

No. 90133-3  
IN THE SUPREME COURT  
FOR THE STATE OF WASHINGTON

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Aug 22, 2014, 11:09 am  
BY RONALD R. CARPENTER  
CLERK

---

JESSE POWERS,

*Respondent,*

vs.

W.B. MOBILE SERVICES, INC.,

*Petitioner.*

RECEIVED BY E-MAIL

---

APPEAL FROM PIERCE COUNTY SUPERIOR COURT No. 09-2-  
09464-6 AND DIVISION II, COURT OF APPEALS No. 42797-4

---

**PETITIONER'S MOTION TO STRIKE**

---

Jill Haavig Stone, WSBA No. 24256  
Melanie T. Stella, WSBA No. 28736  
*Attorneys for Petitioner*

STADIUM LAW GROUP, LLC  
705 S 9th Street, Suite 106  
Tacoma, WA 98405  
(253) 327-1040

**1. Identity of Moving Party**

Petitioner W.B. Mobile Services, Inc., (W.B. Mobile) moves this Court for an order granting the relief requested in paragraph 2, below.

**2. Relief Requested**

W.B. Mobile asks this Court to strike section II(3) (pages 12 through 20) of Respondent's Supplemental Brief, filed with this Court on August 8, 2014. This section improperly raises an issue for the Court's consideration that was not contained W.B. Mobile's petition for review, to which Respondent did not file an answer.

**3. Statement of Facts Relevant to Motion**

This is an appeal from a decision of the Court of Appeals, Division II, reversing the trial court's order dismissing Respondent's claims against W.B. Mobile. W.B. Mobile filed its Petition for Review on April 10, 2014. Therein, W.B. Mobile identified three distinct issues for this Court's consideration:

1. Whether this Court should accept its dictum in *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 331, 815 P.2d 781 (1991), as law and allow a plaintiff to toll the statute of limitations under RCW 4.16.170 against an unknown defendant by naming a "John Doe" defendant with reasonable particularity and serving at least one named defendant within 90 days of filing;

2. If the *Sidis* dictum is adopted as law, what is the standard for determining whether the “John Doe” defendant was identified with reasonable particularity; and

3. If a plaintiff properly tolls the statute of limitations in accordance with the *Sidis* dictum, whether he must also comply with the relation back requirements of CR 15(c) in order to substitute a named defendant for the “John Doe” defendant after the expiration of the statute of limitations.

*Petition for Review pages 1-2.* Respondent did not file an answer to W.B. Mobile’s petition for review per RAP 13.4(d).

On August 8, 2014, the parties filed their respective supplemental briefs. In his brief, Respondent, for the first time, asked this Court to “decide whether ‘inexcusable neglect’ should lose its place as an independent basis for denying relation back under CR 15(c), or in the alternative narrow the application of the ‘inexcusable neglect’ prong under CR 15(c).” *Supplemental Brief of Respondent Jesse Powers at page 12.*

#### **4. Argument**

Under RAP 13.7(b), if this Court accepts review of a Court of Appeals decision, it “will review only the questions raised in the . . . petition for review and the answer” unless otherwise ordered. This Court generally does not review an issue that was not presented as a separate

issue before the Court of Appeals, identified in the petition for review or answer, or raised for the first time in a supplemental brief after review has been accepted. *See Douglas v. Freeman*, 117 Wn.2d 242, 258, 814 P.2d 1160 (1991).

Respondent did not file an answer to W.B. Mobile's petition for review and his "inexcusable neglect" argument was raised for the first time in his supplemental brief. Moreover, Respondent did not raise the question of the propriety of the "inexcusable neglect" element to the Court of Appeals. W.B. Mobile has not had any opportunity to address whether the Court should accept review of this issue or the merits of Respondent's arguments. It should be stricken from his brief and this Court should decline to consider it.

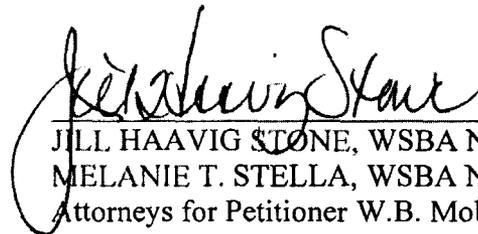
Alternatively, if this Court exercises its inherent authority and considers the issue, W.B. Mobile asks for leave to file a responsive brief. This brief would be limited to W.B. Mobile's position on whether this Court should accept review of this issue (as it would have argued in its reply under RAP 13.4(d)) and W.B. Mobile's position on the merits of the issue (as it would have argued in its supplemental brief under RAP 13.7(d)). Under these circumstances, no additional briefing from Respondent would be necessary.

**5. Conclusion**

W.B. Mobile respectfully requests that this Court strike section II(3) (pages 12 through 20) of Respondent's supplemental brief, which contains his request that this Court decide whether and to what extent the "inexcusable neglect" standard should be a part of Washington's CR 15(c) analysis. Alternatively, if this Court exercises its inherent authority to consider this issue, W.B. Mobile respectfully requests that it be allowed to respond with additional briefing as outlined above.

Dated this 27 day of August, 2014.

STADIUM LAW GROUP, LLC



JILL HAAVIG STONE, WSBA No. 24256  
MELANIE T. STELLA, WSBA No. 28736  
Attorneys for Petitioner W.B. Mobile

**DECLARATION OF SERVICE**

I, Melanie T. Stella, hereby declare under penalty of perjury under the laws of the State of Washington that AUGUST 22, 2014 I filed with the Court the original of PETITIONER'S MOTION TO STRIKE and caused to be served true copies of the same upon:

<p><b>Attorney for Plaintiff</b></p> <p><b>Cameron T. Riecan</b> Tacoma Injury Law Group, Inc., P.S. 3848 S Junett Street Tacoma, WA 98401 P.O. Box 1113 Tacoma, WA 98401</p>	<p><input checked="" type="checkbox"/> <b>Via email to</b> <u>cameron@tacomainjurylawgroup.com</u> <u>doug@tacomainjurylawgroup.com</u> <b>per Stipulation for Electronic Service</b></p> <p><input type="checkbox"/> Via U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Via messenger</p>
<p><b>Co-Counsel for Plaintiff</b></p> <p><b>Tamara S. Clower</b> Attorney at Law 1105 Tacoma Avenue South Tacoma, WA 98402</p>	<p><input checked="" type="checkbox"/> <b>Via email to</b> <u>tamaraclower@yahoo.com</u> <b>per Stipulation for Electronic Service</b></p> <p><input type="checkbox"/> Via U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Via messenger</p>

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

DATED this 22nd day of August, in Tacoma, Washington.

  
 \_\_\_\_\_  
 MELANIE T. STELLA  
 Attorney at Law

## OFFICE RECEPTIONIST, CLERK

---

**To:** Melanie  
**Subject:** RE: Powers v. W.B. Mobile Services, Inc. (Supreme Court Cause No. 90133-3)

Received 8-22-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Melanie [mailto:[melanie@snlawllc.com](mailto:melanie@snlawllc.com)]  
**Sent:** Friday, August 22, 2014 11:06 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** [cameron@tacomainjurylawgroup.com](mailto:cameron@tacomainjurylawgroup.com); [doug@tacomainjurylawgroup.com](mailto:doug@tacomainjurylawgroup.com); [tamaraclower@yahoo.com](mailto:tamaraclower@yahoo.com); Jill; Priscilla VanKooten; Melanie  
**Subject:** Powers v. W.B. Mobile Services, Inc. (Supreme Court Cause No. 90133-3)

Attached for filing and service: Petitioner's Motion to Strike and Declaration of Service

Case name and number: *Powers v. W.B. Mobile Services, Inc.* (Supreme Court Cause No. 90133-3)

Person filing document: Melanie T. Stella, WSBA No. 28736  
(253) 327-1040  
[melanie@snlawllc.com](mailto:melanie@snlawllc.com)

Please confirm receipt. Thank you very much.

**Melanie T. Stella, Attorney**

Stadium Law Group, LLC  
705 South 9th Street, Suite 106  
Tacoma, WA 98405

Direct 253.327.1043 | Fax 253.327.1047

This e-mail and its attachments may be privileged, confidential, and/or protected from disclosure. If you have received this e-mail in error, please reply to the sender immediately.