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STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MARGIE (MEG) JONES, as guardian of MARK JONES,

Plaintiff/Respondent,

v.

CITY OF SEATTLE,

Defendant/Petitioner.

**ANSWER TO
THE WASHINGTON ASSOCIATION OF MUNICIPAL
ATTORNEYS FOR LEAVE TO FILE BRIEF IN SUPPORT OF
CITY OF SEATTLE'S PETITION FOR REVIEW
AND TO THE
BRIEF OF AMICUS CURIAE WASHINGTON DEFENSE TRIAL
LAWYERS**

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INTRODUCTION

Aside from its blatant attempts to prejudice this Court, or perhaps due to them, WSAMA's brief is largely irrelevant to the issues presented on appeal. Jones sets the record straight (once again) below. WSAMA is unhelpful.

WDTL should itself have followed the old adage, "trust but verify." Instead, it adopts the City's misrepresentation wholesale. This badly weakens WDTL's brief.

On the merits, amici simply fail to acknowledge that the trial court's rulings excluding alcohol-related evidence have gone unchallenged and are the law of the case. These rulings rendered the vast majority of the excluded witnesses' testimony irrelevant. The little left over was willfully undisclosed and highly prejudicial. And no lesser sanctions would have served the purposes of discovery and disclosure – precisely designed to prevent exactly the type of trial by ambush the City perpetrated here.

Indeed, the trial court noted that allowing some of this testimony would require a mistrial. That is not a lesser sanction against the City, but rather would punish the plaintiff. Neither the jury, nor the trial judge, nor the Court of Appeals, was misled. This Court should affirm.

FACTS THAT AMICI OVERLOOK OR MISAPPREHEND

Ignoring Mark Jones' 15.5-foot fall onto a concrete floor, his severe cognitive and physical injuries, and the testimony the jury heard about Mark, amici claim that the jury was somehow fooled. Once again, plaintiff Meg Jones must set the record straight.

A. Mark's condition after his catastrophic fall was always up and down.

Mark's fall caused four broken vertebrae, ten broken ribs, multiple pelvic fractures, a punctured lung, a ruptured bladder, a lacerated liver, and diffuse bleeding in the brain. CP 8304, 8311-12. Mark suffers chronic pain, decreased mobility, decreased lung capacity, confusion, disorientation, slow thinking and processing, impaired judgment, anxiety and depression, among other things. 09/17 RP 10-19, 25-30, 32-34; 09/22 RP 182-84, 187, 190.

Mark's doctors consistently maintained that after a "remarkable" recovery from his physical injuries, Mark reached a "basic plateau" in late 2005, then showing no overall improvement. CP 8356; *see also* CP 8304-05, 8356-62; BR 20-22. Mark's always "up and down" recovery was well documented in his extensive medical records. *Id.*; 09/17 RP 55; 09/16 RP 33-34, 37, 65-66; CP 2756-57, 2760, 2764, 2783, 2789, 2791, 2804. Judge Craighead agreed. 09/04 RP 121.

B. Mark cannot work and needs assistance with some activities of daily living – he is not an invalid incapable of throwing a horseshoe or holding a conversation.

More than any patient his doctors had ever treated, Mark worked incredibly hard – for 2.5 years – to recover to a point that he could return to some sort of employment – and independence. BR 13-19, 21-22; 09/16 RP 30; 09/17 RP 35. But several attempts at "light-duty" proved that Mark lacked the cognitive and physical ability to work, even with "a lot of accommodations." 09/16 RP 31-33, 63-64; 09/28 RP 213-15. Mark's doctors concluded that he was "disabled"; *i.e.,* he cannot work. *E.g.*, CP 2420, 2421, 2428.

But Mark's doctors never suggested that he is "an invalid," nor is that the issue. CP 8358; *see also* 8356, 8822, 8824-26, 8828-30, 8834. As Judge Craighead correctly put it, "[t]he jury in this case was not asked to determine whether Mr. Jones is totally disabled, but rather to compare what he has been through, what his life is like now and will likely be in the future with what his life was like before the accident and would likely have been in the future." Unpub Op. at 48 (quoting CP 9779).

C. The jury heard considerable testimony that Mark can do many leisure activities he loved before his fall.

Like the City, WSAMA contends that the post-trial surveillance video contradicts the image of Mark presented at trial.

WSAMA 7-11. But while the City's CR 60 motion focused heavily on footage of Mark playing horseshoes, "the City was aware he played horseshoes at trial and never elicited this information before the jury." CP 9781. The City was also aware that Mark went camping, also seen in the surveillance video, but it also failed to elicit that information. 10/08 RP 154-205. In any event, "The overweight man throwing horseshoes in the surveillance footage is a far cry from the man Mark Jones once was." CP 9795.

Though the City failed to elicit testimony about horseshoes and camping, witnesses for both sides testified at considerable length that, in a limited capacity, Mark hunts and fishes, socializes, drives to Montana to visit friends and family, and helps around the house and yard. BR 32 (citing the record at length). Indeed, the City argued that if Mark could do all of these things, then he was not seriously impaired. 09/14 RP 143; 10/20 RP 174-77. The jury awarded Mark only half of the damages he sought. CP 4730-32.

Amici, like the City, complain that the jury awarded Mark 24/7 care. WSAMA 5, 8; WDTL 2. Mark is cognitively impaired 24/7. 9/23 RP 40. He needs help organizing, cooking, shopping, taking meds, etc. *Id.* at 34-35. Ten hours of care is the same price as 24 hours. *Id.* at 40-41.

ARGUMENT

A. This case is easily distinguishable from *Burnet*, *Rivers*, *Blair*, *Teter*, and every other published decision addressing late-disclosed witnesses.

The trial court correctly concluded that no published Washington case addresses witness exclusion where, as here, witnesses are first disclosed after trial has begun. Unpub. Op. at 36-37. Amici ignore this obvious difference between this matter and ***Burnet***, ***Rivers***, ***Teter*** and ***Blair***:

- In ***Burnet v. Spokane Ambulance***, this Court held that the trial court abused its discretion by excluding the plaintiffs' claim and related discovery – 18 months before trial – without first considering willfulness, prejudice, and the least severe sanctions "that could have advanced the purposes of discovery and yet compensated [defendants] for the effects of [plaintiffs'] discovery failings." 131 Wn.2d 484, 491-92, 494, 497, 502, 93 P.2d 1036 (1997). The sanction was "too severe in light of the length of time to trial." 131 Wn.2d at 497-98.
- In ***Rivers v. Wash. State Conference of Mason Contractors***, this Court reversed the dismissal of plaintiff's case over three months before, remanding with instructions to expressly consider ***Burnet***. 145 Wn.2d 674, 683, 694 n.86, 696, 700, 41 P.3d 1175 (2002).
- In ***Blair v. TA-Seattle East #176***, this Court reversed, where the court struck plaintiff's only medical experts 8 days before trial, leading to the dismissal of plaintiff's case. 171 Wn.2d 342, 346-47, 254 P.3d 797 (2011). This Court held that nothing on the record – oral or written – reflected any consideration of the ***Burnet*** factors. *Id.* at 348-49.
- In ***Teter v. Deck***, this Court affirmed an order granting a new trial, based in part on the trial court erroneously striking an expert witness as a discovery sanction. 174 Wn.2d 207, 212, 214-16, 218, 274 P.3d 336 (2012). Reviewing *de novo*,

> this Court held that neither the court's written order, nor colloquy with counsel, nor oral argument addressed the ***Burnet*** factors. ***Teter***, 174 Wn. 2d at 216, 218.

The City did not disclose Powell, Gordon, and Winquist 18 months before trial (***Burnet***) or even three months before trial (***Rivers***), when "usual sanctions" such as terms or depositions at the City's expense might have remedied the prejudice. CP 2116-17. Nor did the City disclose these witnesses one month before trial (***Teter***) or weeks before trial (***Blair***), when Meg would have at least had the chance to tailor her case-in-chief to counteract the new testimony. Instead, the City disclosed each of these witnesses well into trial: Powell when Meg's case was more than half over, Gordon when Meg's case was just days from over, and Winquist when the entire trial was days from over. "The trial court was properly concerned with the prejudice to Jones caused by introducing a new defense witness into the mix even as the presentation of the plaintiff's case in chief progressed" – or worse, was over. Unpub. Op. at 31. Amici say nothing.

WDTL also forgets that ***Burnet*** and its progeny are concerned with "advanc[ing] the purposes of discovery while compensating a party prejudiced by the opposition's "discovery

failings." ***Teter***, 174 Wn.2d at 216-17; ***Burnet***, 131 Wn.2d at 494-497; WDTL 5.[1] This is virtually impossible in the middle of trial.

B. The trial court complied with *Burnet*.

Amici do not address the following arguments that the trial court's lengthy analysis satisfies the ***Burnet*** test:

Beth Powell: Three days into trial, the City "surprise[d]" everyone, bringing Mark's estranged sister Beth Powell into court to make "an offer of proof" regarding Mark's alleged alcohol-use and his ability to be present in court,[2] and also claiming that it could "use [Powell] as an impeachment witness." 9/11 RP 103-08, 113-14; 9/29 RP 22-23.[3] Mark disclosed Powell in 2008 – there is no excuse for the City's failure to contact her for 18 months. CP 7198.

The trial court reserved ruling, ordering Meg to depose Powell over the weekend. 9/11 RP 111, 115-16. This proved that nearly all of Powell's proffered testimony was about alcohol, so inadmissible under the *in limine* rulings. Unpub. Op. at 19-20; 09/29 RP 23; CP 3620, 3778, 3782-84, 3794-98, 3800.

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[1] WSAMA addresses CR 60, saying little on this issue.

[2] The trial court lacked the authority to compel a non-party's presence in the courtroom, and Mark's doctors agreed that forcing him to sit through trial would be detrimental to his health and well-being. 9/11 RP 108; 10/8 RP 16.

[3] The trial court had already excluded the City's various alcohol theories. 9/04 RP 112-14. The appellate court affirmed. Unpub. Op. at 15, 17-18. The City does not seek review here.

Two weeks into trial, the City disclosed Powell as a "potential rebuttal witness," but there is no such disclosure. CP 3589, 3620-22; Unpub. Op. at 19, 25. The City never moved in writing to call Powell and never addressed ***Burnet***.

Meg moved to exclude Powell, citing ***Burnet*** and ***Mayer***, and noting the court's "previously mentioned familiarity" with those cases. CP 3590 (citing ***Burnet***, *supra*, and ***Mayer v. Sto Industries, Inc.***, 156 Wn.2d 677, 132 P.2d 115 (2006)). Indeed, Meg had previously briefed ***Burnet*** on an *in limine* motion to exclude other late-disclosed witnesses, and the court ruled, under ***Burnet*** and its progeny, that no lesser sanction would allow Meg to "adequately investigate and respond." CP 1509-14; 2112-13, 2116-17. The City never responded to Meg's motion to exclude Powell.

The court struck Powell on September 29, "after overseeing years of pretrial litigation, with the trial well under way, and with the benefit of voluminous briefing and oral argument," including three City pleadings on alcohol-use evidence, "a lengthy colloquy between the parties and the trial court regarding Powell's proffered testimony [and] the benefit of Powell's deposition testimony." Unpub. Op. at 19-20, 29-30; 9/29 RP 22-23, 25-26, 28. The court found no "case where a late disclosure was so late," saw no reason

for the late disclosure, and rejected the claim that Powell was a "rebuttal witness." *Id.* Relying on Powell's deposition, the trial court also excluded Powell on evidentiary grounds, ruling (1) that she had "virtually no personal knowledge"; (2) that her deposition did not change the court's rulings excluding alcohol-use evidence; and (3) that her testimony was thus irrelevant. 9/29 RP 22-23.

The appellate court affirmed, holding that (1) Powell's late disclosure was an "ambush," the epitome of willfulness; (2) that "the timing of [her] disclosure" – two weeks into Meg's case in chief – was itself prejudicial; and (3) that after "voluminous briefing and extensive oral argument," the court "judiciously" ordered Powell's deposition before ruling, providing a "sound basis" for her ruling. Unpub. Op. at 30-32 (citing 9/11 RP 111). The court also affirmed Powell's exclusion on evidentiary grounds, holding that this "basis for exclusion is independent of the City's conduct in failing to disclose Powell." Unpub. Op. at 32.

Gordon Jones: Mark listed his father, Gordon Jones, as a potential witness. CP 4416. Gordon had provided Mark physical therapy, and the City had received his records and paid his bills since 2005. CP 7330, 7336, 7337-38; 9/30 RP 67-68.

The City failed to list Gordon when it made its primary witness disclosure, first seeking permission to call Gordon days before Meg rested her case in chief. 10/7 RP 131; CP 4079-84, 6678-81. The City intended to elicit testimony about Mark's alleged alcohol use, despite *in limine* orders excluding such evidence. Unpub. Op. at 33. The City principally argued that it had timely disclosed Gordon by reserving the right to call Meg's listed witnesses. CP 4079-84. Although the City mentioned in passing that it should be permitted to call Gordon even if he were not disclosed, it never discussed the ***Burnet*** test. *Id.*

The trial court rejected the City's "false" suggestion that it "did not know anything about Gordon . . . until mid-way through [the] trial," where the City had paid his physical therapy bills since 2005. Unpub. Op. at 37 (citing CP 7815); CP 7330, 7336, 7337-38. After lengthy argument, the court excluded Gordon under ER 402 and 403, and under ***Burnet***, (1) finding no case where a witness was disclosed so late ("almost at the end of plaintiff's case"); (2) reminding the parties that she had been "pretty firm about excluding witnesses and testimony" earlier in the case; (3) rejecting the City's argument that Gordon was a "rebuttal witness"; and (4) concluding that "'the risks of unfair prejudice'" were so great as to potentially

cause a "mistrial," which is no lesser sanction for the City, but a punishment for Mark. Unpub. Op. at 37 (quoting 9/29 RP 27-28); 9/29 RP 24-26 (distinguishing ***Blair v. TA-Seattle East #176***, 150 Wn. App. 904, 210 P.3d 326 (2009)); 9/29 RP 27-28.

The next day, the City sought permission to call Gordon for the limited purpose of testifying to Mark's one-time comment that he was pain free. 9/30 RP 68-72. Although the court seriously considered limiting the scope of Gordon's testimony – a lesser sanction – "99 percent" of his proffered testimony was "completely inappropriate" under the *in limine* rulings. *Id.* The court nonetheless reserved ruling. *Id.*

After Meg testified to Mark's "one time" pain-free comment, the City again moved to call Gordon on "rebuttal," repeating its arguments that he was timey disclosed. CP 4224-29; 10/07 RP 52; 10/8 RP 209-16. The City again failed to address ***Burnet***. *Id.* Ultimately it became obvious that if the City did not really intend to limit Gordon's testimony. 10/14 RP 10-11.

Just days before the six-week trial ended, the court again excluded Gordon's testimony, ruling: (1) that permitting his testimony would cause extreme prejudice; (2) that, assuming arguendo that Gordon was timely disclosed, the City could not call

him to testify "regarding completely different issues than those for which [he] was initially disclosed"'; and (3) that the City proposed calling Gordon as a treating health care provider, but had violated the rules prohibiting *ex parte* communication with treaters. 10/14 RP 11-12; Unpub. Op. at 35-37. This was the last of four lengthy on-the-record colloquies addressing the admissibility of Gordon's testimony. 9/29 RP 3-34; 9/30 RP 64-72; 10/8 RP 209-16; 10/14 RP 9-12.

The appellate court affirmed under ***Burnet***, holding (1) that the City's "intentional failure to investigate resulted in [its] untimely disclosure"; (2) that the prejudicial effect of calling Gordon at the close of plaintiff's case was "dramatic"; and (3) that allowing Gordon's testimony would have caused a mistrial, which is no lesser sanction. Unpub. Op. at 33, 37-38. The appellate court also affirmed the "independent" evidentiary ruling excluding Gordon's testimony under the *in limine* orders. *Id.* at 38-39.

Rose Winquist: Winquist's late disclosure was "part of a larger strategy to prevent Jones from deposing the City's investigators." Unpub. Op. at 44 n.13; Supp. BR 9. Four days into trial, the City mentioned an undisclosed investigator, neither naming her nor stating an intent to call her. CP 3592-93, 8206;

9/11 RP 114. Ten days into trial, the City first claimed that Winquist was an "additional rebuttal witness." CP 3620-22. Meg objected, noting that there is no separate "rebuttal witness" disclosure, that the City willfully violated the order striking its prior investigator, and that a continuance would be a reward, not a sanction. CP 3587-95. Four weeks into trial (first day of the City's case), the court rejected the City's claim that Winquist was a rebuttal witness, where the City easily should have anticipated everything she would purportedly "rebut." 10/8 RP 10-11, 14-15.

Four days later, the City moved for the first time to call Winquist for "impeachment." CP 4276-80. The City did not address ***Burnet***, falsely claiming that it had timely disclosed Winquist. CP 4277. Later admitting that Winquist was untimely, the City offered to "sanitize[]" her testimony. 10/14 RP 12-13. The court struck Winquist days before trial ended, ruling, "[a]s it had many times before, [that] Winquist's disclosure [was] 'an ambush.'" Unpub. Op. at 43 (quoting 10/14 RP 17).

The appellate court affirmed, holding (1) that the City's non-disclosure was strategic and an "ambush"; (2) that Meg would be extremely prejudiced, having had no opportunity to counter-investigate or to develop opposing witnesses; and (3) that "[t]he

voluminous record in this case demonstrates that the trial court 'perform[ed] the necessary balancing' required by ***Burnet*** . . . ." Unpub. Op. at 40-41, 43, 44 n.13.

Without addressing these arguments, the trial court's careful rulings, or the appellate court's considered holdings, WDTL claims that more was required. WDTL 4-9. The City "disclosed" Powell and Winquist as "additional rebuttal witnesses," never addressing ***Burnet***, and never responding to Meg's motion to exclude. CP 3589, 3620-22. These are not rebuttal witnesses – "[g]enuine rebuttal evidence . . . consists of evidence offered in reply to new matters." ***State v. White***, 74 Wn.2d 386, 394-95, 444 P.2d 661 (1968). Nor does the City now, or ever on appeal, challenge the rulings that Powell, Winquist (and Gordon) are not rebuttal witnesses.

The City sought permission to call Gordon, but principally argued that he was timely disclosed. CP 4079-84. Arguing only in passing that it should be permitted to call Gordon even if his disclosure was untimely, the City never mentioned ***Burnet***. *Id.* And while the City eventually argued that Gordon too was a "rebuttal witness," it identified nothing "new" he would have responded to. ***White***, 74 Wn.2d at 394-95

WDTL complains that the court's thoughtful analysis is not at "one specific cohesive location in the transcript." WDTL at 8. Indeed the court's colloquy spans 10 days and 136 pages. 9/11 RP 103-17, 147-48; 9/14 RP 29-30, 107-09; 9/17 RP 95-96, 139, 145-46; 9/22 RP 5-12, 120, 123-26, 128-31; 9/25 RP 3-16, 65-70; 9/28 RP 225-26; 9/29 RP 3-29, 32-34; 9/30 RP 64-72; 10/8 RP 4-5, 9-20, 209-16; 10/14 RP 9-17. This is in part because the City repeatedly asked the court to reconsider its rulings, and in part because the court was incredibly thoughtful and thorough. This approach should be encouraged.

WDTL takes exception to the statement that "The willfulness and prejudice here are so obvious as to require little more analysis than 'trial by ambush' – as the trial court ruled." WDTL at 6 (citing Supp. BR at 13). Jones never suggested that willfulness and prejudice were so obvious as to give rise to an "exception" to ***Burnet***. WDTL at 6. Jones' point is that the City's trial-by-ambush tactics speak volumes about its willfulness and the prejudice caused by its very late disclosures.

WDTL also complains that the trial court prioritized local rules over ***Burnet***. WDTL at 11-12. But again, Jones thoroughly briefed ***Burnet***, and the trial court plainly demonstrated her firm

grasp of ***Burnet*** and its progeny. CP 1509-14, 2116-17, 3590. Lesser sanctions that were insufficient weeks before trial plainly would not work in the middle or trial, nor as it came to an end.

WDTL's real focus is its request that this Court adopt a "strong preference for written findings of fact." WDTL at 6-7, 10. ***Blair*** and ***Teter*** both plainly provide that oral rulings or colloquy between court and counsel satisfy ***Burnet***:

> A trial court may make the ***Burnet*** findings on the record orally or in writing. . . . Thus, where an order excluding a witness is entered without oral argument or a colloquy on the record, findings on the ***Burnet*** factors must be made in the order itself or in some contemporaneous recorded finding. [***Teter***, 174 Wn.2d at 217.]
>
> Neither of the trial court's orders striking Blair's witnesses contained any findings as to willfulness, prejudice, or consideration of lesser sanctions, *nor does the record reflect these factors were considered. For example, there was no colloquy between the bench and counsel. There was no oral argument before the trial court entered its orders*, and the orders themselves contain bare directives. [***Blair***, 171 Wn.2d at 348 (emphasis supplied).]

Where (as here) there is a massive record explaining the trial court's rulings, it is both impractical and unnecessary to require written findings in the midst of an ongoing trial.

Amici also ignore the "independent" evidentiary rulings excluding Powell and Gordon. Unpub. Op. at 29, 32, 38-39. The City never challenged these rulings, or the related *in limine* rulings

excluding alcohol-use evidence. This Court should affirm and decline to require a trial court to apply ***Burnet*** when exercising its broad discretion over evidentiary rulings during trial.

C. No new trial was warranted.

The City's CR 60 argument suffers from two fatal flaws Amici cannot remedy, so largely ignore. First, the City has never identified a factual assertion, like that at issue in ***Kurtz v. Fels***, *Infra*, that would excuse the City's failure to diligently investigate. Second, the City instead "misrepresents" the record. Unpub. Op. at 51-52. This Court should affirm.

To obtain a new trial under CR 60(b)(3),[4] the City had to prove that its failure to diligently investigate was excused by its reliance on a "clear and unambiguous" factual assertion that was false. *Id.* at 51; ***Kurtz v. Fels,*** 63 Wn.2d 871, 875, 389 P.2d 65 (1964). The City contends that the "false assertion" it supposedly relied on was Mark's medical records, which document his always up and down recovery. PFR 3, 17-20. But Mark's medical records do not remotely suggest that he is incapable of the activities shown in the surveillance video, such as playing horseshoes and camping (which the City knew he could do in any event). CP 151, 415, 420,

[4] The City abandoned its CR 60(b)(4) claim.

9781, 9808. And these surveillance images are coupled with images of Mark rocking in a chair next to a campfire, or being helped up after falling on the beach. CP 9783. The video is consistent with considerable testimony from both sides that, with limitations and with help, Mark can do many of the things he enjoyed before his catastrophic fall. In short, "the City nowhere convincingly alleges how the videotape footage contradicts Jones's representation of Mark's physical condition" at trial. Unpub. Op. 52.

Without a false factual assertion like the one in ***Kurtz***, the City took "out of context" Meg's statement that Mark made a "remarkable physical recovery." Unpub. Op. at 51-52. The same medical records the City claims it relied on refer to Mark's "remarkable physical recovery" in 2005 and 2006, and Meg repeated the same at her 2008 deposition and again at trial. CP 156, 2411, 2414; 10/01 RP 124. Yet the fundamental underpinning of the City's CR 60 motion was its claim that Meg fabricated Mark's "remarkable physical recovery" to explain his appearance in the surveillance video. Unpub. Op. at 51-52. The appellate court correctly held that "[t]he City misrepresents the record when it chides [Meg] for 'fail[ing] to disclose' Mark's 'remarkable physical recovery.'" Unpub. Op. at 52 (quoting BA 62).

WDTL incorrectly claims that the trial court imposed an "impossibility" standard on the City. WDTL 13-14. The court's order denying the City's CR 60 motion makes plain that the court applied the proper reasonable-diligence standard, as articulated by WDTL and the City. CP 9779-80.

Both amici address ***Kurtz*** at some length, without even attempting to identify a false factual assertion that the City supposedly relied upon. WDTL 17-19; WSAMA 15. Regurgitating this inapposite case is not helpful.

WSAMA's other arguments are worse than unhelpful. WSAMA's entire brief asks this Court to adopt a lower CR 60 standard for municipalities because taxpayers pay into a Self-Insured Retention. WSAMA 2-7. The legal application of CR 60 cannot vary depending on who may be asserting it.

WSAMA states that a party should be able to rely on discovery responses, but incorrectly assumes that Mark provided false or misleading discovery responses or "misled" the jury. *Id.* at 3-5, 10. Framed that way, it would seem rather obvious that a trial court should grant – or at least look "favorably" upon – a CR 60 motion. *Id.* at 5. But again, WSAMA, like the City, fails to identify any false factual assertion – there is none. And WSAMA's

allegations of fraud and misconduct are as irrelevant as they are unfounded – the City abandoned its CR 60(b)(4) argument. PFR 1-2.

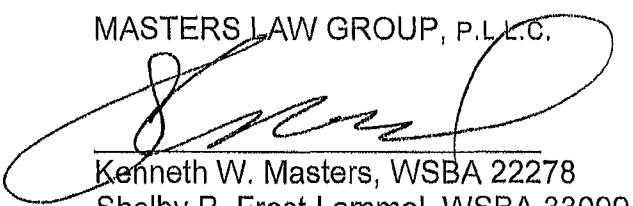
Finally, WSAMA states that one doctor opined that the video showed no indication of a cognitive disorder, omitting that "[n]early all of the medical professionals who testified have submitted declarations indicating that the video did not change their opinions . . . ." *Compare Id.* at 11 *with* CP 9784, 8358, 8822, 8824-26, 8828-30, 8834. Put simply, there is no "scientific basis" for reversing highly-justified medical opinions based on a silent video. CP 8359, 8360-61, 8822, 8831, 8835.

CONCLUSION

This Court should affirm.

RESPECTFULLY SUBMITTED this 31st day of May, 2013.

MASTERS LAW GROUP, P.L.L.C.



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CERTIFICATE OF SERVICE BY MAIL

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To: Cheryl Fox
Subject: RE: 87343-7 Jones v. City of SEattle - Answer to WAMA and WDTL Amicus Briefs

Rec'd 5-31-13

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From: Cheryl Fox [mailto:cheryl@appeal-law.com]
Sent: Friday, May 31, 2013 3:59 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: 87343-7 Jones v. City of SEattle - Answer to WAMA and WDTL Amicus Briefs

ANSWER TO THE WASHINGTON ASSOCIATION OF MUNICIPAL ATTORNEYS FOR LEAVE TOFILE BRIEF IN SUPPORT OF CITY OF SEATTLE'S PETITION FOR REVIEW AND TO THE BRIEF OF AMICUS CURIAE WASHINGTON DEFENSE TRIAL LAWYERS

Case: *Jones v. City of Seattle*
Case Number: 87343-7
Attorney: Shelby Lemmel
Telephone: (206) 780-5033
Bar No.: 33099
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Thank You!

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