 3900 Seattle WA 98154-1051	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Adam M. Shienvold Eckert Seamans Cherin & Mellott, LLC 213 Market Street, 8th Floor Harrisburg, PA 17101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Michael E. Haglund Michael K. Kelley Haglund Kelley Jones & Wilder LLP 200 SW Market Street, Suite 1777 Portland, OR 97201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Scott W. Horngren American Forest Resource Counsel 5100 SW McAdam Blvd., Suite 350 Portland, OR 97239	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
David P. Morrison Thomas W. Brown Cosgrave Vergeer Kester LLP 805 SW Broadway, 8th Floor Portland, OR 97205	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 18th day of November, 2011.



Tara D. Friesen