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**SUPREME COURT OF THE STATE OF WASHINGTON**

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BASILIO CORNELIO CARRERA, an individual,

Respondent,

v.

SUNHEAVEN FARMS, a Washington General Partnership;  
SUNHEAVEN FARMS, LLC, a Washington Limited Liability Company;  
BRENT SCHULTHIES, as general partner of SUNHEAVEN FARMS,

Petitioners.

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**SUPPLEMENTAL BRIEF (CORRECTED)  
DEPARTMENT OF LABOR & INDUSTRIES**

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## I. INTRODUCTION

Sunheaven tries to avoid paying for the results of its safety law violations after causing a worker's arm to be cut off because of its negligence. The Department of Labor & Industries seeks to hold Sunheaven responsible for the damage it has caused: economic and noneconomic. *State v. Vinther*, 176 Wash. 391, 394-98, 29 P.2d 693 (1934), held that no limitation period applies when the Department files a third party cause of action in a workers' compensation case because the action benefits the State. Sunheaven belatedly tries to argue that *Vinther* is no longer good law but not only does this contradict the position it took at the trial court, Court of Appeals, and petition, *Vinther* remains good law on the same core principle: assigned third party actions benefit the State.

Sunheaven correctly concedes that there is only one cause of action here, echoing RCW 51.24.030 and .050. Under these statutes, a liable third party has to pay all damages from the one cause of action. Because the statute of limitations does not apply here under RCW 4.16.160, the Department may seek all damages. This is because the cause of action benefits the State both by ensuring that it is reimbursed for the benefits it has paid and by implementing the broad remedial purposes of the Industrial Insurance Act for the benefit of all Washington residents. In *Vinther's* words, "the remedy provided in [RCW 51.24.030] is an integral

part” of the Act and the Act “as a whole is the exercise of a governmental function in the fullest sense of the word, having its support in the police power of the state.” *Id.* at 394-95. Seeking economic and noneconomic damages as part of the cause of action benefits the State. In particular, seeking noneconomic damages:

- Deters unsafe behavior by negligent parties in keeping with the State’s constitutional duty to protect workers, which in turn reduces the number of workplace accidents that drain state funds,
- Advances the Industrial Insurance Act’s remedial purposes by compensating injured workers, and
- Strengthens the Department’s ability to negotiate settlements with negligent parties, which means better outcomes for the state fund.

The Court of Appeals’ decision properly advanced these interests and this Court should affirm it.

## II. ISSUES

1. RCW 51.24.030 allows a worker to sue a third party who has injured the worker for “damages from the third person.” If a worker does not pursue this action, RCW 51.24.050 allows the Department to prosecute the “cause of action.” Sunheaven concedes there is only one cause of action. In the one cause of action, may the Department seek economic and noneconomic damages for the injuries a third party causes a worker?
2. Under RCW 4.16.160, statutes of limitations do not run against the State when it sues “for the benefit of the state.” Pursuing the third party cause of action directly benefits the State by replenishing the state fund, and indirectly benefits the State by deterring unsafe workplaces, advancing the remedial purposes of the Industrial

Insurance Act, and promoting better settlement outcomes. Does a third party cause of action benefit the State when it seeks both economic and noneconomic damages?

3. The superior court limited the Department to seeking only the amount of benefits it paid Basilio Carrera. RCW 51.24.050 sets a formula that first pays the attorney, then gives a 25 percent share to the worker, reimburses the Department for benefits paid, and pays the remaining balance to the worker. Does this statute limit the Department to seeking only the benefits it has paid when the statute directs payment of excess funds to the worker?

### **III. STATEMENT OF THE CASE**

#### **A. The Department May Sue Negligent Non-Employers**

This case is a “third party” action brought by the Department.

RCW 51.24.050 authorizes the Department to sue a third party for damages sustained by injured workers when workers decline to exercise their right to sue. The Department may seek all damages and then allocate the funds between the Department and worker as directed by the Legislature. RCW 51.24.050. The Department does not retain any of the noneconomic damages, but instead directs them to the injured workers.

In contrast, the economic damages are considered the “recovery” (the term in the statute), and the Department applies a statutory distribution formula to that recovery. RCW 51.24.030(5), .050(4), (5). Under the four-step formula, (1) attorney fees and costs are first paid, (2) then the worker receives 25 percent of the remaining recovery, (3) the Department is then reimbursed for the benefits it has paid, and (4) the

worker receives the remaining balance, subject to a lien on future benefits.

RCW 51.24.050(4), (5).

**B. Because of Sunheaven's Actions, Carrera's Arm Was Amputated by an Unsafe Conveyor Belt**

Basilio Carrera worked for Brent Hartley Farms, LLC. CP 8, 36.

At the time Carrera was injured, Sunheaven Farms had a contract with Brent Hartley Farms for Sunheaven to provide safety compliance services for Brent Hartley Farms. CP 7-8, 35. Sunheaven did not employ Carrera; Brent Hartley Farms did. CP 8, 36. Carrera's arm was cut off when his shirt was caught in a conveyor on which the side guards were removed in violation of WAC 296-307-232. CP 10, 36, 172, 272, 288. Sunheaven failed to correct the unsafe side guards before conveyor use. CP 288.

**C. RCW 51.24.050 Operated to Assign the Lawsuit to the Department**

After being injured, Carrera retained an attorney, Thomas Olmstead, to pursue legal remedies. CP 239. Olmstead did not sue Sunheaven and instead sued Carrera's employer, despite its immunity from suit. CP 293; RCW 51.04.010; RCW 51.32.010. The trial court dismissed the suit. CP 294. Olmstead, despite requirements under RCW 51.24.030(2), failed to notify the Department of the filing of a third party action, until after the court dismissed it. CP 239. After it learned of the dismissal, the Department identified Sunheaven as a potential liable party.

CP 3. The Department subsequently exercised its statutory right to pursue a cause of action against Sunheaven. CP 1; RCW 51.24.050(1).<sup>1</sup> The Department sued Sunheaven more than three years after the injury. CP 1.

**D. The Superior Court Barred the Department from Seeking More Than It Had Paid, but the Court of Appeals Reversed**

Sunheaven moved for summary judgment and conceded that the Department may sue for at least the amount it paid in benefits. CP 52. The superior court ruled that RCW 4.16.080 time barred the Department from recovering damages other than those it paid. CP 404-05. The Court of Appeals reversed. *Carrera v. Sunheaven Farms*, 196 Wn. App. 240, 243, 383 P.3d 563 (2016), *review granted*, 390 P.3d 349 (Wash. 2017). It ruled that the Department may seek, but not retain, the noneconomic damages; only Carrera receives them. 196 Wn. App. at 251 (citing *Tobin v. Dep't of Labor & Indus.*, 169 Wn.2d 396, 401, 239 P.3d 544 (2010); *Flanigan v. Dep't of Labor & Indus.*, 123 Wn.2d 418, 426, 869 P.2d 14 (1994)). The Department does not contest this holding.

The Court of Appeals then concluded that RCW 51.24.050 allows the Department to seek all the economic and noneconomic damages Sunheaven caused Carrera, and the Department is immune from the statute

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<sup>1</sup> Sunheaven suggests that it is unknown whether Carrera received notice about the third party election. Pet. 5. Even assuming that Sunheaven would have standing to contest the assignment, it never did so at the trial court, so it may not argue this now. RAP 2.5. The Department has been in contact with Carrera about the lawsuit, and he has subsequently not filed any action in superior court to contest the assignment. CP 272.

of limitations in doing so. *Carrera*, 196 Wn. App. at 253, 260. It reasoned that deterrence against workplace injuries and the replenishment of the state fund are state benefits. *Id.* at 260.

#### IV. ARGUMENT

The Legislature holds negligent third parties responsible to pay both the economic and noneconomic damages they cause. And the Department may seek them before and after the private-party statute of limitations period ends. *Vinther*, 176 Wash. at 393-98. *Vinther* held that the Department may sue a third party after the limitation period runs for a private party. *Id.* This decision remains good law.

That *Carrera* benefits from the cause of action is irrelevant. This Court has held that if a lawsuit has the “purpose of asserting any public right or protecting any public interest,” then the action is not time-barred (*Vinther*, 176 Wash. at 393), “even if private individuals might benefit specifically.” *State v. LG Electronics Inc.*, 186 Wn.2d 1, 14, 375 P.3d 636 (2016); see *Herrmann v. Cissna*, 82 Wn.2d 1, 7, 507 P.2d 144 (1973).

#### A. The Negligent Third Party Must Pay Both Economic and Noneconomic Damages Because The One Cause of Action Benefits the State

1. RCW 51.24.050 allows the Department to seek all damages from the “cause of action”

Throughout this litigation, Sunheaven has conflated its responsibility to pay damages with what the Department may process through the distribution formula. These are two different things.

The Industrial Insurance Act allows either an injured worker or the Department to bring a cause of action against a negligent third party who injures a worker in the course of employment. RCW 51.24.030, .050. As Sunheaven concedes, the Act draws no distinction between a cause of action brought by the Department and one brought by an injured worker. Suppl. Br. 7. There are, in both instances, two steps present. First, the statutes establish what the worker and Department may seek in damages and what a negligent third party must pay. Second, once damages are received, the statutes establish what the worker and Department may retain from those damages.

Under the first step, although the Industrial Insurance Act bans most private litigation regarding job injuries, RCW 51.24.030 allows a worker to sue a third party for “damages from the third person.” If the worker elects not to proceed against the third party, then the Department may prosecute the cause of action for the damages:

An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

RCW 51.24.050(1). “[C]ause of action” in RCW 51.24.050 refers to the ability to seek “damages from the third person” in RCW 51.24.030.

Reading these statutes together shows one action for all damages.

Under the second step, money from damages that are part of the “recovery” from the third party is subject to the Department’s claim for reimbursement of benefits paid. RCW 51.24.050, .060. The Department receives its share to satisfy the amount of benefits it has paid. But the “recovery” does not include any noneconomic damages and they are not used to reimburse the Department. *Tobin*, 169 Wn.2d at 402, 406-07.

But this is a different question from the issue in the first step: what the Department can seek from negligent parties through its cause of action. *Tobin* does not aid Sunheaven because *Tobin* contemplated that a worker would seek pain and suffering damages in his or her lawsuit. *See Tobin*, 169 Wn.2d at 400. Since there is only one action under RCW 51.24.030 and .050, it follows that these statutes also authorize the Department to seek pain and suffering damages. *Tobin* does not suggest that a negligent party can escape liability for noneconomic damages.<sup>2</sup>

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<sup>2</sup> Because there is only one claim the Department may seek all damages. Nothing supports splitting damages as Sunheaven proposed at the superior court, the Court of Appeals, and in its petition. The authority shows the opposite: statutes of limitation attach to the action on the claim in its entirety. *In re Estate of Palmer*, 145 Wn. App. 249, 258, 187 P.3d 758 (2008).

**2. *Vinther* held that third party causes of action benefit the State and this holding applies here**

Regardless of the type of damages involved, the statute of limitations applicable for private parties does not apply here. *See* RCW 4.16.080(2). Ordinarily if a cause of action is assigned to another party, the defenses to the claim come with the cause of action, including the statute of limitations: the assignee “stands in the shoes” of the assignor. But this result is different when the State is involved because the State is acting as a sovereign. RCW 4.16.160 codifies the common law rule that statutes of limitation do not run against the State if the cause of action benefits the State:

[E]xcept as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state . . . .

RCW 4.16.160. In 1934, this Court recognized that the Department may bring third party lawsuits after the statute of limitations runs because in these lawsuits the State acts in its sovereign capacity to further public policy. *Vinther*, 176 Wash. at 393-94 (citing predecessor statute to RCW 4.16.160). *Herrmann* held that just because the State’s action derives from a private party does not mean that the State is subject to statute of limitations that the private party was subject to. 82 Wn.2d at 10.

In discussing *Vinther*, *Herrmann* recognized that the State's action in a third party action is not "purely derivative" because the action arises out of a statutory right. *Herrmann*, 82 Wn.2d at 8. This is correct. There is one cause of action regarding the damages available, but the Department's right to it stems from statute and cannot be dislodged by a private party's decision as to whether to file within a limitation period or not. As this Court recognizes, the State has a larger interest at stake and should not suffer from poorly-informed decisions about the statute of limitations. *LG Electronics*, 186 Wn.2d at 13.

Sunheaven recognized at superior court, the Court of Appeals, and in its petition that Washington law mandates that the Department may sue even after the statute of limitations for private parties expires, but it now tries to switch course in its supplemental brief. CP 52; Resp't Br. 16; Pet. 4; Suppl. Br. 20. It did not argue at the superior court that *Vinther* was no longer good law; in fact it relied on *Vinther* to argue that the Department could bring the action after the statute of limitation, but only for the amount the Department paid or expected to pay. CP 52, 58-59. Sunheaven did not appeal the superior court's decision that accepted its argument.<sup>3</sup>

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<sup>3</sup> Under principles of judicial estoppel, it cannot now change course. This principle precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position. *Robbins v. Dep't of Labor & Indus.*, 187 Wn. App. 238, 255, 349 P.3d 59 (2015).

In any event, *Vinther* remains good law. Sunheaven questions *Vinther* because the statute has changed. Suppl. Br. 20. Although the statute has changed in some regard, the underlying premise is the same: the worker's cause of action is assigned to the Department. *Compare* Laws of 1911, ch. 74, § 3 (definition of "workman") *with* RCW 51.24.050. And *Vinther* examined the Industrial Insurance Act's purpose to find benefit to the State and held that "The act as a whole is the exercise of a governmental function in the fullest sense of the word, having its support in the police power of the state." 176 Wash. at 394-95. Well aware of *Vinther*, when the Legislature amended the statute it did not waive sovereign immunity due to the social value in pursuing third party actions that benefit both the State and the worker. The Legislature has weighed the equities and determined that a negligent third party should not receive a windfall by escaping the consequences of its unsafe behavior.

Sunheaven argues that RCW 51.24 and the Industrial Insurance is only intended to compensate injured workers, and because of this the State is merely acting in a proprietary capacity in an assigned third party claim, and so RCW 4.16.160 does not apply. Suppl. Br. 12-15. But the proprietary capacity analysis is for municipalities, not the State. *Simonson v. Veit*, 37 Wn. App. 761, 766, 683 P.2d 611 (1984) (proprietary analysis only applies to municipalities). The question here is whether the

Department's third party action benefited the State. In *Vinther*, this Court has already held that it did and it rejected the argument that because the state fund benefits private parties it is not in the public interest. 176 Wash. at 393-96. "While the fund is a trust fund, administered by the state for the benefit of injured workmen, it is in no sense a private fund" and it furthers "the state's public policy in caring for workmen injured in industry." *Id.* at 395-96. *LG Electronics* recognized the continued vitality of this decision. 186 Wn.2d at 14-15. A third party action benefits the State by replenishing the state fund by obtaining economic damages and by obtaining financial and deterrent benefits from noneconomic damages. *See* Part IV.C. Having a system that provides sure and certain relief, with the ability to require third parties to pay for the damages they have caused, directly benefits the State. RCW 51.04.010; RCW 51.24.050.

This not the type of "mere conduit" situation that was prohibited by *Vinther*, where the State has no interest in the suit. Rather, here the Department asserts a "public interest" as recognized by *Vinther*, and given this it does not matter "if private individuals might benefit specifically" as well. *Vinther*, 176 Wash. at 393; *LG Electronics*, 186 Wn.2d at 14.

Sunheaven argues that under the Court of Appeals' decision "there is no situation that will ever meet [the "mere conduit"] criteria." Pet. 19. This is incorrect. *Vinther* describes the type of actions that are "mere

conduit” cases, citing to two federal cases that explained the parameters of a “conduit.” 176 Wash. at 393-94. In both cases the federal government took action on a land claim after a limitations period that had the effect of not returning land to the public domain, but to clear title for a private citizen. *United States v. Beebe*, 127 U.S. 338, 346, 8 S. Ct. 1083, 32 L. Ed. 121 (1888); *United States v. Fletcher*, 242 F. 818, 820-21 (8th Cir. 1917). It was not to benefit the government who had “no interest in the suit, and has nothing to gain from the relief prayed for, and nothing to lose if the relief is denied.” *Beebe*, 127 U.S. at 346. This is the type of mere “conduit” case that *Vinther* contemplated. In contrast to *Beebe* and *Fletcher*, here the Department brought a statutorily authorized lawsuit that gives concrete benefits to the State.<sup>4</sup>

### **3. Res judicata does not bar this suit**

Sunheaven says that the Department had no right to file a lawsuit under a res judicata theory because Carrera already sued the wrong parties. Pet. 2-3; Suppl. Br. 10-11. Because Sunheaven did not raise a res judicata theory at superior court, including not asserting it as an affirmative defense, it may not now raise it. CP 42; CR 8(c); RAP 2.5. The superior

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<sup>4</sup> Sunheaven argues that RCW 4.16.160 should not apply because it claims a worker could re-elect to pursue the suit. Suppl. Br. 12, n. 10. But this is discretionary decision for the Department, and it would be unlikely to grant the right when the action would then be subject to the private party statute of limitations. RCW 51.24.070(4). In any event, Sunheaven raises only a hypothetical irrelevant to the analysis in this case.

court recognized the Department's right to sue, and Sunheaven did not appeal or assign error at the Court of Appeals about this. CP 413; Resp't's Br. 1-31. In any event, res judicata only applies when the parties are the same or in privity. *Ensley v. Pitcher*, 152 Wn. App. 891, 902, 222 P.3d 99 (2009). "Privity does not arise from the mere fact that persons as litigants are interested in the same question or in proving or disproving the same state of facts. . . . It denotes mutual or successive relationship to the same right or property." *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 764, 887 P.2d 898 (1995). No such relationship is here between Sunheaven and Brent Hartley Farms.<sup>5</sup>

**B. Economic Damages Should Not Be Viewed Alone, but if They Are, the Trial Court Erred by Preventing the Department from Seeking All Economic Damages**

The Department is not limited to economic damages but even if it is, the superior court incorrectly limited Sunheaven's liability for economic damages to only the amount of benefits that the Department paid or estimated it would pay. CP 413. No statute or case law authorizes this limitation. To the contrary, RCW 51.24.050 authorizes the Department to seek all damages. RCW 51.24.050 then applies a formula to

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<sup>5</sup> Additionally to prove res judicata there must be the same cause of action. *Ensley*, 152 Wn. App. at 902. Here, there was a negligence claim for Sunheaven's actions and an gross negligence/intentional tort claim for Brent Hartley Farms—this is not the same cause of action. CP 15, 38. Sunheaven is an independent entity with different employees and different documentary records—to establish a claim of negligence against this entity the witnesses and documentary evidence will be a different cause of action.

the “recovery” and the formula limits the Department’s reimbursement to its actual expenses. The “remaining balance” is paid to the worker, subject to a lien against any future benefits.

RCW 51.24.050 reflects that the Department may seek more than it has paid because it directs the Department to distribute the “remaining balance” to the worker once the Department is reimbursed. RCW 51.24.050(4)(c), (d). The superior court’s ruling renders the formula and its remaining balance language superfluous.

Under the original and amended RCW 51.24.050, the Department has always had the right to seek all damages, beyond the Department’s reimbursement amount. In dicta, the *Cowlitz* Court interpreted the original version of the third party statute to mean that the Department only had a subrogation right. *See State v. Cowlitz Cty.*, 146 Wash. 305, 307, 311, 262 P. 977 (1928). Under subrogation principles, the general rule is that, while an insurer is entitled to be reimbursed to the extent that payment is recovered, it can recover from the wrongdoer only the excess “remaining after the insured is fully compensated for his loss.” *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 219, 588 P.2d 191 (1978). But, although analogous, subrogation principles do not apply to limit a statutory right to recovery. *See Rhoad v. McLean Trucking Co.*, 102 Wn.2d 422, 427, 686 P.2d 483 (1984). The Legislature created a statutory right to recovery

under RCW 51.24.050 and the distribution formula there shows intent to allow the Department to seek and recover damages beyond the amount the Department has paid. Laws of 1977, 1st Ex. Sess., ch. 85, § 3.<sup>6</sup>

*Tobin* recognized the Department may apply the distribution formula to funds obtained from damages for the type of benefit the Department pays—not just its actual expenditures in a case. *Tobin*, 169 Wn.2d at 404 (fund replenishment claimed against “those damage types that the fund actually paid out as reimbursement”).

Allowing the Department to seek all economic damages matters because the Department may seek the reasonable value of all medical care received, even if the Department pays less than that under its contract with providers under RCW 51.36.010. See *Hayes v. Wieber Enters., Inc.*, 105 Wn. App. 611, 616, 20 P.3d 496 (2001). Indeed, Sunheaven notes that the Department may seek damages for medical bills over the contracted rate that the Department pays. Pet. 9-10. While the Department may not retain damages beyond what it has paid, it may seek them in the first place.

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<sup>6</sup> As a practical matter, the Department did not interpret the original RCW 51.24.050 as creating a subrogation right. Before the amendments in 1977, it would reimburse itself and then pay the remainder to the worker. Senate Bill Report on S.B. 2154, 45th Leg. 1st Ex. Sess. (Wash. 1977). The 1977 bill had three effects. First, it gave the worker a guaranteed 25 percent share. Second, it maintained the Department’s ability to seek all damages in a third party suit and not just seek benefits paid. And finally, it eliminated any suggestion that subrogation principles applied under *Cowlitz County*.

The Court of Appeals properly held that the Department may seek economic and noneconomic damages, but even if this Court disagrees, it should reverse the trial court because it erred by limiting the Department's recovery of economic damages to the amount of the benefits.<sup>7</sup>

**C. No Need Exists to Determine if Noneconomic Damages Benefit the State Standing Alone Because There Is Only One Cause of Action but, if Parsed, Noneconomic Damages Benefit the State**

The Legislature permits the one cause of action in third party actions after the private-party limitations period because these actions benefit the State. *See* RCW 4.16.160; *Vinther*, 176 Wash. at 393. Here, the Court need only follow *Vinther*, which already decided that third party actions benefit the State. Looking at the third party action as a whole— as RCW 51.24.050 directs—there is a benefit to the State by advancing the purposes of the Industrial Insurance Act and by replenishing the state fund. But even if the Court were willing to entertain Sunheaven's novel statute-of-limitation-damages-splitting theory, the State benefits in making third parties pay for all damages, including noneconomic damages.

**1. Seeking all damages deters unsafe behavior**

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<sup>7</sup> The practical consequence of the limitation imposed by the superior court is to prevent, in all cases, the Department from making the state fund whole. The Department must first pay attorney fees, then disburse 25 percent of the remaining recovery to the injured worker, and then use the remaining funds to replenish the fund. RCW 51.24.050. The inability to seek all economic damages limits the Department to receiving only a portion of its benefit payments in all cases. This is contrary to legislative intent.

Providing financial and reputational incentives for companies to not remove safety equipment functions as deterrence to benefit the public. Deterrence is a well-recognized state benefit. *LG Electronics* recognized the public good of the deterrent effect of consumer protection lawsuits that foster fair and honest competition. 186 Wn.2d at 15. In *LG Electronics*, the State did not get the money, the consumers did in restitution. 186 Wn.2d at 17. Similarly, in *Herrmann*, the Court also emphasized the value of deterrence in a lawsuit where the State did not get the money and where it stood in the shoes of private parties. 82 Wn.2d at 7.

Promoting deterrence furthers our State's long-held mandate to promote workplace safety: "[O]ur constitution requires the legislature to 'pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health.'" *Afoa v. Port of Seattle*, 176 Wn.2d 460, 470, 296 P.3d 800 (2013) (quoting Wash. Const. art. II, § 35). A core purpose of the Industrial Insurance Act is to motivate safe workplaces. *Harry v. Buse Timber & Sales, Inc.*, 166 Wn.2d 1, 19, 201 P.3d 1011 (2009). The risk of harming even one worker may compel companies to protect worker safety. *Contra* Pet. 18. Like the fraudulent behavior in *Herrmann* or the deceptive behavior in *LG Electronics*, the Department's action will deter third parties from taking shortcuts with safety.

**2. Seeking all damages advances the Industrial Insurance Act's remedial purposes**

In addition to creating safer workplaces, seeking all damages furthers the Act's remedial purposes. Sunheaven claims that RCW 4.16.160 should not apply because the industrial insurance trust funds, are "more focused on the workers' personal benefit than a broader public purpose." Suppl. Br. 15. But the Legislature designed the Act to benefit the State as a whole, recognizing the benefit for all:

In practice [the common law system] proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate . . . . The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker.

RCW 51.04.010. Injured workers' interests are the interests of the State.

And the State benefits by a workers' compensation system that allows suit against third parties who have harmed workers. RCW 51.24.030, .050; *Maxey v. Dep't of Labor & Indus.*, 114 Wn.2d 542, 547, 789 P.2d 75, 78 (1990) (the State has a "vital interest" "in a recovery from a responsible third party."). Third party actions "spread[] responsibility for compensating injured employees and their beneficiaries to third parties who are legally and factually responsible for the injury ... [and] permits

the employee to increase ... compensation beyond the Act's limited benefits." *Flanigan*, 123 Wn.2d at 424.

**3. Seeking all damages strengthens the Department's ability to negotiate settlements with negligent parties, which means better outcomes for the state fund**

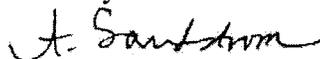
Finally, seeking all damages strengthens the Department's ability to settle to recover funds to reimburse the state fund. Here the Department will provide \$788,418 in benefits, but because Sunheaven altered Carrera's life forever by causing his amputated arm, Carrera sustained damages beyond the benefits amount. CP 147. The Department has a much stronger and fair bargaining position in settlement when all damages are available to incentivize efficient resolution. *See City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997). Maximizing settlements benefits the State because this replenishes the state fund.

**V. CONCLUSION**

Sunheaven's negligence resulted in a man's arm being cut off. Sunheaven should not be able to escape liability for the full damages it caused. The Court should affirm the Court of Appeals.

RESPECTFULLY SUBMITTED this 7th day of April 2017

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