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WASHINGTON STATE  
SUPREME COURT *byh*

No. 91711-6  
(Consolidated with Nos. 91725-6, 91726-4, and 91727-2)

SUPREME COURT OF THE  
STATE OF WASHINGTON

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WILLIAM RALPH, individually,  
Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL  
RESOURCES, a Washington State Public Agency,  
Respondent.

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WILLIAM RALPH, individually,  
Appellant,

vs.

WEYERHAEUSER COMPANY, a Washington Corporation; and  
GREEN DIAMOND RESOURCE COMPANY, a Washington  
Corporation,  
Respondents.

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WILLIAM FORTH, individually; GUY BAUMAN, individually;  
EILEEN BAUMAN, individually; LINDA STANLEY, individually and  
as personal representative IN RE THE ESTATE OF CORAL COTTON;  
ROCHELLE STANLEY as personal representative IN RE THE ESTATE  
OF CORAL COTTON; DONALD LEMASTER, individually; and  
DAVID GIVENS, individually  
Petitioners,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL  
RESOURCES, a Washington State Public Agency; WEYERHAEUSER  
COMPANY, a Washington Corporation; and GREEN DIAMOND  
RESOURCE COMPANY, a Washington Corporation,  
Respondents.

ORIGINAL

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VIRGINIA CAREY, individually; JAMIE CAREY, individually;  
PARADYCE INDUSTRIES INC., d/b/a THE PRINT SHOP, a  
Washington corporation,  
Appellants,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL  
RESOURCES, a Washington State Public Agency; WEYERHAEUSER  
COMPANY, a Washington Corporation; and GREEN DIAMOND  
RESOURCE COMPANY, a Washington Corporation,  
Respondents.

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PETITIONERS' REPLY BRIEF

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Darrell L. Cochran, WSBA #22851  
Loren A. Cochran, WSBA #32773  
Kevin M. Hastings, WSBA #42316  
Christopher E. Love, WSBA #42832  
Counsel for Appellants

PFAU COCHRAN VERTETIS  
AMALA, PLLC  
911 Pacific Avenue, Suite 200  
Tacoma, Washington 98402  
(253) 777-0799

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## I. INTRODUCTION

Litigants frequently plead causes of action and affirmative defenses if only to preserve arguments downstream. But Respondents' strategy in this case was to bet the ranch on outright dismissal under CR 12, refusing to argue in the alternative that venue should be in Lewis County. The purpose of doing so was purely strategic: Dismissals would have created significant, if not insurmountable, statute of limitations issues for Petitioners. Now, Respondents ask this Court to overlook its material pleading failures and affirm the trial court's venue transfer because, among other reasons, they claim there was no reason to assert a potential improper venue defense until this Court's decision in *Ralph v. Dep't of Nat'l Resources*, 182 Wn.2d 242, 343 P.3d 342 (2014) (*Ralph I*).

However, Respondents' argument ignores this Court's 2011 invitation to reconsider and potentially overrule—in a case like this one presenting the issue—precedent holding that RCW 4.12.010 relates to jurisdiction instead of venue. *Five Corner Family Farmers v. State*, 173 Wn.2d 296, 315, n. 5, 268 P.3d 892 (2011) (acknowledging RCW 4.12.010's jurisdictional interpretation and modern trend of overruling such interpretations but declining to reach issue not raised by the parties). Further still, in *Ralph I* this Court acknowledged its consistent, modern trend of overruling contrary precedent and holding that statutory filing and trial requirements related to venue, not jurisdiction. The fact of the matter is that the handwriting was not merely on the wall for Respondents; it was in bold, underlined, and italicized. Respondents knew or should have

known that any objection based on RCW 4.12.010 might ultimately lie in venue, not jurisdiction, and would have suffered no prejudice in asserting alternative objections. However, they took the calculated risk in advancing a pure motion to dismiss purely for strategic reasons. Risks necessarily entail consequences, however, and Respondents provide no persuasive reason from sparing them from the consequences of their failed “all or nothing” strategy in this case.

Even if this Court reached the merits of this case, however, Respondents’ contention that RCW 4.12.010 creates not mandatory, but *exclusive* venue in one county suffers from numerous fundamental flaws. Primarily, Respondents ignore the fact that their policy and historical arguments were expressly rejected in *Ralph I* and, simultaneously, read *Ralph I* as having adopted an “exclusive” venue of interpretation of RCW 4.12.010, refuted the applicability of other “mandatory venue” statutes, and remanded for a venue change to Lewis County. Problematically, none of those “holdings” were actually in the decision, which simply held that RCW 4.12.010 applies and relates to mandatory venue and remanded for further proceedings.

However, to any extent those issues have not been waived by Respondents, they are before this Court now, and Respondents’ “exclusive venue” interpretation of RCW 4.12.010 fails on its merits. This Court previously has recognized the precise type of statutory language creating an “exclusive venue” requirement. RCW 4.12.010 does not bear the slightest resemblance to those statutes. Even more glaringly,

Respondents' offered interpretation completely ignores the plain language of the other applicable venue statutes in this case that gives mandatory effect to a plaintiff's choice of venue. Respondents' interpretation ignores this Court's well-established standards of statutory interpretation by needlessly and impermissibly creating a conflict between the multiple, mandatory venue statutes in this case. The needlessness and impropriety of Respondents' interpretation is only highlighted by the fact that this Court has previously avoided such a conflict between mandatory venue statutes by adopting a "complementary" interpretation.

Respondents provide no persuasive reason for deviating from that well-reasoned, well-traveled path in this case. Under a complementary interpretation of the venue statutes in this case, Petitioners filed their cases in a proper venue, King County. Accordingly, Petitioners respectfully request this Court reverse the trial court's orders transferring venue to Lewis County.

## **II. ARGUMENT**

### **A. Respondents Waived Any Affirmative Defense of Improper Venue**

#### 1. Well-settled Washington law recognizes improper venue as an affirmative defense that may be waived

First, Respondents contend that (1) Petitioners "assume[]—without justification—that mandatory venue under RCW 4.12.010(1) is subject to waiver."<sup>1</sup> In doing so, however, they misrepresent—and completely fail

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<sup>1</sup> Brief of Respondents at 6.

to address—Petitioners’ arguments, based on well-settled Washington law, that improper venue is an affirmative defense that must be asserted in an answer or a motion to dismiss in order to avoid waiver. Because Respondents failed to address these arguments, they have conceded them. *State v. Ward*, 125 Wn. App. 138, 143-44, 104 P.3d 61 (2005) (State conceded double jeopardy argument on appeal by failing to respond to it); *State v. E.A.J.*, 116 Wn. App. 777, 789, 67 P.3d 518 (2003) (State’s conceded impropriety of aggravating factor on appeal by failing to address appellants’ contentions).

Even if Respondents did not concede these arguments, their contention that mandatory venue under RCW 4.12.010(1) cannot be waived fails. First, Respondents contend that RCW 4.12.010(1) and its predecessor statutes codified the common law “local action rule” and that, at common law, the rule could not be waived. But statutory enactments replace and preempt the common law on the same subject matter. See *Adcox v. Children’s Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 40, 864 P.2d 921 (1993) (“RCW 7.70.080 replaces the common law’s collateral source rule.”). Nothing in RCW 4.12.010(1)’s plain language provides that its venue requirements cannot be waived.

Indeed, one of the cases cited by Respondents as support, *ZDI Gaming Inc. v. State ex rel. Wash. State Gambling Com’n*, 173 Wn.2d 608, 616-20, 268 P.3d 929 (2012), actually illustrates that the legislature knows how to create a non-waivable, exclusive venue requirement and did not do so with RCW 4.12.010(1). *ZDI* involved interpretation of RCW

9.46.095's requirement that "*No court* of the state of Washington *other than the superior court of Thurston county* shall have jurisdiction over any action or proceeding against the commission." Emphasis added. This Court interpreted the statute as establishing exclusive venue for "cases involving the Gambling Commission." *ZDI Gaming Inc.*, 173 Wn.2d at 619-620.

*ZDI* demonstrates that the legislature knows how to establish "exclusive," non-waivable venue through "No court . . . other than" language. For example, under RCW 9.46.095's language, any case involving the state Gambling Commission filed outside Thurston County would have to be transferred to Thurston County as no other superior court would be a proper forum, thus necessarily rendering its venue requirements non-waivable. In contrast, RCW 4.12.010(1) merely provides that "[a]ctions . . . shall be commenced in the county in which the subject of the action, or some part thereof, is situated." It contains no express language precluding other venues in a case or otherwise rendering its requirements non-waivable.

Respondents contention that venue under RCW 4.12.010(1) cannot be waived is further undermined by the only other cases they cite as support. Both *Alaska Airlines, Inc. v. Molitor*, 43 Wn.2d 657, 665, 263 P.2d 276 (1953) and *Miles v. Chinto Mining Co.*, 21 Wn.2d 902, 904, 153 P.2d 856 (1944) held that venue under the statute (and its predecessors) could not be waived—through stipulation or otherwise—because it was a *jurisdictional requirement*, not venue. Indeed, the *Miles* court expressly

recognized that, had the statute related to venue instead of jurisdiction, the result would have been different:

It may be conceded that, if § 204, subd. 1, were a statute relating merely to venue, the parties could so stipulate [to venue in a different county]. But it has not been so regarded or construed by our decisions; on the contrary, it has been regarded as a statute affecting jurisdiction.

*Miles*, 21 Wn.2d at 904.

Here, this Court has held that RCW 4.12.010(1) does, in fact, relate to venue. Accordingly, it is waivable through stipulation by the parties, *accord Miles*, 92 Wn.2d at 904. Likewise, if venue under the statute is waivable through one means, it follows logically that it is waivable through other judicially-recognized forms of waiver, such as failure to assert improper venue as an affirmative defense or actions inconsistent with asserting the defense. Accordingly, venue under the statute can be waived.

2. Respondents waived any opportunity to assert improper venue based on RCW 4.12.010(1)

Second, Respondents, citing *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 138-39, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967), assert that no “known” and waivable right to assert improper venue and seek a venue change existed until this Court’s decision in *Ralph I* because RCW 4.12.010(1) was characterized previously as jurisdictional and the only recognized remedy was dismissal. But *Curtis Publishing* is inapposite, as that case involved assertion of an entirely new First Amendment defense

to state libel laws created by an intervening United States Supreme Court decision. *Id.* at 142-144; accord *Fed. Election Com'n v. Legi-Tech, Inc.*, 75 F.3d 704, 707 (D.C. Cir. 1996)). The Supreme Court held that, under the “intentional and voluntary relinquishment of a known right” waiver standard for constitutional rights and the additional “clear and compelling” standard in the First Amendment context, Curtis Publishing had not waived the newly-recognized First Amendment defense. *Id.*

In contrast, this case does not involve waiver of a constitutional right. Accordingly, neither the heightened constitutional waiver standards nor the reasoning of *Curtis Publishing* apply. Even if those standards applied, at least one federal court has recognized that failure to assert even a constitutional affirmative defense constitutes waiver where it was “foreshadowed” by precedent. *Fed. Election Com'n*, 75 F.3d at 707.

Here, prior to *Ralph I*, this Court expressly recognized, under existing case law, the potential for overruling previous decisions interpreting RCW 4.12.010 as relating to jurisdiction instead of venue in a future case presenting the issue. *Five Corner Family Farmers*, 173 Wn.2d at 315 n. 5. As this Court stated,

If RCW 4.12.010 applied, that would raise the troublesome issue of whether that statute is one of jurisdiction, *Snyder v. Ingram*, 48 Wash.2d 637, 638, 296 P.2d 305 (1956), or one of venue, *cf. Young v. Clark*, 149 Wash.2d 130, 134, 65 P.3d 1192 (2003) (overruling case law and holding that article IV, section 6 of the Washington Constitution generally prevents the legislature from limiting subject matter jurisdiction “as among superior courts”). Unless we were to overrule *Snyder*, if RCW

4.12.010 required that this case be filed in Franklin County, the proper remedy would have been dismissal, not transfer. The parties have not briefed this issue, and we decline to address it.

*Five Corner Family Farmers*, 173 Wn.2d 296 at 315 n. 5.

Likewise, in *Ralph I*, this Court acknowledged a string of opinions overruling previous decisions “interpreting similar trial and filing restrictions as jurisdictional.” *Ralph I*, 182 Wn.2d at 253. Furthermore, in *Ralph I*, this Court recognized that, despite RCW 4.12.010(1)’s previous jurisdictional characterization, in practice Washington courts had been allowed to transfer such cases to which it applied to other counties. *Ralph I*, 182 Wn.2d at 255-56.

Thus, the fact that any objection based on RCW 4.12.010 ultimately lay in venue was not merely foreshadowed; it was expressly recognized by this Court as the logical continuation of its recent precedent. Respondents knew or should have known that any objection based on RCW 4.12.010 might ultimately lie in venue, not jurisdiction. Respondents would not have suffered prejudice in “covering their bases” by pleading improper venue as an affirmative defense in their answers or asserting an alternative argument in their motions to dismiss that a change of venue to Lewis County was the proper remedy if their jurisdictional arguments were rejected. Their failure to preserve their affirmative defense through either means constituted waiver.<sup>2</sup>

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<sup>2</sup> Respondents state, “As Plaintiffs acknowledge, [Respondents] had already denied [Petitioners’] allegations that venue was proper in King County.” Joint Brief of Respondents at 8 n. 13. To the extent that Respondents implicitly argue that their general

Moreover, *Curtis Publishing* differs from this case in another key aspect: Respondents not only failed to preserve their improper venue defense before the trial court but also repeatedly and expressly rejected a transfer to Lewis County.<sup>3</sup> In light of ample precedent signaling that this Court was poised to interpret RCW 4.12.010 as a venue statute, Respondents' decision to take an "all or nothing" approach of refusing even to request a venue change as a "fallback" alternative should they ultimately not achieve outright dismissal of these cases should be viewed as a knowing, tactical decision. Respondents were entitled to their litigation tactics, but these tactics now have a manifest and certain consequence. Because Respondents' assertion of an improper venue affirmative defense is inconsistent with their previous behavior and comes years too late, this Court should hold that they have waived any right to

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denials in their answers regarding Petitioners' venue allegations in their complaint was sufficient to preserve their affirmative defense, Petitioners made no such acknowledgement.

CR 8(c) provides that parties "shall set forth affirmatively . . . any other matter constituting an avoidance or affirmative defense." Thus, "Any matter that does not tend to controvert the opposing party's prima facie case as determined by applicable substantive law should be pleaded, *and is not put at issue by a general denial.*" *Shinn Irr. Equipment, Inc. v. Marchand*, 1 Wn. App. 428, 430-31, 462 P.2d 571 (1969) (emphasis added); see also *Harting v. Barton*, 101 Wn. App. 954, 962, 6 P.3d 91 (2000) (stating the same).

Here, Respondents only made general denials regarding Petitioners' venue allegations, as opposed to pleading improper venue as an affirmative defense. Both CR 8(c) and *Shinn* make clear that such general denials are insufficient to preserve an affirmative defense such as improper venue. Accordingly, Respondents waived their objections to venue.

<sup>3</sup> Respondents criticize Petitioners for allegedly seeking a remedy of venue transfer to Lewis County before the trial court prior to *Ralph I* but rejecting such a transfer now. However, Petitioners' position at trial court was consistent: King County was a proper venue, but in the alternative if the trial court disagreed, the remedy should have been a transfer, not an outright dismissal. Petitioners currently are maintaining the position they have taken all along: King County is a proper venue for this case.

seek a venue change under RCW 4.12.010(1). *King v. Snohomish County*, 146 Wn.2d 420, 423, 47 P.3d 563 (2002).

**B. RCW 4.12.010(1) Does Not Establish Venue in a Case to the Exclusion of All Other Applicable Venue Statutes**

1. This court did not address RCW 4.12.010(1)'s interaction with other applicable venue statutes in *Ralph I*

As an initial matter, Respondents, citing *Ralph I*, 182 Wn.2d at 249-51 and Petitioners' supplemental briefing in *Ralph I*, claim that this Court has already held that RCW 4.12.010 establishes not just mandatory but *exclusive* venue where it applies.<sup>4</sup> Respondents' citation is not well-taken, however. In *Ralph I*, the issue presented by Petitioners to the Court was whether RCW 4.12.010 applied *at all* to Petitioners' actions for monetary damages to their real property,<sup>5</sup> and this is precisely how the Court framed the issue it was deciding. *Ralph I*, 182 Wn.2d at 248-49. Ultimately, this Court concluded only that "RCW 4.12.010(1) applies to Ralph's and Forth's claims." *Id.* at 251. This Court did not purport anywhere in its opinion to reach the additional issue other venue statutes' applicability to this case or their interaction with RCW 4.12.010.

Likewise, after determining only that RCW 4.12.010(1) applied, nowhere in its opinion did this Court determine "the proper venue" for Petitioners' claims in this case, hold that Petitioners' actions were filed in the wrong county, or order transfer to Lewis County. Instead, this Court

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<sup>4</sup> Joint Brief of Respondents at 3-4.

<sup>5</sup> Joint Brief of Respondents, Appendix p. 17-18.

merely held that, “[i]f an action for injuries to real property is commenced in an improper county, the result is not dismissal but a change in venue” and remanded for “further proceedings consistent with this opinion.” *Id.* at 259. In doing so, this Court clearly left open the question of whether venue also might be appropriate in another county under other applicable venue statutes. Accordingly, Respondents’ contention that *Ralph I* foreclosed that question fails.

2. RCW 4.12.010(1) does not operate to the exclusion of other applicable, mandatorily-phrased venue statutes

Additionally, Respondents contend that RCW 4.12.010(1) operates to the exclusion of other applicable, mandatorily-phrased venue statutes. In so doing, Respondents’ argument ignores the plain language of the other applicable venue statutes in this case—RCW 4.12.020, RCW 4.12.025(3), and RCW 4.92.010—that gives mandatory effect to a plaintiff’s choice of venue.

As an initial matter, Respondents contend that RCW 4.12.010(1) applies as a “more specific” venue statute than RCW 4.12.025(3), characterized by Respondents as a “general, default” venue statute.<sup>6</sup> But

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<sup>6</sup> Joint Brief of Respondents at 4. Petitioners also note that Respondents’ overall contention that RCW 4.12.010(1) is a “more specific” venue statute because it mandates one, specific county as the venue for cases affecting real property implicitly invokes the “specific-general” rule of statutory interpretation. Indeed, Respondents previously and expressly invoked the rule as a means of harmonizing the applicable venue statutes in these cases. Joint Answer to Petitioners’ Motion for Discretionary Review at 10-12. But the “specific-general” rule is utilized *only* when statutes address the same subject matter *and* “conflict to the extent they cannot be harmonized.” *In re Estate of Kerr*, 134 Wn.2d 328, 343, 949 P.2d 810 (1998). Thus, any argument or interpretation implicitly or expressly relying on the rule hinges on the very statutory conflict it purports to avoid and impermissibly violates the requirements that Washington courts must make “every effort” to harmonize statutes in apparent conflict, *State v. Lessley*, 118 Wn.2d 773, 781, 827 P.2d 996 (1992) and, to that end, “will read statutes as complementary, rather than in conflict,”

the Court of Appeals has clarified that permissively-and-generally phrased RCW 4.12.025(1)<sup>7</sup> is the general, default venue statute. *Eubanks v. Brown*, 170 Wn. App. 768, 772, 285 P.3d 901 (2012), *affirmed*, 180 Wn.2d 590 (2014). In contrast, Petitioners rely on RCW 4.12.025(3)<sup>8</sup>, whose plain language gives mandatory force to a plaintiff's choice of several potential venues in cases specifically involving corporate defendants. Thus, RCW 4.12.025(3) is a specific statute whose grant of mandatory force to a plaintiff's choice of venue must be harmonized with other applicable, mandatorily-phrased venue statutes, not merely brushed aside as a "general" or "default" statute.

Likewise, the plain language of RCW 4.12.020 also gives mandatory effect to a plaintiff's choice of venue. RCW 4.12.020(3) provides:

(3) For the recovery of damages for injuries to the person or for injury to personal property, ***the plaintiff shall have the option of suing*** either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

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*Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Com'n*, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994).

<sup>7</sup> RCW 4.12.025(1) provides, "An action ***may be brought in any county*** in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action." Emphasis added.

<sup>8</sup> RCW 4.12.025(3) provides, "The venue of any action brought against a corporation, ***at the option of the plaintiff, shall be:*** (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence." Emphasis added.

And, in the same vein, RCW 4.92.010 mandates that venue for lawsuits against the State “shall be” in potentially multiple counties<sup>9</sup>, including, as relied on by Petitioners in these cases, “[t]he county where the action may be properly commenced by reason of the joinder of an additional defendant.”

Respondents argue that RCW 4.12.010(1) should be interpreted as superior to these two statutes because it contains “shall be commenced language” that, according to Respondents, requires cases to be filed only in one, specific county.<sup>10</sup> But RCW 4.12.020(3) gives mandatory force to

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<sup>9</sup> RCW 4.92.010 provides in full:

Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court.

The venue for such actions shall be as follows:

- (1) The county of the residence or principal place of business of one or more of the plaintiffs;
- (2) The county where the cause of action arose;
- (3) The county in which the real property that is the subject of the action is situated;
- (4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or
- (5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action.

<sup>10</sup> Even this contention is not universally true. For example, where the real property crosses county lines, RCW 4.12.010(1) permits venue in “the county in which the subject of the action, or some part thereof, is situated.”

a plaintiffs' choice of venue in potentially multiple counties—a choice that plaintiffs manifest by filing the case in their chosen venue. Likewise, .025(3) grants plaintiffs the option of “suing”—an act that necessarily requires *commencing* a lawsuit—in potentially multiple counties and gives mandatory effect to that choice of venue.<sup>11</sup> Finally, Respondents' “exclusive venue” interpretation of RCW 4.12.010(1) brings it into direct conflict with RCW 4.92.010. Thus, Respondents' reliance on RCW 4.12.010(1)'s “shall be commenced” language does nothing to resolve any conflict<sup>12</sup> (and actually creates such a conflict) between the statutes and ignores and renders superfluous the plain language of RCW 4.12.020(3) and RCW 4.12.025(3).

But this Court must make “every effort” to harmonize statutes in apparent conflict, *State v. Lessley*, 118 Wn.2d 773, 781, 827 P.2d 996 (1992) and, to that end, “will read statutes as complementary, rather than in conflict,” *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Com'n*, 123

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<sup>11</sup> RCW 4.12.025(3) does not define the term “suing.” Where statutes do not define express terms, courts may look to a dictionary to determine their ordinary meaning. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009). *Black's Law Dictionary* defines “sue” as “To institute a lawsuit against (another party).” “SUE,” BLACK'S LAW DICTIONARY (10th ed. 2014). Accordingly, the statutory terms “suing” and “commenced” are synonymous in their ordinary meanings.

<sup>12</sup> Any conflict between the statutes is also not resolved by an interpretation of the relevant statutes requiring plaintiffs to file initially in a county specified by RCW 4.12.010(1) but allowing them the option to move subsequently for transfer to another under the other venue statutes. In such a scenario, plaintiffs would not have grounds for a transfer under RCW 4.12.030(1) as the case would have been filed in a proper county pursuant to RCW 4.12.010(1). This would leave the hypothetical plaintiffs' attempt to exercise their choice of venue contingent the uncertain existence of the criteria in .030(2)-.030(4) and the discretion of the trial court, a far cry from effectuating the mandatory force given to plaintiffs' choice under RCW 4.12.020(3) or RCW 4.12.025(3) or the venue mandated by RCW 4.92.010.

Wn.2d 621, 630, 869 P.2d 1034 (1994). Likewise, this Court cannot ignore express terms of a statute, *Ralph I*, 182 Wn.2d at 248; must avoid statutory interpretations that render some portion thereof superfluous, *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010); and must read statutes relating to the same subject matter, “if possible, to reconcile them so as to give effect to each provision.” *Anderson v. Dep't of Corrections*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007) (quoting *State v. Landrum*, 66 Wn. App. 791, 796, 832 P.2d 1359 (1992)). Accordingly, this Court must reject Respondents’ interpretation of RCW 4.12.010(1) as establishing venue in a case to the exclusion of all other applicable, mandatorily-phrased venue statutes.

Instead, Petitioners’ complementary interpretation of the statutes is both proper and required under the rules of statutory interpretation, as it avoids a conflict between and gives effect<sup>13</sup> to the mandatory language in all four venue statutes by permitting plaintiffs a choice of venue in which to file their lawsuits, so long as the chosen venue is one of the “mandatory” venues required by the statutes. *Accord Johanson v. City of Centralia*, 60 Wn. App. 748, 750, 907 P.2d 376 (1991); *Cossel v. Skagit County*, 119 Wn.2d 434, 437-38, 834 P.2d 609 (1992), (approving complementary interpretation as giving effect to all language in multiple

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<sup>13</sup> Respondents also suggest that RCW 4.12.010(1) should be given exclusive application over other applicable venue statutes because doing so would preserve the legislature’s intent to codify the common law “local action” rule. But the legislature also intended to give mandatory force to a plaintiff’s choice of venue as demonstrated by the other applicable statutes. Essentially, Respondents ask the Court to elevate one legislative policy over others, a task meant for the legislature, not the courts.

applicable venue statutes), *overruled on other grounds by Shoop v. Kittias County*, 149 Wn.2d 29, 37, 65 P.3d 1194 (2003). Accordingly, under the required complementary interpretation of the applicable venue statutes, Petitioners properly filed these cases in King County.

3. The trial court did not transfer venue for the convenience of witnesses under RCW 4.12.030(3) and any such transfer would have been improper

Next, Respondents contend, “Plaintiffs argue the trial court abused its discretion by ordering a change of venue under RCW 4.12.030(3) for the convenience of the parties and the witnesses.”<sup>14</sup> However, Respondents entirely mischaracterize Petitioners’ arguments by omitting their position that the record demonstrates the trial court did not transfer venue on those grounds; transfer on those specific grounds require resolution of a question of fact for the trial court; and, because the trial court did not engage in the required fact-finding below, this Court may not do so for the first time on appeal.<sup>15</sup> Indeed, Respondents completely fail to address these points and, as a result, have conceded them. *See, e.g., Ward*, 125 Wn. App. at 143-44.

Even if Respondents did not concede those arguments, this court should not affirm based on RCW 4.12.030(3). As the record demonstrates, the trial court transferred venue under RCW 4.12.030(1), not .030(3).<sup>16</sup> Thus, the trial court appears to have *rejected* Respondents’

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<sup>14</sup> Joint Brief of Respondents at 10.

<sup>15</sup> Brief of Petitioners at 24-25.

<sup>16</sup> *Id.*

request to transfer venue under .030(3), an issue they have not sought to appeal. In the alternative, and at the very least, the trial court declined to order a venue transfer under .030(3). Thus, Petitioners are not asking this Court to “substitute its judgment for that of the trial court.”<sup>17</sup> Rather, Petitioners are asking this Court not to make a fact-contingent, discretionary decision never made by the trial court.

Finally, even if this Court reaches the issue a venue transfer under .030(3), the trial court would have abused its discretion had it ordered a transfer on such grounds. Petitioners are well-aware that they live in Lewis County, but they found a King County forum convenient enough to exercise their right to file suit there under RCW 4.12.020(3), RCW 4.12.025(3), and RCW 4.91.010. Other than potential eyewitnesses to the flooding and property damage, the remaining balance of evidence and witnesses—including those employees at Weyerhaeuser and Green Diamond responsible for and knowledgeable about the forest practices causing the harm to Petitioners’ property—likely<sup>18</sup> will originate from King County. Accordingly, the record does not support either a venue

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<sup>17</sup> Joint Brief of Respondents at 11.

<sup>18</sup> An additional reason for declining to affirm a transfer based on convenience of the parties and witnesses is the procedural posture of Petitioners’ cases. Namely, they are still in their infancy, given that Respondents moved to dismiss them on jurisdictional grounds; all the cases were either dismissed or stayed during the years Petitioner Ralph’s and Forth’s cases were reviewed by the Court of Appeals and this Court; and Respondents moved to transfer venue to Lewis County six days after this Court issued its mandate in *Ralph I*. As a result, there has been little to no opportunity for discovery in these cases, including identification of all Weyerhaeuser and Green Diamond employees and their locations. Accordingly, the proper time to evaluate any transfer of venue based on witness convenience is after the parties have an opportunity to develop a full factual record on the issue.

transfer to Lewis County for the convenience of the parties and potential witnesses as a whole or affirming a venue transfer on this alternative ground.

4. Respondents are not entitled to their attorney fees on appeal

Furthermore, Respondents argue that, if the Court holds that Lewis County is the exclusive venue for these cases under RCW 4.12.010(1), they are entitled to their attorney fees on appeal under RCW 4.12.090(1) because Petitioners could have determined with reasonable diligence that they were required to file there. However, Respondents conceded that direct review by this Court was warranted under RAP 2.3(b)(4), because “substantial ground for a difference of opinion” on these issues exists.<sup>19</sup> Indeed, as both Petitioners and Respondents acknowledged, Washington trial courts have reached differing conclusions regarding RCW 4.12.010(1)’s interactions with other applicable venue statutes after *Ralph I.*<sup>20</sup> Accordingly, Respondents’ effectively have conceded that no amount of legal research or other diligence could have established that Lewis County was the only proper county for filing.

Similarly, it has taken two separate instances of review by this Court to establish whether (1) RCW 4.12.010(1) required dismissal of these cases if they were filed in an improper county and (2) RCW

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<sup>19</sup> Respondents’ Joint Answer to Statement of Grounds for Direct Review at 5-66.

<sup>20</sup> *Id.* at 5; Statement of Grounds for Direct Review at 6-14; Appendix to Statement of Grounds for Direct Review at 330-334.

4.12.010(1), newly and correctly recognized as a venue statute, operates in an exclusionary or complementary manner with other applicable venue statutes. Where determination of the permissible venue or venues for this action has required two instances of review by this Court, no amount of diligence could have established Lewis County as the only permissible venue.

Finally, before *Ralph I*, precedent only dissuaded Petitioners from filing in King County on jurisdictional grounds, a point Petitioners rejected and successfully refuted on appeal. And both before and after *Ralph I*, no precedent exists to shed light on whether RCW 4.12.010(1), newly and correctly recognized as a venue statute, operates in a complementary or exclusionary fashion to other mandatorily-phrased venue statutes. Once again, no amount of legal research or other diligence could have definitively established that Lewis County was the only proper county for filing. Indeed, Respondents' fee request is surprising, given that they argue they should receive the benefit of uncertainty in the law but seek to penalize Petitioners for the same. Accordingly, even if the Court determines that Petitioners improperly filed their case in King County, it should not award Respondents their attorney fees.

5. An “exclusive venue” interpretation of RCW 4.12.010(1) is not essential for the orderly administration of cases involving real property

Finally, Respondents claim that an “exclusive venue” interpretation of RCW 4.12.010(1)—including mandatory transfer of any case to which the statute applies to the real property’s county—is

“essential” to “promot[ing] stability and predictability in our state’s land title system and real property actions.”<sup>21</sup> But amici raised these same arguments in *Ralph I* in support of their contention that lawsuits affecting real property should proceed only in the situs county. *Ralph I*, 182 Wn.2d at 255-256. This Court rejected those arguments, recognizing that Washington precedent already allowed such lawsuits to proceed outside the situs county and, “[i]n many instances, the legislature has authorized courts to adjudicate matters affecting title to real property outside their geographical boundaries.” *Id.* Indeed, this Court recognized that it had *already* rejected “the notion that a case involving real property must be resolved in the county where such property is located in order to preserve the accuracy of title searches.” *Id.* at 257 (citing *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 409, 165 P.2d 82 (1946)). Accordingly, this Court concluded that allowing such lawsuits to be filed outside the situs county did not alter the legal landscape in Washington. *Id.* at 256. Moreover, this Court further recognized that other statutory mechanisms, such as Washington’s *lis pendens* and other statutory recording requirements, provide interested parties ample notice of such lawsuits, regardless of the county in which they are filed. *Id.* at 256-257. This Court’s apt reasoning in *Ralph I* applies with equal force regardless of where such lawsuits are ultimately resolved.<sup>22</sup>

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<sup>21</sup> Joint Brief of Respondents at 13.

<sup>22</sup> Petitioners further note that Respondents make no attempt to demonstrate that the specific types of lawsuits they list as areas of concern—owners of real property facing a

### III. CONCLUSION

For all these reasons, the Court should reverse the trial court's orders transferring venue in these cases to Lewis County and awarding Respondents costs incurred in transferring venue. In the alternative, should this Court affirm the venue transfers only on the basis of RCW 4.12.030(3), the Court should vacate the trial court's award of costs to Respondents. Finally, the Court should reject Respondents' requests for fees and costs on appeal.

RESPECTFULLY SUBMITTED this 23rd day of May, 2016.

PFAU COCHRAN VERTETIS AMALA, PLLC

By:  \_\_\_\_\_

Darrell L. Cochran, WSBA No. 22851  
Loren A. Cochran, WSBA No. 32773  
Kevin M. Hastings, WSBA No. 42316  
Christopher E. Love, WSBA No. 42832

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claim to their property, homeowners facing foreclosure, or tenants facing eviction—would ever have applicable, mandatorily-phrased venue statutes other than RCW 4.12.010(1) that would also permit venue in a county other than the situs. Regardless, the applicability of other venue statutes in such scenarios and whether they would permit venue in a county other than the situs county are questions for another day.

STATE OF WASHINGTON     )  
  )ss  
COUNTY OF KING         )

Laura Neal, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

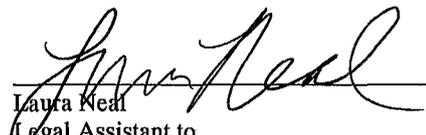
That on May 23, 2016, I placed for delivery with Legal Messengers, Inc., a true and correct copy of the above, directed to:

Earl Sutherland  
Michael Lynch  
Attorney General of Washington  
7141 Cleanwater Drive SW  
P.O. Box 40126  
Olympia, WA 98504-0126  
Attorney for: State of Washington Dept. of Natural Resources

Diane M. Meyers  
Madeline Engel  
Miller Nash Graham & Dunn, LLP  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121

Louis D. Peterson  
Hillis Clark Martin & Peterson, P.S.  
1221 Second Avenue  
Suite 500  
Seattle, WA 98101  
Attorney for: Weyerhaeuser Company

DATED this 23rd day of May, 2016.

  
\_\_\_\_\_  
Laura Neal  
Legal Assistant to  
Darrell L. Cochran

SUPREME COURT OF THE  
OF THE STATE OF WASHINGTON

WILLIAM RALPH

NO. 91711-6

PLAINTIFF/PETITIONER,

DECLARATION OF  
ELECTRONICALLY RECEIVED  
DOCUMENTS  
(DERD)

VS.

STATE OF WASHINGTON DEPARTMENT  
OF NATURAL RESOURCES; ET AL

DEFENDANT/RESPONDENT,

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Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing electronically transmitted for filing.
2. My address is: 1517 S. Fawcett Ave #100 Tacoma WA 98402.
3. My phone number is 253-383-1791
4. The facsimile number where I received the document is 253-272-9359 and or e-mail address is [tac@abclegal.com](mailto:tac@abclegal.com).
5. I have examined the foregoing document, determined that it consists of 29 Pages, including this Declaration page.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 5/24/16  
At Tacoma, Washington.

Signature:



Print Name: Lana Sheldon