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86584-1

Supreme Court No. _____
NO. 65359-8-I RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

NATHAN LOWMAN,

Appellant

v.

JENNIFER WILBUR AND JOHN DOE WILBUR, COUNTRY
CORNER, INC. d/b/a COUNTRY CORNER, ANACORTES
HOSPITALITY, INC. d/b/a COUNTRY CORNER, PUGET
SOUND ENERGY and COUNTY OF SKAGIT,

Respondents

REPLY IN SUPPORT OF PETITION FOR REVIEW

KEANE LAW OFFICES
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ORIGINAL

I. INTRODUCTION

Nothing stated by respondent regarding the petition alters the clarification of Washington law undertaken by this court in *Keller v. Spokane*, 146 Wn.2d 237, 44 P.2d 845 (2002). And this Court explained at length in its opinion, Washington cases have lacked a clear and strong statement regarding how duty is analyzed in multiple tortfeasor cases. *Keller* made clear that duty is analyzed without regard for the conduct of the plaintiff.

II. ARGUMENT

The decision in *Keller* undercut, if not overruled, various cases regarding the duty of defendants in multiple party cases. It also recalibrated duty analysis in Washington. The language in *Keller* relates directly to the analysis of each of the courts which were relied upon by the *Medrano v. Schwendeman*, 66 Wn.App. 607, 836 P.2d 833 (1992) court: no duty exists if the plaintiff acted unreasonably. *Keller* determined that that is no longer a correct statement of the law. If that is not a correct statement of the law, then the legal ground upon which *Medrano* rests has been changed by this Court.

While there was no need to specifically address, in the Court of Appeals decision in *Unger v. Cachon*, 118 Wn.App. 165, 73 P.3d 1005 (2003), or in the Court of Appeals or Supreme Court decisions in *Keller*,

whether adjusting duty analysis necessarily adjusts legal causation analysis, the answer is that it does as discussed in the petition for review.

Keller is a significant and enduring statement of duty law in Washington. If *Keller* had been decided before the cases upon which *Medrano* was decided, the *Medrano* court could not have conducted the cursory examination of legal causation it did for that case was decided at a time when plaintiffs with fault were owed no duty. Certainly Mr. Schwendeman had fault. And the opinion strongly suggests, if never states, that to him no duty was owed.

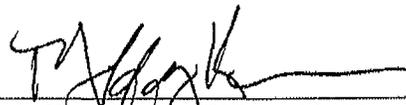
III. CONCLUSION

Regarding what branch of RAP 13.4 petitioner relies upon, petitioner states:

1. RAP 13.4 (b)(1): The decision by the Court of Appeals is in conflict with *Keller v. Spokane*;
2. RAP 13.4(b)(2): The Court of Appeals decision in *Keller* is in conflict with the Court of Appeals decision in the present case. In addition, the Court of Appeals decision in *Unger v. Cachon* is in conflict with the decision in the present case;
3. RAP 13.4 (b)(3): It is a significant question, in this state, how this Court views the present legal causation test following its decision in *Keller v. Spokane*.

Respectfully submitted this 24 day of October, 2011.

KEANE LAW OFFICES



T. Jeffrey Keane, WSBA #8465
Attorney for Appellant

DECLARATION OF SERVICE

I hereby certify that on October 24, 2011, copies of the foregoing Reply in Support of Petition for Review was served on counsel at the following address and by the method(s) indicated:

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- U.S. Mail
- Fax
- Legal messenger
- Express mail
- Email, read receipt requested

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of October, 2011, at Seattle, Washington.



Donna M. Pucel

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Donna M. Pucel
Paralegal to T. Jeffrey Keane

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Lowman v. Wilbur, Court of Appeals No. 65359-8-I Submitted by:
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