

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/11/2017 11:04 AM  
BY SUSAN L. CARLSON  
CLERK

95062-8

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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CESAR BELTRAN-SERRANO, an incapacitated person,  
individually, and BIANA BELTRAN as guardian ad litem of  
the person and estate of  
CESAR BELTRAN-SERRANO,

Petitioner,

v.

CITY OF TACOMA,  
a political subdivision of the State of Washington,

Respondent.

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RESPONSE TO MOTION FOR DISCRETIONARY  
REVIEW

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WILLIAM FOSBRE, City Attorney

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Deputy City Attorney  
Attorney for Defendant

Plaintiff has identified the issues for review as whether there is a common law duty to refrain from the negligent use of excessive force and whether the public duty doctrine would preclude such a cause of action. The City respectfully asserts that Plaintiff has identified the wrong issues, and in any event has identified no error or unsettled question of law for this Court to consider on direct discretionary review. If the motion is not denied outright, the City asks that this Court transfer this motion to Division II for consideration with the City's pending motion for discretionary review of the trial court's order preventing the City from challenging Plaintiffs' claimed medical bills, which was also certified for appellate review by the trial court. RAP 4.2(e)(2).

**A. ISSUE PRESENTED FOR REVIEW**

Whether a plaintiff in Washington can bring a tort claim for negligence for damages allegedly caused by intentional conduct, such as the intentional use of force by a police officer in the discharge of the officer's official duties?

**B. STATEMENT OF THE CASE**

The question resolved by the trial court is a question of law. Plaintiff devotes a significant portion of his Motion for Discretionary Review to the facts, facts that are largely not relevant to the issue

presented herein. Although these facts are not relevant, in the interest of an accurate record, the City feels it is important to address some of the factual misstatements contained in Plaintiff's motion.

For example, Plaintiff claims that Officer Volk crowded Mr. Beltran-Serrano and questioned him "forcefully." Motion, p. 5. In support of this assertion, Plaintiff cites to the appendix at pages 440-441, the report of Plaintiff's expert Sue Peters. A careful examination of the pages cited, however, reveals that nothing in Ms. Peters' report supports this contention. Rather, the best evidence of the interaction between Mr. Beltran-Serrano and the officer can be found in Officer Volk's deposition testimony<sup>1</sup>.

As she testified, when Officer Volk first made contact with Mr. Beltran-Serrano, she asked him if he spoke English and he shook his head "no." App. 357-358. Officer Volk then called for another officer, Officer Gutierrez, to respond to the scene in the hopes that he could help with communication. App. 270. Officer Volk and Mr. Beltran-Serrano then just stood around for a few minutes, waiting for

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<sup>1</sup>Mr. Beltran-Serrano has not offered any testimony in this matter. In response to the City's issuance of a deposition notice for Mr. Beltran-Serrano's deposition, Plaintiff sought and obtained an order quashing the deposition on the grounds that Mr. Beltran-Serrano was not competent to testify. Supp. App. at 29. Thus, the officer's testimony concerning the events that occurred prior to Mr. Beltran-Serrano's assault of Officer Volk is the only competent evidence available.

Officer Gutierrez to arrive. App. 272. While waiting, Officer Volk asked Mr. Beltran-Serrano if he had any identification and made a hand motion suggesting a small card, like a driver's license. App. 272-277. Mr. Beltran-Serrano patted his pockets, as if looking for his wallet. He then reached down into a hole and the officer stepped closer so that she could see what he was getting. App. 272. When Mr. Beltran-Serrano stood up, he had a metal pipe in his hand and he swung it at the officer, striking her in the forearm, which she had raised to block the blow. Id. Thus, her entire interaction with Mr. Beltran-Serrano before he assaulted her consisted of the officer saying hello, asking him if he spoke English and asking him if he had identification. There is no evidence in the record, however, to support the contention that Officer Volk "forcefully questioned" Mr. Beltran-Serrano about anything.

Plaintiff also claims that Officer Volk had no legal justification<sup>2</sup> to pursue Mr. Beltran-Serrano when he chose to walk away from her. Motion, p. 6; App. 469. In a footnote, Plaintiff then states that "even

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<sup>2</sup> At the point that Officer Volk followed Mr. Beltran-Serrano into the street and deployed her ECT, she had probable cause to arrest Mr. Beltran-Serrano for felony assault (assault in the third degree) pursuant to RCW 9A.36.031.

if Beltran-Serrano had hit Volk” with the pipe, she was still under no duty to pursue him. Motion, p. 6 n.3. While it is true that the facts on summary judgment are to be construed in favor of the nonmoving party, the court cannot assume that facts for which there is no competent evidence. The officer’s undisputed testimony is that Beltran-Serrano struck her with a heavy metal pipe. Moreover, although this assault was not captured by the WSP dashcam video, Trooper Timothy Rushton (who had a different vantage point than the camera) testified that he did see Beltran-Serrano swing an object at Officer Volk. App. 466. Although Plaintiff does not directly assert that Mr. Beltran-Serrano did not hit the officer with the pipe, Plaintiff is essentially making the argument by implication. This argument has no basis in the record and thus, this inference is not one that any court can draw in favor of Plaintiff.

Similarly, Plaintiff cites to the officer’s statement that Mr. Beltran-Serrano was no longer a threat to her, insinuating that Mr. Beltran-Serrano was not a threat at the time the officer fired her gun. Plaintiff’s use of this statement is grossly misleading. Officer Volk testified that when Beltran-Serrano struck her with the metal object, she pulled her service weapon. When he turned his back towards her and began to move away from her, *at that moment*, she no longer

considered him an imminent threat of death or serious bodily harm (even though he still had the metal object in his hand). Therefore, she holstered her weapon and instead, pulled her ECT (commonly referred to as a “taser”). See App. at 275-276. When the taser proved ineffective and Mr. Beltran-Serrano turned back towards the officer while raising the metal pipe, only then did the officer use deadly force. App. 330.

Finally, Plaintiff’s statement that officers are trained that mentally ill individuals may not be affected by the use of a taser is nonsensical and has no basis in the record or in fact. See Motion, p. 6 n.4. It is well recognized by the courts that a taser, when used in dart mode, causes neuromuscular incapacitation. See, e.g., Bryan v. MacPherson, 630 F.3d 805, 812 (9th Cir. 2010). It is unclear why Plaintiff believes that police officers would be trained that a taser can impact a mentally ill person’s nervous and muscular systems differently than any other person’s.

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**C. ARGUMENT REGARDING THE SCOPE OF REVIEW**

**1. Resolution of the relevant issue does not require the Court to reach the public duty doctrine.**

When Plaintiff commenced this litigation, he asserted claims for 1) assault and battery; and 2) negligence against the City of Tacoma. With respect to his negligence claims, Plaintiff made the following allegations in his amended complaint:

- “Defendant owes a duty to refrain from negligently, unreasonably, recklessly and wantonly engaging in the non-consensual invasion of the sanctity of a person’s bodily and personal security” (App. 27);

- “Defendant owes a duty to refrain from negligently engaging in harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such harm or apprehension that such contact is imminent” (App. 27);

- “Defendant owes a duty to properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force” (App. 27);

- “Defendant breached that duty when they engaged in the improper, unreasonable, unnecessary and excessive use of

force, including but not limited to shooting Cesar Beltran in the back while he was trying to walk away from Officer Volk” (App. 27);

- “Defendant breached that duty, acted unreasonably and was negligent, when it failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness” (App. 27-28);

- “Defendant breached that duty, acted unreasonably and was negligent, when it used unnecessary and improper physical force and violence against Cesar Beltran” (App. 28); and

- “Defendant breached that duty when it unreasonably, unnecessarily, and without provocation shot Cesar Beltran in the back, torso, and extremities and otherwise engaged in harmful or offensive contact with Plaintiff thereby inflicting an assault and battery on Cesar Beltran.” (App. 28).

While some of these allegations are couched in terms of a breach of a duty of care, the thrust of many of these allegations is clearly assault and battery<sup>3</sup>. See App. at 27 (Amended Complaint,

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<sup>3</sup>Under Washington law, “a police officer making an arrest is justified in using sufficient force to subdue a prisoner, however he becomes a tortfeasor and is liable as such for assault and battery if unnecessary violence or excessive force is used in accomplishing the arrest.” Boyles v. Kennewick, 62 Wn. App. 174, 176, 813 P.2d 178, review denied, 118 Wn.2d 1006 (1991). Because Plaintiff claims that his

paras. 19, 20, 22). The remaining allegations – negligent training, negligent supervision, negligent use of force – were the focus of the City’s motion for summary judgment.

In its motion for summary judgment, the City asserted three bases for dismissal. First, with respect to the negligent training and supervision claims, the City asserted that such claims were not cognizable as Officer Volk was acting within the course and scope of her employment<sup>4</sup>. See Evans v. Tacoma Sch. Dist. No. 10, 195 Wn. App. 25, 46-47, 380 P.3d 553 (2016) (“an injured party generally cannot assert claims for negligent hiring, retention, supervision or training of an employee when the employer is vicariously liable for the employee’s conduct.”), rev. denied, 186 Wn.2d 1028 (2016), citing LaPlant v. Snohomish County, 162 Wn. App. 476, 479-80, 217 P.3d 254 (2011). Plaintiff did not respond to the City’s motion for summary judgment on the negligent training and supervision claims. Further, Plaintiff has not sought discretionary review of the trial court’s order dismissing those claims. Thus, the dismissal of

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damages were caused by Officer Volk’s use of deadly force, which Plaintiff alleges was excessive, any allegation that is based on an excessive use of force necessarily relates to the assault and battery claim.

<sup>4</sup> There was no dispute that Officer Volk was acting within the course and scope of her employment as a police officer during her contact with Mr. Beltran-Serrano. (DR 24)

Plaintiff's negligent training and supervision claims is not at issue herein.

With respect to the negligent use of force claim, the City advanced two arguments – 1) a plaintiff cannot base a claim of negligence on an intentional act; and 2) the public duty doctrine bars such a claim under the circumstances of this case. In ruling on the City's motion for summary judgment on the negligent use of force claim, however, the trial court did not focus its analysis on the public duty doctrine. Instead, the trial court focused on the lack of authority in Washington to support a claim of negligent use of force.

During oral argument on the motion, the trial court identified the negligence claims at issue:

THE COURT: Defendant's motion to dismiss negligent -- this is what I wrote down, Ms. Homan, so if I miss one please let me know -- negligent training, negligent supervision, negligent use of force.

Supp. App. 16, lines 16-19. The trial court then made it clear that it was looking for specific Washington authority (not California authority) to establish a cause of action for negligent use of force:

THE COURT: Mr. LeBank, I want Washington law. I have the same concern that Ms. Homan has.

MR. LEBANK: Yeah.

THE COURT: I wrote down that California and other jurisdictions allow negligence as a cause of action -- in essence, as a cause of action.

MR. LEBANK: Certainly, Your Honor. Certainly. Ms. Homan is absolutely incorrect. There is no Washington case that holds that you may not bring a negligence claim for an officer-involved shooting. And so –

THE COURT: I want the opposite question answered. What is the Washington case law that says you may bring a negligence claim?

Supp. App. 18, lines 6-18.

In response to the instant motion, as he did in response to summary judgment, Plaintiff relies heavily on California jurisprudence and Hayes v. County of San Diego, 57 Cal.4th 622, 120 Cal. Rptr.3d 684, 305 P.3d 252 (2013), as the basis for a negligent use of force claim. In Hayes, the California Supreme Court applied long-standing California law and held that “liability can arise if the tactical conduct and decisions leading up to a use of deadly force show, as part of the totality of circumstances, that the use of deadly force was unreasonable.” Id. at 639. Plaintiff did not identify, either to the trial court or to this Court, *any authority* to establish that Washington has recognized such a cause of action for negligence. Moreover, no Washington court has ever cited to Hayes, let alone

relied upon or adopted the analysis outlined therein by the California Supreme Court.

In Washington, an officer's use of excessive and unreasonable force sounds in assault and battery, not in negligence. Boyles v. Kennewick, 62 Wn. App. 174, 813 P.2d 178, rev. denied, 118 Wn.2d 1006 (1991); McKinney v. Tukwila, 103 Wn. App. 391, 13 P.3d 631 (2000). Plaintiff has asserted a cause of action for assault and battery and that claim remains at issue. Consequently, the trial court's ruling on the City's motion regarding negligence does not deprive Plaintiff of a potential remedy.

Further, contrary to Plaintiff's arguments, it is well-established in Washington that a plaintiff may not base a claim of negligence on an intentional act, like the use of excessive force:

To state a claim for negligence, the underlying complaint must allege facts that support a conclusion that the conduct was negligent. See *McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 319, 255 P.2d 360 (1953) ("In order to state a cause of action for negligence, it is necessary to allege facts which would warrant a finding that the defendant has committed an unintentional breach of a legal duty, and that such breach was a proximate cause of the harm.").

Grange Ins. Ass'n v. Roberts, 179 Wn. App. 739, 769, 320 P.3d 77 (2013) (emphasis added). See also Brutsche v. City of Kent, 164 Wn.2d 664, 679, 193 P.3d 110 (2008) (declining to address

negligence claim where officer's act of breaching the door on plaintiff's property was intentional, not accidental); Tegman v. Accident & Med. Inves., Inc., 150 Wn.2d 102, 75 P.3d 497 (2003) ("fault" within the meaning of RCW Chapter 4.22, which encompasses liability for negligence, does not include intentional acts or omissions). Accord Roufa v. Constantine, 2017 U.S. Dist. LEXIS 4966, at \*30-31 (W.D. Wash. Jan. 11, 2017) (plaintiff cannot base a claim of negligence on alleged intentional actions, such as excessive force or unlawful arrest); Lawson v. City of Seattle, 2014 U.S. Dist. LEXIS 55883, at \*37-40 (W.D. Wash. Apr. 21, 2014) (dismissing negligent infliction of emotional distress and negligence claims because a plaintiff cannot base claims of negligence on intentional acts and because the public duty doctrine applies to law enforcement activities); Willard v. City of Everett, 2013 U.S. Dist. LEXIS 126409, 2013 WL 4759064 at \*4-5 (W.D. Wash. Sept. 4, 2013)(no cognizable claim for negligent where claim is based on intentional act and where police owed no individualized duty to plaintiff pursuant to the public duty doctrine).

Under controlling Washington authority, Plaintiff cannot premise a negligence claim on an intentional application of force by a police officer. Plaintiff concedes as much when he states that "[t]he

duty sought by Beltran-Serrano here is not an onerous one.” (MDR 16) This statement – “the duty *sought*” – explicitly acknowledges that no such duty currently exists under Washington law.

Washington law is clear on this point and application of this well settled law is sufficient to support the grant of summary judgment on Plaintiff’s negligent use of force claim.

**2. Cases involving §302B of the Restatement (Second) of Torts have no application to the instant case.**

As he did in response to summary judgment, Plaintiff also relies upon cases addressing §302B of the Restatement (Second) of Torts to support the instant motion for discretionary review. Plaintiff argues that a common law duty of reasonable care exists where police officers take action (misfeasance) as opposed to where officers do not take action (nonfeasance). Reliance on these cases is misplaced.

The cases in which the court discusses the distinction between misfeasance and nonfeasance by police officers all involve application of §302B of the Restatement (Second) of Torts. See, e.g., Washburn v. City of Federal Way, 178 Wn.2d 732, 310 P.3d 1275 (2013); Robb v. City of Seattle, 176 Wn.2d 427, 439-40, 295 P.3d 212 (2013). §302B of the Restatement (Second) of Torts has been

limited to situations where there is a duty to protect the plaintiff from the criminal acts of a third party<sup>5</sup>. See, e.g., Robb v. City of Seattle, 176 Wn.2d 427, 439-40, 295 P.3d 212 (2013). In the instant case, there is no allegation that Plaintiff was harmed by the intentional or criminal acts of a third person. Instead, Plaintiff alleges that he was harmed by the intentional acts of Officer Volk. The very nature of Plaintiff's claim renders cases involving §302B inapplicable.

Further, Plaintiff's reliance on Coffel v. Clallam County, 58 Wn. App. 517, 794 P.2d 513 (1990), and Garnett v. City of Bellevue, 59 Wn. App. 281, 796 P.2d 782 (1990), is equally unavailing. Coffel involved the application of the failure to enforce exception to the public duty doctrine and Garnett involved the application of the special relationship exception to the public duty doctrine. See also Keates v. Vancouver, 73 Wn. App. 257, 269-70, 869 P.2d 88 (1994)

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<sup>5</sup> §302B provides: "An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal." The comments to this section indicate that this section imposes a duty in some situations where an actor's own affirmative act has created or exposed the plaintiff to a recognized high degree of risk of harm through the misconduct or criminal act of third person. At the trial court, Plaintiff suggested that this section is applicable through the "through the conduct of the other" language, but this section of the Restatement has not been applied by any Washington court to create a duty in any situation other than those situations involving a risk of harm to the plaintiff by the intentional or criminal acts of a third party. See Robb v. Seattle, supra; Washburn v. City of Federal Way, supra; Parrilla v. King County, 138 Wn. App. 427, 157 P.3d 879 (2007)

(confirming that Garnett involved the special relationship exception to the public duty doctrine). As outlined herein, the Court does not need to reach the public duty doctrine in order to address the relevant issue. The City's Answer to the Plaintiffs' Statement of Grounds for Direct Review explains why, in any event, this State's case law addressing the public duty doctrine forecloses any argument that the dismissal of the negligence claims here provides any basis for direct review.

**D. CONCLUSION**

This Court should either outright deny or transfer Plaintiff's motion for discretionary review to Division II for consideration.

Dated this 1st day of December, 2017.

WILLIAM FOSBRE, City Attorney

By: 

JEAN P. HOMAN  
WSB #27084  
Deputy City Attorney  
Attorney for Defendant

## CERTIFICATE OF SERVICE

On said day below, I electronically served a true and accurate copy of the RESPONSE TO MOTION FOR DISCRETIONARY REVIEW in Supreme Court Case No. 95062-8 to the following parties:

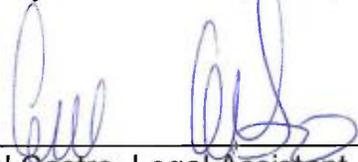
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Original E-filed with:  
Washington Supreme Court  
Clerk's Office

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

EXECUTED this 1<sup>st</sup> day of December, 2017, at Tacoma, WA.

  
\_\_\_\_\_  
Gisel Castro, Legal Assistant  
Tacoma City Attorney's Office

**SUPPLEMENTAL  
APPENDIX**

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

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CESAR BELTRAN-SERRANO, an	)	
incapacitated person, individually,	)	
and BIANCA BELTRAN as guardian ad	)	
litem of the person and estate of	)	
CESAR BELTRAN-SERRANO;	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 15-2-11618-1
v.	)	
	)	
CITY OF TACOMA, a political	)	
subdivision of the State of	)	
Washington;	)	
	)	
Defendant.	)	

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**VERBATIM TRANSCRIPT OF PROCEEDINGS**

September 1, 2017  
Pierce County Courthouse  
Tacoma, Washington  
Before the  
Honorable Susan K. Serko

Lanre G. Adebayo, CCR  
Official Court Reporter  
Department 14 Superior Court  
(253) 798-2977

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A P P E A R A N C E S

For the Plaintiff:  
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MEAGHAN DRISCOLL  
CONNELLY LAW OFFICES, PLLC

For the Defendant:  
JEAN HOMAN  
DEPUTY CITY ATTORNEY  
TACOMA CITY ATTORNEY'S OFFICE

T A B L E O F C O N T E N T S

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E X H I B I T

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	(No exhibits marked or admitted.)		



1 THE COURT: Okay. What was your verdict?

2 MS. HOMAN: It was split. One for the plaintiff,  
3 three for the defense.

4 THE COURT: Oh.

5 MS. HOMAN: So -- yeah.

6 THE COURT: A split.

7 MS. HOMAN: It was a split.

8 THE COURT: Okay. We are here on plaintiff's motion  
9 for partial summary judgment regarding past medical specials,  
10 for a determination by the Court that they are reasonable,  
11 necessary, and related to the June 29th, 2013, incident.  
12 We're also here on defendant's motion for summary judgment.  
13 Let's talk about the medical specials first.

14 MS. DRISCOLL: Yes, Your Honor. As you're aware,  
15 this case stems from a Tacoma police officer shooting  
16 Mr. Beltran four times in the arm, chest, abdomen --

17 THE COURT: Yeah, you don't need to go into all the  
18 details. I've read this a number of times.

19 MS. DRISCOLL: Yeah, and the resulting two months he  
20 spent at the Tacoma General Hospital there --

21 THE COURT: Right.

22 MS. DRISCOLL: -- for the substantial medical  
23 specials. We filed instant motion in August. I'm sure you  
24 -- you know, as you read, we included a report from Dr.  
25 James -- you'll read all the medical records -- found that

1 they were all reasonable, necessary.

2 THE COURT: Yep.

3 MS. DRISCOLL: In light of all of the evidence that  
4 we submitted in our summary judgment motion, defense then  
5 really kind of did the only thing it could and came out with  
6 a late disclosed expert who has really a scientifically shaky  
7 and unsound methodology in order to rebut our motion and  
8 create some semblance of a disputed issue of fact. For that  
9 reason, we argued in our reply that that opinion of  
10 Dr. Wickizer, he's a health care economist, should be  
11 excluded -- and I'll go into the rationale for that.

12 Really, it all comes down to the reasonableness prong  
13 of the specials. Dr. Wickizer is opining that medical bills  
14 essentially are not reasonable in all of the health care  
15 industry, and that a plaintiff in a case should only be  
16 entitled to essentially what amounts to the Medicare  
17 reimbursement rate, which is a small fraction of the actual  
18 bill that is charged to the patient. There's a lot of issues  
19 with this methodology and I'd like to get into that; but most  
20 significantly, it's really in direct contravention of the  
21 collateral source rule. And in the case of Hayes v. Wieber  
22 in a very similar situation, the trial court held there that  
23 testimony regarding the discrepancy between an amount the  
24 physician billed and the amount he accepted was properly  
25 excluded.

1           So we're asking the Court to do that here under the  
2 collateral source rule of evidence. Asking the jury to look  
3 at what a hospital gets reimbursed at is asking the jury to  
4 look at a collateral source, the relationship between  
5 insurance and the actual hospital. This is a clear  
6 violation, and the collateral source rule should be excluded  
7 even if it were factually and methodologically sound, which  
8 it's not. And that brings me to my next point which really  
9 under Frye and then under ER 702, 703, Dr. Wickizer's  
10 methodology is not scientifically accepted in the community.  
11 He has stated in deposition which we included in our  
12 materials --

13           THE COURT: Not yours.

14           MS. DRISCOLL: Not our --

15           THE COURT: This is a deposition that was taken in a  
16 different case.

17           MS. DRISCOLL: It was. And the reason for that is  
18 that he was just disclosed on August 21st.

19           THE COURT: Correct, I understand that.

20           MS. DRISCOLL: But in that case, it was the same  
21 methodology in that case as this one, he's looking at medical  
22 bills, he's saying that -- that they should be -- that the  
23 reasonable cost is this reimbursement rate. But what's  
24 important about that is in the deposition he stated that his  
25 methodology is solely for the purposes of litigation. So

1 this isn't something that's used in the scientific community;  
2 it's not something that's used by life care planners or  
3 people who actually look at what reasonable costs are for  
4 medical bills; it's something made up entirely for defendants  
5 here, like in this case, to essentially cut down plaintiff's  
6 specials when they've been wronged.

7         Additionally, just kind of as a practical matter, the  
8 numbers that Dr. Wickizer comes up with do not reflect the  
9 fair market value. What we're talking about here is a  
10 situation where Mr. Beltran was shot, he was in critical  
11 condition, very nearly died. In that situation, you get the  
12 medical care you need. You're not in a bargaining position.  
13 You can't go to Virginia Mason to go get -- go two hours  
14 through traffic up to Seattle, you have to go to Tacoma  
15 General. And so the reasonable rate or the reasonable cost  
16 for the care is what is lifesaving; and that's exactly what  
17 happened here.

18         Additionally, this whole reliance on the Medicare  
19 reimbursement rate is really contrived in the sense that  
20 that's one example, the lowest example of hospitals having  
21 their rates reduced. But, as this Court is aware and  
22 probably every attorney in this room is aware, another  
23 example that Dr. Wickizer chose not to use for obvious  
24 reasons is PIP. In PIP situations, you know, the injured  
25 party goes and gets their treatment and the hospital gets

1 reimbursed at a hundred percent rate on that. So it's clear  
2 that Dr. Wickizer is picking and choosing the lowest  
3 reimbursement rate possible, so there's obvious issues with  
4 that.

5 And another critical point is that Dr. Wickizer doesn't  
6 actually look at what was paid for the actual care, he's  
7 looking at just kind of unspecified national standards, and  
8 that violates principles of subrogation. I would direct the  
9 Court to Judge McDermott's ruling out of King County; he's  
10 considered this exact issue and in that case he ruled -- and  
11 I'll quote and I also quoted in our materials:

12 The use of Wickizer would require a change in the rules  
13 of evidence. This is too difficult for the jury to determine  
14 reasonableness of every billing. Plaintiff should not be  
15 forced to argue regarding discount of insurance breaks in the  
16 billings.

17 So we'd ask that the Court follow Judge McDermott's  
18 example and grant our motion. And really this comes down to  
19 a broad picture of a public policy of reimbursing people who  
20 have been injured by tortfeasors and our motion is in line  
21 with that policy.

22 MS. HOMAN: Your Honor --

23 THE COURT: Before you start, I have some questions.

24 MS. HOMAN: Yes.

25 THE COURT: Is Dr. Wickizer relying on the Medicare

1 reimbursement rate in this case?

2 MS. HOMAN: No.

3 THE COURT: What's he relying on?

4 MS. HOMAN: What he is relying on is there is data  
5 collected -- hospitals are required to submit annual reports  
6 to the Federal Government. It happens to be the same  
7 department that handles the Medicare reimbursement, but this  
8 is not based on Medicare reimbursement. Hospitals submit  
9 reports to the Federal Government, which have detailed by CPT  
10 Code, this is what it costs us to provide these services.  
11 Dr. Wickizer's --

12 THE COURT: Then why does the hospital bill  
13 \$712,000.00?

14 MS. HOMAN: Because the hospitals routinely  
15 negotiate different rates, the literature and the research  
16 demonstrates. Here's how his opinion is based. It costs the  
17 hospital X number of dollars to provide each of these  
18 services; and the opinion that he is offering is based on the  
19 annual report for the hospital that provided the services.  
20 There is peer reviewed literature and research that hospitals  
21 generally have this profit margin if they are for-profit;  
22 this profit margin if they are not for-profit. And the  
23 reasonable value based on -- the profit margins are  
24 determined based on payments from all sources. It's not  
25 based on the Medicare reimbursement.

1           THE COURT: Don't we have to focus on an individual  
2 case however? Mr. Beltran is billed \$712,000.00. Is there a  
3 negotiated amount for some one-third of that to be recovered  
4 by the hospital that gave him all this treatment and saved  
5 his life?

6           MS. HOMAN: So let's -- first off, there is no  
7 motion to exclude in front of you; not one that's properly  
8 noted or that I had an opportunity to respond to. And I do  
9 need to correct something that Ms. Driscoll said in the  
10 record. Ms. Driscoll said that they got Dr. Wickizer's  
11 report on August 21st; no, they didn't.

12          THE COURT: I'm not concerned about that.

13          MS. HOMAN: Okay.

14          THE COURT: I read it. I've read everything. I've  
15 read your reply.

16          MS. HOMAN: Okay. Got it.

17          THE COURT: I'm more concerned about if there's an  
18 individual doctor who will say, this amount of care was  
19 outrageous for this individual and the hospital should not be  
20 reimbursed that rate. But that's not what he does. He has  
21 this very broad-based generalized opinion about -- in lots of  
22 different cases and over lots of statistics, as opposed to  
23 focusing on Mr. Beltran and what was incurred in his case.

24          MS. HOMAN: No, he has looked at the actual CPT  
25 Codes for all of the charges that were billed in

1 Mr. Beltran's case. He has looked at Tacoma General's report  
2 in terms of what it cost them to provide those services.  
3 Your Honor, plaintiff -- there's no dispute that the  
4 treatment rendered was reasonable and medically necessary.  
5 He was shot, those medical services were necessary. What's  
6 in dispute is what is the reasonable value of those medical  
7 services. There is peer reviewed literature that says nobody  
8 pays full-freight. Hospitals don't. They do have inflated  
9 charges, nobody pays the 700,000.00. It doesn't violate the  
10 collateral source rule because we're not looking at payments  
11 that were made by an insurer on behalf of Mr. Beltran.

12 The plaintiff says this is a reasonable amount because  
13 this is what everybody bills. Dr. Wickizer says there is  
14 literature and peer reviewed studies that shows that the  
15 billed amount is not what everybody pays. Plaintiff argues  
16 on the one hand we should look at Dr. Wickizer's opinion as  
17 not valid because it doesn't take into account what people  
18 actually pay for such services. It's based exactly on what  
19 people pay for such services. It's looking at the cost of  
20 providing the services by this particular hospital for these  
21 particular services. It looks at the profit margin. The  
22 billed amount is a fiction. That's not the reasonable value.

23 THE COURT: Wouldn't I have to have something in the  
24 record that said the hospital has now compromised the  
25 \$712,000.00 to this amount of money, to allow that number to

1 go to the jury as opposed to \$712,000.00?

2 MS. HOMAN: So then we would actually be talking  
3 about the Medicare reimbursement rate because that's who  
4 would have paid these charges on behalf of Mr. Beltran.

5 THE COURT: But again, aren't we speculating? I  
6 don't know that. That's not necessarily in the record today.  
7 Wouldn't that potentially be maybe a posttrial motion as  
8 opposed to --

9 MS. HOMAN: No, Your Honor, it goes to the  
10 reasonable value.

11 THE COURT: Okay.

12 MS. HOMAN: The case law says they cannot rely  
13 simply on what is billed. And all Mr. Choppa says is the  
14 amount billed is reasonable because everybody bills that  
15 amount. And Dr. Wickizer's opinion is based on actual data  
16 that that's not what everybody pays, so that's actually not  
17 the reasonable value, and it doesn't implicate collateral  
18 source. And the McDermott case is not the only Court to  
19 consider Dr. Wickizer's opinion. And if we're going to base  
20 it on that --

21 THE COURT: No, you're not going to have to base it  
22 on that.

23 MS. HOMAN: Okay, because I've got --

24 THE COURT: I'm considering this --

25 MS. HOMAN: -- another opinion to the contrary.

1 THE COURT: -- on it's own terms in my courtroom  
2 without reference to another judge who I highly respect.

3 MS. HOMAN: Right.

4 THE COURT: Okay?

5 MS. HOMAN: So in this case it doesn't implicate  
6 collateral source. They can argue that it is -- their  
7 arguments essentially go to weight. But the fiction that the  
8 reasonable value is the amount billed, when there is actual  
9 factual evidence to the contrary that the amount billed is  
10 not what anybody ever pays, it's not even the amount the  
11 hospital expects to receive, and it's --

12 THE COURT: Okay. I've heard enough on this issue.  
13 We have another important motion that I need to hear the  
14 other way.

15 MS. HOMAN: Certainly.

16 THE COURT: I'm going to find -- I'm going to grant  
17 the plaintiff's motion in the sense that these were bills  
18 that were actually billed and can be presented to a jury.  
19 The question then becomes -- so there's no need to bring  
20 Dr. Wickizer in to say it's less, you know, to tell the jury  
21 it's less. I think this is a ruling as a matter of law  
22 posttrial to see what the jury awards, whether they award  
23 that or they award something else. So, that's not very --

24 MS. HOMAN: I'm not even sure what procedurally that  
25 motion would be.

1 THE COURT: I don't either; but what I'm telling you  
2 is I don't think it's fair, and I think it's appropriate for  
3 the plaintiff to have a determination as a matter of law that  
4 these bills were actually billed and are reasonable,  
5 necessary and related. The reasonableness is the pivotal  
6 issue, and again --

7 MS. HOMAN: Mr. Choppa himself admitted that if  
8 offered cash -- doesn't involve any collateral source, if  
9 offered cash, would a hospital discount the billed rate? He  
10 said yes.

11 THE COURT: But don't you have to have the hospital  
12 come in and say, this is what we're accepting. So if  
13 Medicare is billed \$300,000.00 for this care and pays  
14 \$300,000.00 for care, and a jury says the medical expenses  
15 were \$712,000.00; can't the Court at that point say, I'm  
16 going to reduce this, as opposed to having a witness testify  
17 based on generalized statistical information of what a  
18 hospital does in many different cases as opposed to in this  
19 individual case.

20 MS. HOMAN: If we were to bring a post-verdict  
21 motion based on Medicare was billed and Medicare paid, how  
22 would that not implicate collateral source?

23 MS. DRISCOLL: If I may, I think this is no  
24 different than subrogation in any other context in that it  
25 will be handled on the back end, if at all, between -- if

1 there's liens on the bills or whatnot. And, I mean, maybe  
2 that's the solution, I don't -- I mean --

3 MS. HOMAN: No, because what that deals with is the  
4 subrogated amount that a third-party subrogee can recover  
5 from the plaintiff. But the defense is being tasked with the  
6 reasonable value of the services provided is an amount that  
7 has no relationship to reality. It is grossly inflated and  
8 so we get to -- they can say this is the amount billed, and  
9 we should be allowed to present evidence that says, and  
10 hospitals know that's not the amount they're going to get  
11 paid, that's not the reasonable value.

12 MS. DRISCOLL: I think by way of context --

13 THE COURT: Okay. Okay. I've heard enough. I'm  
14 going to grant the plaintiff's motion. I don't -- I still do  
15 not believe it's fair and legitimate to allow the defense to  
16 come in and say, in a generalized fashion, this is not what a  
17 hospital expects to receive. I think that the opinion, if  
18 you have one of Dr. Wickizer, is more Mr. Beltran was billed  
19 this, and that's not reasonable.

20 MS. HOMAN: Not reasonable based on the amount that  
21 it cost the hospital to charge the services and the profit  
22 margin that this hospital normally expects to receive.  
23 Understood, Your Honor.

24 THE COURT: Motion granted.

25 MS. DRISCOLL: Your Honor, the proposed order I have

1 includes exclusion of Dr. Wickizer as well as the granting of  
2 the motion, so I don't know.

3 THE COURT: I don't think that that there was a  
4 motion to exclude.

5 MS. HOMAN: No.

6 MR. LEBANK: Well, it was part of --

7 MS. HOMAN: Not one they actually noted.

8 MR. LEBANK: It was part of the reply so, I mean,  
9 it's more of an evidentiary summary judgment issue so we can  
10 rehash that in motions in limine as to whether or not he  
11 actually gets to testify.

12 THE COURT: Fair enough.

13 MS. DRISCOLL: Okay. So I'll cross--

14 THE COURT: So you could cross that language out.

15 MS. DRISCOLL: Okay. All right.

16 THE COURT: Defendant's motion to dismiss negligent  
17 -- this is what I wrote down, Ms. Homan, so if I miss one  
18 please let me know -- negligent training, negligent  
19 supervision, negligent use of force.

20 MS. HOMAN: Yes. Basically plaintiff has asserted  
21 two primary claims; assault and battery --

22 THE COURT: Right.

23 MS. HOMAN: -- which is not the subject of the  
24 instant motion --

25 THE COURT: Right.

1 MS. HOMAN: -- and negligence.

2 THE COURT: Right.

3 MS. HOMAN: And the allegations in the complaint as  
4 to negligence kind of wandered around a bit, but essentially  
5 negligent training and supervision, negligent use of force.  
6 There are multiple legal reasons to grant the defendant  
7 motion for summary judgment on the negligence claim. In  
8 Washington State, we don't have a negligent application of  
9 force by a police officer. There's no contention in this  
10 case that Officer Volk's gun went off by accident. And there  
11 is case law that says that we distinguish between negligent  
12 and intentional conduct in this state. The reliance on  
13 California law to the contrary is misplaced. They have a  
14 different body of law.

15 With respect to the negligent training and supervision,  
16 there's no contention that Officer Volk was acting outside  
17 the course and scope of her employment. And those causes of  
18 action exist to impose liability on the employer when  
19 respondeat superior would not be present. So for those two  
20 reasons alone, the negligent infliction of deadly force and  
21 the negligent training and supervision should go away.

22 Overarching all of that is you have a problem with the  
23 public duty doctrine. Law enforcement activities are  
24 quintessential governmental functions; there's no exception  
25 to the doctrine. There's a discussion in the pleadings about

1 the Washburn and Robb and the Parrilla cases which deal with  
2 302(b); that's an entirely different context that deals with  
3 protecting someone from the criminal acts or intentional acts  
4 of a third party, so those don't apply. So really what this  
5 case boils down to is the assault and battery claim.

6 THE COURT: Mr. LeBank, I want Washington law. I  
7 have the same concern that Ms. Homan has.

8 MR. LEBANK: Yeah.

9 THE COURT: I wrote down that California and other  
10 jurisdictions allow negligence as a cause of action -- in  
11 essence, as a cause of action.

12 MR. LEBANK: Certainly, Your Honor. Certainly.

13 Ms. Homan is absolutely incorrect. There is no  
14 Washington case that holds that you may not bring a  
15 negligence claim for an officer-involved shooting. And so --

16 THE COURT: I want the opposite question answered.  
17 What is the Washington case law that says you may bring a  
18 negligence claim?

19 MR. LEBANK: Okay. So the Washington case law is  
20 decades of jurisprudence. Coffel. So, I mean, we start --  
21 if we go all the way back to 1961 when we abrogated sovereign  
22 immunity, we start --

23 THE COURT: I read your brief --

24 MR. LEBANK: Yeah, but we start with --

25 THE COURT: -- and I don't want to go through the

1 whole brief.

2 MR. LEBANK: Right. We start with the car accident  
3 scenario. And I think that -- I want to just -- can I give  
4 you a little bit of framework here --

5 THE COURT: Okay.

6 MR. LEBANK: -- because I feel like I'm arguing  
7 against myself a little bit. I think -- and I think that  
8 what's happened and it's happened in the last decade really  
9 since I've been practicing law is that the public duty  
10 doctrine has been very misunderstood, and Justice Chambers  
11 went to great lengths to try to tell us that.

12 THE COURT: I appreciate that and I read it.

13 MR. LEBANK: He told us that in Munich and he told  
14 us that in a number of other cases. But what we have is that  
15 police officers -- and Coffel says this and Coffel has been  
16 cited again and again -- if you choose to act, i.e., an act  
17 of commission as opposed to an act of omission, you have to  
18 do it reasonably. And this goes back to basic negligence  
19 principles, right, which is, you're responsible for the  
20 foreseeable consequences of your actions. And you look at  
21 Hunsley v. Giard, and you look at Washburn. And the quote  
22 from Washburn says police officers -- and I can quote it, but  
23 the quote from Washburn which is a 2013 Supreme Court case --

24 THE COURT: And the Washburn case is the case of the  
25 63-year-old woman whose apartment was invaded mistakenly.

1 MR. LEBANK: No, no, no, no, no; that's Mancini.

2 THE COURT: Oh, that's Mancini.

3 MR. LEBANK: That's Mancini.

4 THE COURT: Okay. So give me the facts of Washburn  
5 then.

6 MR. LEBANK: Washburn was our case. Washburn was a  
7 protective order case where the officer served the protective  
8 order on Ms. Roznowski, which is why it's confusing, at her  
9 home with her estranged boyfriend --

10 THE COURT: Correct.

11 MR. LEBANK: -- standing behind her, left her in the  
12 home, three hours later he murdered her.

13 THE COURT: Right.

14 MR. LEBANK: Now the court divides its analysis into  
15 two sections in the Supreme Court analysis in Washburn. The  
16 first is the failure to enforce exception to the public duty  
17 doctrine in terms of enforcing the no contact order that she  
18 received. The second section is the common law section,  
19 right? And these are two separate and distinct duties; one  
20 is the failure to enforce, that implicates public duty  
21 doctrine; the second is the 302(b) argument, okay? And this  
22 is important because the defense is misrepresenting what  
23 302(b) says, because 302(b) -- that's Parrilla, Robb and  
24 Washburn, right, those are the three primary 302(b) cases.  
25 And this is a common law duty, and in each of these cases

1 there is no exception, traditional exception to the public  
2 duty doctrine, right? But it says: An act or omission may  
3 be negligent if the actor realizes or should realize that it  
4 involves an unreasonable risk of harm to another through the  
5 conduct of the other, or a third person.

6 So it's either your own -- I mean, the third person; to  
7 protect somebody from the acts of a third person, that's much  
8 more extraneous than to protect someone from the acts of  
9 yourself. And so when we look at this and then we have  
10 Coffel which separated it out from the officers; they said  
11 there's no special relationship because the assurances were  
12 revoked, right, and so they said the public duty doctrine  
13 applied to the officers not present on the scene, but that  
14 the officers present on the scene who actively prevented the  
15 business owner from going in and stopping the destruction  
16 from occurring, they were liable under the common law for  
17 their own actions.

18 Then we have Garnett v. City of Bellevue; and I think  
19 that case is really important, it's really on point. That's  
20 the one with the women in the bar and there's a call, the  
21 officers come, they're escorting the women out, they call  
22 them hookers and prostitutes.

23 THE COURT: Uh-huh.

24 MR. LEBANK: And the court says we don't have an  
25 exception to the public duty doctrine here. We don't have a

1 special relationship, we don't have a failure to enforce, we  
2 don't have -- you know -- a rescue doctrine, we don't have  
3 any of the traditional exceptions, but liability should  
4 attach. And the Court of Appeals agreed in Garnett; so I  
5 think Garnett is directly on point.

6 The City admits that driving a car, if you drive  
7 through a crosswalk -- if a police officer drives through a  
8 crosswalk, there's no exception to the public duty doctrine  
9 there, right? I mean, there's no special relationship.

10 THE COURT: Isn't that a different situation?

11 MR. LEBANK: It's not different at all --

12 THE COURT: Okay.

13 MR. LEBANK: -- because it's a common law duty and  
14 that's the important thing. So there's a common law duty to  
15 act reasonably when you're driving a car. So here, Officer  
16 Volk has a -- as soon as she chooses to act, gets out of her  
17 car and approaches Mr. Beltran, now we're away from the  
18 nebulous public, right? So now -- because the public duty  
19 doctrine says, a duty to all is a duty to none. So if it's a  
20 duty to the nebulous public; for example, in the 911 context  
21 to respond to a 911 call, that's where we have to have  
22 expressed assurances, right? That's Munich is the 911 line  
23 of cases. As soon as she steps out of the car and approaches  
24 Mr. Beltran, now she has an obligation to act reasonably,  
25 right?

1           And so what does she do? It's obvious to Loretta Cool  
2 that he's mentally ill. City of Tacoma has a policy for  
3 dealing with the mentally ill. She doesn't follow it. She's  
4 not even aware of it, hence the negligent training. She  
5 violates line after line of the policy for dealing with the  
6 mentally ill. She walks in on him. She identifies that he's  
7 Spanish speaking. He shakes his head and says he doesn't  
8 speak Spanish (sic). She calls a Spanish speaking officer,  
9 she doesn't wait for him to arrive, she asks him for  
10 identification.

11           Then it's disputed and the City admits that there are  
12 disputed issues of material fact here between the eyewitness  
13 accounts and Officer Volk's accounts. So then she  
14 essentially pushes him and creates this encounter. And  
15 assuming her version of the event, which we dispute, she then  
16 chases him across the street where she uses her Taser  
17 improperly, she fails to use it properly. Then she, in our  
18 position, acts unreasonably and shoots him.

19           The City focuses on that final act. And I was looking  
20 just at the definition of battery, right? Harmful or  
21 offensive; it's intended harmful or offensive conduct. Well,  
22 that's the moment that she pulls the trigger. What the  
23 negligence claim is, is everything else. The failure to  
24 follow the policy for dealing with the mentally ill; the  
25 failure to wait for a Spanish speaking officer; the failure

1 to deal properly with an individual who is clearly suffering  
2 from mental illness, didn't speak English, and then  
3 escalating the situation; the failure to properly deploy her  
4 Taser; those were not intentional acts; she didn't intend to  
5 do those things. She did it as because she wasn't familiar  
6 with the policies for dealing with the mentally ill. She  
7 didn't properly -- she didn't follow them; she didn't  
8 identify that he was suffering from mental illness; she  
9 escalated the situation; she didn't wait for Officer  
10 Gutierrez who was two minutes away. And so those are  
11 negligent acts that, under Coffel, if she chooses to act, she  
12 has a duty to act reasonably.

13 And, you know, the City cites to these federal opinions  
14 because a lot of these cases wind up in Federal Court. We  
15 gave the Court the 9th Circuit opinion in Peterson which is  
16 attached to our materials, where they remanded the case on  
17 negligence alone. It's a police shooting case; they remanded  
18 it on negligence alone, citing to Coffel. Judge Lasnik in  
19 Mitchell v. City of Tukwila did the same thing citing to  
20 Munich and Coffel and Robb. And so what we have here is a  
21 situation where we have a common law duty, the duty to act  
22 reasonably and to prevent the foreseeable -- and this is  
23 hornbook negligence law; it applies in California, it applies  
24 in Washington, it applies in Louisiana, it applies in  
25 Washington, D.C.; an actor has a duty to prevent the

1 foreseeable consequences of their actions just like anyone,  
2 any ordinary person.

3 And that's what the waiver of sovereign immunity does.  
4 Officer Volk, as soon as she gets out of the car and chooses  
5 to interact with a person on the street, she's away from the  
6 nebulous public.

7 THE COURT: So there's always going to a cause --

8 MR. LEBANK: There's --

9 THE COURT: Let me finish.

10 MR. LEBANK: Yeah, go ahead.

11 THE COURT: There's always going to be a cause of  
12 action for negligence when an officer acts; that's what I'm  
13 hearing you say.

14 MR. LEBANK: That's what Robb says.

15 THE COURT: Okay.

16 MR. LEBANK: That's what Robb says is that -- that's  
17 what the Supreme Court said in Robb is -- and that's what the  
18 Supreme Court said -- or that's what the Court of Appeals  
19 said in Coffel. And so Robb says that active -- that once  
20 you act essentially -- and I think they used misfeasance and  
21 nonfeasance or an act of omission versus an act of  
22 commission. So commission, this is an active negligence  
23 versus failing to act, right? And in Robb, they said it was  
24 an act of omission not an act of commission. That was the  
25 distinction that the court made there.

1 THE COURT: Thank you.

2 MS. HOMAN: Yes, Your Honor.

3 THE COURT: Briefly, please.

4 MS. HOMAN: Yes. Law enforcement conduct forcing  
5 activities are traditional governmental functions. There is  
6 absolutely no case discussing law enforcement activities in  
7 the context of misfeasance versus nonfeasance, except in the  
8 context of 302(b), and only in the context of a failure to  
9 prevent harm to the plaintiff by the intentional or criminal  
10 acts of a third party. There is no Washington case law  
11 allowing a cause of action for negligent infliction of deadly  
12 force. Plaintiff did not respond to the motion on the  
13 negligent hiring and supervision.

14 THE COURT: Yeah, there's that issue.

15 MS. HOMAN: There is that issue, because again  
16 there's no contention that Officer Volk was acting outside  
17 the course and scope employment. From a legal perspective,  
18 plaintiff's negligence claims cannot stand. Their cause of  
19 action is assault and battery and that's what goes to the  
20 jury.

21 THE COURT: Thank you. I agree. I'm going to grant  
22 the motion. Do you have an order as well -- is it Ms.  
23 Driscoll, is that right?

24 MS. DRISCOLL: Yes, Your Honor. I assume Ms. Homan  
25 wants to look at it real quick.

1 MS. HOMAN: Yes, I would like to.

2 (Parties sign orders.)

3 MS. HOMAN: Handing up the original.

4 (Court signs orders.)

5 MR. LEBANK: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 MS. DRISCOLL: Thank you.

8 (Proceedings concluded at 10:40 a.m.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

---

CESAR BELTRAN-SERRANO, an )  
 incapacitated person, individually, )  
 and BIANCA BELTRAN as guardian ad )  
 litem of the person and estate of )  
 CESAR BELTRAN-SERRANO; )  
 )  
 Plaintiff, ) Superior Court  
 ) No.15-2-11618-1  
 v. )  
 )  
 CITY OF TACOMA, a political )  
 subdivision of the State of )  
 Washington; )  
 )  
 Defendant. )

---

REPORTER'S CERTIFICATE

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STATE OF WASHINGTON )  
 ) ss  
 COUNTY OF PIERCE )

I, Lanre G. Adebayo, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 15th day of September, 2017.

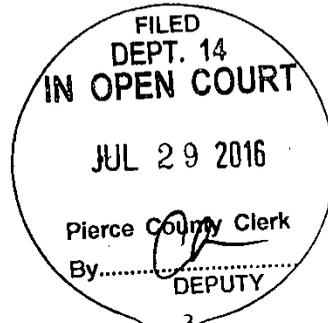
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LANRE G. ADEBAYO, CCR  
 Official Court Reporter  
 CCR #2964

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8/2/2016



HONORABLE GRETCHEN LEANDERSON  
Hearing Date: August 5, 2016  
Time: 9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

CESAR BELTRAN-SERRANO, an  
incapacitated person, individually, and  
BIANCA BELTRAN as guardian *ad litem* of  
the person and estate of CESAR BELTRAN-  
SERRANO  
  
Plaintiff,  
  
v.  
  
CITY OF TACOMA, a political subdivision of  
the State of Washington;  
  
Defendant.

NO. 15-2-11618-1

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PROTECTIVE ORDER  
AND TO QUASH THE NOTICE OF  
DEPOSITION OF CESAR BELTRAN-  
SERRANO

THIS MATTER, having come on for hearing upon Plaintiffs' Motion for Protective  
Order and to Quash the Notice of Deposition of Cesar Beltran-Serrano and having reviewed  
fully the materials submitted, and having specifically reviewed:

1. Plaintiff's Motion for Protective Order and to Quash the Deposition of Cesar Beltran-Serrano;
2. Declaration of Micah R. LeBank in Support of Motion for Protective Order and to Quash Deposition of Cesar Beltran-Serrano with exhibits thereto;

ORDER GRANTING PROTECTIVE ORDER AND  
QUASHING THE NOTICE OF DEPOSITION OF  
CESAR BELTRAN-SERRANO - 1

CONNELLY LAW OFFICES, PLLC  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

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8/2/2016

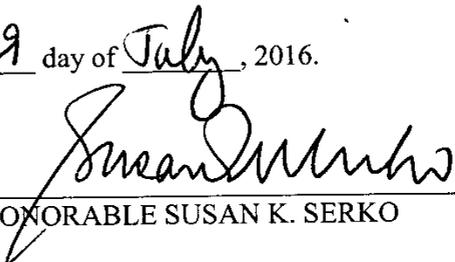
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- 3. Declaration of Michael Jay Badger, Ph.D.
- 4. Defendants' Response to Plaintiff's Motion for a Protective Order and to Quash Deposition Notice;
- 5. Affidavit of Jean P. Homan in Response to Plaintiff's Motion for a Protective Order and to Quash Deposition Notice; and
- 6. Plaintiff's Reply to Plaintiff's Motion for a Protective Order and to Quash Deposition Notice.

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Protective Order is **GRANTED**.

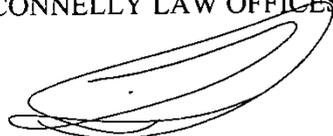
IT IS FURTHER ORDERED that the Notice of Deposition of Cesar Beltran Serrano is **QUASHED**.

DONE IN OPEN COURT this 29 day of July, 2016.

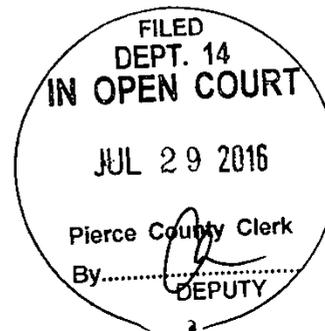
  
 \_\_\_\_\_  
 HONORABLE SUSAN K. SERKO

Presented by:

CONNELLY LAW OFFICES, PLLC

  
 \_\_\_\_\_  
 Micah R. LeBank, WSBA No.: 38047  
 Attorneys for Plaintiff

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ORDER GRANTING PROTECTIVE ORDER AND QUASHING THE NOTICE OF DEPOSITION OF CESAR BELTRAN-SERRANO - 2

**CONNELLY LAW OFFICES, PLLC**  
 2301 North 30th Street  
 Tacoma, WA 98403  
 (253) 593-5100 Phone - (253) 593-0380 Fax

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Approved as to form and copy received:

ELIZABETH A. PAULI, City Attorney



Jean Homan, WSBA No. 27084  
Deputy City Attorney  
Attorney for Defendant

ORDER GRANTING PROTECTIVE ORDER AND  
QUASHING THE NOTICE OF DEPOSITION OF  
CESAR BELTRAN-SERRANO - 3

**CONNELLY LAW OFFICES, PLLC**

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**TACOMA CITY ATTORNEYS OFFICE**

**December 01, 2017 - 11:04 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95062-8  
**Appellate Court Case Title:** Cesar Beltran-Serrano v. City of Tacoma  
**Superior Court Case Number:** 15-2-11618-1

**The following documents have been uploaded:**

- 950628\_Answer\_Reply\_20171201110003SC204834\_8178.pdf  
This File Contains:  
Answer/Reply - Answer to Motion for Discretionary Review  
*The Original File Name was Discretionary Review-Response w Appendix.pdf*
- 950628\_Answer\_SOG\_for\_Direct\_Review\_20171201110003SC204834\_7083.pdf  
This File Contains:  
Answer to Statement of Grounds for Direct Review  
*The Original File Name was Statement of Grouds-Response.pdf*

**A copy of the uploaded files will be sent to:**

- bmarvin@connelly-law.com
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**Comments:**

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Sender Name: Jean Homan - Email: jhoman@cityoftacoma.org  
Address:  
747 MARKET ST # 1120  
TACOMA, WA, 98402-3701  
Phone: 253-591-5629

**Note: The Filing Id is 20171201110003SC204834**