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No. 86924-3

SUPREME COURT
OF THE STATE OF WASHINGTON

JARED K. BARTON,
a single man,

Respondent,

KORRINE C. LINVOG, individually; and THOMAS LINVOG and
MADONNA LINVOG, husband and wife,

Respondents,

v.

STATE OF WASHINGTON, Department of Transportation,

Petitioner.

ANSWER TO PETITION FOR REVIEW

SMITH GOODFRIEND, P.S.

LUVERA, BARNETT,
BRINDLEY, BENINGER
& CUNNINGHAM

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ORIGINAL

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I. INTRODUCTION

Following a four week trial in which a jury found the State 95% at fault for negligent design of an intersection and found the defendant driver, 19-year old Korrine Linvog, 5% at fault, the trial court entered a joint and several judgment for respondent Jared Barton against the State, Korrine, and her vicariously liable parents on the jury's verdict of \$3.6 million. In an unpublished decision, the Court of Appeals affirmed the trial court's extensive findings that rejected as a matter of fact the State's contention that it was prejudiced by a pretrial agreement between plaintiff and two of the four defendants – Korrine's vicariously liable parents – under which the Linvogs' insurer paid an advance of \$20,000 for Barton's much needed medical care in return for a promise not to execute against the Linvog parents' personal assets. The State does not challenge its joint and several liability with the defendant driver. This case thus does not involve the scope of the Tort Reform Act as the State maintains, but instead whether the trial court properly exercised its discretion in its choice of discovery sanctions under CR 26(e) by requiring plaintiff to forfeit \$146,000 in interest due from the State, after finding that the failure to supplement discovery responses to disclose the advance payment was not deliberate but "due to oversight."

The State has abandoned any challenge to the trial court's extensive findings that the State suffered no prejudice because the vicariously liable parents continued to believe that they, like their daughter, remained "on the hook all the way," just as the agreement provided. Moreover, the State accepted the benefit of the parties' agreement because the State *in fact* retained its right of contribution against Korrine's solvent parents as well as Korrine, and *in fact* obtained a contribution judgment against Korrine's parents for their vicarious liability for their daughter's fault as provided in RCW 4.22.060. The Court of Appeals properly deferred to the trial court's findings that the State established neither fraud nor prejudice and therefore properly exercised its discretion in denying the State's motion to vacate under CR 60(b)(4) and in assessing sanctions under CR 26(e).

II. RESTATEMENT OF ISSUES FOR REVIEW

Did the Court of Appeals correctly affirm the trial court's exercise of discretion (1) in refusing to vacate for fraud a judgment under CR 60(b)(4) that maintained the State's enforceable right of contribution against solvent parents of a teen-age driver who was jointly and severally liable with the fault-free plaintiff on the ground that the State suffered no prejudice, and (2) in assessing \$146,000 in discovery sanctions after

finding plaintiff's failure to disclose a \$20,000 advance payment by the parents' insurer was not deliberate but due to oversight?

III. RESTATEMENT OF THE CASE

This action arose from an intersection collision in Skagit County on November 24, 2004. As the trial court summarized, Barton, who "had been driving straight down the highway on his motorcycle," had the right of way, when he was struck by 19-year old Korrine Linvog who had stopped at the stop sign, but did not see Barton as "the view was obstructed" because of the placement of the stop line in relationship to the trunks of trees that "block[ed] the view of cars traveling toward the intersection." (CP 384) ¹

Barton, represented by attorney Ralph Brindley, filed this action against the State and Korrine Linvog in 2005. Barton also sued Korrine's parents because Korrine was driving the Linvogs' car. (CP 384) William Spencer, Linvogs' counsel, offered Barton \$100,000 – the limits of the Linvogs' insurance coverage – as a full settlement of all claims against the Linvogs shortly after the lawsuit was filed. (CP 555) In rejecting the

¹ The State continues to suggest that the Linvogs' and Barton's lawyers colluded to manufacture a theory of State liability for the accident (Pet. 4), but on the very night of the collision Korrine told the investigating officer that she stopped and looked to the left, but did not see Barton's oncoming headlight. (CP 861; Tr. Ex. 11) The State ignores the fact that Korrine went back to the intersection on her own only days after the collision and then became aware of the obstruction created by trees to the east of the stop line. (CP 861, 1007-08)

offer, Mr. Brindley explained to Mr. Spencer that the Linvogs' insurance limits represented only a fraction of Barton's damages and that while he would not risk defeating joint and several liability (along with the State's right of contribution against joint tortfeasors), his consistent practice was to refrain from attempting to collect a judgment above insurance limits from an individual defendant where a solvent institutional defendant was jointly and severally liable on the same judgment. (CP 384, 555, 560-61, 569)

The trial court found, and the State now concedes, that Mr. Brindley accurately and truthfully answered the State's written interrogatories in October 2005, denying that Barton "or anyone acting on [his] behalf ha[d] entered into any agreement or covenant with any party or person regarding the incident referred to in the Complaint" or receiving "money from any source" as a result of the collision. (CP 384, 833) Mr. Spencer answered similar form interrogatories in the negative. (CP 556)

The trial court also found that two years after the accident, in early 2007, Barton, who was uninsured, was in dire need of medical care. (CP 384, 555, 561) The Linvogs' insurer agreed to advance \$20,000 to Barton for his treatment in exchange for an agreement not to execute against Mr. and Mrs. Linvogs' personal assets. (CP 384-85) Mr. Spencer recommended that the Linvogs' insurer make this payment because

Barton's damages were extensive, there was a significant likelihood that Korrine Linvog would be held liable, Barton would be found to be fault free, and therefore the Linvog parents would be jointly and severally liable in an amount far exceeding their insurance coverage. (CP 555) Korrine Linvog was not, and, as Mr. Spencer and Mr. Brindley discussed, never intended to be, a party to the agreement. Mr. Spencer told the Linvogs that they would still face liability in contribution to the State in the event that their daughter's share of liability exceeded the limits of their liability insurance. (CP 555-56, 561)

The Linvogs' insurer issued a \$20,000 check payable to Barton and his lawyers on February 22, 2007. (CP 665) Mr. Spencer prepared a "Stipulation of the Parties Regarding Advance Payment By Mutual of Enumclaw" reciting that (1) the payment would be credited toward any judgment entered against the Linvogs, (2) Barton would not execute against Mr. and Mrs. Linvog beyond the limits of their liability insurance, and (3) the stipulation and payment "does not represent a settlement of any claims Plaintiff Jared Barton has brought in this matter against Defendants." (CP 556, 663-64)

Mr. Spencer never signed the stipulation. Mr. Brindley signed the stipulation but never returned it to Mr. Spencer. The document was never filed in court. (CP 556, 562) Neither Mr. Spencer nor Mr. Brindley gave

the State notice of a settlement or sought a reasonableness determination from the trial court pursuant to RCW 4.22.060. (CP 563-64) Mr. Brindley forgot that the stipulation existed and did not supplement his response to the State's interrogatory regarding the receipt of funds or the execution of any agreements regarding the collision. (CP 562-63, 567) The trial court found that the failure to supplement was not deliberate, but "due to oversight." (CP 385)

The judge who presided over the four week trial found no evidence that either Barton's or the Linvogs' trial strategy was in any way influenced by the undisclosed payment, that Korrine's testimony changed as a result of the agreement, or that Korrine was even aware of it. (CP 386-90) The trial court also found that the Linvog parents were a "non presence at trial." (CP 390) They did not testify, they were not present at counsel table, and they were not on the verdict form. (CP 390) Mr. Spencer argued that the collision was unavoidable from the perspective of 19-year old Korrine. (CP 388, 557, 1208-09, 1212-29)

Before sending the case to the jury, the trial court held as a matter of law that Barton was not contributorily negligent. (CP 385) Finding both the State and Korrine Linvog negligent, the jury allocated 95% of the fault to the State and 5% to Korrine, and awarded Barton \$3.6 million in damages. (CP 1463-65) The trial court entered a joint and several

judgment against the State, Korrine and her parents. (CP 1549-57) When Barton received the balance of the Linvogs' policy limits, Mr. Brindley executed only a partial satisfaction of judgment, in the amount of \$100,000. (CP 1241-42) Korrine Linvog and her parents remained jointly and severally liable, along with the State, on the remaining unsatisfied portion of the judgment. (CP 567, 1549-51)

The State unsuccessfully appealed the trial court's ruling that Barton was not at fault as a matter of law. *Barton v. State*, noted at 147 Wn. App. 1021, 2008 WL 4838687 (2008). When demanding satisfaction of the judgment from the State following return of the mandate, Mr. Brindley reviewed his files and found the proposed, partially executed stipulation reflecting the \$20,000 advance payment. (CP 568) Mr. Brindley sent the State's new counsel² documentation concerning the advance, including a copy of the \$20,000 check and the uncompleted stipulation that he located in his files. (CP 569) He demanded the State pay the remaining unsatisfied portion of the judgment, stating that "[i]f the state wishes to pursue a contribution claim against the Linvogs that is probably its option." (CP 568, 575)

² The State's trial counsel, John Kirchner, died shortly after the trial. (CP 843) The State's new appellate counsel who alleged misconduct had no personal knowledge of any events occurring during or prior to trial. (CP 560)

Rather than paying the judgment, the State placed funds in the registry of the court, insisting that they be maintained in trust and not released to Barton (CP 888), and moved to vacate the judgment under CR 60(b)(4), alleging that counsel for Barton and the Linvogs' colluded to shift liability to the State. (CP 1304-22) The trial court denied the State's motion (CP 25-39), and also denied Barton's motion for an award of \$146,000 in interest from the State, which he sought because the State had refused to authorize release of the funds to Barton until nine months after they had been deposited into the court registry. (CP 20-21) The trial court held that the State owed Barton the interest, but also held that the loss of interest was an appropriate sanction for the inadvertent failure to supplement interrogatory responses pursuant to CR 26(e). (CP 19) The State did not appeal (CP 1-2), or assign error to that ruling (App. Br. 1-2), and does not challenge this ruling in its petition.

The State then presented, and the trial court signed on August 27, 2010, a judgment in favor of the State on its claim for contribution against Thomas and Madonna Linvog, as well as Korrine Linvog, in the amount of \$92,632.30, plus interest at the judgment rate. (CP 1507-09) While the State appealed the denial of the motion to vacate, it did not appeal the contribution judgment that it sought and then received against Mr. and Mrs. Linvog. (CP 1-2) In an unpublished decision, Division One

affirmed the trial court's denial of the State's motion to vacate, and held that the trial court did not abuse its discretion in denying Barton approximately \$146,000 in interest as a discovery sanction under CR 26(e). (Opinion 14)

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals Decision Affirming The Trial Court's Denial of A Motion To Vacate And Its Choice Of Discovery Sanctions Followed Established Law. The State Makes No Argument That Review Of Such Discretionary Decisions Is Justified Under RAP 13.4(b).

The State's petition ignores the basis of the Court of Appeals decision. Focusing on the "central question . . . whether the State was prejudiced" by counsel's failure to disclose the \$20,000 advance payment by the Linvogs' insurer and the agreement between Barton and Korrine Linvogs' parents (Opinion 8), the Court of Appeals held that "[t]he trial court did not err in determining that the failure to supplement discovery did not prejudice the State or its ability to prepare for or try the case," that counsel's "discovery violations were not deliberate, but were inadvertent failures to supplement discovery answers, 'due to oversight,'" and that therefore, "the trial court did not abuse its discretion by administering sanctions as it did." (Opinion 13-14) The State does not address the deferential standard of review of a trial court's discretionary decision on a motion to vacate based on allegations of fraud or misconduct of counsel

under CR 60(b)(4), or the trial court's choice of discovery sanctions for an inadvertent failure to supplement discovery under CR 26(e).

The Court of Appeals followed settled law in holding that a party seeking to vacate a final judgment under CR 60(b)(4) must establish prejudice, regardless whether the allegations at issue, if proved, would establish "fraud" or "other misconduct" within the meaning of the rule. *Peoples State Bank v. Hickey*, 55 Wn. App. 367, 372, 777 P.2d 1056 (1989), *rev. denied*, 113 Wn.2d 1029 (1989). See Tegland 4 *Wash. Pract.* 554 (5th Ed. 2006) ("Fraud or misconduct that is harmless will not support a motion to vacate.") The Court of Appeals properly reviewed for substantial evidence the trial court's extensive factual findings that the State suffered no prejudice, and held that the trial court did not abuse its discretion in refusing to grant the State's motion to vacate under CR 60(b)(4). See *State v. Hardesty*, 129 Wn.2d 303, 317, 915 P.2d 1080 (1996) ("A trial court's decision on a motion to vacate is reviewed on an abuse of discretion standard."); *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979) ("The motion to vacate is addressed to the sound discretion of the trial court."); *Stoullil v. Edwin A. Epstein, Jr., Operating Co.*, 101 Wn. App. 294, 297 n.4, 3 P.3d 764 (2000) ("A decision under CR 60(b) will not be overturned on appeal unless it plainly

appears that the trial court exercised its discretion on untenable grounds or for untenable reasons.”)

The trial court awarded the State \$146,000 in interest, which was otherwise owed to Barton, as a discovery sanction under CR 26(e). (CP 19) The State has not challenged the trial court’s finding that it owed Barton interest, and it is a verity for purposes of appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 100 P.3d 805 (2004). Moreover, the State makes no argument that the Court of Appeals failed to follow settled law in giving deference to the trial court’s choice of sanctions and its finding that the failure to supplement discovery was not intentional but inadvertent. (CP 385; Opinion 13-14) See *Washington State Physicians Ins. & Exchange Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (judge who presided over the trial is “better positioned than another to decide” issues of discovery abuse and litigation misconduct) (quotation omitted); *Rice v. Janovich*, 109 Wn.2d 48, 56-57, 742 P.2d 1230 (1987) (affirming refusal to bar expert testimony as sanction for failure to timely supplement where “the record gives no indication the delay was due to tactical considerations.”); *Panorama Village Homeowners Ass’n v. Golden Rule Roofing, Inc.*, 102 Wn. App. 422, 431, 10 P.3d 417 (2000) (“We review the trial court’s decision on a motion for sanctions under CR 26(g) for abuse of discretion.”), *rev. denied*, 142 Wn.2d 1018 (2001).

The State's petition does not address the Court of Appeals' review of these discretionary rulings and does not address the issue of prejudice, the "central question" decided by the Court of Appeals. (Opinion 8) The Court of Appeals' decision affirming the trial court's discretionary denial of the State's motion to vacate and its choice of sanctions for the failure to supplement answers to interrogatories does not conflict with any decisions of this Court or of the Court of Appeals and presents no issue of substantial public concern. *See* RAP 13.4(b)(1), (2), (4).

B. The Court of Appeals Correctly Held That The Linvog Parents Were Not Released From Contribution Because All Parties Believed That They Remained Vicariously Liable For The Full Amount of Their Daughter's Liability, Because The State Enforced Its Right To Contribution By Entering Judgment Against The Linvogs, And Because The Parties Never Intended To Release The Linvogs.

The State's petition asks this Court to declare that under RCW 4.22.060 the parties' agreement confirming that Barton would not execute against the Linvog parents beyond the limits of their liability insurance negates joint and several liability and liability for contribution as a matter of law. However, the Court of Appeals found it unnecessary to address the agreement's operative legal effect under RCW ch. 4.22, holding that regardless whether the agreement was void or enforceable, it did not affect the jury's allocation between the State and Korrine Linvog who was not a party to the agreement, did not affect the State's ultimate liability to

Barton, and did not affect its right of contribution from the Linvog parents.
(Opinion 9-10)

The lower courts therefore did not take issue with the State's argument that RCW 4.22.070 "only allows joint liability between defendants against whom judgment is entered," (Petition 13), but held that joint liability was preserved here because Barton was fault free and judgment *was* entered against the State, against Korrine Linvog, and against her parents. The lower courts understood that a release or covenant not to execute under RCW 4.22.060, entitled "Effect of settlement agreement," discharges the settling defendant from any further liability, but held that the parties in this case had no intent to release the senior Linvogs, and that they *in fact* remained "on the hook" for Barton's damages as jointly and severally liable defendants who, along with their daughter who was not a party to *any* agreement, were personally liable in contribution for any judgment in excess of their insurance limits. (CP 390) The Court of Appeals affirmed because the State could not establish any prejudice whatsoever, let alone grounds to vacate a judgment on a jury's verdict entered after a 16-day trial for the inadvertent failure to disclose the agreement to advance \$20,000 toward Barton's medical expenses.

1. The Parties Believed That The Linvog Parents Remained Jointly Liable For Their Daughter's Damages, As Stated In The Agreement.

The State's reliance on the legal effect of settlement agreements and other types of releases under the Tort Reform Act ignores the unchallenged findings that Barton and Korrine's parents never intended to release the senior Linvog from joint and contribution liability based upon Korrine Linvog's fault. It was this factual determination – that the parties consistently believed that the Linvog parents remained “on the hook all the way” – that formed the basis of the lower courts' determination that the State could not establish prejudice from an undisclosed advance payment of \$20,000 from the Linvogs' insurer.

In discerning contractual intent, “the practical interpretation given by the parties themselves is entitled to great, if not controlling influence.” *Henry v. Lind*, 76 Wn.2d 199, 204, 455 P.2d 927 (1969); see *Berg v. Hudesman*, 115 Wn.2d 657, 677-78, 801 P.2d 222 (1990). Overwhelming evidence supports the trial court's findings. The State ignores the undisputed fact that Korrine Linvog – the driver of the car that hit Barton, and along with the State, the only named party on the verdict form – was not a party to *any* agreement and therefore could not have been released under *any* interpretation of RCW 4.22.060(2) (settlement agreement “does not discharge any other persons liable on the same claim . . .”). As the

trial court found, there is no evidence that Korrine's testimony changed in any way after her parents' insurer advanced Barton \$20,000, or that she even knew about the advance payment. (CP 390) As a matter of law, Korrine Linvog (and her insurer) remained jointly liable with the State under RCW 4.22.070(1) because Barton was fault free and because judgment was entered against Korrine and against the State for the entire amount of damages awarded by the jury. *See* RCW 4.22.070(1)(b)

Because Korrine was never released, the Linvog parents and their attorneys reasonably believed that they remained vicariously liable under the family car doctrine for all fault assigned to their daughter by the jury. *See Jerdal v. Sinclair*, 54 Wn.2d 565, 568-69, 342 P.2d 585 (1959) (family car doctrine imposes liability on parents based on agency principles). Thus, the judgment on the jury's verdict imposed joint and several liability on Mr. and Mrs. Linvog, as well as on Korrine, for the jury's entire award of \$3.6 million. (CP 1549-51) Mr. Brindley consistently maintained that the State retained its full right of contribution against the Linvogs. (CP 575) The Linvogs affirmatively acknowledged that they remain liable for contribution, or as the trial court stated, "on the hook all the way." (CP 390; Linvog Resp. Br. 26)

The language of the agreement accurately reflected the parties' objectively manifested understanding that, Barton did not enter into a

release or “a settlement of any claims Plaintiff Jared Barton has brought in this matter against Defendants.” (CP 663-64) The Court of Appeals correctly affirmed the trial court’s conclusion that “the parties to the agreement believed at the time of trial that the agreement was valid according to the terms they agreed on.” (Opinion 10) Its fact-bound and unpublished decision presents no grounds for review.

2. The State Has Ratified The Parties’ Agreement And Accepted Its Benefits By Obtaining Judgment For Contribution Against All The Linvogs.

Not only did the parties intend that the Linvog parents remain “on the hook,” but the State *in fact* obtained a judgment against them for contribution. As the Court of Appeals noted, the State ratified the parties’ understanding of the agreement as well as the judgment imposing joint and several liability on Mr. and Mrs. Linvog when it “successfully sought and obtained such contribution, in the amount of \$92,632.30, plus interest.” (Opinion 8 n.1) By obtaining a judgment for contribution against the Linvogs, the State has accepted the benefit of the very judgment it now seeks to vacate. *See* RAP 2.5(b)(1); *Buckley v. Snapper Power Equipment Co.*, 61 Wn. App. 932, 942, 813 P.2d 125, *rev. denied*, 118 Wn.2d 1002 (1991) (acceptance of benefit doctrine precluded minor

who withdrew funds from court registry from challenging trial court's approval of settlement on appeal).³

The relief sought by the State – vacation of the underlying judgment and a new trial – cannot be squared with the State's enforcement of its right of contribution by imposing a judgment lien against the solvent elder Linvogs and their real estate. (CP 88, 1507-09) The State's actions fully support the lower courts' determination that it suffered no prejudice. The State's actions also establish that it accepted the benefits of the trial court's decision that the advance payment from the senior Linvogs' insurer did not release the Linvogs "from all liability for contribution," as would a settlement agreement under RCW 4.22.060(2).

3. The Court of Appeals Correctly Distinguished Cases In Which The Parties Intended A Release, Elimination of Joint Liability and Liability For Contribution.

While the Court of Appeals' reliance on the "central question" of prejudice is alone grounds for denying review, the Court of Appeals' focus on the parties' intent in determining the practical effect and consequences of the parties' agreement does not conflict with this Court's decisions or any cases from the Court of Appeals. The cases cited by the State are

³ The Court of Appeals noted the respondents' acceptance of benefit and estoppel arguments, but did not rely on the doctrine in affirming the trial court. (Opinion 8 n.1) Were this Court to accept review, the State's enforceable right of contribution against the solvent Linvog parents would, standing alone, provide an alternative basis for affirming the trial court. *See* RAP 13.4(g).

fully consistent with the established rule that the parties' contractual intent determines whether they intended an agreement to constitute a full settlement and "release" within the meaning of RCW 4.22.060.

For instance, the parties' agreement recited that they intended to make "*a complete resolution* of all claims by the plaintiffs against defendants Teuber and Hadsall under RCW 4.22.060 such that any and all contribution claims against those defendants will be extinguished by this settlement" in *Maguire v. Teuber*, 120 Wn. App. 393, 397-98, 85 P.3d 939 (emphasis in original), *rev. denied*, 152 Wn.2d 1026 (2004). Division One held that the plaintiff could not artificially create joint and several liability by amending his complaint to add a highway design claim against the State after intending and effecting "a complete resolution of all claims" with the individual defendants. 120 Wn. App. at 399.

Similarly, Division Three interpreted a "Settlement and Covenant Not To Execute," that expressly released a mother who was joined as a defendant in an action against the school district for the wrongful death of her son, who was struck and killed after the mother dropped him off in front of the child's school in *Romero v. West Valley School Dist.*, 123 Wn. App. 385, 98 P.3d 96, *rev. denied*, 154 Wn.2d 1010 (2004). The "Settlement" agreement released the mother from any further liability in exchange for payment of insurance limits, plus \$5,000, which the estate

would pay back to the mother if it obtained a judgment of more than \$30,000 against the school district. Calling the agreement a “classic Mary Carter agreement,” Division Three held that “the practical effect of this settlement agreement was to relieve Ms. Romero” of liability, which “was effectively at an end after the agreement.” 123 Wn. App. at 389.⁴ See also *Shelby v. Keck*, 85 Wn.2d 911, 918, 541 P.2d 365 (1975) (defendant properly dismissed upon paying insurance limits under agreement that “set the upper limits of his liability” and left “no justiciable issue to be resolved between these parties.”); *Bunting v. State*, 87 Wn. App. 647, 649, 653, 943 P.2d 347 (1997) (refusing to rescind “release discharging [driver and his liability insurer] from all claims arising from the accident” where plaintiffs did not return liability insurer’s payment and insurer was not party to rescission agreement) (*all cited in* Pet. 12-14).

The Legislature equated such “Mary Carter” agreements to full releases under RCW 4.22.060 in order to preclude collusive attempts to artificially manufacture joint and several liability and thus require a financially solvent defendant to pay for the share of fault assigned by the

⁴ As the trial court recognized, a “Mary Carter” agreement realigns a settling defendant with the plaintiff, by making “what one party receives contingent on a certain outcome produced at trial.” (CP 386) See *Booth v. Mary Carter Paint Co.*, 202 So.2d 8, 10 (Fla. App. 1967); Phillips, *Looking out for Mary Carter: Collusive Settlement Agreements In Washington Tort Litigation*, 69 Wash. L. Rev. 255, 256 (1994) (“Mary Carter” agreement is one in which “the settling defendant retains a financial stake in the plaintiff’s recovery. . .”).

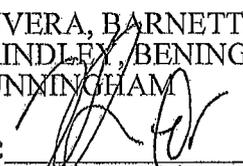
jury to a less solvent defendant who has settled with the plaintiff. But there was no "Mary Carter" agreement here, where the stipulation regarding advance payment could not under even the State's interpretation defeat Korrine Linvog's joint and several liability, the parties never intended to release the elder Linvogs' vicarious liability for their daughter's share of fault, and the solvent Linvogs' personal assets remain subject to the State's right of contribution. Finally, and contrary to the State's assertion, the Linvogs were not "sham defendants at trial" (Petition 18) because they, along with their daughter, remained "on the hook all the way." The Court of Appeals' fact-bound decision does not warrant review under RAP 13.4(b)(1), (2) and (4).

V. CONCLUSION.

This Court should deny review of the Court of Appeals' unpublished decision.

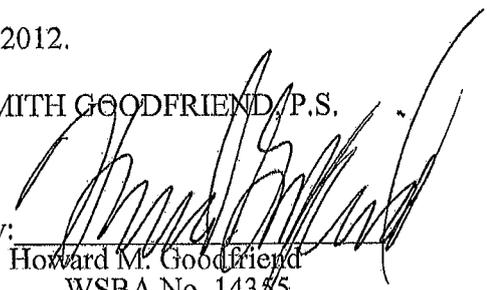
DATED this 30th day of January, 2012.

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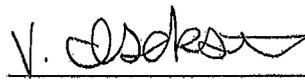
DECLARATION OF SERVICE

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

That on January 30, 2012, I arranged for service of Answer to Petition for Review, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 30th day of January, 2012.



Victoria K. Isaksen

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Subject: Barton v. State of Washington, Cause No. 86924-3

Attached for filing in .pdf format is the Answer to Petition for Review in *Barton v. State of Washington*, Cause No. 86924-3. The attorney filing this document is Howard Goodfriend, WSBA No. 14355, email address howard@washingtonappeals.com.

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