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NO. 96527-7

SUPREME COURT OF THE STATE OF WASHINGTON

GILDARDO CRISOSTOMO VARGAS, an incapacitated person, by and through WILLIAM DUSSAULT, his Litigation Guardian ad Litem; LUCINA FLORES, an individual; ROSARIO CRISOSTOMO FLORES, an individual; and PATRICIA CRISOSTOMO FLORES, a minor child by and through LUCINA FLORES, her natural mother and default guardian,

Petitioners,

v.

INLAND WASHINGTON, LLC, a Washington limited liability company,

Respondent,

and

INLAND GROUP P.S., LLC, a Washington limited liability company, RALPH'S CONCRETE PUMPING, INC., a Washington corporation, and MILES SAND & GRAVEL COMPANY d/b/a CONCRETE NOR'WEST, a Washington corporation,

Defendants.

**RESPONDENT INLAND WASHINGTON, LLC'S OPPOSITION
TO PETITIONERS' MOTION FOR DISCRETIONARY REVIEW**

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I. INTRODUCTION

Respondent Inland Washington LLC (“Inland”) was the general contractor of the construction project where Petitioners Vargas (“Vargas”) allege Gildardo Crisostomo Vargas, an employee of Inland’s subcontractor, Hilltop Concrete Construction (“Hilltop”) suffered injuries from a blow to the head from a concrete pump hose on a pump truck operated by Hilltop’s supplier/subcontractor Defendant Ralph’s Concrete Pumping (“Ralph’s”). In 2015, the trial court determined that Inland is not vicariously liable as a matter of law. Vargas did not appeal that ruling.

In 2017, the trial court granted summary judgment that Inland cannot be liable under any other theory, dismissing Inland from the case. In making that 2017 ruling, the trial judge refused to revisit the 2015 judge’s no-vicarious-liability ruling. The 2017 judge did not believe that the appellate court’s *Afoa II* decision effected a “sea-change” in the law. Vargas sought a RAP 2.3(b)(4) certification using language that erroneously implied that the 2017 court reaffirmed the 2015 court’s no-vicarious-liability ruling – which it did not.

The Court of Appeals Commissioner improvidently granted review on the vicarious liability issue. She incorrectly seemed to think that either the Court of Appeals’ *Afoa II*, or this Court’s then-pending decision on *Afoa II*, might effect a change in the law. Inland argued in its merits briefing that review was improvidently granted. The Court of Appeals properly concluded it was. This Court should deny review.

II. DECISION BELOW

The trial court dismissed Inland on its motion for summary judgment, holding that Inland was not liable for Mr. Vargas' injuries as a matter of law. The Court of Appeals then correctly ruled that Vargas' Motion for Discretionary Review of this dismissal had been improvidently granted by a Court Commissioner. Inland requests that the Supreme Court affirm the Court of Appeals' decision and not accept review.

III. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals commit obvious or probable error and render further proceedings useless or substantially alter the status quo, or so depart from the usual course as to call for revisory jurisdiction, where it determined that review had been improvidently granted? RAP 13.5.

IV. STATEMENT OF THE CASE

A. Hilltop, Not Inland, Retained Contractual Control over the Concrete Pour at the Project

On May 23, 2013, a concrete pump hose struck Vargas, injuring him (the "Incident"). APP 1742, 1745. Inland was the general contractor for the two-building North City Apartments, in Shoreline, WA (the "Project"). APP. 1-2, 3-4. Inland hired subcontractor Hilltop to pour concrete walls at the Project. APP. 5-30 ("Subcontract"). Hilltop employed Vargas. APP. 31-32.

The Subcontract required Hilltop to safely perform work in its own work areas, to hold and attend safety meetings, and to comply with the Washington Industrial Safety and Health Act (WISHA). APP. 33-36, 37-38, 39-40, 41-43, 44-46. The Subcontract also required Hilltop's agreement

“with any written instructions given by” Inland, so Inland did not retain the contractual right to control Hilltop’s work. APP. 47-48.

Hilltop—not Inland—hired Defendant Miles Sand & Gravel dba Concrete Nor’west (“Miles”) to supply the concrete for the Project. APP. 49-50. Hilltop also hired Ralph’s to pump concrete from Miles’ supply truck into the wall forms Hilltop erected. APP. 51-54. Ralph’s routinely used a form daily-rental agreement to rent its concrete-pump truck to Hilltop, including a qualified pump-truck operator solely under Hilltop’s control. APP. 55-56, 57-59 (“All operators are loaned servants acting under the sole supervision and control of Lessee [Hilltop] who is solely responsible for their actions”); APP. 60-62 (Hilltop rented equipment from Ralph’s multiple times before the Incident using the same form daily-rental agreement).

B. Hilltop, Not Inland, Retained Actual Control over the Concrete Pour on the Day of the Incident

In addition to its general contractual control over the concrete pours under the Subcontract, Hilltop supervised and controlled the concrete-pour site on the day of the Incident. APP. 63-64. Matt Skoog was Hilltop’s supervisor in charge of maintaining overall control of the concrete pours. APP. 65-66. Skoog controlled the start of the pours, signaling Ralph’s pump-truck operator to start pumping. APP. 67-68.

Vargas was Hilltop’s lead employee – second-in-command only to Skoog – at the pour. APP. 69-70. Vargas had worked for Hilltop for six years. APP. 71-72. Over that time, Vargas attended Hilltop safety-training

classes (some taught by Skoog) on safe concrete-pumping operations and pump-hose risks. APP. 73-74. Hilltop trained on hose-whip “blow outs.” APP. 75-76.

On the morning of the Incident, Ralph’s sent a Putzmeister concrete-pump truck to the Project, equipped with an adjustable boom 47 meters (154 feet) long. APP. 77-78, 79-80. The boom pumps concrete from the supply truck to difficult-to-reach areas. APP. 81-82, 83-84. The wall forms were distant from the street-side where Miles’ trucks delivered concrete at Hilltop’s request. APP. 85-86. No one from Inland was involved with this pour. APP. 85-86.

Miles’ trucks delivered the concrete into Ralph’s pump-truck hopper, while Miles’ driver monitored the concrete level in the hopper. APP. 68. Monitoring ensures that concrete levels remain above the pump inlet, preventing air from entering the system; if air gets in, it can compress inside the supply line; if compressed air reaches the end of the delivery hose, it may “whip” around when the air is suddenly released. APP. 87-88.

Ralph’s pump-truck operator controlled the pumping operation with a portable remote-control box. APP. 89-90. The Hilltop employee overseeing the pour would typically instruct Ralph’s operator where to pour concrete, but would give no instructions on how to operate the pump truck. APP. 91-92.

C. Only Hilltop Employees Were Present at the Incident Site

It is undisputed that on May 23, 2013, only Hilltop employees were

in the Incident area. APP. 93-94. No other trades were present so that Hilltop employees “could focus on doing our work properly and safely during the pour.” APP. 95-96. Just before the Incident, Skoog and Ralph’s concrete-pump operator, Anthony Howell, were standing on the concrete deck near the wall-pour site. APP. 97-98. Howell then moved away from Skoog, 50 feet closer to his pump so his remote control would work. APP. 99-101. Vargas and two other Hilltop employees “were positioned on the scaffolding next to the concrete forms.” APP. 102-103. Vargas was holding the end of the concrete pour hose, while the two other Hilltop employees stood by, ready to assist him with the pour. APP. 104-106. The Incident occurred when the concrete supply hose struck Vargas’ head. APP. 107-108. Inland was not present.

D. Inland Did Not Violate any WISHA Safety Regulations

Following the Incident, the Washington Department of Labor and Industries (“L&I”) conducted inspections of three entities (Inland, Ralph’s, and Hilltop) to determine whether they violated applicable WISHA safety regulations. Kyle Grayson, an L&I Compliance Safety and Health Officer, inspected the Project with two other L&I safety inspectors; they concluded Inland violated no WISHA safety regulations:

Q Did the results of your investigation result in a report that found citations for WISHA violation?

A Which inspection are you referring to, sir?

Q Inland Washington.

A Inland.

Q Yes.

A **There were no violations for Inland.**

APP. 109-110 (emphasis added); *see also* APP. 111-112 (“This inspection resulted in no violations); APP. 113-114 (“No violations . . . No penalties . . .”).

Similarly, the L&I inspectors determined that Ralph’s violated no WISHA regulations. APP. 115-116. Moreover, in response to written discovery, Vargas produced no evidence of any specific WISHA violations. APP. 117-122. No admissible expert opinion alleges how or why the hose suddenly whipped. Although Vargas’ experts have speculated about causation, none of them proffers, on a more probable than not basis, that any Inland act or omission proximately caused the Incident.

E. Procedural History

Vargas filed its lawsuit on or about September 11, 2013, asserting a single claim of negligence against Inland. APP. 123-126. On June 26, 2015, the trial court (Hon. Carol Schapira) denied in part Inland’s first motion for summary judgment,¹ but also ruled that Inland was not vicariously liable. APP. 127-128. Vargas did not seek interlocutory review of that order.

On March 31, 2017, on Inland’s second motion for summary judgment, the trial court (Hon. Jeffrey Ramsdell) dismissed the remaining claims against Inland. APP. 129-133 (“2017 Order”). At that time, Judge Ramsdell declined to revisit Judge Schapira’s ruling on vicarious liability:

¹ Judge Schapira issued a prior order dated April 30, 2015 granting in part Inland’s Motion For Summary Judgment, ruling Inland did not owe a duty as a possessor of land. APP 163].

THE COURT: ... I'm disinclined to revisit Judge Shapira's ruling [on vicarious liability], as I said before, because I don't see a major sea-change arising from *Afoa*.

RP 179-182. Judge Ramsdell granted Inland's motion:

As far as the *Stute* issue and the nondelegable duty that we've just been arguing about, I'm inclined to grant Inland's motion, and the reason for that is I'm really not seeing much in the way of substance from the plaintiff as to what the actual violation is of what nondelegable duty we're talking about.

It sounds like a generalized guarantor of safety across the board, which I don't think is what *Stute* contemplates. And so I'm going to grant Inland's motion and dismiss the claim against them.

RP 179-182. The 2017 Order granted Inland's motion, dismissing all claims against Inland with prejudice, and entered no findings or conclusions regarding the 2015 Order of no-vicarious-liability. APP. 129-133.

On April 21, 2017, the trial court denied reconsideration, again without revisiting vicarious liability. APP. 134-140. On the same day, the court certified its 2017 Order for immediate review under RAP 2.3(b)(4). APP. 141-144 ("Certification"). While the Certification does not explicitly reference the 2015 no-vicarious-liability ruling, it implies that the 2017 Order reaffirmed that 2015 ruling. APP. 145-146. But the trial court's oral ruling (RP 179-182) and its 2017 Order (APP. 129-133) contradict that implication.

Vargas moved Division I of the Court of Appeals for discretionary review of the 2017 Order (No. 76717-8-I), but notably, Vargas did not timely request discretionary review of the no-vicarious-liability ruling of the 2015 Order. On July 21, 2017, a Commissioner granted Vargas' motion

for interlocutory review of the trial court's 2017 Order, specifically on the issue of vicarious liability, in light of Division I's then-recent ruling in *Afoa II*.² The parties briefed the appeal.

On September 17, 2018, however, Division I held that the Commissioner improvidently granted review:

In light of the Supreme Court's decision in *Afoa v. Port of Seattle*, 191 Wn.2d 110, 421 P.3d 903 (2018), which reversed this court's decision in *Afoa v. Port of Seattle*, 198 Wn. App. 206, 393 P.3d 802 (2017), the standards for discretionary review set forth in RAP 2.3(b)(4) are not met. Accordingly, we deem review improvidently granted.

Vargas, et al., v. Inland Washington, LLC, Court of Appeals No. 76717-8-I (Unpublished Opinion, filed September 17, 2018). Division I denied Vargas' requests for reconsideration. As set forth below, the Court of Appeals correctly decided that interlocutory review of the 2017 Order had been improvidently granted.

V. ARGUMENT

A. Vargas Does Not Meet the Stringent Standards Warranting Discretionary Review

Vargas does not meet the standards warranting extraordinary review of an interlocutory order by a trial court. RAP 13.5(b) governs what a litigant must establish to warrant interlocutory review before this Court:

(b) Considerations Governing Acceptance of Review. Discretionary review of an interlocutory decision of the Court of Appeals will be

² The Commissioner's order references Judge Ramsdell having "reaffirmed [the court's] prior ruling that Inland is not vicariously liable for the breaches of WISHA or common law duties by the other defendants." Nothing in the record supports this statement: Judge Ramsdell's orally declined to do so. App. 181-182.

accepted by the Supreme Court only:

- (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
- (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5. Interlocutory review is disfavored. *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010) (citing *Mayburv v. City of Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959)). An appellate court should not inject itself into a lawsuit to undertake direct control of the conduct of a case. *Maybury*, 53 Wn.2d at 720.

Whether the Court of Appeals Commissioner improvidently granted discretionary review is the sole issue properly before this Court. The Commissioner's basis for granting review is flawed because it focuses entirely on Inland's putative vicarious liability, an issue not decided by the trial court when it granted Inland summary judgment in 2017:

The dismissal appears to involve a controlling question of law as to which there is a substantial ground for a difference of opinion **on the scope of Inland's WISHA (Washington Industrial Safety and Health Act, chapter 49.17 RCW) and common law duties and liability as a general contractor under the *Stute* line of cases.**

* * *

But the court also affirmed its prior ruling that Inland is not vicariously liable for the breaches of WISHA or common law

duties of the other defendants. This conclusion appears to involve a question of law as to the scope of Inland's WISHA and common law duties and liability as the general contractor.

APP 168-69; 175-76 (emphasis added). The Commissioner cites the following cases in support of her decision:

See Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 464, 788 P.2d 545 (1990) (. . . general contractor [must] comply with WISHA regulations for the benefit of employees of independent contractors because "the general contractor's innate supervisory authority constitutes sufficient control over the workplace"); *Kelley v. Howard S. Wright Constr. Co.*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978) (general contractor who retains control over the work of the employee of an independent contractor has a common law duty "within the scope of that control, to provide a safe place of work"); *Afoa v. Port of Seattle*, 176 Wn.2d 460, 472, 296 P.3d 800 (2013) (*Afoa I*) ("jobsite owners have a specific duty to comply with WISHA regulations if they retain control over the manner and instrumentalities of work being done on the jobsite," and "this duty extends to all workers on the jobsite that may be harmed by WISHA violations"); *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 125-27, 52 P.3d 472 (2002) (jobsite owner, who does not retain control over the manner in which an independent contractor performs work, is not liable under common law or WISHA for the manner in which the contractor performed work); *Afoa v. Port of Seattle*, 198 Wn. App. 206, 217-34, 393 P.3d 802 (2017) (*Afoa II*) (Port of Seattle, which retained control over the manner of work done on a worksite, had a nondelegable duty to maintain a safe workplace, is vicariously liable for any breach of that duty, and is not entitled to allocate fault to four nonparty airlines to proportionately reduce its liability). In *Afoa II* a petition for review is currently pending in the Supreme Court.

Commissioner Ruling Granting Review, APP. 169 n.1. The Commissioner thus apparently thought five cases required review (*Stute*, *Kelley*, *Kamla*, and *Afoas I & II*). Of these, only *Stute* and *Kelley* involved general contractors like Inland. *Afoa II* does not affect *Stute* or *Kelley*. Thus, the Commissioner's rationale as to the *opposite* cases disappeared when this

Court's decision in *Afoa II* appeared: it does not affect general-contractor liability, but simply reaffirms that nondelegable duties are a form of direct liability, not vicarious liability. To the extent this was a basis for granting review, it was improvidently granted.

As for *Kamla*, *Afoa I* and *II*, these decisions concern property owners, not general contractors. The Supreme Court's *Afoa II* decision does not affect *Kamla* or *Afoa I*. *Afoa II* thus disaffirmed any basis for review under those two inapposite cases.

Division I's *Afoa II* opinion is reversed. To the extent the Commissioner disagreed with the trial court's belief that *Afoa II* did not effect a "sea change" or require a different outcome, this Court's reversal disaffirmed that basis for granting review: it is no longer good law.

In sum, the Commissioner's ruling suggests that *Afoa II* required a different outcome or that the then-pending Supreme Court decision in *Afoa II* might do so. Neither basis for review was correct, so this Court's decision in *Afoa II* rendered review improvidently granted. The Court of Appeals did not commit obvious or probable error in dismissing this appeal.

B. The 2015 No-Vicarious-Liability Ruling Is Not Properly Before This Court

The 2015 no-vicarious-liability ruling is not properly before this Court, as Vargas did not timely seek review of the 2015 ruling. Vargas instead could only seek review of the 2017 Order, which did not revisit or reaffirm the 2015 ruling. Since the only issue on which the Commissioner granted discretionary review was untimely, this Court should affirm that

interlocutory review was improvidently granted.

Discretionary review is rare and should be granted only in rare cases. *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010). It is disfavored because it permits piecemeal appeals. *Id.* Pretrial review of trial court rulings confuses the functions of trial and appellate courts. *Id.* Orderly review is best served when finality exists, conserving appellate effort, and eliminating interlocutory delay. *Wlasiuk v. Whirlpool Corp.*, 76 Wn. App. 250, 253–54, 884 P.2d 13 (1994). This rule recognizes the deference appellate courts owe trial courts. *Id.* (citing *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981); 9 James W. Moore, et al., FED. PRAC. § 110.07 at 39 (2nd ed. 1990)).

On June 26, 2015, the trial court concluded that Inland “is not vicariously liable.” APP 163. Vargas could have requested discretionary review of that 2015 ruling up to 30 days after it was entered. See RAP 5.2(b). Vargas did not seek review.

During the March 2017 hearing on Inland’s second summary judgment motion, the trial court refused to revisit the 2015 no-vicarious-liability ruling. RP 179-182. The 2017 Order says nothing about the 2015 ruling. APP 129-133. Vargas filed a NDR nearly two years after the 2015 ruling. The Commissioner found no other issue satisfying RAP 2.3(b)(4).

The time for filing an NDR may be extended only in extraordinary circumstances and to prevent a gross miscarriage of justice. RAP 18.8(b). This rule will not be waived. RAP 1.2(c). “Extraordinary circumstances” may exist when “the filing, despite reasonable diligence, was defective due

to excusable error or circumstances beyond the party's control.” *Reichelt v. Raymark Indus., Inc.* 52 Wn. App. 763, 765, 764 P.2d 653 (1988); *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1988). But negligence and lack of diligence are not extraordinary circumstances. *Beckman v. Dept. of Soc. & Health Svcs.*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000). The RAP 18.8(b) analysis does not require prejudice to the opposing party. *Reichelt*, 52 Wn. App. at 766. And even where an appeal raises important—if untimely—issues, it is improper to consider them absent extraordinary circumstances and a gross miscarriage of justice. *Schaeferco, Inc. v. Columbia River Gorge Comm’n*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993). Vargas’ 2017 NDR is grossly untimely as to the 2015 no-vicarious-liability ruling. On this basis alone, Vargas’ MDR was improvidently granted.

Vargas appears to rely on the Certification, but it falsely implies the 2017 trial court revisited the 2015 no-vicarious-liability ruling. APP. 141-144. As explained *supra*, the 2017 trial court refused to revisit the 2015 ruling, and the 2017 Order says nothing about it. RP 179-182; APP 147-150. Nor did the Commissioner’s Ruling say that the 2015 ruling was subject to discretionary review in 2017. Rather, that Ruling erroneously states that the trial court “reaffirmed” its 2015 no-vicarious-liability ruling in 2017, a statement contradicted in this record. App. A181-82.

Vargas may seek review of the 2015 ruling as of right following a verdict in the trial of this matter, or after all claims against the other defendants have been resolved. This Court should deny review.

C. Inland Is Not Vicariously Liable as a Matter of Law Because that Allegation Is Irrelevant to the Nondelegable Duties Directly Owed by a General Contractor

The trial court correctly decided in its 2015 ruling that Inland is not vicariously liable as a matter of law, a conclusion the 2017 trial court refused to revisit. This Court's ruling in *Afoa II* does not change the law in that regard. If anything, *Afoa II* confirms prior settled law on vicarious liability and the nondelegable duty, justifying Division I's decision to dismiss review.

1. A general contractor is not vicariously liable to employees of its subcontractor, and vicarious liability is irrelevant to nondelegable duties.

Vicarious liability is distinct from nondelegable duties. Liability may be direct or vicarious: direct liability occurs when a party breaches its own duty of care; "vicarious liability, sometimes called imputed negligence, is liability for breach of another's duty of care." *Phillips v. Kaiser Aluminum & Chem. Corp.*, 74 Wn. App. 741, 749, 875 P.2d 1228 (1994).

Generally, a principal is not vicariously liable for an independent contractor's acts, "even when a principal hires an independent contractor to perform inherently dangerous work, if the injured plaintiff is an employee of the independent contractor". *Id.* (citing *Epperly v. City of Seattle*, 65 Wn.2d 777, 785, 399 P.2d 591 (1965) (quoting *Tauscher v. Puget Sound Power and Light Co.*, 96 Wn.2d 274, 277, 635 P.2d 426 (1981))). Thus, unless Inland retained control or the right to control Hilltop's worksite – which it did not – Inland is not directly or vicariously liable.

In contrast, a claim based on the general contractor's nondelegable

duties alleges direct—not vicarious—liability for an independent subcontractor’s negligence:

[T]he establishment of liability under a nondelegable duty does not give rise to vicarious liability. Under vicarious liability, one person, although entirely innocent of any wrongdoing and without regard to duty, is nonetheless held responsible for harm caused by the wrongful act of another . . . We reject any coupling of the concept of vicarious liability and nondelegable duty.

Saiz v. Belen Sch. Dist., 827 P.2d 102, 114–15 (N.M. 1992); *see also Kirkland v. City of Gainesville*, 166 So. 460, 464 (Fla. 1936) (addressing direct liability for breach of nondelegable duties). Vicarious liability is irrelevant to the nondelegable-duty analysis.

This Court recognized the distinction between nondelegable duty and vicarious liability for the fault of others in *Afoa II*:

Afoa argues that the Port’s nondelegable duty to provide a safe workplace under WISHA and common law made it vicariously liable for the airlines’ fault. We disagree. The jury found that Afoa’s injuries were the result of both the port and the airlines’ failure to ensure a safe workplace. But neither has escaped its own liability by delegation to the other.

WISHA does not expressly provide for vicarious liability when employers are concurrently negligent. . . . WISHA requires employers to “comply with the rules, regulations, and orders promulgated under this chapter. RCW 49.17.060(2). Nothing in chapter 49.17 RCW suggests that the legislature intended to impose joint and several liability for WISHA regulations.

Afoa II, 191 Wn.2d at 121–22. Contrary to Petitioner’s argument (MDR at 11) that this Court “explicitly affirmed Division I’s holding on vicarious liability for non-delegable duties in *Afoa II*,” this Court held to the contrary: “[s]imply because the Port cannot delegate its responsibility does not mean

it must adopt the responsibility of another.” 191 Wn.2d at 123. Instead, to establish vicarious liability, Vargas must—just as Afoa was required but failed to do—establish that an exception to the rule of several liability under RCW 4.22.070 (*i.e.*, agency) applies. As in *Afoa II*, Vargas failed to do so here, warranting Inland’s dismissal.

In short, *Afoa II* (2018) simply confirmed the law that guided the trial court. In 2015, after almost two years of litigation, Judge Schapira correctly held that Inland was not vicariously liable as a matter of law. What remained was a determination of whether Inland had breached its nondelegable duty to comply with WISHA (its so-called *Stute* nondelegable duty). After almost two additional years of discovery, Judge Ramsdell looked at Vargas’s best evidence in light of settled authority, and properly concluded Inland had not breached its nondelegable duties. Since this Court’s opinion in *Afoa II* merely restated settled law, Division I appropriately decided that extraordinary review was improvidently granted.

2. *Afoa II* specifically rejects equating vicarious liability with breach of the general contractor’s nondelegable duty to provide a safe worksite.

Division I accepted review based exclusively on the notion that the law was unsettled regarding the applicability of vicarious liability in the context of workplace injury claims. Its decision in *Afoa v. Port of Seattle*, 198 Wn. App. 206, 393 P.3d 802 (2017), decided shortly before the trial court’s 2017 dismissal, was the impetus of this decision. But not only does *Afoa II* differ from this case factually, this Court’s decision reversing

Division I's opinion in *Afoa II* only confirms that the trial court properly applied settled law. Indeed, as noted, Judge Ramsdell appropriately declined to revisit Judge Schapira's 2015 ruling that Inland is not vicariously liable as a matter of law. RP 179-182. The 2017 Order was correct.

3. Inland cannot be vicariously liable for acts or omissions of an immune subcontractor or its employees, non-subcontractors, or dismissed entities.

Even if the Court were inclined to review whether Inland is not vicariously liable, and even if such a theory generally applied – which it does not – no legal authority supports vicarious liability for general-contractor Inland based on the purported fault of its immune subcontractor, Hilltop, of its lower-tier subcontractors/suppliers, or of a dismissed entity (Inland Group) as a matter of law.

D. Inland Is Not Directly Liable as a Matter of Law

1. Inland's direct liability, if any, is not properly before the Court.

At this time, and on this record, the Court cannot properly review the factual question of whether sufficient evidence has been presented of a WISHA violation sufficient to overcome the trial court's 2017 order granting summary judgment. Vargas did not raise that question as an error in the NDR, and the Commissioner's Ruling (2-3, 9-10) did not authorize review of that factual issue—it focused on the legal question of vicarious liability. No disputed factual or legal issue regarding Inland's direct liability

is properly presented to this Court for discretionary review, and Vargas' attempt to appeal that issue here should be denied.

2. Inland cannot be directly liable under the common law because Vargas was not working in a common work area under Inland's control.

Even if this Court is inclined to review the evidence regarding the purported direct liability of Inland and the trial court's finding of insufficient evidence to support such a claim, undisputed evidence shows that Inland did not control Hilltop's work, thus did not owe a common-law duty to keep Hilltop's "non-common work area" safe for its employees.

3. Inland is not statutorily liable because it did not violate any WISHA safety regulations or proximately cause the Incident.

The trial court correctly determined Inland is not liable absent a WISHA violation proximately causing the Incident. Under *Stute*, "the general contractor has a duty to comply with all pertinent safety regulations with respect to every employee on the job site." *Stute*, 114 Wn.2d at 456. No admissible evidence exists that Inland violated any WISHA safety regulation, let alone proximately caused Vargas' alleged injury.

Under WISHA, the general contractor has a statutory duty to employees at a construction worksite, where each employer:

- (1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees ... and
- (2) Shall comply with the rules, regulations, and orders promulgated under this chapter.

RCW 49.17.060. The Supreme Court held that a general contractor owes a general duty under RCW 49.17.060(1) only to its own employees, but owes a specific duty under RCW 49.17.060(2) to comply with WISHA regulations covering all employees at the work site. *Stute*, 114 Wn.2d at 460 (“Employers must comply with the WISHA regulations”). But this “duty only extends to employees of independent contractors when a party asserts that the employer did not follow particular WISHA regulations.” *Weinert v. Bronco Nat'l Co.*, 58 Wn. App. 692, 695, 795 P.2d 1167 (1990) (quoting *Stute* at 457). Here, the trial court accurately found no evidence that Inland violated any WISHA regulation. RP 179-182.

Vargas failed to offer any competent or admissible evidence that Inland failed to comply with WISHA. The L&I inspector who investigated the Incident found Inland did not violate any WISHA regulations. Vargas’ conclusory and speculative lay-witness testimony as to purported WISHA violations is not admissible (ER 702); nor does it create a genuine issue of a material fact sufficient to avoid summary judgment. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 234, 770 P.2d 182 (1989) (“material fact” is a fact upon which the litigation depends, in whole or in part, and “[o]nce the moving party has made and supported his motion, the nonmoving party must come forward with specific facts showing that a genuine issue of fact exists for trial. CR 56(e).”).

No WISHA regulation requires that concrete-pour employees stay out of the purported “danger zone” when the pour operation starts. The undisputed evidence showed that Howell, Ralph’s pump operator, knew of

this potential hazard and had responsibility for keeping the pouring crew out of the “zone.” APP. 151-152, 153-154, 155-157. His purported failure to do so cannot be imputed to Inland on the record before this Court: no expert stated on a more-probable-than-not basis that Inland’s purported failure to prevent Vargas from standing in the “danger zone” when the hose whipped violated any WISHA regulation or proximately caused the Incident.

The trial court was unwilling to turn the law on its head to make the general contractor a guarantor of everyone’s safety at the worksite. RP 78.

VI. CONCLUSION

Based on the foregoing reasons, Inland respectfully requests that the Court deny Vargas’ Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 14th day of January, 2019.

PREG O’DONNELL & GILLETT PLLC

By *s/ John K. Butler*

David E. Chawes, WSBA #36322

John K. Butler, WSBA #28528

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(206) 287-1775

MASTERS LAW GROUP PLLC

By *s/ Kenneth Masters*

Kenneth Masters, WSBA #22278

241 Madison Ave N.

Bainbridge Island, WA 98110

(206) 780-5033

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing

1. Respondent Inland Washington, LLC's Opposition to
Petitioners' Motion for Discretionary Review;

to be served on the following parties in the manner indicated below on the
14th day of January, 2019:

**Counsel for Appellant Department of Labor &
Industries:**

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Senior Counsel
Attorney General of Washington
Labor & Industries Division
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MS TB-14
Office Id. No. 91018
Seattle, WA 98104-3188

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- Via Overnight Mail, postage prepaid
- Via Email, with recipient's approval

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Vargas; Lucina Flores, as GAL for Patricia
Crisostomo Flores and Rosario Crisostomo
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- Via Email, with recipient's approval

DATED at Seattle, Washington, this 14th day of January,
2019.

PREG O'DONNELL & GILLETT PLLC

By /s/ John K. Butler

John K. Butler, WSBA #28528

David E. Chawes, WSBA #36322

Attorneys for Respondent Inland
Washington, LLC

FILED
SUPREME COURT
STATE OF WASHINGTON
1/14/2019 4:18 PM
BY SUSAN L. CARLSON
CLERK

EXHIBIT 1

RS	7/20/12
MS	7/20/12

INLAND WASHINGTON, LLC
SUBCONTRACT AGREEMENT
 Rev 72011

EXHIBIT 19
 BY: G. Skoog
 DATE: 2-24-14
 BLANK COPY, CCR

THIS AGREEMENT is made between the Contractor:

INLAND WASHINGTON, LLC
 North 1820 Wanner Road, Bldg B
 Spokane Valley, WA 99216
 509/881-5162 - Fax 509/822-2251

LIC #: INLANWL9820Z
 CONTACT: D. Reid Dickinson
 JOB #: 26015
 COST CODE: 3300

and the Subcontractor:

Milltop Concrete Construction, LLC
 PMS 111, 3406 172nd St NE #8
 Arlington WA 98223-6735

CONTACT: Gordon Skoog
 PHONE: 206-817-0345
 FAX: 360-357-8240
 CELL: 206-817-0345

The Project is:

Job #: 26015
 North City Apartments
 1220 NE 175th Street
 Shoreline WA 98155

The Owner is:

North City Family Apartments
 1620 N. Wanner Rd, Bldg B
 Spokane Valley WA 99216

The Architect is:

Nystrom Olson Incorporated
 912 W. Sprague Avenue
 Spokane WA 99201

Contractor and Subcontractor Agree as set forth below:

The above Subcontractor shall perform certain labor and furnish certain material for the construction and the completion of the above named project as per the agreement between Owner and Contractor, the project plans (which are numbered and dated herein or are as an attachment), general, supplementary and special conditions, specifications, appendices, attachments and Appendices, all of which documents are hereinafter referred to as the "Main Contract".

In consideration therefore, Subcontractor agrees as follows:

1. Subcontractor shall provide all supervision, Subcontract Work, labor, supplies and equipment for the work set forth below and, if needed, is more fully described in Appendix 4 (hereafter "Subcontract Work"):

Structural Concrete

Subcontractor shall provide the Subcontract Work in accordance with the Main Contract, which document has been made, and remains, available to Subcontractor for review, the provisions of which are expressly incorporated herein by reference in Paragraph A here following.

2. Subcontractor may be requested to provide a bond at the Contractor's sole discretion. See Paragraph C.

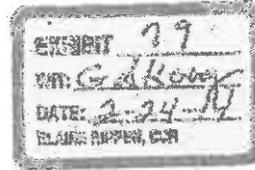
EXHIBIT 2

<p style="text-align: right;">26</p> <p>1 to 27 or 28, and, obviously, he'd be in that bracket.</p> <p>2 Q How much did the lowest paid employees at Hilltop make?</p> <p>3 A I don't remember. Usually if people come on a job, they</p> <p>4 don't know anything, but they can carry a board from here to</p> <p>5 there, they usually will make about 16.</p> <p>6 Q And how much would those people make on a government job?</p> <p>7 A We usually don't put those kind of people on a government</p> <p>8 job.</p> <p>9 Q Because government work requires more trained people?</p> <p>10 A No. If you pay them higher wages, you want to pay people</p> <p>11 that know a little bit or that work a little harder.</p> <p>12 Q So in the range between \$22 and \$27, those people, how much</p> <p>13 would they make on a government job?</p> <p>14 A Well, as I said, the base would be about 40, and then it'd</p> <p>15 be up in the 50s depending on the specific task that they</p> <p>16 are doing.</p> <p>17 Q Who at Hilltop has any management roles?</p> <p>18 A Myself, my two sons, and then we delegate management roles</p> <p>19 just depending on what process in the project that we're</p> <p>20 doing to other people, we delegate it to other people.</p> <p>21 Q Other than owner, does your wife have any role in the</p> <p>22 operations of the company?</p> <p>23 A She does a little bit of paperwork, yes.</p> <p>24 Q What is your wife's name?</p> <p>25 A Hilda, H-i-l-d-a.</p>	<p style="text-align: right;">28</p> <p>1 A I don't remember if that's the correct address, but it</p> <p>2 sounds good.</p> <p>3 Q Is that known as the North City Apartment job?</p> <p>4 A Yes.</p> <p>5 Q Was it known by any other name?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q What work was being done on the North City Apartment job by</p> <p>8 Hilltop?</p> <p>9 A Concrete work.</p> <p>10 Q What was the scope of work?</p> <p>11 A To build parking garage.</p> <p>12 Q How many garages?</p> <p>13 A There's two buildings.</p> <p>14 Q How big were they?</p> <p>15 A If you're going to ask for square footages, I do so many</p> <p>16 takeoffs and stuff that I don't remember now.</p> <p>17 Q Just an estimate or a ballpark?</p> <p>18 A There could have been 70 or 80,000 square feet of parking</p> <p>19 area.</p> <p>20 Q Park garage or combined?</p> <p>21 A Combined, total.</p> <p>22 Q How many levels or floors?</p> <p>23 A One building was one floor, the other building was two</p> <p>24 floors.</p> <p>25 Q Who was the general contractor on this project?</p>
<p style="text-align: right;">27</p> <p>1 Q Skoog, I assume?</p> <p>2 A Yes.</p> <p>3 Q Has Hilltop or its managers ever had any license suspended,</p> <p>4 revoked, or subject to any other discipline?</p> <p>5 A Are you talking about a business license, a car license?</p> <p>6 Q Business or contractor's related to construction, not</p> <p>7 necessarily a driver's license.</p> <p>8 A No.</p> <p>9 Q Has Hilltop ever been cited or reprimanded in any way by any</p> <p>10 government entity?</p> <p>11 A I don't think so.</p> <p>12 Q Including OSHA or the WISHA, L & I?</p> <p>13 A I think we were cited for \$300 because we didn't have one</p> <p>14 little piece of paperwork right.</p> <p>15 Q Do you know what piece of paperwork that was?</p> <p>16 A I don't remember.</p> <p>17 Q Was that an OSHA 300 form?</p> <p>18 A It could have been.</p> <p>19 Q Is it true that in May of 2013 Hilltop was working on a new</p> <p>20 construction project at 1220 Northeast 175th Street in</p> <p>21 Shoreline, King County, Washington?</p> <p>22 A Yes.</p> <p>23 Q Is that the correct address?</p> <p>24 A One more time?</p> <p>25 Q 1220 Northeast 175th Street, Shoreline.</p>	<p style="text-align: right;">29</p> <p>1 A That was Inland.</p> <p>2 Q Inland Group or Inland Washington?</p> <p>3 A You probably have the context that would my think one. I</p> <p>4 don't really remember.</p> <p>5 Q Do you know if there's a difference between Inland Group or</p> <p>6 Inland Washington?</p> <p>7 MR. HANSEN: Object to the item.</p> <p>8 A I don't know.</p> <p>9 Q When you refer to Inland, do you know who you're referring</p> <p>10 to?</p> <p>11 A When I refer to Inland on this job, I'm referring to Steve</p> <p>12 Miller.</p> <p>13 Q So Steve Miller is somebody that you worked with at Inland?</p> <p>14 A Yes.</p> <p>15 Q Do you know if he works for Inland Group or Inland</p> <p>16 Washington?</p> <p>17 A I don't have any idea about all that.</p> <p>18 Q Did you know that there were two different companies</p> <p>19 starting with Inland?</p> <p>20 A There could be three or four or five. I don't know.</p> <p>21 Q Other than Inland, whichever company that may be, were there</p> <p>22 any other companies acting as general contractors on this</p> <p>23 project?</p> <p>24 A No.</p> <p>25 Q Were there any other companies that had control of Hilltop's</p>

EXHIBIT 3

Rev	7/20/12
MO	7/20/12

INLAND WASHINGTON, LLC
SUBCONTRACT AGREEMENT
 Rev F2011



20

THIS AGREEMENT is made between the Contractor:

INLAND WASHINGTON, LLC
 North 1620 Mamer Road, Bldg B
 Spokane Valley, WA 99218
 509/861-5162 - Fax 509/922-2251

LIC #: INLANWL9620Z
 CONTACT: D. Reid Dickinson
 JOB #: 28015
 COST CODE: 3300

and the Subcontractor:

Hilltop Concrete Construction, LLC
 PMS 111, 3406 172nd St NE #5
 Arlington WA 98223-4736

CONTACT: Gordon Skoog
 PHONE: 206-817-0345
 FAX: 360-867-6248
 CELL: 206-817-0345

The Project is:

Job #: 28015
 North City Apartments
 1220 NE 178th Street
 Shoreline WA 98155

The Owner is:

North City Family Apartments
 1620 N. Mamer Rd, Bldg B
 Spokane Valley WA 99216

The Architect is:

Nystrom Olson Incorporated
 912 W. Sprague Avenue
 Spokane WA 99201

Contractor and Subcontractor Agree as set forth below:

The above Subcontractor shall perform certain labor and furnish certain material for the construction and the completion of the above named project as per the agreement between Owner and Contractor, the project plans (which are numbered and dated herein or are as an attachment), general, supplementary and special conditions, specifications, addenda, attachments and Appendices, all of which documents are hereinafter referred to as the "Main Contract".

In consideration therefore, Subcontractor agrees as follows:

1. Subcontractor shall provide all supervision, Subcontract Work, labor, supplies and equipment for the work set forth below and, if needed, is more fully described in Appendix 4 (hereafter "Subcontract Work"):

Structural Concrete

Subcontractor shall provide the Subcontract Work in accordance with the Main Contract, which document has been made, and remains, available to Subcontractor for review, the provisions of which are expressly incorporated herein by reference in Paragraph A here following.

2. Subcontractor may be requested to provide a bond at the Contractor's sole discretion. See Paragraph C.

3. Subcontractor agrees to be bound by all of the terms of this Subcontract, including general conditions paragraphs A through W here following, Appendices 1-8, documentation supplied by Subcontractor, and any other attachments to this Subcontract.

For the full, complete and faithful performance of this Subcontract, Contractor agrees to pay Subcontractor (hereafter "Subcontract Price") of:

a) Lump sum of \$2,390,000.00 This lump sum does not include Sales Tax.
 EXACTLY TWO MILLION THREE HUNDRED NINETY THOUSAND DOLLARS

OR

b) Unit price of _____ This Unit sum does not include Sales Tax.

This Subcontract shall be executed below prior to starting work by an officer or duly authorized representative of Subcontractor and returned to Contractor within fifteen (15) days of its receipt. The delivery to Contractor of written acceptance without exception; of suitable bonds, if provided for; and of proof of the insurance called for herein; are all express conditions precedent to any payment due under this Subcontract.

4. Miscellaneous. Contractor cannot guarantee when payment will be forwarded from the Owner, lending institution or public agency. However, Contractor is willing to use its banking credit line to advance Subcontractor and Material Suppliers full progress payments via U.S. mail postmarked by the 10th of the following month or the next business day thereafter (provided that all contractual obligations are in good standing and Subcontractor or Material Supplier has submitted all necessary pay applications and lien releases in a form approved by Contractor) for a 2% cash discount. Contractor offers this program in a spirit of team effort to enable our Subcontractors, Vendors and material suppliers flexibility in meeting their financial obligations. If Contractor, in its sole discretion, determines that Owner has failed or may fail to make payments to Contractor within a reasonable time, Contractor reserves the right to suspend or to terminate this program and to proceed as provided in Paragraph 1. of the General Conditions (Payment).

Sign here only if accepting discount to be paid early: X

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this Agreement effective the date of Inland's authorized signature below unless otherwise agreed.

INLAND WASHINGTON, LLC

SUBCONTRACTOR INFORMATION:

By: [Signature]

026 535 00
Worker's Compensation Acct I.D. Number

Title: ADMINISTRATOR

010606935
Federal I.D. Number

Date: 9/24/12

HILLTOP 99561
License or Registration number

Hilltop Concrete Construction, LLC

194992 00 0
State Unemployment Acct #

By: [Signature]

Incorporated? LLC Yes X No _____

Title: Project Mgr

Date: 9/1/12

INLAND WASHINGTON, LLC
General Conditions of Subcontract Agreement

A. OBLIGATIONS AND RESPONSIBILITIES

1. With respect to the Subcontract Work, Subcontractor agrees to be bound to Contractor by each and all of the terms and provisions of the Main Contract, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by the Main Contract assumed toward Owner. Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor, as Owner under the terms and provisions of the Main Contract, has against Contractor, with the same force and effect as though every such right and remedy were set forth herein in full. The terms and provisions of this Subcontract are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the Main Contract.

2. The provisions of this Subcontract and the Main Contract are intended to supplement and complement each other and shall, where possible, be thus interpreted. In the event a conflict occurs between a provision in the Subcontract and the Main Contract that cannot be read to be complementary, then the interpretation that is more costly to or which imposes the greater duty upon the Subcontractor shall control, and if that guideline does not resolve the conflict, then the terms of this Subcontract shall control.

3. Subcontractor acknowledges the Subcontract Work may or may not be entirely contained in that division of work in the Main Contract where such work is customarily found. Subcontractor shall perform any work reasonably inferred from the description of Subcontract Work that may be located outside of its customary division in the Main Contract.

4. Subcontractor agrees to be bound by any applicable Project Labor Agreement.

5. Contractor has implemented a Safety Program (hereafter "Program") which shall apply to the Project. Subcontractor agrees that it, its employees and its lower tier subcontractors (which includes, but is not limited to, Sub-subcontractors, Vendors and Suppliers) and their employees shall be bound by the Program and any other program implemented by Contractor to benefit the health, safety and welfare of persons or property, and shall comply with all provisions thereof. However, nothing contained herein shall relieve Subcontractor of its obligations of implementing its own safety program and of its responsibilities towards its employees and lower tier contractors. In addition to fines imposed by Contractor for violations of the Program (as set forth in the Program), Subcontractor agrees to reimburse and indemnify Contractor from any fines imposed against Contractor based on actions or omissions of Subcontractor, its employees or lower tier Subcontractors. Subcontractor shall review and become knowledgeable about the Program which has been made and remains available to Subcontractor for review. Subcontractor shall include the provisions of this paragraph in every lower tier subcontract, and shall require its subcontractors to include it in their subcontracts so that such provisions will be binding upon each subcontractor and its employees at every tier. In the event of Subcontractor's noncompliance, this Subcontract may be cancelled, terminated, or suspended, in whole or in part.

6. Subcontractor shall furnish all tools, equipment, scaffolding, hoisting equipment, apparatus, ways, machinery and plant necessary to perform the Subcontract Work.

7. Subcontractor shall timely provide and pay for all engineering, testing, surveying, special inspections and instrumentalities as may be required by Owner or Contractor in connection with the performance of this Subcontract. Should Subcontractor fail to accomplish the foregoing on a timely basis, Contractor may perform said task and charge the account of Subcontractor for same.

B. COMPLIANCE WITH LAWS, RULES, REGULATIONS, ETC.

1. Subcontractor shall comply with all federal, state, county, municipal and local laws, codes, ordinances, rules, regulations, standards, orders, notices and requirements, including those relating to OSHA, fair employment practices, prevailing wage, equal opportunity, and discrimination on the basis of race, religion, sex or national origin (hereafter "Laws"), without additional expense to Contractor. Subcontractor shall correct, at its own cost and expense, any violations thereof. Subcontractor shall require its suppliers and lower tier subcontractors to also comply with this requirement, and shall furnish such proof as Contractor may request to demonstrate compliance with such Laws.

2. All work, labor, services and materials to be furnished by Subcontractor must strictly comply with all applicable Laws now in force and hereafter placed in effect without any additional compensation.

3. Subcontractor agrees to indemnify and save Contractor, its surety, if any, and Owner harmless from and against any and all claims, loss, fines, penalties, or expense, including attorney fees and costs, caused directly or indirectly by its failure to fully comply herewith.

C. BOND

If Contractor should request a Bond, then Subcontractor shall furnish Bond to Contractor, within ten (10) days of request. Such performance and payment bonds shall be in a form and from a surety acceptable to Contractor in amounts equal to the Subcontract Price. The bonds shall be conditioned upon the full and faithful performance of all terms, provisions, and conditions of this Subcontract, and specifically upon payment for all labor, materials, equipment and supplies used in the performance of the Subcontract Work. Subcontractor shall be required to provide only the bonds described above within ten (10) days of receipt of a request therefore, and Contractor shall reimburse Subcontractor for reasonable bond premiums that result, provided, however, that in no event shall the reimbursement from Contractor for the bond premium exceed 2% of the Subcontract price.

D. SUBMITTALS, O&M MANUAL, AS BUILTS, ETC.

1. Subcontractor agrees to furnish Contractor suitable shop drawings, specifications, final selection of materials, and other specified items for approval by Owner or Architect sufficiently early so as to prevent delay to the progress of the Project.

2. Subcontractor agrees to furnish Contractor complete operational and maintenance manuals, as built, and spare parts in such quantities and format as may be required by the Main Contract. Delivery to Contractor shall be prior to Subcontractor's substantial completion, prior to retainage release, and sufficiently early so as to prevent delay to the completion of the Project. The as built shall be updated on a daily basis throughout the project.

E. LOWER TIER CONTRACTORS

Prior to starting, Subcontractor shall list, in writing to Contractor, all lower tier subcontractors it intends to use, subject to Contractor's approval, which approval shall not be unreasonably withheld, and it shall not subsequently change such lower tier subcontractors without Contractor's prior written approval. Subcontractor shall bind any lower tier subcontractor to Subcontractor in the same manner as Subcontractor is bound to Contractor, and as Contractor is bound to Owner.

F. NATURE OF WORK

1. Subcontractor has carefully examined and understands the Main Contract; has satisfied itself as to the nature and location of the Subcontract Work, the character, quantity and kind of conditions to be encountered, and the character, kind and quality of the equipment needed to perform and complete the Subcontract Work; has visited and familiarized itself with the location, conditions and other matters visible at the job site which can in any manner affect the Subcontract Work; and here acknowledges it has had reasonable opportunity to complete same. Subcontractor has signed this Subcontract on the basis of the foregoing, and not in reliance upon any opinion or representation by Contractor or others.

2. Prior to commencing work, Subcontractor shall notify Contractor in writing of any conditions which might adversely affect its work; failure to do so shall constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions.

3. Subcontractor shall regularly check the correctness of contiguous work installed by others, and its failure to promptly detect or report any discrepancies to Contractor before proceeding shall preclude Subcontractor from recovery for any resulting cost, expense or damage.

G. SCHEDULING/TIME OF COMPLETION

1. Time is of the essence in this Subcontract.

2. If this Subcontract is governed by prevailing wage laws, an Intent to Pay Prevailing Wages form obtained from Contractor, must be completed, signed, notarized and returned to Contractor with a check payable to the applicable agency. No pay requests will be processed until the completed form has been approved by the state or a federal agency, where applicable.

3. In establishing the Schedule, Contractor shall accept input from Subcontractor regarding developing and updating the construction schedule, but retains the right to decide the time, order and priority in which the various portions of the Project shall be performed. The schedule and any revisions thereto are available to Subcontractor for review. Subcontractor shall promptly provide Contractor with any requested scheduling information, including periodic projections of its anticipated progress on the Subcontract Work and anticipated delivery dates for materials or equipment that may be in the course of preparation or manufacture.

4. Contractor shall give Subcontractor advance notice of the anticipated starting date for Subcontract Work. Subcontractor shall start the Subcontract Work on the date established by Contractor, and shall complete it at such times as may be scheduled by Contractor. *Per mutual agreement*

5. Subcontractor shall perform the Subcontract Work as it becomes available in a manner that, in the Contractor's opinion, benefits the overall Project schedule. Subcontractor agrees to cooperate with and coordinate its efforts with Contractor and other subcontractors whose work may interfere with the Subcontract Work. Subcontractor shall participate in the preparation of coordination drawings and work schedules as may be required by Contractor in areas of congestion, specifically noting and advising Contractor in writing of any interference by others. Should Subcontractor fall behind, it shall take necessary action to meet and maintain job progress without additional compensation, and shall be liable to and reimburse Contractor for all damages resulting from or related to any delay.

6. Subcontractor shall comply with any written instructions given by Contractor, including instructions to suspend, delay or accelerate Subcontract work. *Per mutual agreement*

7. Subcontractor assumes toward Contractor responsibility to pay such liquidated damages as may be provided for in the Main Contract. Subcontractor shall pay such damages directly or by offset to the extent any delay is caused, in whole or in part, by Subcontractor, which payment shall be in addition to any other claim Contractor may have for damages caused by Subcontractor's delay.

8. The Contractor shall establish the normal business hours on the Project. No work shall be allowed at the project site after normal business hours without first securing the express written permission of Contractor. Any work permitted after normal working hours shall be pre-approved by Contractor, and subject to the following terms and conditions: (a) Subcontractor shall compensate Contractor for any of Contractor's supervisor's time spent supervising Subcontractor's after-hours performance. (b) Upon demand by the Contractor, the Subcontractor shall compensate Contractor or Owner for any additional costs incurred by the Contractor or Owner as a result of after-hours performance. (c) At the sole option of Contractor, Contractor may allocate the costs detailed in (a) and (b) above among two or more subcontractors. (d) The approval of after-hours work is at the sole discretion of Contractor. Contractor may withdraw or terminate that approval at any time. Such withdrawal or termination shall not create a cause of action against Contractor and Subcontractor acknowledges it shall retain no right to continue to work after-hours thereafter.

H. MATERIALS AND EQUIPMENT

Materials and equipment delivered to the job site by or for Subcontractor shall remain on the job site and shall become the property of Owner upon payment thereof. It shall be Subcontractor's responsibility to unload, store and protect the materials and equipment it furnishes, and Subcontractor shall bear the risk of loss or damage thereto. Subcontractor shall protect such materials and equipment against loss until they are actually incorporated into the Project and the Project is finally accepted by the Owner, even though title thereto may previously have passed to Owner.

I. PAYMENT

1. Prior to its first application for payment, Subcontractor shall submit to Contractor a detailed schedule of values acceptable to Contractor for use in checking Subcontractor's certified monthly applications for payment. Subcontractor's applications for payment for work and materials incorporated into the Project shall be for such quantities as may be determined by Contractor and/or Owner, shall be reported on a form as may be required by Contractor, and shall be in Contractor's home office in proper form by the twenty-fifth (25th) day of each month in order to have the current month's work considered for payment the following month. The schedule of values shall be used for payment purposes only, and approval of an application for payment shall not relieve Subcontractor from furnishing all work required by this Subcontract.

Subcontractors that sign for a Discount on page 2 of this Contract, and have their Draw Request in to the office by the 25th in proper form, will be the only applications considered for payment on the 10th of the following month. All other payments will be sent out of our office within 15 days after receipt of Owner's Payment. Payments made on the 10th of the month shall be mailed via U.S. mail on or before the 10th of the month unless the 10th falls on a weekend or holiday, in which case payment shall be mailed the following business day.

2. Contractor shall withhold retainage from Subcontractor in the amount of 5.00 % of the Subcontract Price unless a question arises regarding deficient work or a breach of this Subcontract by Subcontractor.

3. Subcontractor shall be paid for its work, up to the date of Contractor's last approved progress billing approved within fifteen (15) days following the date when Contractor receives payment for such progress billing. Contractor and Subcontractor expressly agree that Owner's payment to Contractor for the Subcontractor's work is a condition precedent to Contractor's obligations to make progress or final payment to the Subcontractor under this Subcontract. Subcontractor is relying on the credit of Owner, rather than Contractor, for payment of its efforts. Contractor and Subcontractor expressly agree that Subcontractor shall provide, in a form satisfactory to Contractor, partial lien and claim waivers, releases and affidavits on behalf of itself and its sub-contractors, suppliers, and sub-suppliers for their completed work. Subcontractor agrees that anyone completing a waiver, release, or affidavit on its behalf is authorized by subcontractor to do so. Such partial lien and claim waivers, releases and affidavits are an absolute condition precedent to Contractor's obligations to make progress or final payment to the Subcontractor under this Subcontract.

4. Subcontractor shall act as a fiduciary for its employees, lower tier subcontractors, and suppliers on the Project, using all progress payments to first pay those parties all sums owing and due them for work on the Project before paying itself. Contractor may take such steps as it deems necessary to insure that progress and final payments shall be utilized to pay bills invoiced in the performance of the Subcontract work, including the issuance of joint checks.

5. Progress payments are advances subject to adjustment at any time for errors, overpayment, faulty or defective work or material, or Contractor's good faith determination that the remaining balance of payments may be insufficient to insure completion of the Subcontract Work in accordance with its terms. Should at any time the remaining unpaid Subcontract balance become insufficient to cover completion costs, Subcontractor and its sureties, if any, shall promptly reimburse Contractor for such overpayment.

6. Contractor may withhold amounts otherwise due under this Subcontract, or under any other arrangement between the parties, as an offset to cover 100% of Contractor's reasonable estimates of any liability Contractor has incurred or may incur for which Subcontractor may be responsible under this Subcontract, or under any other agreement between the parties. This offset shall be subject to adjustment when the exact amounts of liability are determined. Contractor may also make progress and final payments to Subcontractor using a Joint Check Agreement to insure payments to Suppliers and Sub-Subcontractors. Contractor reserves the right at any time and from time to time to pay directly for any material, equipment, or other services supplied to the project as part of this Subcontract by check (a "Joint Check") to the order of (i) the Subcontractor, and/or (ii) any and all suppliers of material, equipment, or other services to the project (each a "Supplier" and collectively, the "Suppliers"); this includes direct payment to the Supplier or Supplier's Subcontractor acknowledges and agrees that issuance of Joint Checks shall not be deemed or construed as creating: (i) privity of contract by and between Contractor and any Supplier; (ii) a relation of guarantor and/or surety between Contractor and Supplier; or (iii) any other obligation or liability to the Supplier from Contractor other than as maker of the Joint Check. Contractor reserves the right to place a restrictive endorsement on any Joint Check reflecting the same.

7. If the Main Contract permits payment for materials delivered to the job site or to satisfactory storage facilities, Subcontractor may invoice for materials so delivered and receive payment therefor as outlined herein; provided, however, that all such stored materials shall be stored at the sole risk and expense of Subcontractor until final acceptance of the Subcontract Work.

8. Final payment to Subcontractor, subject to withholding as permitted hereunder, shall not be due until: (1) both Subcontractor's Work and the entire Project have been accepted by Owner; (2) fifteen (15) days have passed following the time when

Contractor has been paid in full for the entire Project; (3) proof of payment has been provided, in a form satisfactory to Contractor and Owner, of all amounts owed by Subcontractor in connection with this Subcontract, including conditional lien and claim waivers, releases and affidavits; and (4) all the other payment prerequisites in this Subcontract and the Main Contract have been satisfied. Subcontractor's receipt of final payment shall constitute a waiver of any past, present or future claims by Subcontractor arising out of or relating to the Subcontract.

J. UNIT PRICE

In the event this Subcontract contains unit price items, it is understood and agreed that any quantities mentioned are approximate only, and are subject to change as ordered and directed by Contractor. Price adjustments, if any, for variations in quantity are available to Subcontractor only if they are approved by Contractor.

K. CHANGES IN THE SUBCONTRACT WORK

1. Contractor shall have the right by written order, to order changes, additions, deletions, or alterations to the Subcontract Work or the time of performance of the Subcontract. Contractor shall have this right without notice to the Subcontractor's surety, if any. Should Subcontractor claim any such order or any act by Contractor or others would cause additional costs, or if Subcontractor otherwise believes itself entitled for any reason to an adjustment in the Subcontract Price or Schedule, Subcontractor shall submit written notice to Contractor within seven (7) calendar days of said claim arising, and prior to commencing such work; otherwise, such claim shall be deemed waived, and Subcontractor shall have no right to maintain an action in court or arbitration to recover for extra work or additional costs. In no event shall Subcontractor be entitled to a change order or an equitable adjustment unless authorized in writing by Contractor. Should the parties be unable to agree as to the value of any work to be added, deleted or altered, Subcontractor shall proceed with the work promptly, but only upon written order of Contractor, and the amount due for the disputed work shall be resolved as provided herein.

2. The value of any work added, deleted or altered from the Subcontract Work shall be determined by one or more of the following methods, or combinations thereof, as Contractor may elect: (1) mutual acceptance of a lump sum with properly itemized costs; (2) unit prices established in this Subcontract or subsequently agreed upon (unit prices shall be deemed to include an allowance for all of Subcontractor's direct or indirect costs, including, without limitation, office and shop expense, overhead, profit and bond); or (3) a mutually determined cost plus a jointly accepted allowance for overhead and profit not to exceed 10 %.

3. The Contractor shall not be liable to Subcontractor for any damages or additional compensation as a consequence of delays, it being understood and agreed by Subcontractor that Subcontractor's sole and exclusive remedy for delay shall be an extension in the Schedule.

4. Contractor shall have the right to inspect, copy and audit the books and records of Subcontractor or any lower tier subcontractor making claim for reimbursement for actual costs in order to verify the claim accuracy and to determine if costs claimed will be allowed.

L. PERMITS, TAXES, ETC.

The Subcontract Price includes, and the Subcontractor accepts exclusive responsibility for securing and paying for: (1) all ~~permits, fees and licenses necessary for the performance of the Subcontract;~~ (2) ~~all federal, state, county, municipal and other taxes,~~ including without limitation business and occupation taxes, personal property taxes, sales taxes, use taxes, penalties and interest based upon labor, services, goods, equipment or other items acquired, performed, furnished or used in connection with the Subcontract Work; (3) paying any contributions, taxes or premiums, including penalties and interest, measured upon Subcontractor's payroll or required to be withheld from Subcontractor's employees; and (4) paying any pension, welfare, vacation, annuity and other benefit contributions owed in connection with labor agreements or applicable law.

M. EMPLOYEE-RELATED PAYMENTS

1. Subcontractor has the status of employer as defined by industrial insurance, the Workers' Compensation and Unemployment Compensation Acts, Social Security, and other similar laws, rules and regulations of the federal, state and local government. Subcontractor shall withhold from its payroll applicable social security taxes, workers' compensation, and unemployment compensation contributions and withholding taxes and timely pay the same, and Contractor shall in no way be liable as an employer to or on account of any of the employees of Subcontractor.

2. Subcontractor shall furnish to Contractor evidence that it has in force Workers' Compensation insurance, including Employers' Liability, as may be required by the jurisdiction or jurisdictions in which the Subcontract Work is being performed. Where applicable, this shall include United States Longshoremen's and Harbor Workers Act insurance, including Coverage B - Employer's Liability (Maritime), with limits not less than the Bodily Injury limits required by the Main Contract but in no event less than \$1,000,000.00. Such evidence of insurance shall be in the form of an Insurance Certificate issued by an insurer satisfactory to Contractor and shall provide for not less than 30 days notice to Contractor of cancellation or reduction of coverage. In the event Subcontractor fails to maintain any insurance in the manner required by this Subcontract, Contractor may at its option, purchase such insurance in the name of Subcontractor and deduct the cost of same from payments due Subcontractor.

3. Before final payment is made upon this Subcontract, Subcontractor shall furnish evidence satisfactory to Contractor that it has conformed and shall conform to said laws, rules and regulations. Subcontractor hereby agrees to indemnify Contractor for any and all claims, demands, liability, loss or damages including but not limited to attorney's fees and costs, arising from any failure of the Subcontractor to conform to such laws, rules and regulations with respect to the Subcontract Work, pursuant to APPENDIX 2 hereto.

N. INSPECTION AND DEFECTIVE WORK

1. Subcontractor shall at all times provide sufficient, safe and proper facilities in the field, at shops, or at any other place where materials or equipment for the Subcontract Work are in the course of preparation, manufacture, treatment or storage, for inspection by Contractor, Owner or their authorized representatives.

2. Within twenty-four (24) hours after receiving written notice from Contractor to that effect, Subcontractor shall proceed to take down all portions of the Subcontract Work, and remove from the job site all materials, whether worked or unworked, which the Owner or Contractor shall condemn as unsound, defective, or in any way failing to conform to this Subcontract or the Main Contract. Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof.

O. JOB DAMAGE

Job damage caused by Subcontractor to work shall be reported immediately in writing to Contractor, and Subcontractor shall be responsible for the cost of its repair. Job damage to work caused by others shall be reported immediately in writing to Contractor.

P. HOUSEKEEPING AND SAFETY

1. Subcontractor shall remove all refuse, waste and debris produced by its operation on a daily basis. Subcontractor shall not permit its refuse to interfere with free access to the work site. In the event Subcontractor fails to remedy these cleanup obligations, refuse removal may be done by Contractor and charged against the Subcontractor.

2. Subcontractor shall legally dispose of all waste materials off site on a daily basis. Should Subcontractor leave empty boxes or crating on site which are subsequently used by others for waste disposal, Subcontractor will be held responsible for disposal of the boxes and their contents. Contractor will not be responsible for the disposal of Subcontractor's hazardous waste and will not provide a dumpster for Subcontractor's use.

3. Subcontractor shall conduct the Subcontract Work in a safe manner, shall comply with all safety measures initiated by Contractor or required by the Main Contract, and shall comply with all Laws relating to the safety of person or property. Subcontractor accepts responsibility to prevent accidents to workmen engaged upon or in the vicinity of the Project. Subcontractor shall be solely responsible for the protection and safety of its employees, for final selection of additional safety methods and means, and for daily inspection of its work area and safety equipment. When so ordered, Subcontractor shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken, and the Subcontractor agrees it shall not have or make any claim for damages growing out of such stoppages. Should Subcontractor fail to take such corrective measures, Contractor may attempt to remedy the condition at the cost and expense of Subcontractor and may deduct the cost thereof from any payments due or to become due Subcontractor. Failure on the part of Contractor to stop unsafe Subcontractor practices shall in no way relieve Subcontractor of its responsibility hereunder.

Q. WARRANTY AND INDEMNITY

1. Subcontractor warrants the Subcontract Work and materials furnished hereunder to Contractor and Owner for one year from the Owner's final acceptance of the Project. With respect to the Subcontract Work, Subcontractor shall assume all warranty obligations and responsibilities of Contractor under the Main Contract. In no event shall Subcontractor's obligation in this regard limit or affect Subcontractor's obligation and responsibility to correct or pay damages related to improper or defective Subcontract Work or materials. Subcontractor agrees to provide any special warranties required under the Main Contract or otherwise.

2. Subcontractor agrees to indemnify and hold Contractor harmless from any claims, demands, liability, loss or damages, including attorney's fees and costs arising or resulting from or related to any failure of Subcontractor to strictly comply with a term of this Subcontract. Subcontractor shall further indemnify, hold harmless and defend Contractor pursuant to Appendix 2 hereto.

R. FAILURE TO PERFORM

1. If for any reason, Subcontractor fails to start the Subcontract Work as requested by Contractor, or at any time refuses or fails to supply sufficient properly skilled workmen, proper material of the proper quality, or becomes unable in any other respect to perform or complete any portion of the Subcontract Work or commits any other breach of this Subcontract, it shall be in default of this Subcontract. In such event, then the Contractor, without prejudice to any other rights or remedies, may do all or any portion of the following: (a) Contractor may provide any labor and material which in Contractor's opinion are necessary to perform and satisfactorily complete the Subcontract Work by whatever method Contractor deems expedient, including the hiring of another subcontractor or subcontractors, and deducting the cost thereof, including Contractor's usual overhead, administrative expenses, and profit margin thereupon, from any payment due or thereafter to become due to Subcontractor. (b) Contractor may withhold further payments to the Subcontractor until the Subcontract Work is accepted by the Owner. (c) Contractor may terminate Subcontractor's right to proceed with the Subcontract Work or any part thereof, and perform the remaining work as provided above. This termination shall be effective upon three (3) calendar days notice, without any further notice required. (d) Contractor may, for the purposes of performing and completing the Subcontract Work, take possession of and use without cost all material, equipment and tools belonging to or under the control of Subcontractor. In that event, Contractor shall not be liable for the cost of depreciation nor for any damage occurring during reasonable use.

2. Subcontractor hereby assigns to Contractor, as security for Subcontractor's performance hereunder, all sub-subcontracts and all other contracts, purchase orders, equipment leases and other agreements entered into in connection with the Project, and appoints Contractor its attorney to enforce said contracts according to their terms. Such assignment shall be operative only upon notice by Contractor and only with respect to those specific agreements designated by Contractor at the time of such notice, in the event of default by, or upon the termination of, the Subcontractor under this Subcontract. All sub-subcontracts and other such agreements shall provide that the Subcontractor consents to such assignment.

3. Neither the exercise nor non-exercise of Contractor's rights under this paragraph shall excuse Subcontractor from strict compliance with this Subcontract, nor prejudice Contractor's rights to recover damages for any default of Subcontractor or to pursue any other remedy that may be available to Contractor.

S. CONVENIENCE TERMINATION

Contractor may terminate this Subcontract, or a part of the Subcontract Work, without Subcontractor being at fault, for Contractor's convenience, and require Subcontractor to immediately stop said terminated work. If there has been a termination of the Main Contract by the Owner, the Subcontractor shall be paid the amount due from Owner to Contractor for the Subcontractor's Work upon such payment by the Owner to the Contractor. Otherwise, Contractor shall pay Subcontractor for that work actually performed prior to termination in an amount proportionate to the Subcontract Price. In the event of such a convenience termination, Contractor shall not be liable to Subcontractor for any other costs or amounts, including prospective profits or unabsorbed overhead on Subcontract Work not performed.

T. DISPUTES

1. In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the Subcontract Work, or in the event of any dispute or claim between Contractor and Subcontractor caused by or arising out of conduct for which Owner may be responsible, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to that same extent to any and all dispute resolution procedures contained in the Main Contract, and to any resulting decisions, findings, determinations, or awards made under the terms of the Main Contract by the person so authorized, or by an administrative agency, board, court of competent jurisdiction, or arbitration, and to any and all appeals therefrom, whether or not Subcontractor is a party to the proceedings. In that event, Subcontractor agrees it shall not take, and shall suspend if already undertaken, any other action or actions with respect to any such claims, and shall pursue no independent litigation or arbitration with respect thereto pending final determination of any dispute resolution procedure between Owner and Contractor. If any such dispute or claim is prosecuted or defended by Contractor, and Subcontractor is not directly a party, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose, and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with this Project arising, in whole or in part, from the actions or fault of Owner or Architect, Contractor shall not be liable to Subcontractor therefore in any greater amount than Owner is liable to Contractor, less any markups or costs incurred by Contractor.

2. As to any claims asserted by Subcontractor for, on account of, or stemming from, acts or omissions of Owner or Architect, or their agents or representatives, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor's name. For any amount thereby recovered or collected by Subcontractor, whether through Court, arbitration proceedings, or settlement, Contractor shall be entitled to ten percent (10%) of such amount received or collected in lieu of its standard markup for such claims. Subcontractor shall have full responsibility for the preparation, presentation, appeal and final disposition of such claims, and shall pay all the expenses thereof including attorney's fees.

3. All other claims, disputes, and other matters in question between Contractor and Subcontractor arising out of or relating to the Main Contract or this Subcontract, the breach thereof, or work thereunder (for which a dispute resolution procedure is not otherwise provided in the Main Contract), shall be decided by, at Contractor's sole option, litigation or arbitration in Spokane County, Washington, arbitration will be before one arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Said arbitration shall be administered through the American Arbitration Association, Seattle, Washington office, with arbitrator selection from that office's list of arbitrators. Contractor and Subcontractor agree that Contractor may, at its sole election, join any signatory to a Guaranty Agreement in said arbitration, and they further agree to be bound by the findings and award of such arbitrator without recourse to any court of law other than for the enforcement of the arbitrator's decision. Contractor may, at its sole election, join any other dispute or arbitration into any other arbitration Contractor may be engaged in. Any court enforcing litigation or the arbitrator's decision shall also award the prevailing party its attorneys' fees and costs as may be incurred in the litigation or arbitration and thereafter to obtain enforcement of that award.

4. Written notice of any claims whatsoever by Subcontractor shall be given to Contractor immediately upon Subcontractor's first knowledge of the event. In the event Subcontractor fails to so notify Contractor within seven (7) calendar days of becoming aware of the event for which such claim(s) is to be made, such claim(s) shall be deemed waived.

5. As a condition precedent to submitting to any litigation or arbitration of any claim or counterclaim between Subcontractor and Contractor, the parties to this Subcontract shall first submit their dispute to non-binding mediation with the assistance of a recognized settlement authority who shall participate for at least four (4) hours in the mediation. The parties shall bear equally all expenses, exclusive of attorneys' fees, associated with the mediation.

IV. MODIFICATIONS

No modification of this Subcontract and no waiver of any rights under this Subcontract shall be valid or binding on the parties unless the same be in writing signed by both parties.

V. MISCELLANEOUS

1. This Subcontract shall be considered to have been made in and shall be interpreted under the laws of the State of Washington. The venue of any lawsuit arising out of this Subcontract or the Subcontract Work shall be in Spokane County, Washington.

2. Any written notice required to be given to a party shall be hand-delivered or delivered via facsimile (with delivery receipt) or certified mail to the address of that party indicated above.

3. This Subcontract represents the final integrated understanding of the parties and shall supersede any prior proposals, offers, negotiations, revisions, unincorporated written communications or oral discussions, statements, representations or agreements.

4. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties as set forth in this Subcontract to the greatest extent possible consistent with the law.

5. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

6. Termination shall not relieve Subcontractor from obligations in connection with work performed prior to termination, nor shall it abrogate any provisions herein dealing with resolution of disputes.

7. Subcontractor shall notify Contractor in writing of any intention to assign the proceeds of this Subcontract prior to such assignment which assignment shall not be valid until approved by Contractor in writing. If approved, Subcontractor shall provide Contractor with the written acceptance by Assignee of the terms of this Subcontract, and of the obligations for adjustment and offset, before such assignment shall occur or be honored. It is agreed that the assignee of funds due or to become due under the Subcontract shall take such assignment subject to the trust fund obligations of the Subcontractor and all other obligations of the Subcontractor to the Contractor, with respect not only to the Subcontractor's work under this Agreement, but also with respect to any other Subcontract Work performed by the Subcontractor for the Contractor on other Projects.

8. Subcontractor shall remove or cause to be removed any and all liens, bond claims or retainage claims of lower-tiered Subcontractors, suppliers, or laborers before any action is brought to enforce the same, or within ten (10) days after written demand by Contractor, whichever first occurs. Subcontractor agrees to indemnify, defend and hold Contractor and the Project free and harmless of all liability for any and all such liens or claims, together with attorneys' fees and costs and expenses related thereto. Without limitation as to any such liens or claims, upon the written request of Contractor, Subcontractor shall post the cash deposit or bond provided for in any applicable statute that permits a construction lien to be bonded off real property. If Subcontractor fails to remove or bond off such liens or claims, all expenses, including attorneys' fees and costs, so incurred by Contractor in doing so, shall be immediately due from Subcontractor to Contractor and shall bear interest eighteen (18%) per annum or at the maximum rate allowed by law. In addition to reimbursing all costs incurred by Contractor in removing such lien(s), the Subcontractor shall also pay Contractor a \$5,000 Administrative fee.

9. This assignment may be signed in any number of counterparts each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

APPENDIX 1

PROJECT: North City Apartments

SUBCONTRACTOR: Hilltop Concrete Construction, LLC

Insurance

This Appendix 1 is hereby made a part of the Subcontract by and between Contractor and Subcontractor

Subcontractor shall comply with the following:

1. Standard Insurance Coverages: Subcontractor shall secure and maintain from the outset of commencement of work or the effective date of the Subcontract the minimum insurance coverages and limits required by this Appendix 1 or if greater, any coverages or limits of liability specified in the Alean Contract or required by law. If Subcontractor is seeking policy(s) providing higher limits than those specified below, the higher limits shall apply and the certification of insurance provided by Subcontractor shall reflect those higher limits. Before permitting any Sub-subcontractor to perform any work under the Subcontract, the Subcontractor shall require that the Sub-subcontractor maintain insurance in like form and amounts to that required herein. Prior to commencing its performance under the Subcontract, Subcontractor shall provide Contractor a Certificate of Insurance evidencing the coverage required by this Appendix 1. Required coverages are as follows:

1.1 Worker's Compensation and Employer's Liability: Worker's Compensation insurance and Employer's Liability insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Subcontract Work is to be performed and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) for disease, each employee, and one million dollars (\$1,000,000) disease policy limit.

Policy coverage terms and conditions to include: (1) USL&H - if any' basis where applicable, (2) Jones Act - if any' basis where applicable, (3) All states endorsement, where applicable, (4) Employee Liability/Shop Equip Liability if work is performed in the State of Washington, (5) For the attachment of Worker's Compensation in nonrespective states, coverage must be secured through the state fund of that state, (6) Certificate must clearly identify that coverage applies in the State in which the Project is located.

Owner/operators are required to furnish Worker's Compensation certificates, notwithstanding any statutory exemptions. For states that do not require Worker's Compensation coverage, Owner/Operators shall elect into coverage under the Workers Compensation laws of the governing state. Owner/Operators shall file with the Industrial Insurance Commission a written declaration stating that the provisions of the Worker's Compensation laws shall apply to it and its surety.

1.2 Commercial General Liability Insurance: Commercial General Liability Insurance ("CGL") within an ISO form CG 00 01 Edition date 10/01 or equivalent and shall confer a status or contain an endorsement (Form CG 2503 or equivalent) requiring that the general aggregate limit of liability shall apply to this Project. Coverage shall be based on an occurrence form and include hazards of: (a) Construction Operation, (b) Subcontractors and Independent Contractors, (c) Products and Completed Operations applicable to the additional insured (with Completed Operators coverage to remain in force from the date of first completion of the Subcontract Work until the expiration of the stated coverage of this State in which the Project is located).

CGL Insurance shall also include: (1) Contractual Liability coverage sufficient to meet the requirements of the Subcontract/Purchase Order (including defense costs and attorney's fees assumed under contract, which shall be payable in addition to the limit of liability); (2) Personal Injury Liability (with the standard contractual and employee exclusions deleted); and (3) Notice and Knowledge of Occurrence.

If not marked as "Not required", Subcontractor's CGL Insurance is also required to provide the following coverages:

	Not required	Not required
- Pollution Including mold coverage	✓	
- ERS	✓	
- Subsidence	✓	
- Operations (Performed within 50' of railroad)		✓
- Residential operations		✓
- Apartments		✓
- Duplexes		✓
- Condominiums		✓

If the Subcontractor's CGL Insurance excludes any of the required coverage, a separate policy acceptable to Contractor must be obtained.

CGL Insurance shall have the following minimum limits of liability, which shall be available to the Project:

EACH OCCURRENCE	\$ 1,000,000
PRODUCTS-COMP/OP. AGG.	\$ 2,000,000
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000

1.3 Commercial Auto Liability Insurance: Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the Subcontract Work with limits of \$1,000,000 combined single limit per accident for bodily injury and property damage. The policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and contractual Liability coverage. If hauling of hazardous waste is part of the Subcontract Work, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).

1.4 Commercial Umbrella Liability Insurance: Commercial Umbrella Liability Insurance for bodily injury and property damage liability over Subcontractor/Seller's primary Employer's Liability, Commercial General Liability, and Commercial Automobile Liability with Limits available to the Project in the amount of \$1,000,000 each occurrence and aggregate. All coverage and terms required under the Commercial General Liability, Automobile Liability and Employers Liability (sections 1.1, 1.2, and 1.3 above) must be included on the Umbrella Liability policy.

1.5 Leased Employee Liability: If Subcontractor leases one or more employees through the use of a payroll, employee management or other company, Subcontractor must directly procure workers compensation insurance. The insurance shall be written on a "Minimum Premium" or "If Any" policy form and will be in addition to the workers compensation coverage provided to and for the leased employees by the payroll, employee management or other company.

1.6 Property Insurance: Property insurance coverage for tools and equipment owned, leased or used by the Subcontractor in the performance of the Subcontract Work. The Property insurance shall extend to equipment, materials and supplies stored off the Project site or in transit to the Project site to be furnished as part of the Subcontract Work and incorporated into the Project. If Builder's Risk or other property insurance is provided by Contractor or others, Contractor and Subcontractor waive all rights against each other and Owner, and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor shall be responsible for that portion of the Builder's Risk deductible which is proportionate to the loss or damage resulting from acts or omissions attributable to the Subcontractor.

1.7 Asbestos/Pollution Liability: \$1,000,000 each occurrence; \$2,000,000 aggregate; required if the Subcontract Work involves or is in any way connected or related to asbestos, lead paint or pollution.

Not required ✓ 1.8 Professional Liability Insurance: If not marked as "Not required", Subcontractor must comply with the requirements of the attached Appendix 1A, Professional Liability insurance.

Not required ✓ 1.9 Riggers Liability Required: If not marked as "Not required", the Subcontract Work involves the rigging, hoisting, lowering, raising or moving of property or equipment and Riggers Liability Insurance is required to insure against physical loss or damage to the property or equipment.

Not required ✓ 1.10 Aircraft/Watercraft: If not marked as "Not required", the Subcontract Work involves the use of any owned, leased, chartered or hired aircraft or watercraft of any type and Aircraft Liability Insurance or Watercraft Liability Insurance, as applicable, is required in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability for bodily injury and property damage.

2. General Provisions: Each insurer providing insurance coverage as required in this Appendix 1 shall be a licensed admitted insurer authorized to issue such coverage in each State in which any part of the Subcontract Work is performed. The insurer shall be acceptable to Contractor and shall have an AM Best rating of "A-" VII or better. Except as otherwise specified below or in the Main Contract, the insurance required hereunder shall be maintained from the commencement of the performance of the Subcontract Work until the end of the applicable warranty period and Subcontractor shall maintain a current Certificate of Insurance with Contractor for this period. Failure of the Contractor to identify deficiencies in any insurance provided by Subcontractor shall not relieve

Subcontractor from any insurance obligations. The insurance coverages maintained by Subcontractor shall not limit any of Subcontractor's indemnity obligations or other liabilities under the Subcontract.

3. **Additional Insureds:** Unless otherwise required by the Subcontract, all insurance required by this Appendix 1 (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall name Contractor, its affiliates, directors, officers, and employees and Owner each as an additional insured and any other parties as required by the Owner Contract, and shall be primary and non-contributory to any insurance maintained by Contractor/Buyer and Owner and any other parties as required by Owner Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor. In the event Subcontractor and Contractor are covered by Contractor's insurance, Contractor's policy shall only apply excess of Subcontractor's policy. The Additional Insured Endorsement must be on Form CG 2010 11/85, or CG 20 10 10/01 plus CG 20 37 10/01, or equivalent, shall include ongoing and completed operations, shall not contain any restrictions and shall be attached to the Certificate of Insurance.

Coverage shall be afforded to Additional Insureds whether or not a claim is in litigation. All insurance required by this Appendix 1 (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall be endorsed to provide that, inasmuch as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

4. **Prohibited Endorsements/Exclusions:** Subcontractor's insurance shall strictly comply with the requirements of this Appendix 1 and any endorsement or exclusion which modifies the requirements herein shall not be acceptable. Without limitation to the foregoing, the following endorsements/exclusions are prohibited: 1.) Any Form, including Form CG 2294 (10-01) or its equivalent, which purports to remove the Subcontractor exception to the Damage to Your Work Exclusion is not acceptable; 2) Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding injury or damage (a) arising from explosion, collapse, underground property damage or work performed by subcontractors; or (b) arising from a prior occurrence causing continuous or progressively deteriorating injury or damage; 3) There shall be no endorsement or modification of the Commercial General Liability form arising from explosion, collapse, underground property damage or work performed by subcontractors; 4) For work which involves assisted living or residential construction, Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding assisted living/residential construction; 5) For work which involves an exterior insulation and finish system, Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding damage or injury caused directly, indirectly, in whole or in part by the exterior insulation and finish system or by the design, installation, construction or manufacture thereof.

6. **Notices:** All insurance coverages required by this Appendix 1 shall contain a provision that the coverage afforded hereunder cannot be cancelled, non-renewed, allowed to lapse, or have any restricted modifications added unless at least thirty (30) days prior written notice has been given to the Contractor by certified mail, return receipt requested. The Certificates of Insurance shall delete any language which modifies or disclaims the Insurer's obligations to actually notify Contractor of any such cancellation, non-renewal, or modification. For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be sent to the Contractor by certified mail return receipt requested.

6. **Deductibles/Denial of Claims:** Subcontractor shall be responsible, at no additional cost to Contractor, for the payment of any deductibles or self-insured retention in connection with the insurance coverages required by this Appendix 1 both for itself and all additional insureds. Any self-insured retention or deductible in excess of \$25,000 must be declared at the time Subcontractor submits its bid and must be specifically approved by Contractor prior to execution of the Subcontract/Purchase Order. Subcontractor shall be responsible for any loss arising out of coverage denial by its insurance carrier.

7. **Waiver of Subrogation:** All insurance coverage maintained by Subcontractor shall include a waiver of any right of subrogation of the insurers thereunder against Owner, Contractor and Owner's and Contractor's other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise in respect of any liability of any person insured under any such policy (Workers Compensation - where permitted). Subcontractor further waives all claims and all rights of subrogation against Owner, Contractor and Owner's and Contractor's other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters for loss of or damage to, Subcontractor's Subcontract Work of work, tools, machinery, equipment, material, supplies or any other losses within the Subcontract Work of any insurance maintained by Subcontractor.

8. **Breach of Insurance Requirements:** Subcontractor's failure to obtain and maintain insurance coverage as required by this Appendix 1 shall constitute a material breach of the Subcontract. In such event Contractor may at its option: (i) terminate the Subcontractor for default; or (ii) purchase coverage and deduct or backcharge the premium and associated costs from monthly progress payments due to Subcontractor or from the Subcontract amount.

Contractor Initials



Subcontractor Initials



APPENDIX 1A

PROJECT: North City Apartments

SUBCONTRACTOR: Hilltop Concrete Construction, LLC

Professional Liability Insurance

If Section 1.8 of Appendix 1 is marked as requiring Professional Liability Insurance, this Appendix 1A is hereby incorporated into the Insurance Requirements of Appendix 1 of the Subcontract between Contractor and Subcontractor.

Subcontractor's Subcontract Work or work involves professional services and Professional Liability Insurance is required covering liability for claims that arise from the negligent errors, omissions or acts of the Subcontractor/Seller and its Subsubcontractors/Sub-suppliers in the provision of professional services. The policy shall include Contractual Liability coverage and be effective (retroactively, if applicable) from the date of commencement of professional activities in connection with the Subcontract Work until five (5) years following completion of the Subcontract Work. Minimum limits are (1) Prime Design Professional: \$1,000,000 per occurrence/aggregate; (2) Sub-Design Professional: \$1,000,000 per occurrence/aggregate. A copy of the policy shall be provided to the Contractor.

Coverages shall include:

- Identification Endorsement: Contractor and Owner and any other parties as required by Owner Contract as indemnified parties.
- Contractual Liability covering hold harmless agreement contained in contract must be included without exceptions.
- Delays in project completion and cost guarantees are covered.
- Insurance is primary and non-contributory.
- Insuring agreement to read: "to pay on behalf of in lieu of to indemnify."
- Separation of insureds.
- Retroactive date: Will apply back to the first date of professional services.
- No exclusions for construction means, methods, techniques, sequences and procedures.

~~General Aggregate must apply per project.~~

For the purpose of Professional Liability Insurance, the term "Prime Design Professional" means the architect/engineer providing architectural, engineering and/or other professional services under a contract directly with Contractor/Buyer, and the term "Sub-Design Professional" means any architect/engineer providing architectural, engineering and/or other professional services directly or indirectly to the Prime Design Professional in connection with the Project. A Prime Design Professional is also a Subcontractor/Supplier and a Sub-Design Professional is also a Sub-subcontractor/Sub-supplier.

Limits must be specific to this Project and must not be encumbered or reduced in value during the duration of Subcontract, except by claims or insurable events that may take place on this Project. There shall be a 30-day written notice to Contractor of any reduction of coverage limits of liability for this policy. This policy shall have an extended reporting period of at least 24 months from the Substantial Completion of the Project. Subcontractor shall provide a certificate of insurance naming Contractor as a certificate holder.

Contractor Initials _____

Subcontractor Initials _____

APPENDIX 2

PROJECT:

North City Apartments

SUBCONTRACTOR:

Hilltop Concrete Construction, LLC

Indemnification

This Appendix 2 is hereby made a part of the Subcontract by and between Contractor and Subcontractor.

1. With the exception that this Appendix shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the state where the work is performed, Subcontractor shall indemnify and hold harmless Contractor and Owner, including their officers, directors, agents, employees, affiliates, parents, subsidiaries and sureties, and any other entities required to be indemnified by Contractor under the Contract Documents, and each of them (collectively referred to as "Indemnitees" and individually referred to as "Indemnitee"), of and from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature, whatsoever arising out of or in any way connected with or incidental to, the performance of the Work under this Agreement or any of the obligations contained in this Agreement ("Claims"). As used herein, "damages" include personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including without limitation any employees or agents of Subcontractor, Contractor, Owner, any other subcontractor, or any other person; or other damages of any kind including, but not limited to, economic loss, property damage, and loss of use.

2. The Subcontractor agrees, at its own cost, expense and risk to defend the Indemnitees against any Claims as defined in this Appendix that may be brought or instituted by third persons, including, but not limited to, government agencies or employees of Subcontractor. In the event Subcontractor fails to do so, the Contractor, in addition to any other legal right it may have, may defend the same and all costs and expenses incidental to the defense thereof, including, but not limited to actual attorneys' fees and expert costs, or settlement of any such claim or liability, or payment of any judgment, cost, attorneys' fees, expert fees, and expenses incidental thereto, or said amount as Contractor in its discretion deems necessary to defend and resolve such claims or liability, shall be deducted from the amount due Subcontractor hereunder and withheld by Contractor. If Contractor is not withholding, or is unable for any reason to continue withholding, sufficient monies to compensate it for the above, then Subcontractor agrees to forthwith pay such excess to Contractor. Indemnitees expressly reserve the right to select the attorney to be retained by Subcontractor to defend against Claims as defined in this Appendix.

3. Subcontractor's duty to defend, indemnify and hold Indemnitees harmless as stated herein shall include, but not be limited to, the reasonable hourly rate and expenses of Indemnitees' employees and officers spent in connection with the Claim and all other Claim-related expenses, to the fullest extent permitted by law, even though such Claims may prove to be false, groundless, or fraudulent, subject only to the following limitations: (a) Subcontractor's duty to indemnify shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Indemnitees, or their agents or employees; and (b) ~~to the extent of the negligence of Subcontractor, its agents or employees, then Subcontractor's duty to indemnify for liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of~~ (i) Indemnitees, or their agents or employees, and (ii) Subcontractor or Subcontractor's agents or employees, shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees; except when negligence is not a requirement of liability.

4. Subcontractor's duty to defend, indemnify and hold Indemnitees harmless as stated herein shall extend to Claims occurring during performance of the Subcontract Work and in the future after the Subcontract Work is performed or completed, and shall survive the termination of this Agreement.

5. It is expressly acknowledged and agreed that each of the foregoing Indemnitees is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of Contractor, Owner, or other Indemnitee (subject to the indemnity limitations set forth in paragraph 3 above). It is expressly acknowledged and understood by Subcontractor that the indemnity obligations specified herein shall arise and become due and owing to Contractor, Owner or other Indemnitee immediately upon receiving notice of any and all Claims; however, neither an allegation, claim, finding, opinion, declaration, decree or judgment of negligence and/or fault or liability against Subcontractor shall be a prerequisite for the accrual or triggering of said indemnity obligations. It is expressly acknowledged and agreed that Subcontractor and any other responsible party shall be jointly and severally liable to Contractor with respect to Claims described herein above. At its sole discretion, Contractor may determine which Indemnitor or Indemnitors Contractor will look to for indemnification hereunder.

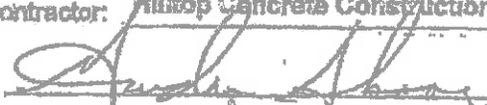
6. For the purposes of these indemnification provisions only, Subcontractor specifically and expressly waives any immunity that may be granted it under the worker's compensation laws of any state; provided that such waiver shall be expressly limited to Subcontractor's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker's compensation acts, disability benefits acts, or other employee benefits acts.

7. The insurance requirements set forth in Appendix 1 are separate and distinct from other obligations contained in the Agreement, including, without limitation, the indemnity obligations contained in this Appendix; and Subcontractor's indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of insurance which may be available to Subcontractor.

8. The partial or complete invalidity of any one or more provisions of this Appendix shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS APPENDIX WAS MUTUALLY NEGOTIATED.

Contractor: INLAND WASHINGTON, LLC
By: 
Its: Administrator
Date: 9/24/12

Subcontractor: Hilltop Concrete Construction, LLC
By: 
Its: Const. Mgr
Date: 9/1/12

Job # 28016

Hilltop Concrete Construction, LLC

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APPENDIX 3

PROJECT: North City Apartments

SUBCONTRACTOR: Hilltop Concrete Construction, LLC

SAFETY PRECAUTIONS AND PROGRAM

This Appendix 3 is hereby made a part of the Subcontract by and between Contractor and Subcontractor

1. The Subcontractor shall be responsible for instituting, maintaining and supervising all safety precautions and programs in connection with his work per all applicable Federal and State OSHA rules and regulations.

2. SAFETY OF PERSONS AND PROPERTY

A. The Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

i. All employees on the Work and all other persons who may be affected thereby;

ii. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site under the care, custody or control of the Subcontractor or any of its Sub-subcontractors; and

iii. Other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

B. Subcontractor shall immediately notify Contractor in writing of any and all damage, injury or loss to any person, property, materials or equipment on the Project.

3. The Subcontractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

4. The Subcontractor, as pertains to its scope of work, shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards and equipment for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent properties.

5. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Subcontractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

6. The Subcontractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which Subcontractor is responsible, except damage or loss solely attributable to the acts or omissions of the Owner or Contractor or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable, and not attributable to the fault or negligence of the Subcontractor.

~~7. The Subcontractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Subcontractor's Site Supervisor unless otherwise designated by the Subcontractor in writing to the Contractor.~~

8. The Subcontractor shall not load or permit any part of the Work to be loaded or stored so as to endanger its safety or the safety of others.

9. In any emergency affecting the safety of person or property, the Subcontractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Subcontractor on account of emergency work shall be determined as provided in Changes in the Work.

10. The Subcontractor warrants that all work to be performed and materials to be furnished and installed within the scope of this Subcontract shall comply with all federal, state, and local safety rules and regulations including but not limited to the Occupational Safety & Health Act of 1970 or the equivalent laws of the state where the work is performed.

11. The Subcontractor agrees to indemnify and hold the Contractor harmless from any loss including but not limited to any fines, penalties, and corrective measures Contractor may sustain by reason of Subcontractor's failure to comply with all safety related laws, rules, and regulations.

12. The Subcontractor warrants that the Contractor shall be immediately informed of any hazardous substances contained in any materials to be used or installed under the terms of this Subcontract so that the Contractor may carry out the requirements of the Right-to-Know Act with its employees.

APPENDIX 4

PROJECT: North City Apartments

SUBCONTRACTOR: Hilltop Concrete Construction, LLC

This Appendix 4 is hereby made a part of the Subcontract by and between Contractor and Subcontractor. In addition to the work described in other parts of this Subcontract Agreement, the following further describes Subcontractor's Scope of work:

Description of Work	Cost Code	Description	Amount
Structural Concrete 3300	3300.000	Bldg Concrete	2,380,000.00

Notes

Provide all labor, materials, equipment, transportation, and services as required to complete the STRUCTURAL BUILDING CONCRETE work in accordance with the Contract Documents. The Contract Documents are enumerated in the attached Appendix 5. This contract is also based on a mutually agreed upon schedule which is part of this agreement and attached as Appendix 6.

The following items are specifically INCLUDED in this agreement:

1. Provide all labor, materials, formwork, accessories, equipment to complete the structural concrete work in accordance with the Contract Documents.
2. Form, reinforce, and place all continuous footings, pad footings, piers, walls, and columns.
3. Form, reinforce, place, finish, and saw cut building slabs on grade.
4. Form, reinforce, place, and finish all elevated post-tensioned slabs.
5. Supply all building concrete.
6. Furnish and install waterstop at cold joint locations. Volclay Bentonite.
7. Concrete Conveyance: This subcontractor shall be responsible for any/all pump truck charges, line pumping, buggy, wheelbarrow, etc. as required to place all building concrete.
8. Furnish and install all building reinforcing steel.
9. Furnish and install all post-tensioned cables. Tension cables, and provide documentation in the form of test reports.
10. Furnish and install stud rails as indicated on the plans.
11. Hot and cold weather concrete protection.
12. All concrete formwork, placement, and finishing shall be in accordance with American Concrete Institute (ACI) standards.
13. Patch PT cable holes after tensioning.

Description of Work	Cost Code	Description	Amount
14. Provide cast-in-place perimeter slab curbs at wall lines as indicated on the drawings.			
15. Provide waterproof concrete additive at exposed PT decks. Area receiving waterproof additive shall extend a minimum of two feet into the building.			
16. Provide on-site, self-contained concrete wash-out station. Location of station shall be coordinated with and agreed to by Inland's site superintendent.			
17. It is understood that there are no topping slabs on this project and that top side of all exposed exterior PT decks shall be broom finished.			
18. Provide all form release, and curing compounds as required.			
19. Furnish and install all formwork and formwork accessories such as dimensional lumber, plywood, shoring frames, support joist, ties, stakes, fasteners, pour stops, keyway, expansion, waterproofs, chamfer, and reveal.			
20. Provide blockouts in concrete walls as required.			
21. Provide concrete additives as required to complete this subcontractor's work.			
22. Break form ties and patch voids on all vertical concrete.			
23. Safety rails / fall protection for this subcontractor's work. Subcontractor shall provide Inland's site supervisor with a fall protection plan prior to starting work.			
24. -Sack and rub architecturally exposed concrete walls as indicated on the exterior elevations.			
25. Exterior columns as shown on building elevations.			
26. Coordination with other trades. Subcontractor shall specifically coordinate with wood and metal stud framers, plumbing, fire protection, HVAC, and electrical with respect to bolts, embeds, and slab penetrations prior to placing concrete.			
27. Fine grading.			
28. Place embeds.			
29. Provide and place wire mesh and/or fiber mesh as indicated in the Contract Documents.			
30. Place anchor bolts/hold-downs on framers layout. (materials provided by Inland)			
31. Slab finishes shall be discussed with Inland prior to placement. (i.e. hard trowel vs. broom finish)			
32. Coordination of required inspections with City of Shoreline, Inland, and Special Inspection/Testing firm.			
33. Provide layout for this subcontractors work. Inland shall provide elevation benchmarks and grid lines at all whole number grids, subcontractor shall provide secondary lines, batter boards as required to complete their work.			
34. Forklift hoisting/scaffolding as required to complete this subcontractor's work.			
35. Provide restoring labor and materials for elevated decks as required			

Handwritten initials/signature in the top right corner.

Handwritten initials/signature next to item 20.

Description of Work	Cost Code	Description	Amount
36. Mix design submittals for approval no later than July 31, 2012.			
37. Reinforcing steel shop drawing submittals for approval no later than August 7, 2012.			
38. Post tensioning shop drawing submittals for approval no later than August 14, 2012.			
39. Daily clean-up as required to maintain a safe and orderly jobsite.			
40. Disposal of debris into Inland supplied dumpster.			
41. Haul off and disposal of any concrete rubble generated by corrective work.			
42. Furnish and install plastic safety caps on vertical rebar as required.			
43. Any sloped concrete surfaces shall comply with all ADA, Fair Housing, and ANSI requirements.			
44. W.I.S.H.A. Compliance. This subcontractor shall comply with all health and safety requirements.			
45. Subcontractor shall mark-up the post-tension cable shop drawings for any changes in final placement location.			
46. Subcontractor shall adhere to project schedule and coordinate all onsite activities with Inland's superintendent.			
47. A competent english speaking representative shall be on site daily. This individual shall attend weekly meetings and shall be authorized to make field decisions.			
48. Subcontractor shall be responsible for storage and protection of all materials provided by this subcontractor.			
49. Extras, changes, and backcharges will not be accepted unless subcontractor receives approval from the project manager or a work order from the Superintendent prior to performing the work.			
50. Compliance with Specification 00800 - Evergreen Checklist.			

The following items are specifically EXCLUDED from this agreement:

1. Washington State Sales Tax
2. Furnish steel embeds (unless specifically included above)
3. Site concrete (curbs, walks, ramps, etc.)
4. Storm vault construction.
5. Permit Fees
6. Special Inspection Fees

Subcontractor acknowledges that it will provide a punch crew in addition to any and all crews normally associated with the subcontractor's Scope of Work, in order to maintain the job completion schedule.

In order to assure job safety and a smooth running project the Subcontractor agrees that its Site Supervisor will be able to read and speak English fluently.

Leave the jobsite in a clean condition at the end of each workday and properly dispose of all debris offsite.

Coordinate all onsite activities with jobsite Contractor's Superintendent and adhere to schedules established by same.

All work shall be inclusive of and performed in strict accordance with all applicable codes, the contract plans and specifications, and manufacturer's instruction, **IN THEIR ENTIRETY**, including all contract Documents listed in all Appendices and the Contractor's construction schedules (initial and updated versions).

Subcontractor shall provide all services necessary for the performance of Subcontractor's work unless expressly excluded.

Subcontractor expressly excludes:

PRIOR TO STARTING WORK, THE FOLLOWING SHALL BE PROVIDED TO CONTRACTOR:

1. Subcontractor's information sheet
2. Subcontractor's List of Suppliers and Subcontractors
3. Certificate of insurance:

PRIOR TO PAYMENTS, THE FOLLOWING SHALL BE PROVIDED TO CONTRACTOR:

1. All items above
2. Payment requests on Inland's Application
3. Lien Waivers

JOB-SPECIFIC REQUIREMENTS:

1. Subcontractor shall attend all Safety Meetings
2. Subcontractor shall attend on-site Job Meetings upon Request.

APPENDIX 4.1
General Terms and Provisions

A.) Project Mobilization

Before a subcontractor is allowed to start work the following information shall be submitted to Inland. Failure to furnish this information and subsequently not being able to commence work on the scheduled start date will constitute a delay by the subcontractor and any impacts associated with such shall be the subcontractor's responsibility to cure.

1. Executed subcontract agreement
2. Insurance certificates
3. Payment & performance bonds, if required
4. Safety program

B.) Contract

1. Taxes -- The subcontract value does not include Sales tax, however all other taxes imposed by law are included.
2. Additional Work -- Subcontractor agrees that extra work authorizations will only be valid if previously authorized and signed by an Inland representative on the day the work is performed. Failure to receive authorization will be justification for not paying extra work invoices.
3. Retention -- 5% retention will be held until the completion of the entire project.
4. Progress billings -- In addition to those items listed at the end of Appendix 4 under "Prior to Payments", subcontractor shall submit all daily reports, weekly field safety meeting reports, provide proof of current as-builts, and fully execute all change orders in order to receive payment for any progress billing.
5. "Contract Documents" -- This term shall encompass the main contract, subcontract, general conditions, plans & specifications, addenda, RFIs, ASIs, appendices and any other document referred to in the main body of the subcontract agreement.

C.) Permits & Inspections

1. Subcontractor has included cost to obtain and coordinate all permits, licenses, and inspections necessary for the installation of its work and transportation of materials or equipment. The general building permit will be provided by others.

D.) Daily Progress

1. Clean up -- Subcontractor shall clean its own work areas on an ongoing and daily basis or at other times deemed necessary by Inland or the owner. Should subcontractor fail to comply, Inland will perform necessary clean up and back charge the subcontractor.
Subcontractor shall have one man for every \$ present on site available on a weekly basis for a site clean-up operation organized by Inland should it be deemed necessary.
2. Protection of work -- The subcontractor shall protect the existing facility, adjoining work, and work of others from damage from its operations. Subcontractor has included cost for temporary protection of its installed work or cost to repair work as required until the work has been punch listed and accepted by the owner, Inland, and architect.
3. Survey & Layout -- Subcontractor shall perform all layout for its scope of work. Inland will provide one vertical and horizontal control point only.
4. Daily Reports -- Subcontractor shall submit a daily report to the superintendent detailing on-site activities at the end of each workday. At a minimum this will detail manpower on-site, areas worked, activities worked, materials received, and any delays or conflicts in progress.
5. Staging -- The subcontractor understands that there is a limited amount of lay down area and that all deliveries will need to be coordinated with and approved by the site superintendent. The subcontractor has carried provisions for just in time deliveries and/or off-site storage.
6. Material Storage and Delivery -- The subcontractor shall unload, inspect, transport, handle, store and maintain materials and equipment, protect from weather and other damage, and provide heated or conditioned air for storage as may be required by the manufacturer/supplier or contract documents for materials or equipment furnished by the subcontractor or Inland furnished and installed by subcontractor.

7. **Traffic Control** - Subcontractor has included all necessary provisions for traffic control in and out of the site, including any required signage and/or flagmen and coordination with local authorities.
8. **Security** - Subcontractor is fully responsible for the protection and security of its own work, materials, tools, and other property.
9. **Parking** - No parking will be available on site. Subcontractor will provide parking for its employees. Subcontractor will be allowed to access the site at the start and end of each workday to unload/load people and equipment.
10. **Access** - Subcontractor will replace and/or repair any existing or protective conditions it alters to access any part of the project site at the end of each work day or as soon as the activity is completed.
11. **Waste** - Subcontractor will be responsible for depositing all of its non-hazardous waste into dumpsters provided and located by Inland. Subcontractor shall remove any hazardous waste at its own expense and conform to all federal, state, and local codes and regulations.
12. **Sanitary Facilities** - Inland will provide site toilet facilities.
13. **Water** - Subcontractor shall supply and distribute drinking water to its own work forces. Construction water will be made available from a single point of use when the site utilities have been completed. Subcontractor has included provisions for temporary construction water until this time. Any means necessary to distribute water beyond Inland's single point of use is the responsibility of the subcontractor.
14. **Power & Lighting** - Subcontractor acknowledges that there will be a limited amount of power available in selected locations determined by Inland. General lighting only will be provided to minimum legal limits. Task lighting, extension chords, spider box, light bulbs, and other means for power distribution and lighting required to perform its work are the responsibility of the subcontractor. Subcontractor realizes that power will not be provided until the electrical utility is extended to site and has made provisions to provide its own temporary power until that time.
15. **Weather Protection** - Subcontractor has included all cost associated with weather protection and dewatering as required to maintain the projects schedule.
16. **Pollution** - Subcontractor will adhere by all federal, state, & local codes and policy's implemented by Inland regarding water, soil, waste, noise and dust pollution & control and has included cost for these activities.
17. **Removal** - Inland has the authority to require the removal from the jobsite of any employee of the subcontractor for cause. Removal from the site may be for repeated (2) failures to observe safe work practices, a single blatant safety violation, or any other reason deemed significant by Inland. Loss of manpower due to justified removal will be replaced the next day. Impacts caused by delays due to lack of manpower will be the subcontractors' responsibility to cure.

R.) Document Control

1. **Contract Documents** - Inland will supply one contract set of plans and specifications. Additional sets may be obtained for the cost of reproduction. Each subcontractor will be required to have one complete set of contract documents on-site and posted current.
2. **Submittals** - Subcontractor shall provide 6 copies of all submittals required by the contract documents with in 20 calendar days of the Notice to Proceed. Subcontractor shall allow 30 calendar days for review of submittals. Subcontractor will furnish additional submittal copies for field use incorporating any corrections when required by Inland for coordination with other trades.
3. **Request For Information** - Subcontractor shall fully review the contract documents as it pertains to its scope of work before mobilization for any deficiencies, discrepancies, ambiguities, or errors and notify Inland in writing. Subcontractor shall allow for a minimum of 7 calendar days for responses to RFIs.
4. **Operation & Maintenance Manuals** - Subcontractor shall submit all operation and maintenance information at 75% completion of its scope of work as measured by its billing progress. Payment will be held beyond 75% for compliance.

5. As built drawings & specifications - Subcontractor will maintain an updated as built set of drawings current with all field modifications, changes, and RFI information posted. Progress billings will not be processed without proof of current as built drawings.
6. Main Contract - "main contract" and "contract documents" shall be interchangeable and be defined in the first paragraph of subcontract agreement.
7. Subcontractor - The words "contractor," "general contractor," "trade contractor," or "prime contractor" in the contract documents shall mean this subcontractor as it relates to this subcontractor's scope of work.

F.) Coordination

1. Personnel - Subcontractor shall have a competent technically qualified English speaking supervisor on site with full authority to act on the subcontractor's behalf.
2. Meetings - The subcontractor's project manager and superintendent shall attend coordination meetings at a frequency as determined by Inland. This shall include any meetings with the local authority, engineers, architects, and/or owners as required for the necessary approvals to commence its work.
3. General - Notwithstanding submittals required by the contract documents, it is this subcontractor's responsibility to coordinate its work as it interrelates to other trades. Inland's distribution of submittals to various subcontractors should be construed as a courtesy and shall not relieve the subcontractor of its obligations to coordinate its work to ensure a complete and timely installation. Conflicts that arise out of failure to complete this task will be the responsibility of the subcontractor second in progress to resolve at its own cost. Subcontractor realizes it will not have exclusive use workspaces at all times.
4. Field Measurements - This subcontractor is responsible for verifying all field dimensions before proceeding with its work or fabrication of materials.
5. Structural Penetrations and Openings - Structural penetrations shall be provided as indicated on the structural drawings or as detailed in manufacturers' product data. Any additional penetrations required for the subcontractors work shall be submitted for approval of the engineer of record and shall be provided at the expense of this subcontractor. Subcontractor has included any wall, floor/ceiling, and roof coring/cutting required to complete its work. All sleeves or core locations must be submitted for approval prior to performing this operation. Subcontractor will protect any openings it created and maintain protection at openings until this subcontractor has filled the opening to a safe and permanent condition.
6. Building Envelope Penetrations - This subcontractor will be responsible for the proper flashing and waterproofing of any penetrations it makes in the buildings envelope.
7. Fire Stopping - Fire stopping, fire rating and waterproofing of all penetrations created or used by this subcontractor is included.
8. Access panels - Access panels shall be furnished, located and installed by the subcontractor whose work requires access. Access panels shall meet the contract documents and all code requirements. If access panel locations are not specifically shown on the contract documents, subcontractor will be responsible for coordinating these locations with the project team in writing.
9. Subcontractors - Subcontractor is responsible for all hired sub-subcontractors that have been taken on to perform work associated with its contract. This subcontractor is responsible for an on-site presence at all times when any work associated with its subcontract is being undertaken.
10. Attachment - Subcontractor is responsible to design, engineer, furnish and install all backing, seismic supports, seismic bracing, anchors and miscellaneous supports required to install its work.
11. Substitutions - Any deviation from the contract documents will be submitted to Inland in writing for approval. Should this deviation be approved, the subcontractor will be responsible for all other cost associated with the subsequent changes initiated by its deviation, including but not limited to architecture, engineering, and trade contractor impacts.
12. ADA - Subcontractor is responsible to meet all federal and state ADA codes and regulations for work installed under this agreement. Any deviations from ADA

compliance within the contract documents shall be brought to the attention of Inland construction before proceeding with installation.

G.) Quality Management

1. **QC Program** – Subcontractor is responsible for implementing its own quality control program. This program shall at a minimum be written document containing: A. Identify on-site person responsible for execution of QC program. B. Description of different scopes of work to be completed by subcontractor and methods for ensuring work is installed per the contract documents. C. Written tracking system that will be copied to Inland at the completion of any QC activities noting deficiencies and date for corrections.

H.) Project Completion

1. **Testing and Start-up** – Subcontractor shall provide for the testing, start-up, and commissioning of equipment furnished and /or installed by the subcontractor including Inland and owner furnished equipment.
2. **Final Clean** – Each subcontractor will be responsible for final clean up of the items installed by the subcontractor to a dust free condition and coordinated with Inland to minimize rework, includes removing any temporary protection or packaging.
3. **Training** – Subcontractor is responsible for coordinating and delivering an owner training session for any equipment installed under its scope of work that is either requested in the contract documents or requires special product knowledge to operate.
4. **Completion List** – A "completion list" will be generated by this subcontractor at completion of significant phases of the project or as determined by Inland detailing remaining items left unfinished for the predefined area. Subcontractor will submit this list to Inland for review and approval and have 7 calendar days (or be notified if less) to complete these activities. Should the subcontractor fail to complete these activities, Inland shall have the right to complete these activities and back charge the subcontractor for cost incurred. Should the Subcontractor not generate a completion list, Inland will compile the completion list for the subcontractor and back charge the subcontractor for its efforts.
5. **Punch List** – A punch list will be generated by the owner and architect at the completion of significant phases of the project or as determined by Inland detailing remaining items not completed per the contract documents for the predefined area. Inland will distribute this list to subcontractors with a 7 calendar day completion duration. Subcontractor shall have adequate manpower available to complete these activities without impacting the projects critical path schedule as it applies to other areas of the site and phased construction activities. Should the subcontractor fail to complete these activities, Inland shall have the right to complete these activities and back charge the subcontractor for cost incurred.
6. **Final Payment & Retention Release** – Final payment and retention will not be released until the following list of items are completed:
 - a. Final statement of contract value
 - b. Change orders fully executed
 - c. All warranties submitted correctly
 - d. As-builts
 - e. Operation & Maintenance Manuals
 - f. Extra stock
 - g. Owner training
 - h. Punch list & Completion list activities
 - i. Insurance requirements current
 - j. Resolution of all back charges
 - k. Statement of paid taxes
 - l. Fully executed unconditional waiver

I.) Safety - In addition to those requirements set forth in Appendix 3, subcontractor shall comply with the following:

1. **Empowerment** – Subcontractor shall empower its employees to stop work anytime they recognize an unsafe condition whether their work or another trades.

2. **Responsibility** – Subcontractor shall be responsible for the health and safety of its employees.
3. **Personal Protection** – Subcontractor shall provide its field work force with proper protection which shall conform to all applicable laws and safety codes relating to the safe completion of their work. Hard hats and safety glasses shall be worn at all times by all employees.
4. **First Aid** – Subcontractor will provide a first aid trained employee on site at all times. Subcontractor shall supply necessary first aid facilities and supplies for their own employees.
5. **Safety Meetings** – Subcontractor shall conduct one safety meeting with its employees per week, document topic and attendance, and submit to Inland.
6. **Fall Protection** – Subcontractor shall comply with 100% tie off above 6'-0".
7. **Safety Barriers** – Subcontractor will replace any safety barriers it removes to complete its work immediately after its work is complete. If a subcontractor creates a hazard, it is responsible for safety off that hazard.
8. **Safety Plan** – Subcontractor is responsible for creating and implementing its own written safety plan in compliance with all state and federal regulations and presenting a copy of this plan to Inland before mobilization.
9. **Hazard Communication Program** – Subcontractor is responsible for creating and implementing its own written Hazard Communication Program in compliance with all state and federal regulations and presenting a copy of this plan to Inland before mobilization.
10. **MSDS** – Subcontractor shall submit MSDS sheets to Inland for all material brought onto the project site prior to the start of affected work.
11. **Enforcement** – Subcontractor shall be responsible for enforcing relevant portions of the safety provisions required by the contract documents, Inland's safety plan, and its own safety plan.
12. **Removal** – Should the GC be required to remove any of subcontractors employees for safety violations it shall be the subcontractors responsibility to immediately replace the production loss at its cost.
13. **Fines** – Subcontractor shall be responsible for payment of all fines and or claims for damages levied against the Owner, Architect or Inland for safety deficiencies relating to the conduct of subcontractors work.

S/S

EXHIBIT 4

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task you're doing, whether you're doing labor work, which is anything from carrying forms, helping to set forms, a carpenter, some of the power tools, rod busters, someone tying the rebar. There are so many different prevailing wage tasks that give its own wage. I can't tell you exactly what all that is.

Q Now, if \$27 per hour was Mr. Crisostomo Vargas's wage rate on a private job, how much would his wage rate be for the work that he does on a government job?

A I'm going to give you the same answer. Every task he does would be a different task which will be a different pay rate. If he's using power tools, he'll get one pay rate. If he's tying rebar, he'll get another pay rate. If he's just standing forms or cleaning forms or stripping forms, he gets another pay rate. They vary from \$40 up to 50-something.

Q So the work that he would be doing on a private job at \$27 an hour, he would be making between \$40 and \$60 an hour on a government job depending on the task; is that accurate?

A That's pretty close.

Q Of the 20 or so employees, at least, that you say you currently have, was Mr. Crisostomo Vargas one of the higher paid employees, one of the lower ones, average?

A He was not the highest paid. There was other guys that were higher than him. If you -- there's a lot of guys between 22

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to 27 or 28, and, obviously, he'd be in that bracket.

Q How much did the lowest paid employees at Hilltop make?

A I don't remember. Usually if people come on a job, they don't know anything, but they can carry a board from here to there, they usually will make about 16.

Q And how much would those people make on a government job?

A We usually don't put those kind of people on a government job.

Q Because government work requires more trained people?

A No. If you pay them higher wages, you want to pay people that know a little bit or that work a little harder.

Q So in the range between \$22 and \$27, those people, how much would they make on a government job?

A Well, as I said, the base would be about 40, and then it'd be up in the 50s depending on the specific task that they are doing.

Q Who at Hilltop has any management roles?

A Myself, my two sons, and then we delegate management roles just depending on what process in the project that we're doing to other people, we delegate it to other people.

Q Other than owner, does your wife have any role in the operations of the company?

A She does a little bit of paperwork, yes.

Q What is your wife's name?

A Hildur H-uh-uh-

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Q Skoog, I assume?

A Yes.

Q Has Hilltop or its managers ever had any license suspended, revoked, or subject to any other discipline?

A Are you talking about a business license, a car license?

Q Business or contractor's related to construction, not necessarily a driver's license.

A No.

Q Has Hilltop ever been cited or reprimanded in any way by any government entity?

A I don't think so.

Q Including OSHA or the WISHA, L & I?

A I think we were cited for \$300 because we didn't have one little piece of paperwork right.

Q Do you know what piece of paperwork that was?

A I don't remember.

Q Was that an OSHA 300 form?

A It could have been.

Q Is it true that in May of 2013 Hilltop was working on a new construction project at 1220 Northeast 175th Street in Shoreline, King County, Washington?

A Yes.

Q Is that the correct address?

A One more time?

Q 1220 Northeast 175th Street, Shoreline.

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A I don't remember if that's the correct address, but it sounds good.

Q Is that known as the North City Apartment job?

A Yes.

Q Was it known by any other name?

A Not that I'm aware of.

Q What work was being done on the North City Apartment job by Hilltop?

A Concrete work.

Q What was the scope of work?

A To build parking garages.

Q How many garages?

A There's two buildings.

Q How big were they?

A If you're going to ask for square footages, I do so many takeoffs and stuff that I don't remember now.

Q Just an estimate or a ballpark?

A There could have been 70 or 80,000 square feet of parking area.

Q Each garage or combined?

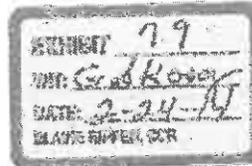
A Combined, total.

Q How many levels or floors?

A One building was one floor, the other building was two floors.

Q Who was the general contractor on this project?

EXHIBIT 5



RD

INLAND WASHINGTON, LLC
SUBCONTRACT AGREEMENT
Rev 82011

Rev	2/20/12
MO	2/20/12

THIS AGREEMENT is made between the Contractor:

INLAND WASHINGTON, LLC
North 1620 Warner Road, Bldg B
Spokane Valley, WA 99216
509/891-5162 - Fax 509/922-2251

LIC#: INLANWLS920Z
CONTACT: D. Reid Diefelsson
JOB #: 26015
COST CODE: 3300

and the Subcontractor:

Milltop Concrete Construction, LLC
PMB 141, 8408 172nd St NE
Arlington WA 98223-4735

CONTACT: Gordon Skoog
PHONE: 206-817-0345
FAX: 360-367-6248
CELL: 206-817-0345

The Project is:

Job #: 26015
North City Apartments
1220 NE 175th Street
Shoreline WA 98155

The Owner is:

North City Family Apartments
1620 N. Warner Rd, Bldg B
Spokane Valley WA 99216

The Architect is:

Nystrum Olson Incorporated
912 W. Sprague Avenue
Spokane WA 99201

Contractor and Subcontractor Agree as set forth below:

The above Subcontractor shall perform certain labor and furnish certain material for the construction and the completion of the above named project as per the agreement between Owner and Contractor, the project plans (which are numbered and dated herein or are as an attachment), general, supplementary and special conditions, specifications, addenda, attachments and Appendices, all of which documents are hereinafter referred to as the "Main Contract".

In consideration therefore, Subcontractor agrees as follows:

1. Subcontractor shall provide all supervision, Subcontract Work, labor, supplies and equipment for the work set forth below and, if needed, is more fully described in Appendix 4 (hereafter "Subcontract Work"):

Structural Concrete

Subcontractor shall provide the Subcontract Work in accordance with the Main Contract, which document has been made, and remains, available to Subcontractor for review, the provisions of which are expressly incorporated herein by reference in Paragraph A here following.

2. Subcontractor may be requested to provide a bond at the Contractor's sole discretion. See Paragraph C.

3. Subcontractor agrees to be bound by all of the terms of this Subcontract, including general conditions paragraphs A through W here following, Appendices 1-6, documentation supplied by Subcontractor, and any other attachments to this Subcontract.

For the full, complete and faithful performance of this Subcontract, Contractor agrees to pay Subcontractor (hereinafter "Subcontract Price") of:

a) Lump sum of \$2,390,000.00 This lump sum does not include Sales Tax.

EXACTLY TWO MILLION THREE HUNDRED NINETY THOUSAND DOLLARS

OR

b) Unit price of _____ This unit sum does not include Sales Tax.

This Subcontract shall be executed below prior to starting work by an officer or duly authorized representative of Subcontractor and returned to Contractor within fifteen (15) days of its receipt. The delivery to Contractor of written acceptance without exception; of suitable bonds, if provided for; and of proof of the insurance called for herein; are all express conditions precedent to any payment due under this Subcontract.

4. Miscellaneous. Contractor cannot guarantee when payment will be forwarded from the Owner, lending institution or public agency. However, Contractor is willing to use its banking credit line to advance Subcontractor and Material Suppliers full progress payments via U.S. mail postmarked by the 10th of the following month or the next business day thereafter (provided that all contractual obligations are in good standing and Subcontractor or Material Supplier has submitted all necessary pay applications and lien releases in a form approved by Contractor) for a 2% cash discount. Contractor offers this program in a spirit of team effort to enable our Subcontractors, Vendors and material suppliers flexibility in meeting their financial obligations. If Contractor, in its sole discretion, determines that Owner has failed or may fail to make payments to Contractor within a reasonable time, Contractor reserves the right to suspend or to terminate this program and to proceed as provided in Paragraph 1. of the General Conditions (Payment).

Sign here only if accepting discount to be paid early: X

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this Agreement effective the date of Inland's authorized signature below unless otherwise agreed.

INLAND WASHINGTON, LLC

SUBCONTRACTOR INFORMATION:

By: [Signature]

026 535 00
Worker's Compensation Act ID Number

Title: ADMINISTRATOR

010606935
Federal ID Number

Date: 9/24/12

HILLTOP 9950.1
License or Registration number

Hilltop Concrete Construction, LLC

184992.00 0
State Unemployment Act #

By: [Signature]

Incorporated? LLC Yes X No _____

Title: Project Mgr

Date: 9/11/12

INLAND WASHINGTON, LLC
General Conditions of Subcontract Agreement

A. OBLIGATIONS AND RESPONSIBILITIES

1. With respect to the Subcontract Work, Subcontractor agrees to be bound to Contractor by each and all of the terms and provisions of the Main Contract, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by the Main Contract assumed toward Owner. Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor, as Owner under the terms and provisions of the Main Contract, has against Contractor, with the same force and effect as though every such right and remedy were set forth herein in full. The terms and provisions of this Subcontract are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the Main Contract.

2. The provisions of this Subcontract and the Main Contract are intended to supplement and complement each other and shall, where possible, be true interpreted. In the event a conflict occurs between a provision in the Subcontract and the Main Contract that cannot be read to be complementary, then the interpretation that is more costly to or which imposes the greater duty upon the Subcontractor shall control, and if that guideline does not resolve the conflict, then the terms of this Subcontract shall control.

3. Subcontractor acknowledges the Subcontract Work may or may not be entirely contained in that division of work in the Main Contract where such work is customarily found. Subcontractor shall perform any work reasonably inferred from the description of Subcontract Work that may be located outside of its customary division in the Main Contract.

4. Subcontractor agrees to be bound by any applicable Project Labor Agreement.

5. Contractor has implemented a Safety Program (hereafter "Program") which shall apply to the Project. Subcontractor agrees that it, its employees and its lower tier subcontractors (which includes, but is not limited to, Sub-subcontractors, Vendors and Suppliers) and their employees shall be bound by the Program and any other program implemented by Contractor to benefit the health, safety and welfare of persons or property, and shall comply with all provisions thereof. However, nothing contained herein shall relieve Subcontractor of its obligations of implementing its own safety program and of its responsibilities towards its employees and lower tier contractors. In addition to fines imposed by Contractor for violations of the Program (as set forth in the Program), Subcontractor agrees to reimburse and indemnify Contractor from any fines imposed against Contractor based on actions or omissions of Subcontractor, its employees or lower tier Subcontractors. Subcontractor shall review and become knowledgeable about the Program which has been made and remains available to Subcontractor for review. Subcontractor shall include the provisions of this paragraph in every lower tier subcontract, and shall require its subcontractors to include it in their subcontracts so that such provisions will be binding upon each subcontractor and its employees at every tier. In the event of Subcontractor's noncompliance, this Subcontract may be cancelled, terminated, or suspended, in whole or in part.

6. Subcontractor shall furnish all tools, equipment, scaffolding, hoisting equipment, apparatus, ways, machinery and plant necessary to perform the Subcontract Work.

7. Subcontractor shall timely provide and pay for all engineering, testing, surveying, special inspections and instrumentalities as may be required by Owner or Contractor in connection with the performance of this Subcontract. Should Subcontractor fail to accomplish the foregoing on a timely basis, Contractor may perform said task and charge the account of Subcontractor for same.

B. COMPLIANCE WITH LAWS, RULES, REGULATIONS, ETC.

1. Subcontractor shall comply with all federal, state, county, municipal and local laws, codes, ordinances, rules, regulations, standards, orders, notices and requirements, including those relating to OSHA, fair employment practices, prevailing wage, equal opportunity, and discrimination on the basis of race, religion, sex or national origin (hereinafter "Laws"), without additional expense to Contractor. Subcontractor shall correct, at its own cost and expense, any violations thereof. Subcontractor shall require its suppliers and lower tier subcontractors to also comply with this requirement, and shall furnish such proof as Contractor may request to demonstrate compliance with such Laws.

2. All work, labor, services and materials to be furnished by Subcontractor must strictly comply with all applicable Laws now in force and hereafter placed in effect without any additional compensation.

3. Subcontractor agrees to indemnify and save Contractor, its surety, if any, and Owner harmless from and against any and all claims, loss, fines, penalties, or expense, including attorney fees and costs, caused directly or indirectly by its failure to fully comply herewith.

C. BOND

If Contractor should request a Bond, then Subcontractor shall furnish Bond to Contractor, within ten (10) days of request. Such performance and payment bonds shall be in a form and from a surety acceptable to Contractor in amounts equal to the Subcontract Price. The bonds shall be conditioned upon the full and faithful performance of all terms, provisions, and conditions of this Subcontract, and specifically upon payment for all labor, materials, equipment and supplies used in the performance of the Subcontract Work. Subcontractor shall be required to provide only the bonds described above within ten (10) days of receipt of a request therefore, and Contractor shall reimburse Subcontractor for reasonable bond premiums that result, provided, however, that in no event shall the reimbursement from Contractor for the bond premium exceed 2% of the Subcontract price.

D. SUBMITTALS, PERMITS, AS BUILT, ETC.

1. Subcontractor agrees to furnish Contractor suitable shop drawings, specifications, final selection of materials, and other specified items for approval by Owner or Architect sufficiently early so as to prevent delay to the progress of the Project.

EXHIBIT 6

11. INSPECTION AND DEFECTIVE WORK

1. Subcontractor shall at all times provide sufficient, safe and proper facilities in the field, at shops, or at any other place where materials or equipment for the Subcontract Work are in the course of preparation, manufacture, treatment or storage, for inspection by Contractor, Owner or their authorized representatives.

2. Within twenty-four (24) hours after receiving written notice from Contractor to that effect, Subcontractor shall proceed to take down all portions of the Subcontract Work, and remove from the job site all materials, whether worked or unworked, which the Owner or Contractor shall condemn as unsound, defective, or in any way failing to conform in this Subcontract or the Main Contract. Subcontractor, at its own cost and expense, shall replace the same with properly and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof.

12. JOB DAMAGE

Job damage caused by Subcontractor to work shall be reported immediately in writing to Contractor, and Subcontractor shall be responsible for the cost of its repair. Job damage to work caused by others shall be reported immediately in writing to Contractor.

13. HOUSEKEEPING AND SAFETY

1. Subcontractor shall remove all refuse, waste and debris produced by its operation on a daily basis. Subcontractor shall not permit its refuse to interfere with free access to the work site. In the event Subcontractor fails to remedy these cleanup obligations, refuse removal may be done by Contractor and charged against the Subcontractor.

2. Subcontractor shall legally dispose of all waste materials off site on a daily basis. Should Subcontractor leave empty boxes or crating on site which are subsequently used by others for waste disposal, Subcontractor will be held responsible for disposal of the boxes and their contents. Contractor will not be responsible for the disposal of Subcontractor's hazardous waste and will not provide a dumpster for Subcontractor's use.

3. Subcontractor shall conduct the Subcontract Work in a safe manner, shall comply with all safety measures initiated by Contractor or required by the Main Contract, and shall comply with all Laws relating to the safety of person or property. Subcontractor accepts responsibility to prevent accidents to workmen engaged upon or in the vicinity of the Project. Subcontractor shall be solely responsible for the protection and safety of its employees, for final selection of additional safety methods and means, and for daily inspection of its work area and safety equipment. When so ordered, Subcontractor shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken, and the Subcontractor agrees it shall not have or make any claim for damages growing out of such stoppages. Should Subcontractor fail to take such corrective measures, Contractor may attempt to remedy the condition at the cost and expense of Subcontractor and may deduct the cost thereof from any payments due or to become due Subcontractor. Failure on the part of Contractor to stop unsafe Subcontractor practices shall in no way relieve Subcontractor of its responsibility hereunder.

14. WARRANTY AND INDEMNITY

1. Subcontractor warrants the Subcontract Work and materials furnished hereunder to Contractor and Owner for one year from the Owner's final acceptance of the Project. ~~With respect to the Subcontract Work, Subcontractor shall assume all warranty obligations and responsibilities of Contractor under the Main Contract. In no event shall Subcontractor's obligation in this regard limit or affect Subcontractor's obligation and responsibility to correct or pay damages related to improper or defective Subcontract Work or materials. Subcontractor agrees to provide any special warranties required under the Main Contract or otherwise.~~

2. Subcontractor agrees to indemnify and hold Contractor harmless from any claims, demands, liability, loss or damages, including attorney's fees and costs arising or resulting from or related to any failure of Subcontractor to strictly comply with a term of this Subcontract. Subcontractor shall further indemnify, hold harmless and defend Contractor pursuant to Appendix 2 hereto.

15. FAILURE TO PERFORM

1. If for any reason, Subcontractor fails to start the Subcontract Work as requested by Contractor, or at any time refuses or fails to supply sufficient properly skilled workmen, proper material of the proper quality, or becomes unable in any other respect to perform or complete any portion of the Subcontract Work or commits any other breach of this Subcontract, it shall be in default of this Subcontract. In such event, then the Contractor, without prejudice to any other rights or remedies, may do all or any portion of the following: (a) Contractor may provide any labor and material which in Contractor's opinion are necessary to perform and satisfactorily complete the Subcontract Work by whatever method Contractor deems expedient, including the hiring of another subcontractor or subcontractors, and deducting the cost thereof, including Contractor's usual overhead, administrative expenses, and profit margin thereupon, from any payment due or thereafter to become due to Subcontractor. (b) Contractor may withhold further payments to the Subcontractor until the Subcontract Work is accepted by the Owner. (c) Contractor may terminate Subcontractor's right to proceed with the Subcontract Work or any part thereof, and perform the remaining work as provided above. This termination shall be effective upon three (3) calendar days notice, without any further notice required. (d) Contractor may, for the purposes of performing and completing the Subcontract Work, take possession of and use without cost all material, equipment and tools belonging to or under the control of Subcontractor. In that event, Contractor shall not be liable for the cost of depreciation nor for any damage occurring during reasonable use.

EXHIBIT 7

APPENDIX 3

PROJECT:

North City Apartments

SUBCONTRACTOR:

Hilltop Concrete Construction, LLC

SAFETY PRECAUTIONS AND PROGRAM

This Appendix 3 is hereby made a part of the Subcontract by and between Contractor and Subcontractor

1. The Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with his work per all applicable Federal and State OSHA rules and regulations.

2. SAFETY OF PERSONS AND PROPERTY

- A. The Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:
- All employees on the Work and all other persons who may be affected thereby;
 - All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site under the care, custody or control of the Subcontractor or any of its Sub-subcontractors; and
 - Other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.
- B. Subcontractor shall immediately notify Contractor in writing of any and all damage, injury or loss to any person, property, materials or equipment on the Project.

3. The Subcontractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

4. The Subcontractor, as pertains to his scope of work, shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards and equipment for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent properties.

5. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Subcontractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

6. The Subcontractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which Subcontractor is responsible, except damage or loss solely attributable to the acts or omissions of the Owner or Contractor or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable, and not attributable to the fault or negligence of the Subcontractor.

~~7. The Subcontractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Subcontractor's Site Supervisor unless otherwise designated by the Subcontractor in writing to the Contractor.~~

8. The Subcontractor shall not load or permit any part of the Work to be loaded or stored so as to endanger its safety or the safety of others.

9. In any emergency affecting the safety of person or property, the Subcontractor shall not prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Subcontractor on account of emergency work shall be determined as provided in Changes in the Work.

10. The Subcontractor warrants that all work to be performed and materials to be furnished and installed within the scope of this Subcontract shall comply with all federal, state, and local safety rules and regulations including but not limited to the Occupational Safety & Health Act of 1970 or the equivalent laws of the state where its work is performed.

11. The Subcontractor agrees to indemnify and hold the Contractor harmless from any loss including but not limited to any fines, penalties, and corrective measures Contractor may sustain by reason of Subcontractor's failure to comply with all safety related laws, rules, and regulations.

12. The Subcontractor warrants that the Contractor shall be immediately informed of any hazardous substances contained in any materials to be used or installed under the terms of this Subcontract so that the Contractor may carry out the requirements of the Right-to-Know Act with its employees.

EXHIBIT 8

Description of Work	Cost Code	Description	Amount
36. Mix design submittals for approval no later than July 31, 2012.			
37. Reinforcing steel shop drawing submittals for approval no later than August 7, 2012.			
38. Post tensioning shop drawing submittals for approval no later than August 14, 2012.			
39. Daily clean-up as required to maintain a safe and orderly jobsite.			
40. Disposal of debris into Inland supplied dumpster.			
41. Haul off and disposal of any concrete rubble generated by corrective work.			
42. Furnish and install plastic safety caps on vertical rebar as required.			
43. Any sloped concrete surfaces shall comply with all ADA, Fair Housing, and ANSI requirements.			
44. W.I.S.H.A. Compliance. This subcontractor shall comply with all health and safety requirements.			
45. Subcontractor shall mark-up the post-tension cable shop drawings for any changes in final placement location.			
46. Subcontractor shall adhere to project schedule and coordinate all onsite activities with Inland's superintendent.			
47. A competent english speaking representative shall be on site daily. This individual shall attend weekly meetings and shall be authorized to make field decisions.			
48. Subcontractor shall be responsible for storage and protection of all materials provided by this subcontractor.			
49. Extras, changees, and backcharges will not be accepted unless subcontractor receives approval from the project manager or a work order from the Superintendent prior to performing the work.			
50. Compliance with Specification-00800 - Evergreen Checklist.			

The following items are specifically EXCLUDED from this agreement:

1. Washington State Sales Tax
2. Furnish steel embeds (unless specifically included above)
3. Site concrete (curbs, walks, ramps, etc.)
4. Storm vault construction.
5. Permit Fees
6. Special Inspection Fees

Subcontractor acknowledges that it will provide a punch crew in addition to any and all crews normally associated with the subcontractor's Scope of Work, in order to maintain the job completion schedule.

In order to assure job safety and a smooth running project the Subcontractor agrees that its Site Supervisor will be able to read and speak English fluently.

Leave the jobsite in a clean condition at the end of each workday and properly dispose of all debris onsite.

Coordinate all onsite activities with jobsite Contractor's Superintendent and adhere to schedules established by same.

All work shall be inclusive of and performed in strict accordance with all applicable codes, the contract plans and specifications, and manufacturer's instruction, IN THEIR ENTIRETY, including all contract Documents listed in all Appendices and the Contractor's construction schedules (initial and updated versions).

Subcontractor shall provide all services necessary for the performance of Subcontractor's work unless expressly excluded.

Subcontractor expressly excludes:

PRIOR TO STARTING WORK, THE FOLLOWING SHALL BE PROVIDED TO CONTRACTOR:

1. Subcontractor's Information sheet
2. Subcontractor's List of Suppliers and Subcontractors
3. Certificate of Insurance:

PRIOR TO PAYMENTS, THE FOLLOWING SHALL BE PROVIDED TO CONTRACTOR:

1. All items above
2. Payment requests on Inland's Application
3. Lien Waivers

JOB-SPECIFIC REQUIREMENTS:

1. Subcontractor shall attend all Safety Meetings
2. Subcontractor shall attend on-site Job Meetings upon Request.

EXHIBIT 9

compliance within the contract documents shall be brought to the attention of Inland construction before proceeding with installation.

G.) Quality Management

1. QC Program - Subcontractor is responsible for implementing its own quality control program. This program shall at a minimum be written document containing: A. Identify on-site person responsible for execution of QC program. B. Description of different scopes of work to be completed by subcontractor and methods for ensuring work is installed per the contract documents. C. Written tracking system that will be copied to Inland at the completion of any QC activities noting deficiencies and date for correction.

H.) Project Completion:

1. Testing and Start-up - Subcontractor shall provide for the testing, start-up, and commissioning of equipment furnished and /or installed by the subcontractor including Inland and owner furnished equipment.
2. Final Clean - Each subcontractor will be responsible for final clean up of the items installed by the subcontractor to a dust free condition and coordinated with Inland to minimize rework, includes removing any temporary protection or packaging.
3. Training - Subcontractor is responsible for coordinating and delivering an owner training session for any equipment installed under the scope of work that is either requested in the contract documents or requires special product knowledge to operate.
4. Completion List - A "completion list" will be generated by this subcontractor at completion of significant phases of the project or as determined by Inland detailing remaining items left unfinished for the predefined area. Subcontractor will submit this list to Inland for review and approval and have 7 calendar days (or be notified if less) to complete these activities. Should the subcontractor fail to complete these activities, Inland shall have the right to complete these activities and back charge the subcontractor for cost incurred. Should the Subcontractor not generate a completion list, Inland will compile the completion list for the subcontractor and back charge the subcontractor for its efforts.
5. Punch List - A punch list will be generated by the owner and architect at the completion of significant phases of the project or as determined by Inland detailing remaining items not completed per the contract documents for the predefined area. Inland will distribute this list to subcontractors with a 7 calendar day completion duration. Subcontractor shall have adequate manpower available to complete these activities without impacting the projects critical path schedule as it applies to other areas of the site and phased construction activities. Should the subcontractor fail to complete these activities, Inland shall have the right to complete these activities and back charge the subcontractor for cost incurred.
6. Final Payment & Retention Release - Final payment and retention will not be released until the following list of items are completed:
 - a. Final statement of contract value
 - b. Change orders fully executed
 - c. All warranties submitted correctly
 - d. As-builts
 - e. Operation & Maintenance Manuals
 - f. Extra stock
 - g. Owner training
 - h. Punch list & Completion list activities
 - i. Insurance requirements current
 - j. Reconciliation of all back charges
 - k. Statement of paid invoices
 - l. Fully executed unconditional waiver

I.) Safety - In addition to those requirements set forth in Appendix 3, subcontractor shall comply with the following:

1. Empowerment - Subcontractor shall empower its employees to stop work anytime they recognize an unsafe condition whether their work or another trades.

2. **Responsibility** – Subcontractor shall be responsible for the health and safety of its employees.
3. **Personal Protection** – Subcontractor shall provide its field work force with proper protection which shall conform to all applicable laws and safety codes relating to the safe completion of their work. Hard hats and safety glasses shall be worn at all times by all employees.
4. **First Aid** – Subcontractor will provide a first aid trained employee on site at all times. Subcontractor shall supply necessary first aid facilities and supplies for their own employees.
5. **Safety Meetings** – Subcontractor shall conduct one safety meeting with its employees per week, document topic and attendance, and submit to Inland.
6. **Fall Protection** – Subcontractor shall comply with 100% tie off above 6'-0".
7. **Safety Barriers** – Subcontractor will replace any safety barriers it removes to complete its work immediately after its work is complete. If a subcontractor creates a hazard, it is responsible for safing off that hazard.
8. **Safety Plan** – Subcontractor is responsible for creating and implementing its own written safety plan in compliance with all state and federal regulations and presenting a copy of this plan to Inland before mobilization.
9. **Hazard Communication Program** – Subcontractor is responsible for creating and implementing its own written Hazard Communication Program in compliance with all state and federal regulations and presenting a copy of this plan to Inland before mobilization.
10. **MSDS** – Subcontractor shall submit MSDS sheets to Inland for all material brought onto the project site prior to the start of affected work.
11. **Enforcement** – Subcontractor shall be responsible for enforcing relevant portions of the safety provisions required by the contract documents, Inland's safety plan, and its own safety plan.
12. **Removal** – Should the GC be required to remove any of subcontractors employees for safety violations it shall be the subcontractors responsibility to immediately replace the production loss at its cost.
13. **Fines** – Subcontractor shall be responsible for payment of all fines and or claims for damages levied against the Owner, Architect or Inland for safety deficiencies relating to the conduct of subcontractors work.

S/S

EXHIBIT 10

2. Subcontractor agrees to furnish Contractor complete operational and maintenance manuals, as built, and spare parts in such quantities and format as may be required by the Main Contract. Delivery to Contractor shall be prior to Subcontractor's substantial completion, prior to release, and sufficiently early so as to prevent delay to the completion of the Project. The as built shall be updated on a daily basis throughout the project.

E. LOWER TIER CONTRACTORS

Prior to starting, Subcontractor shall list, in writing to Contractor, all lower tier subcontractors it intends to use, subject to Contractor's approval, which approval shall not be unreasonably withheld, and it shall not subsequently change such lower tier subcontractors without Contractor's prior written approval. Subcontractor shall bind any lower tier subcontractor to Subcontractor in the same manner as Subcontractor is bound to Contractor, and as Contractor is bound to Owner.

F. NATURE OF WORK

1. Subcontractor has carefully examined and understands the Main Contract; has satisfied itself as to the nature and location of the Subcontract Work, the character, quantity and kind of conditions to be encountered, and the character, kind and quality of the equipment needed to perform and complete the Subcontract Work; has visited and familiarized itself with the location, conditions and other matters visible at the job site which can in any manner affect the Subcontract Work; and here acknowledges it has had reasonable opportunity to complete same. Subcontractor has signed this Subcontract on the basis of the foregoing, and not in reliance upon any opinion or representation by Contractor or others.

2. Prior to commencing work, Subcontractor shall notify Contractor in writing of any conditions which might adversely affect its work; failure to do so shall constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions.

3. Subcontractor shall regularly check the correctness of contiguous work installed by others, and its failure to promptly detect or report any discrepancies to Contractor before proceeding shall preclude Subcontractor from recovery for any resulting cost, expense or damage.

G. SCHEDULING/TIME OF COMPLETION

1. Time is of the essence in this Subcontract.

2. If this Subcontract is governed by prevailing wage laws, an Intent to Pay Prevailing Wages form obtained from Contractor, must be completed, signed, notarized and returned to Contractor with a check payable to the applicable agency. No pay request will be processed until the completed form has been approved by the state or a federal agency, where applicable.

3. In establishing the Schedule, Contractor shall accept input from Subcontractor regarding developing and updating the construction schedule, but retains the right to decide the time, order and priority in which the various portions of the Project shall be performed. The schedule and any revisions thereto are available to Subcontractor for review. Subcontractor shall promptly provide Contractor with any requested scheduling information, including periodic projections of its anticipated progress on the Subcontract Work and anticipated delivery dates for materials or equipment that may be in the course of preparation or manufacture.

4. Contractor shall give Subcontractor advance notice of the anticipated starting date for Subcontract Work. Subcontractor shall start the Subcontract Work on the date established by Contractor, and shall complete it at such times as may be scheduled by Contractor.

5. Subcontractor shall perform the Subcontract Work as it becomes available in a manner that, in the Contractor's opinion, benefits the overall Project schedule. Subcontractor agrees to cooperate with and coordinate its efforts with Contractor and other subcontractors whose work may interfere with the Subcontract Work. Subcontractor shall participate in the preparation of coordination drawings and work schedules as may be required by Contractor in cases of congestion, specifically noting and advising Contractor in writing of any interference by others. Should Subcontractor fall behind, it shall take necessary action to meet and maintain job progress without additional compensation, and shall be liable to and reimburse Contractor for all damages resulting from or related to any delay.

6. Subcontractor shall comply with any written instructions given by Contractor, including instructions to suspend, delay or accelerate Subcontract work.

7. Subcontractor assumes toward Contractor responsibility to pay such liquidated damages as may be provided for in the Main Contract. Subcontractor shall pay such damages directly or by check to the extent any delay is caused, in whole or in part, by Subcontractor, which payment shall be in addition to any other claim Contractor may have for damages caused by Subcontractor's delay.

8. The Contractor shall establish the normal business hours on the Project. No work shall be allowed at the project site after normal business hours without first securing the express written permission of Contractor. Any work permitted after normal working hours shall be pre-approved by Contractor, and subject to the following terms and conditions: (a) Subcontractor shall compensate Contractor for any of Contractor's supervisor's time spent supervising Subcontractor's after-hours performance. (b) Upon demand by the Contractor, the Subcontractor shall compensate Contractor or Owner for any additional costs incurred by the Contractor or Owner as a result of after-hours performance. (c) At the sole option of Contractor, Contractor may allocate the costs detailed in (a) and (b) above among two or more subcontractors. (d) The approval of after-hours work is at the sole discretion of Contractor. Contractor may withdraw or terminate that approval at any time. Such withdrawal or termination shall not create a cause of action against Contractor and Subcontractor acknowledges it shall retain the right to continue to work after-hours thereafter.

EXHIBIT 11

1 Q Did Ralph's contract directly with Hilltop?
 2 MR WALLACE Object to form.
 3 A Yes
 4 Q Was Inland ever involved in choosing or approving Ralph's
 5 Concrete as the subcontractor?
 6 MR WALLACE Object to form.
 7 MR HANSEN Object to form
 8 A No
 9 Q Did Hilltop ever have any problems with Ralph's in the past
 10 regarding either quality or safety?
 11 MR WALLACE Object to form.
 12 A No
 13 Q Do you know anything about any accidents or injuries other
 14 than this one --
 15 Let me strike that.
 16 Does Hilltop know anything about accidents or injuries
 17 on any job that Ralph's was involved with?
 18 MR WALLACE Object to form. I don't know if I
 19 understand it.
 20 A I have not heard that they've had accidents on other jobs.
 21 They're a concrete pumping company, so you know -- I don't
 22 know
 23 Q Who at Ralph's was on this project?
 24 A I don't know the name of the operator.
 25 Q Do you know the names of anybody at Ralph's?

1 MR MOORE Yes
 2 Q Who built those forms?
 3 A Hilltop
 4 Q Do you know if there was anybody else involved in the
 5 building of the forms?
 6 A No.
 7 Q Is that no, you don't know, or no, there were no others?
 8 A There was no others.
 9 Q You talked about Concrete NorWest. I understand that
 10 that's a trade name of Miles Sand & Gravel. Is that your
 11 understanding?
 12 A It's not a trade name. It's just another company of Miles.
 13 Q And what was Concrete NorWest's role in the project?
 14 A Supply concrete
 15 Q Who did they contract with?
 16 A Hilltop
 17 Q And what was Concrete NorWest's contract to supply?
 18 MR WALLACE Object to the form.
 19 MR HICKS Asked and answered
 20 A I think I've already answered that Concrete
 21 Q How did Hilltop choose Concrete NorWest?
 22 A I liked the salesman
 23 Q Who was the salesman?
 24 A His name is Dan Nelson That wasn't the real reason. I was
 25 just joking The real reason was because of price.

1 A Yes
 2 Q Who?
 3 A Well, from what I understand the name of the owner is Skip,
 4 the name of the manager is Tim, my salesman is Jacob
 5 Q Do you know their last names?
 6 A Tim is -- I don't believe I do, no
 7 Q Is there any Ralph at Ralph's Concrete?
 8 A Not that I know of
 9 Q Do you know where they get that name?
 10 A I have no idea
 11 Q So other than Skip, Tim, and Jacob, do you know anybody else
 12 at Ralph's Concrete Pumping?
 13 A Off the top of my head, no. Skip's got several kids that
 14 work there. Those are the people that I work with
 15 Q What was Ralph's scope of work on this project?
 16 A I think I've covered that, but it was to pump concrete from
 17 the street to the forms
 18 Q What forms?
 19 A These forms (indicating)
 20 Q You're pointing at the wooden forms to the left on Exhibit
 21 2; is that right?
 22 A Correct
 23 MR HANSEN. Can I interrupt to ask a question?
 24 Are the copies that we have, are they in the same order of
 25 what the exhibit is?

1 Q Did you put it out for bid?
 2 A We don't really put anything out for bids. We call people
 3 and ask for prices.
 4 Q And did Concrete NorWest have the lowest price?
 5 A I don't remember if they had the lower price or if I
 6 squeezed them down to the point that they had the lower
 7 price.
 8 Q At the end of it they had the lowest price?
 9 A Yes
 10 Q Had you worked with them on any previous jobs?
 11 A Yes.
 12 Q How many?
 13 A Many. I don't know. We work with them a lot.
 14 Q Do you remember when you first worked with them?
 15 A No
 16 Q What year, estimate?
 17 A Maybe '05 or '04. I don't know.
 18 Q How much work does Hilltop do with them?
 19 A I don't know. We do a lot
 20 Q Are there other suppliers that you use?
 21 A Yes.
 22 Q Who else do you use?
 23 A We've used Salmon Bay. Well, we've used them all. You're
 24 going to ask when we've used them. In the past five years
 25 we've used Salmon Bay, we've used CalPortland. I think

EXHIBIT 12

1 A 2012
 2 Q The incident happened in May of 2013.
 3 A Then it wasn't 2012. Okay, let's try 2013.
 4 Q So just last year? It's 2014 now. Last year was 2013. Was
 5 Hilltop still on the job last Thanksgiving?
 6 A I don't think so.
 7 MR. WALLACE: And I don't want to interrupt, but
 8 given the corrected date, does that change when this job
 9 began? Did it still begin in the summer of 2011 or were you
 10 a year off on that?
 11 THE WITNESS: I was a year off, yeah.
 12 MR. WALLACE: Thank you.
 13 Q So it started maybe in the summer of 2012?
 14 A Yes.
 15 Q So do you know if it was winter or fall of 2013 when
 16 Hilltop's role in the project stopped?
 17 A I would say it was probably fall. It could have been
 18 summer. Fall comes right after summer, so it's probably in
 19 there someplace.
 20 Q Are you sure it wasn't winter?
 21 A I was out of town last week. It's kind of hard for me to
 22 remember a whole lot.
 23 Q Did Hilltop finish all the work that it was initially
 24 brought on to do?
 25 A Yes.

1 were in the vicinity of the incident when it happened?
 2 A No.
 3 Q Did Hilltop hire any subcontractors on this project?
 4 A We did.
 5 Q Who?
 6 A We hired Ralph's to pour the concrete, we hired Bulwark to
 7 place the rebar and tendons, and we hired a finisher named
 8 LangCo, L-a-n-g-C-o.
 9 Q So what did Bulwark do?
 10 A They placed the rebar and tendons.
 11 Q And what did LangCo do?
 12 A They were the flat workers. They poured the slabs.
 13 Q Other than Ralph's, did any other Hilltop subcontractor do
 14 any work on the project at the time of the incident?
 15 A Well, the supplier was Concrete NorWest. I don't know if
 16 you think of them as a subcontractor, and Inland was there,
 17 and then the inspection agency.
 18 Q Did the supplier have people on the site at the time?
 19 A Yes.
 20 Q Do you know who was there?
 21 A I don't know names.
 22 Q The inspection agency, who was that?
 23 A I don't know.
 24 Q Was that somebody from L & I?
 25 A No, this is an independent inspection agency that inspects

1 (Recessed 11:08 a.m. to 11:13 a.m.)
 2 Q Other than Hilltop, how many other subcontractors were on
 3 the North City Apartment job that you know of?
 4 A I would have no idea to how many.
 5 Q How many can you think of?
 6 A There could be ten or more. How many contractors does it
 7 take to build a house? You've got plumbers, electricians.
 8 I have no idea.
 9 Q How many do you recall being on the site at the same time
 10 that Hilltop was working?
 11 A Well, you would have a plumber, an electrician, you'd have
 12 sprinkler, depending on what you put in the slab whether you
 13 have conduits for securities. I have no idea.
 14 Q How about in May of 2013 around when the incident happened?
 15 A I'm going to give you the same answer. I don't have a clue.
 16 I don't know.
 17 Q But there were several other contractors for different
 18 trades on the site at that time, is that accurate?
 19 A When the accident happened it was pretty much just our
 20 company in that area.
 21 Q Do you know of any other companies that were near that area
 22 at that time?
 23 A I'm sure there's people from the plumbers, electricians,
 24 things like that. I just don't know.
 25 Q But you don't know of anybody other than Hilltop people who

1 the rebar and concrete.
 2 Q Do you remember the name of the agency?
 3 A No, I don't.
 4 Q Do you know who hired them?
 5 A Inland.
 6 Q Inland Group or Inland Washington?
 7 MR. HANSEN: Object to the form.
 8 A I don't know.
 9 Q You said you've done two other projects with Inland?
 10 A No, I said I've done several others.
 11 Q Several others?
 12 A Yes.
 13 Q How many others have you done with Inland?
 14 A I don't count them. I might have done a dozen buildings for
 15 them.
 16 Q What percentage of Hilltop's work is done for Inland?
 17 MR. HICKS: Objection to the form. Do you mean
 18 what percentage of Inland is Hilltop or what percentage of
 19 Hilltop -- I'm confused what you're talking about. Whose
 20 percentage to whom?
 21 Q What percentage of Hilltop's work comes from Inland?
 22 A That's impossible for me to say. Inland is our biggest
 23 client, but the percentage like in '08 and '09 was zero, but
 24 in the last couple years it's been, I'd say, most of it. It
 25 just depends what year.

1 Q So in the last couple of years?

2 A Last two years.

3 Q You say most. Is that 51 percent or over 90 percent?

4 A Eighty percent. It's just a guess.

5 Q But more than three-fourths of your business comes from

6 Inland over the last two years; is that accurate?

7 A Well, it just depends what years you're talking about.

8 Right now we're not working for them, so that would be zero.

9 Back in '08 '09 it was zero. If you're talking about 2012,

10 2013, the percentage grows, so it's impossible for me to

11 tell you.

12 Q So is the most work that you were doing for Inland in 2012

13 to 2013?

14 A That was the highest dollar amounts, but that was mainly

15 because we were doing a couple of jobs at the same time for

16 them.

17 Q How about in 2010 or 2011, how much work were you doing for

18 Inland?

19 A You're asking for dates and I can't give you dates. I think

20 in '07 we were doing some work in the Shoreline area for

21 them, and between '07 and like 2012 I think we did two other

22 projects for them.

23 Q And you say now you're doing no work for Inland?

24 A Right. The jobs are completed. That's not true. We might

25 be doing a little bit of punch list clean-up work on one job.

1 Q What companies were involved in the concrete work at the

2 time of the incident in May of 2013?

3 A Well, it's just our company, which included Ralph's and

4 NorWest.

5 Q And any other companies?

6 A Well, there was a testing lab.

7 Q Who was the testing lab?

8 A You asked me that. I don't know.

9 Q Who hired the testing lab?

10 A Inland.

11 Q And what was the testing lab testing for?

12 A It's an inspection. They inspect the rebar and they test

13 the concrete for quality and they inspect to make sure

14 you're pouring properly.

15 Q And did the testing lab, did they have somebody out on the

16 job site?

17 A Like I said, they were there.

18 Q Do you know when they were there?

19 A During the pouring.

20 Q But you don't remember any names?

21 A I do not.

22 Q How about Inland? Did Inland have any involvement in the

23 pour at the time of the incident?

24 MR WALLACE: Object to the form.

25 MR HANSEN: Join.

1 for them.

2 Q Do you know why you're not doing much work for Inland now?

3 A They were busy doing the jobs that we were doing and I

4 didn't want to go to Olympia.

5 Q Did they say they had work for you or concrete work to be

6 done in Olympia?

7 A No, they just had a job for me to bid.

8 Q Did you bid on the Olympia job?

9 A No.

10 Q Did anyone from Inland ever tell you that you were not

11 welcome to bid on their jobs anymore?

12 A No.

13 Q Other than Ralph's Concrete, and Concrete NorWest, Inland

14 Group, and Hilltop, were there any other companies involved

15 in the concrete work at the time of the incident?

16 MR HANSEN: Object to the form the question.

17 That's not correct.

18 MR MOORE: I'll ask it this way.

19 MR HANSEN: You've seen the subcontract, haven't

20 you?

21 MR MOORE: I'm asking him. He's the witness.

22 He's testifying, I'm not.

23 MR HANSEN: Yes, you are.

24 MR MOORE: Let me restate the question. I'll try

25 to accommodate.

1 A Inland did not have anybody involved in the pouring.

2 Q What was Ralph's Concrete Pumping's involvement in the

3 project?

4 A Ralph's Concrete Pumping was there to pump the concrete.

5 Q Describe in as much detail as possible what they were

6 brought on to do.

7 MR WALLACE: Object to the form.

8 A They were to pump the concrete from the street up and into

9 the forms.

10 Q And what equipment did they bring to do their part of the

11 job?

12 MR WALLACE: Object to the form.

13 Q If any.

14 A That picture right there (indicating).

15 Q You're pointing to the truck shown in Exhibit 2?

16 A I am.

17 Q Do you know if that was owned by Ralph's Concrete Pumping or

18 if they got it from someone else?

19 A That's not for me to know.

20 Q But that truck was something that Ralph's brought on to the

21 site?

22 A Like I said, that was what they brought.

23 Q How did Ralph's get this job?

24 A How did they get this job? They're just a concrete pumping

25 company that's been pumping for me for many, many years.

1 Q Did Ralph's contract directly with Hilltop?
 2 MR WALLACE Object to form
 3 A Yes
 4 Q Was Inland ever involved in choosing or approving Ralph's
 5 Concrete as the subcontractor?
 6 MR WALLACE Object to form
 7 MR HANSEN Object to form
 8 A No
 9 Q Did Hilltop ever have any problems with Ralph's in the past
 10 regarding either quality or safety?
 11 MR WALLACE Object to form
 12 A No
 13 Q Do you know anything about any accidents or injuries other
 14 than this one --
 15 Let me strike that.
 16 Does Hilltop know anything about accidents or injuries
 17 on any job that Ralph's was involved with?
 18 MR WALLACE Object to form I don't know if I
 19 understand it
 20 A I have not heard that they've had accidents on other jobs.
 21 They're a concrete pumping company, so, you know -- I don't
 22 know.
 23 Q Who at Ralph's was on this project?
 24 A I don't know the name of the operator.
 25 Q Do you know the names of anybody at Ralph's?

1 MR MOORE Yes
 2 Q Who built those forms?
 3 A Hilltop
 4 Q Do you know if there was anybody else involved in the
 5 building of the forms?
 6 A No.
 7 Q Is that no, you don't know, or no, there were no others?
 8 A There was no others.
 9 Q You talked about Concrete NorWest. I understand that
 10 that's a trade name of Miles Sand & Gravel. Is that your
 11 understanding?
 12 A It's not a trade name. It's just another company of Miles.
 13 Q And what was Concrete NorWest's role in the project?
 14 A Supply concrete
 15 Q Who did they contract with?
 16 A Hilltop
 17 Q And what was Concrete NorWest's contract to supply?
 18 MR WALLACE Object to the form
 19 MR HICKS Asked and answered
 20 A I think I've already answered that. Concrete
 21 Q How did Hilltop choose Concrete NorWest?
 22 A I liked the salesman
 23 Q Who was the salesman?
 24 A His name is Dan Nelson. That wasn't the real reason. I was
 25 just joking. The real reason was because of price.

1 A Yes
 2 Q Who?
 3 A Well, from what I understand, the name of the owner is Skip,
 4 the name of the manager is Tim, my salesman is Jacob
 5 Q Do you know their last names?
 6 A Tim is -- I don't believe I do, no.
 7 Q Is there any Ralph at Ralph's Concrete?
 8 A Not that I know of.
 9 Q Do you know where they got that name?
 10 A I have no idea.
 11 Q So other than Skip, Tim, and Jacob, do you know anybody else
 12 at Ralph's Concrete Pumping?
 13 A Off the top of my head, no. Skip's got several kids that
 14 work there. Those are the people that I work with.
 15 Q What was Ralph's scope of work on this project?
 16 A I think I've covered that, but it was to pump concrete from
 17 the street to the forms.
 18 Q What forms?
 19 A These forms (indicating)
 20 Q You're pointing at the wooden forms to the left on Exhibit
 21 2; is that right?
 22 A Correct
 23 MR HANSEN: Can I interrupt to ask a question?
 24 Are the copies that we have, are they in the same order of
 25 what the exhibit is?

1 Q Did you put it out for bid?
 2 A We don't really put anything out for bids. We call people
 3 and ask for prices.
 4 Q And did Concrete NorWest have the lowest price?
 5 A I don't remember if they had the lower price or if I
 6 squeezed them down to the point that they had the lower
 7 price.
 8 Q At the end of it they had the lowest price?
 9 A Yes
 10 Q Had you worked with them on any previous jobs?
 11 A Yes.
 12 Q How many?
 13 A Many. I don't know. We work with them a lot.
 14 Q Do you remember when you first worked with them?
 15 A No.
 16 Q What year, estimate?
 17 A Maybe '05 or '04. I don't know.
 18 Q How much work does Hilltop do with them?
 19 A I don't know. We do a lot.
 20 Q Are there other suppliers that you use?
 21 A Yes.
 22 Q Who else do you use?
 23 A We've used Salmon Bay. Well, we've used them all. You're
 24 going to ask when we've used them. In the past five years
 25 we've used Salmon Bay, we've used CalPortland. I think

EXHIBIT 13

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1 Q So of all the named insured on Exhibit 6, Ralph's Concrete
 2 Pumping, Inc., is the only company that actually provides
 3 rental pumps and operators to contractors?
 4 A Correct
 5 (Exhibit 7 marked for identification)
 6 Q Mr. Henson, I've handed you a document labeled Exhibit 7.
 7 Do you recognize this certificate?
 8 A Yes
 9 Q What is this?
 10 A It would appear to be the certificate of insurance that we
 11 provided to Hilltop Construction
 12 Q And do you know who asked you to procure this certificate of
 13 insurance for Hilltop?
 14 A Do I know who asked us to procure it?
 15 Q Yes
 16 A I would assume it's Gordon Skoog, but I'm not sure
 17 Q So as we sit here today you can't recall specifically
 18 anybody saying to you, Tim Henson, procure insurance for
 19 Ralph's for a project?
 20 A No
 21 Q Is there someone in your company, Ralph's Concrete, that
 22 handles obtaining certificates of insurance on behalf of
 23 other contractors?
 24 A Yes
 25 Q Who would that be?

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1 A Kathy Brader requests all the insurance certificates from
 2 our insurance company
 3 Q And if you look toward the bottom of the page there's a box
 4 that says, Description of Operations, Locations, Vehicles.
 5 Do you see that?
 6 A Yes
 7 Q And then it says Projects, North City Apartments and Vintage
 8 at Ash Bay?
 9 A Ash way
 10 Q Ash way. I'm sorry.
 11 A Yes
 12 Q Do you know the Vintage at Ash Way project at all?
 13 A No
 14 Q Do you know the North City Apartments?
 15 A I would assume that's the one where the incident occurred.
 16 Q And then beneath that it says, Hilltop Concrete
 17 Construction, LLC, and Inland of Washington are named as
 18 additional insureds as required by written contract. Do you
 19 see that?
 20 A Un-huh
 21 Q Do you know what written contract that statement refers to?
 22 A No. There is none. I mean between Ralph's and us. There
 23 may be a contract between Hilltop and Inland.
 24 Q Mr. Henson, before you is a subcontract agreement, and
 25 before we have it marked or further described, I want to ask

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1 if you've ever seen this subcontract agreement before?
 2 A I don't believe so, no
 3 Q Has anybody ever described the contents of this subcontract
 4 agreement to you?
 5 A No
 6 Q So as we sit here today, as far as you know this is the
 7 first very first time you've ever seen the subcontract
 8 between Hilltop Concrete Construction and Inland Washington
 9 for the North City apartments?
 10 A Yes
 11 MR CHAWES: Unless somebody wants it marked, I
 12 don't see the need
 13 (Exhibit 8 marked for identification)
 14 Q Mr. Henson, I've handed you what's been marked as Exhibit
 15 Number 8, a rental agreement. Do you recognize this
 16 document?
 17 A I do
 18 Q What is it? Could you describe it?
 19 A It's a our daily rental agreement. This one specifically
 20 was for the job that involves this incident between us and
 21 Hilltop Concrete
 22 Q Can you tell us what the job date is for this particular
 23 rental agreement?
 24 A This says 05/23/2013
 25 Q Is that how you recognize it as the rental agreement for the

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1 day of the incident or is there other information?
 2 A Well, that and no concrete was pumped, and the note at the
 3 bottom saying the job was canceled due to incident at site.
 4 Q So is it typical that your rental agreements were basically
 5 on a daily basis between Ralph's Concrete and Hilltop?
 6 A Yes
 7 Q Were the rental agreements the same in terms of the terms
 8 and conditions every single day that you provided equipment
 9 and an operator to Hilltop?
 10 A Yes
 11 Q So is it correct if we look at page two of Exhibit 8,
 12 general conditions of rental agreement --
 13 A Yes
 14 Q -- would it be correct to say that what we see on this page
 15 is essentially the same general conditions every single day
 16 for provision of an operator and equipment between Ralph's
 17 and Hilltop?
 18 A Yes
 19 Q Let me ask it another way. Had you worked with Hilltop --
 20 had Ralph's worked with Hilltop prior to the start of the
 21 North City project?
 22 A Yes
 23 Q Did you for those particular instances also provide the same
 24 rental agreement to Hilltop?
 25 A Our relationship with Hilltop goes back a long, long time.

EXHIBIT 14



RENTAL AGREEMENT

1829 RAINIER AVENUE SOUTH
SEATTLE, WA 98144
(206) 326-8988

Job Date: 05/23/2013
Work Order #243128
Unit Number: 208
Time on Job: 00:00
Concrete Time: 00:00

Billing Address

HILLTOP CONCRETE CONSTRUCTION LLC
PMD 111
ARLINGTON WA 9023

Site Address

NORTH CITY APARTMENTS
1320 NE 176TH ST
SHORELINE WA 98133

Handwritten: JAW 2/8/22

Size Requested: 47	Employee: TONHOW	ROYALTY CONCRETE NORTHWEST
Size Sent: 47		Phone 206-691-6014
Plant Type: COLUMN WALLS	Est. Yards: 95.00	

STUCK / DAMAGE WAIVER

I ACCEPT RESPONSIBILITY FOR ALL EXPENSES ASSOCIATED WITH REMOVAL OF PUMP FROM THE JOBSITE IN THE EVENT IT BECOMES STUCK.
SIGNATURE _____ DATE _____

I ACCEPT RESPONSIBILITY FOR ANY DAMAGE CAUSED TO -

RECEIVABLE	APPROVAL	DISCOVERY	OTHER
------------	----------	-----------	-------

COMMENTS _____ SIGNATURE _____ DATE _____

JOBSITE INCIDENT REPORT

DATE & TIME OF INCIDENT: _____

TYPE OF INCIDENT (Check One):
 Personal Injury Property Equipment

DESCRIBE INCIDENT: _____

_____ SIGNATURE _____ DATE _____

IF IT'S DANGEROUS DON'T GO IN! ADVISE THE CHIEF OF THE PROBLEM!

Handwritten: 15

Handwritten: WDM

Arrive Job: 7:00 Leave Job: 12:00 Yards: 1.00 Mileage: _____

I have paid the terms and conditions, on the reverse side, and understand and accept them. I have noted the critical time, departure time and pump stop and accept these. I am aware of my safety responsibilities per the terms and accept them. I understand that I am renting equipment, and if any equipment is supplied by the client, the operator is a trained service under my direction and control. Any liability arising from this Rental Agreement represents and restricts that liability to of negligence and has authority and power in sign this Rental Agreement for or on behalf of the Operator.

Signature: _____ Date: 5/23/13 Time: _____

Map Code:
Directions:

System Required:

Comments:

Lot / Job #s: Job Cancelled Due to Incident at Site

CUSTOMER ACKNOWLEDGES OFF SITE CLEAN-UP CHARGE OF:
\$ _____ X _____

BACK CHARGES NOT TO EXCEED PRICE OF PUMP FOR THE DAY

EXHIBIT	8
WT:	Zhang
DATE:	1-20-15
ELAINE RIPPEN, CCR	

GENERAL CONDITIONS OF RENTAL AGREEMENT

Definitions: Company/Lessor is Ralph's Concrete Pumping Inc. Customer/Lessee is Rental Agreement Customer.

- (a) Company is not responsible for damage to any property. Company is not responsible for any delays including those caused by improper scheduling of trucks, changes in gradation of aggregate or incorrect batching of concrete. Company is solely leasing equipment _____ with _____ without operator.
- (b) If company-supplied operator handles rented equipment, operator will make every effort to place material when, where and how customer designates, but company is not responsible and is not liable for any damage or loss sustained by customer or any third party due to mechanical failure, equipment breakdown or improper placing of material.
- (c) Rental rates stated on this agreement is for the lease of the equipment rental and the provision of a qualified operator. If customer supplies operator, rate will be reduced by \$30.00 per hour. Yardage charge is for the volume of material actually being consumed by the lessee in the course of the operation of the rented equipment.
- (d) Customer agrees to pay all charges on or before the tenth day of the month following the date of the invoice. Charges in excess of the tenth day of the month following the date on this invoice shall bear interest at the rate of 13% per month. Charges shall not be abated during any period of standby time of Company caused by delays not attributed to Company.
- (e) Customer agrees to furnish adequate labor to assist the Company during all phases of the concrete pour, including clean-up.
- (f) Customer agrees to supply all materials necessary for the pour.
- (g) Customer agrees to perform all work necessary to remove waste materials from the work site and the equipment of Company.
- (h) Customer shall provide access roads to the work site and a work site adequate to accommodate the equipment of the Company. Company shall not be liable for any loss or damage due to Customer's failure to provide such means roads or job site conditions. In the event the Company's equipment becomes stuck at the work site, Customer shall pay all costs incident to freeing the Company's equipment.
- (i) Overtime will be charged on jobs beginning before 7:00am or ending after 4:00pm.
- (j) In the event the Company's equipment or parts become damaged by Customer or its contractors, Customer agrees to pay for repair or replacement if necessary, of all such parts and/or equipment as well as the charges the Company would have incurred with said equipment during the repair time.
- (k) In the event Company brings any action of any kind to enforce the terms of this agreement, Customer agrees to pay, in addition to the costs and disbursements provided by law, reasonable attorney's fees, irrespective of an action being filed. To be filed by the Court in which such action is brought, in the event any provision of this agreement is declared invalid, such provision shall be deemed severable from the remaining provisions of this agreement, which shall remain in full force and effect. Venue for any action brought pursuant to this agreement shall be in King County, Washington.
- (l) This rental agreement is for the outright lease of equipment without reservations. The Lessee is acquiring the right to possess the equipment rented, and the lessor shall have the right of disposition and control over the equipment, even to the decline of the Lessee. Lessee shall be responsible for the storage, safety and security of the equipment and its operation. To the extent insurance is necessary to cover any such risk of loss or damage, Lessee agrees to obtain such insurance.
- (m) Lessee agrees to operate the equipment with qualified operator knowledgeable of all safety, maintenance, and operating parameters of the equipment. Lessee agrees to obtain Lessor's approval of its operator.
- (n) Any provision of an operator by Lessor shall not diminish the absolute rights of possession, dominion and control that reside solely with Lessee during the term of this outright lease. At any time, Lessee may replace owner's operator with another qualified and approved operator of its own choosing. In addition, Lessor is not responsible for the operation of the equipment under lease or the operator's acts or omissions, even if it supplies the operator. All operators are deemed to work under the sole supervision and control of Lessee who is solely responsible for their actions.
- (o) Company will supply all parts necessary to have the equipment rental operate according to contract terms. Customer agrees to return the equipment rented, except for the miscellaneous piling and other equipment covered solely by the yardage charge, to the Company at the conclusion of the lease term in the same condition it was in at the time Company delivered it to Lessee. To the extent any routine maintenance is required during the term of the Lease, the Lessee shall be solely responsible for the cost of such repair. If the equipment is damaged by Lessee's use of the equipment, caused by ordinary wear and tear, Lessee is required to repair the equipment back to the condition it was in at the time of delivery.
- (p) Liability for backcharges and discipline of workites: Lessor has no liability to Lessee for any cost incurred due to delays or stoppages resulting from (a) the first hour of any mechanical breakdown or failure of the Equipment, (b) damage to equipment or damage to the site that (c) acts of God, (d) labor strikes, lockouts, or any events beyond the Lessor's control, and (e) breach by Lessee of any of its responsibilities or obligations hereunder. **THE EQUIPMENT WAS SELECTED BY LESSEE, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, NATURE, OR DESCRIPTION, EXPRESS OR IMPLIED WITH REGARD TO THE SELECTION OF THE EQUIPMENT BY LESSEE, INCLUDING, WITHOUT LIMITATION, THE EQUIPMENT'S CONDITIONS, SUSTAINABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** In the event such backcharges claimed for any day of use of the Equipment exceed the total rental price charged by Lessor for that one (1) day period, Claims for backcharges shall be deemed waived by Lessee unless notice is provided in Lessor in writing within three (3) business days after receipt of services.

EXHIBIT 15

1 completed at the end of a work day, and all of the customer's employees have left for the
2 day by the time the operator completes his clean-up operations. In such cases, the
3 operator is told to leave a copy of the completed rental agreement where the customer
4 would most likely find it the next morning, such as by the door to the customer's job
5 trailer. Ralph's then prepares an invoice based upon the Rental Agreement that is sent to
6 the customer for payment.

7 8. The written Rental Agreement used by Ralph's since October 1997
8 includes written terms and conditions for the rental of Ralph's equipment that are
9 intended to make it clear that Ralph's is leasing concrete pumping equipment to a
10 customer, rather than providing any service to the customer. If the customer chooses to
11 have Ralph's provide a certified concrete pump operator to operate the leased equipment
12 for the customer, the terms and conditions in the Rental Agreement expressly provides
13 that the operator is under the sole supervision and control of the customer, who is solely
14 responsible for the operator's actions. Consistent with these contract provisions, Ralph's
15 never sends any additional employee to the site of a concrete pour to supervise the actions
16 of the pump operator during the concrete pouring operation.

17 9. Attached as Exhibit "A" is the front and back of the Rental Agreement on
18 the day of Vargas' incident, May 23, 2013. Hilltop requested a 47' concrete boom pump
19 truck. Hilltop requested that Ralph's also supply an operator for the boom pump, so
20 Ralph's employee Howell accompanied the rented pump truck as its operator. The
21 relevant provisions regarding the lease status of the equipment and Hilltop's sole control
22 and supervision of the supplied operator is set forth in Paragraphs (l) (ii) and (ii) of the
23 agreement. On the front page, right about the signature line, it also states that the
24 operator is a loaned servant to the concrete customer, here Hilltop.

25
DECLARATION OF TIM HENSON - 4

LAW OFFICE OF WILLIAM J. O'BRIEN
800 Fifth Avenue, Suite 3810
Seattle WA 98104-3176
Telephone (206) 515-4800/Fax (206) 515-4848

1 10. The express terms and conditions on the Rental Agreement regarding the
2 legal rights of the customer and Ralph's in the leased equipment during the lease period,
3 and also the customer's exclusive supervision and control over any supplied operator is
4 considered to be very important to Ralph's since, based upon prior rulings on Ralph's
5 operations by the Washington State Department of Revenue, Ralph's is not obligated to
6 pay state sales tax when it purchases pump trucks that are then leased to customers under
7 the express terms and conditions set out in the Rental Agreement. However, it is my
8 understanding that any such equipment must be leased exclusively according to these
9 terms and conditions, or Ralph's would otherwise become obligated to pay state sales tax
10 for the full purchase price of the pump truck. For these reasons, we always insist upon
11 rentals according to the terms and conditions on the rental agreement.

12 11. I have known Gordon Skoog, the principal of Hilltop, for 40 years.
13 Hilltop has been a customer of Ralph's for decades, renting equipment thousands of
14 times, each time under the provisions of the Rental Agreement. On the particular job at
15 issue, Hilltop rented equipment from Ralph's dozens of times, both before and after the
16 May 23, 2013, each time using the same Rental Agreement. Attached as Exhibit "B" are
17 just a sampling of Rental Agreements, both before and after the May 23, 2013 incident,
18 reflecting Hilltop's renting of equipment from Ralph's. All are Rental Agreements for
19 rented equipment dispatched to North City Apartments, where the May 23, 2013 incident
20 occurred. Each time Hilltop rents equipment, a separate Rental Agreement is generated
21 and received by Hilltop. At no time either before or after the May 23, 2013 incident has
22 any representative of Hilltop contacted Ralph's to advise that Hilltop disagreed with any
23 of the stated Terms and Conditions on our Rental Agreement.

24 12. At the time Howell was provided to Hilltop on May 13, 2013, to operate
25 the boom pump truck rented by Hilltop from Ralph's, Howell as fully qualified to operate

DECLARATION OF TIM HENSON - 5

LAW OFFICE OF WILLIAM J. O'BRIEN
800 Fifth Avenue Suite 3810
Seattle WA 98104-3176
Telephone (206) 515-4800/Fax (206) 515 4848

EXHIBIT 16

105	<p>1 Q Now, do you have an understanding of the maximum rock size 2 that was in this concrete that was being used at the time of 3 the incident? 4 MR. BUTLER: Object to form. 5 MR. MUSE: Join. 6 A No. 7 Q So do you have any idea of the size of the rock that was 8 being pumped that day? 9 MR. BUTLER: Same objection. 10 MR. MUSE: Join. 11 A I believe it's around 7/8. 12 Q And again, did you place this order? 13 A I don't recall. 14 Q But somebody at Hilltop placed this order? 15 A Possibly. 16 Q And did you have a sense of the rock size that was being 17 ordered for this job? 18 MR. MUSE: Object to form. 19 MR. BUTLER: Join. 20 A Whatever is in the mix. 21 Q How was it determined what kind of mix you were going to use 22 that day? 23 A The mixes are given to me and I order the number of the mix 24 that is required for that pour. 25 Q Who gave you the mix?</p>	107	<p>1 Q And that mix code was also marked 7/8 #57; is that right? 2 MR. MUSE: Object to form. 3 A I don't recall. 4 Q What is the maximum aggregate rock size that you would 5 expect in wall mix of the type that you planned to use that 6 day? 7 MR. MUSE: Object to form. 8 A I don't know. 9 Q Did you know at the time? 10 A No. 11 Q Do you know if anybody else at Hilltop knew what the size of 12 the rocks were going to be used in the wall mix that day? 13 MR. MUSE: Object to form. 14 A I don't know. 15 Q Do you have any understanding of the size of the pipes, 16 reducers, and end hose that were going to be used on the 17 pump that day? 18 A I have an understanding of sizes of pipes, yes. 19 Q And what was your understanding of the pipes and end hose 20 that were going to be used that day? 21 MR. CASEY: Object to form. 22 A I don't recall. 23 Q Did you know what size of end hose was going to be used that 24 day? 25 A I don't recall.</p>
106	<p>1 A My boss. 2 Q Who was your boss at the time? 3 A Gordon Skoog. 4 Q And do you know if he decided what mix was going to be used 5 or if it was somebody else? 6 A I do not recall. 7 Q When he gave you the mix, did he tell you that you needed to 8 order that for a specific purpose? 9 A It's written on the paper. 10 Q Did he say we need this mix to pour slabs or walls or 11 pillars or anything like that? 12 A The paper said it, yes. 13 Q What paper? 14 A The mix design paper. 15 Q And is this the mix design paper, Exhibit 3? 16 A No. 17 Q On the day of the incident did you have any knowledge of 18 what kind of mix was going to be poured that day? 19 A A wall mix. 20 Q What does wall mix mean to you? 21 A It means the number that was designated for pouring walls, 22 that I ordered it. 23 Q Is that number the mix code here, 0260A? 24 MR. BUTLER: Object to form. 25 A I think so, yes.</p>	108	<p>1 Q Is it something that you would have known at the time? 2 MR. CASEY: Object to form. 3 A I don't recall. 4 Q In your work with Hilltop doing concrete pouring jobs 5 involving pump trucks, did you ever know what type of end 6 hose, what size of end hose was going to be used the day of 7 pumping? 8 MR. BUTLER: Object to form. 9 A At the time sometimes we choose a bigger hose. 10 Q And who is "we"? 11 A Whoever is in charge of pouring concrete and the pump 12 operator. 13 Q When you say somebody is in charge of pouring concrete, who 14 would that be? 15 MR. CASEY: Object to form. 16 A An employee at Hilltop. 17 Q Would that be you? 18 A Sometimes. 19 Q Would that be whoever is the foreman? 20 A Not necessarily. 21 Q Who else would it be? 22 A Anyone who's going to be pouring concrete. 23 Q And again, you were the foreman for Hilltop on this 24 particular job on the day of the incident? 25 A Yes.</p>

EXHIBIT 17

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1 operator is being supplied by Ralph's as a loaned servant
 2 under the direction and supervision of Hilltop?
 3 A It does say that.
 4 Q And that's consistent on the second page as well?
 5 A Yes.
 6 Q And are you aware of whether or not it was ever stricken
 7 from any contract the language with regards to the borrowed
 8 servant?
 9 A I'm sorry, can you repeat it?
 10 Q Yeah. Was it ever stricken, was that phrase or governance
 11 as a borrowed servant, ever stricken from any contract that
 12 you're aware of between Hilltop and Ralph's?
 13 A Not that I'm aware of.
 14 Q And you never struck it from any of the ones that you
 15 signed?
 16 A No.
 17 Q Are you aware of the fact that Hilltop as the employer of
 18 Mr. Vargas is entitled to immunity?
 19 A I am not.
 20 Q Are you aware that that immunity extends to all employees,
 21 including borrowed servants?
 22 MR. MOORE: I'm going to object. These are legal
 23 conclusions.
 24 A I am not.
 25 Q And do you agree on the date of this particular incident

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1 that the pump truck operator was serving in accordance with
 2 the rental agreement?
 3 MR. MOORE: Again it's a legal conclusion
 4 objection.
 5 MR. BUTLER: I'll join.
 6 A I don't really want to say one way or the other as to what
 7 he was doing in accordance to the contract because I'm not a
 8 lawyer.
 9 Q Let me ask it a different way. Do you have any reasons to
 10 dispute that?
 11 A No.
 12 MR. BUTLER: Same objection.
 13 MR. MOORE: Join.
 14 Q In terms of your arrival on site that morning, were you
 15 present when the slurring process occurred?
 16 A I don't recall exactly.
 17 Q Do you recall watching the slurring process take place?
 18 A I was present. I remember he slurred up behind the pump or
 19 by the pump. I do remember that.
 20 Q Were you at the front of the truck at the time or just near
 21 him?
 22 A I was just on the project.
 23 Q And in terms of your presence on the project, was it your
 24 practice to inform them of what the plan was in terms of
 25 where you all were going to be pouring that day?

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1 A Is it the same question as earlier? Can you repeat it?
 2 MR. CASEY: Yeah, she can read it back.
 3 (Pending question read back.)
 4 A Yes.
 5 Q During the slurring process did you observe concrete exit
 6 the hose?
 7 A I don't recall.
 8 Q Do you recall any communications that you had with the
 9 pouters or the pouring crew prior to actually going out onto
 10 the slab?
 11 A I don't recall exact communication.
 12 Q Do you remember anything in terms of conversations?
 13 A Only what I put in my declaration.
 14 Q In terms of the slurring process, did you have any
 15 communication with the inspector that was on site that day?
 16 A I don't recall.
 17 Q Do you recall that there was an inspector?
 18 A I don't recall.
 19 Q Did you have any communication with the ready-mix driver?
 20 A I don't recall.
 21 Q Do you know if you'd ever worked with him before?
 22 A I don't recall who it was.
 23 Q Was there a sort of check-in booth or location where when
 24 somebody arrived on project, equipment or things of that
 25 nature, where they would go to confirm what they were doing

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1 and why they were there and where you wanted them?
 2 A Check-in booth?
 3 Q Or a common meeting area?
 4 A No, they would just find me.
 5 Q And is that because you were sort of overseeing the entire
 6 process each day?
 7 A For the concrete portion.
 8 Q Not with regards to framing or other construction projects?
 9 A Correct.
 10 Q Do you recall what the intent was in terms of if you had
 11 poured for the whole day what you were going to try and pour
 12 on the date of this incident?
 13 A The walls that were formed up on the west side of the
 14 project.
 15 Q Do you know if it was the west side or the north side?
 16 A The wall covering the northwest corner and the southwest
 17 corner.
 18 Q Did anybody else from Hilltop make decisions about where the
 19 pour was going to occur?
 20 A Possibly.
 21 Q Who would that have been?
 22 A Gordon.
 23 Q Do you know if you had any communication with Gordon about
 24 the pour for that particular day, May 23rd?
 25 A I don't recall.

EXHIBIT 18

177	<p>1 Q But it would have been either you or Gordon?</p> <p>2 A Yes.</p> <p>3 Q Do you recall setting up cones on the outside of the truck in the street area in order to mark off traffic?</p> <p>4 A I don't recall.</p> <p>6 Q Is that something that you would have typically done or somebody else would have done it?</p> <p>8 A I believe the general contractor would typically do that.</p> <p>9 Q How long were you near the truck when the slurring process was going on?</p> <p>11 A I don't recall.</p> <p>12 Q Do you recall the amount of time between the slurring process concluding and the start of the pour?</p> <p>14 A No.</p> <p>15 Q At some point you went out onto the slab; is that right?</p> <p>16 A The deck?</p> <p>17 Q Yeah, the deck.</p> <p>18 A Yes.</p> <p>19 Q And you were standing how close to where the pour was occurring?</p> <p>21 A Ten to twenty feet.</p> <p>22 Q And Mr. Howell, or the pump truck operator, was right next to you?</p> <p>24 A At some point.</p> <p>25 Q Do you recall any communication prior to the pour occurring</p>	179	<p>1 A Yes.</p> <p>2 Q Were you authorized to stop the pour at any point?</p> <p>3 A Yes.</p> <p>4 Q And in terms of your role standing next to him or near him, did you ever signal for him to stop on that day?</p> <p>6 A No.</p> <p>7 Q And on the day in question did any of the other pourers up on the scaffolding signal that it was okay to start?</p> <p>9 A I don't recall.</p> <p>10 Q Do you know if they gave a thumbs up and said we're ready or let's go?</p> <p>11 A I don't recall.</p> <p>13 Q Is that something that would typically happen?</p> <p>14 A Yes.</p> <p>15 Q Do the pourers also have authority to tell the pump truck operator to pause or stop the pour?</p> <p>17 A Yes.</p> <p>18 Q And is that because it's common during the pouring process that there would be reason to pause to catch up or something else?</p> <p>20 A Yes.</p> <p>22 Q And that occurs frequently throughout any given pour; is that fair?</p> <p>23 A Yes.</p> <p>24 A Yes.</p> <p>25 Q During your average pour, how many times would you say that</p>
178	<p>1 or in this interim process when you're standing on the deck, do you recall any communication between you and Mr. Howell?</p> <p>2 A I recall him saying his remote wasn't working properly.</p> <p>3 Q Before he said that, to the extent that he did say that, did you hear any concrete being poured into the form?</p> <p>4 A I don't recall.</p> <p>7 Q Do you recall any concrete at any point coming out and being poured into the form?</p> <p>8 A Only right during the incident is what I remember.</p> <p>10 Q And you could hear the splattering of concrete down inside the wooden structure; is that correct?</p> <p>12 A There was not much. There was very little, so not really.</p> <p>13 Q And that was subsequent to what we just talked about right at the time of the incident itself?</p> <p>14 A Yes.</p> <p>16 Q Prior to that do you recall any noise in terms of concrete coming out and going into the form?</p> <p>17 A I don't recall.</p> <p>19 Q In terms of your position, the pump truck operator wouldn't just typically start up without giving a signal to either the pourers or you giving a signal to him; is that fair?</p> <p>21 MR. MOORE: Object to form.</p> <p>22 A Yes.</p> <p>23 Q And was it your communication with him that signaled that it was okay to attempt to start the pour?</p> <p>25</p>	180	<p>1 there is a pause at some point for some duration based upon pourers telling the operator to stop?</p> <p>2 A It's hard to put a number on it. It's different on every pour.</p> <p>3 Q But it's not infrequent?</p> <p>4 A No.</p> <p>7 Q And in terms of telling the operator to pause, that could be, for example, because you're moving from one form to another form somewhere nearby?</p> <p>8 A Yes.</p> <p>10 Q And you don't just pour concrete all across the location where you're working?</p> <p>11 A No.</p> <p>14 Q Between the time that you were initially standing next to Mr. Howell on the slab or on the deck, how long was it between that point and when the pour was re-attempted?</p> <p>15 A I don't recall.</p> <p>16 Q Was it a matter of seconds?</p> <p>17 A Yes, I believe so. I'm sorry, I don't recall. I cannot say yes or no for sure, so I don't recall.</p> <p>18 Q In your mind was it a long time?</p> <p>19 A No.</p> <p>20 Q And when you say that he then walked away from you, how close were you at the point that he turned around and things were restarting?</p> <p>21 A No.</p> <p>22 Q And when you say that he then walked away from you, how close were you at the point that he turned around and things were restarting?</p> <p>23 A No.</p> <p>24 Q And when you say that he then walked away from you, how close were you at the point that he turned around and things were restarting?</p> <p>25</p>

EXHIBIT 19

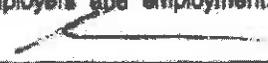
185	<p>1 Q Approximately how long did the noise of the concrete entering did you hear before the incident occurred?</p> <p>2 A I don't recall.</p> <p>3 Q If a pourer had had a question, were you their boss on site?</p> <p>4 A Yes.</p> <p>5 Q And the same thing if they had any other questions that came up in terms of instruction?</p> <p>6 A Yes.</p> <p>7 Q Earlier you indicated, and I believe it's in your declaration, that Mr. Gildardo Vargas was the lead of the pouring team?</p> <p>8 A Yes.</p> <p>9 Q Was he your effective second in command on the location?</p> <p>10 A Yes.</p> <p>11 Q Did he have authority, if you authorized him, to sign documents and do other transactions in terms of that process?</p> <p>12 A Certain documents, possibly.</p> <p>13 Q Do you recall an instance in which you authorized him to sign something or sign off on something?</p> <p>14 A No, I don't recall.</p> <p>15 Q In terms of prior to the incident, could you hear the concrete moving in the boom itself?</p> <p>16 A No, I do not recall.</p> <p>17 Q Do you recall if any amount was poured before the first</p>	187	<p>1 when it was jostling?</p> <p>2 A I don't recall.</p> <p>3 Q Do you recall whether or not at this particular project whether or not there was any specific training provided with regards to hose whips?</p> <p>4 A I do not recall on this specific project, no.</p> <p>5 Q Do you recall whether or not that would have been documented in, for example, the training documents that you typically went through in terms of safety meetings?</p> <p>6 A I don't know.</p> <p>7 Q Is that something that you typically wrote down, a specific subject matter that was covered?</p> <p>8 A I don't recall exactly.</p> <p>9 Q How long is a common pause in your experience in terms of -- if you're moving to another part of the pour or a different form, what's the break time in between those two?</p> <p>10 A It depends on the situation.</p> <p>11 Q How often would that occur?</p> <p>12 A Every few minutes in some and sometimes you'd go multiple trucks without stopping.</p> <p>13 Q And in terms of the period of time, the lapse, if you can estimate in your experience, how long the average lapse would be, what would that include?</p> <p>14 A A lapse of what?</p> <p>15 Q Elapsed time. How much time would elapse typically?</p>
186	<p>1 cutout?</p> <p>2 A No, I don't believe so.</p> <p>3 Q In terms of your prior experience, have you had an instance where a plug occurred and a whip did not occur?</p> <p>4 A Yes.</p> <p>5 Q Would you say that that's common in your experience?</p> <p>6 A Yes.</p> <p>7 Q And is it also common in your experience that an air pocket may exit but without a whip of the type that occurred on this date?</p> <p>8 A Yes.</p> <p>9 Q In terms of your experience, what is the number of occasions in which air pockets may occur?</p> <p>10 A I'd say it's almost every pour.</p> <p>11 Q Is it often that you would notice jostling and things like that in terms of just the regular flow of concrete that there would be movement in the boom and the hose?</p> <p>12 A Yes.</p> <p>13 Q And is it also common that pourers would sometimes try and hold or take hold of that during that jostling period?</p> <p>14 A If it's just moving a little bit, yes. Not if it's clogged.</p> <p>15 Q Prior to this incident have you ever observed Gildardo attempting to hold onto the hose in an improper manner?</p> <p>16 A No.</p> <p>17 Q Had you ever seen him attempt to hold onto the hose in a way</p>	188	<p>1 A Between pumping? Anywhere from 30 seconds to 10, 15 minutes.</p> <p>2 MR. BUTLER: May I ask a clarifying question?</p> <p>3 MR. CASEY: Sure.</p> <p>4 MR. BUTLER: When you're talking about this, are you talking about stopping the flow of the concrete through the hose?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. BUTLER: And putting on the halo?</p> <p>7 THE WITNESS: Yes.</p> <p>8 Q In terms of authority over taking breaks, was that something that you typically would pause at a certain time of day to allow everybody to take a break?</p> <p>9 A On a normal working day, yes.</p> <p>10 Q Do you recall if that was -- was May 23rd, 2013, an average working day?</p> <p>11 A Pouring days, the breaks would be slightly different, but yes, it was an average working day.</p> <p>12 Q Was it your experience as well that you were sort of the person who decided when the breaks would occur and when the logical stopping point would be?</p> <p>13 A Yes.</p> <p>14 Q And was that your role as well as this location?</p> <p>15 A Yes.</p> <p>16 Q The North City Apartments?</p>

EXHIBIT 20

1 INTERROGATORY NO. 5: List the names, addresses and telephone numbers of all
2 employers that you have had for the past ten (10) years and your dates of employment as to
3 each.

3 ANSWER:

4 Objection. This interrogatory is overly burdensome as Plaintiff cannot be expected to remember the
5 details of his employment history for the ten years prior to the incident to present. Plaintiff also objects
6 to the extent that it calls for legal conclusions regarding the terms "employers" and "employment."

6 
Derek K. Moore, WSBA No. 37921

7 Without waiving said objection, the Plaintiff answers:

8 2000 to 2005: Abboud's McDonalds, LLC, 6307 California Avenue SW # 101, Seattle, WA
9 98136.

10 2005 to 2006: Kirkland Builders Group, 101 10th Avenue, Kirkland, WA 98033.

11 2006 to 2007: Spartan Concrete, Inc., 9442 116th Avenue NE, Kirkland, WA 98033.

12 2007 to 2013: Hilltop Concrete Construction, LLC, 3405 172nd Street NE #5, Arlington, WA
13 98223.

14 INTERROGATORY NO. 6: State the nature of any self-employment that you have
15 had and the dates of such self-employment.

15 ANSWER:

16 Objection. This interrogatory is vague as to the term "self-employment" and the "nature" thereof and
17 overly burdensome as Plaintiff cannot be expected to remember whether he has ever been self-
18 employed. Plaintiff also objects to the extent that it calls for legal conclusions as to his employment
19 status such as whether he would be considered an employee or a self-employed independent
20 contractor at any of his jobs.

19 
Derek K. Moore, WSBA No. 37921

20 Without waiving said objection, the Plaintiff answers:

21 To the best of his recollection, Plaintiff has not been self-employed.

22 INTERROGATORY NO. 7: Identify all health care providers that you have been seen
23 by for the last ten (10) years preceding the alleged occurrence and a brief description of the
24 reason for such treatment.

24 Def Inland Group P.S., LLC's 1st Rogs/Req to Pltf - 7
Cause No.: 13-2-32219-6 SEA
(0164-9; inland wash) 20131119Plaintiff's answers to Defendant Inland ROGS and RPS.

ANKEN ST. LOUIS & SILJES, P.S.
ATTORNEYS AT LAW
601 SECOND AVENUE
SUITE 1200
SEATTLE, WASHINGTON 98104
(206) 924-2660 / FAX (206) 823-6764

EXHIBIT 21

1 a job. Is that what you're asking?

2 Q Was he given any training regarding the risks of pump hoses?

3 A Every time we pour.

4 Q And what training does that consist of?

5 A Our people do not hold the hose, operate the hose, I'm not
6 sure what word you want to use, without lots of experience
7 as a vibrator and without lots of experience on how to do
8 it.

9 Q Who instructed him on how to do it?

10 A Whoever is the foreman on that particular job.

11 Q Who was the foreman on the North City Apartment job?

12 A Matt Skoog.

13 Q Did Hilltop have an accident prevention program in place
14 that covered the dangers of pump hoses?

15 A Of course.

16 (Exhibit 72 marked for identification.)

17 Q Before we get into this, what is your understanding, what is
18 Hilltop's understanding of what happened on or about May
19 23rd, 2013 to cause Gildardo's injury?

20 A Boy, I think we've answered that several times, but the hose
21 on the concrete pump got clogged up and then it exploded and
22 the hose whipped and hit him in the head.

23 Q What caused the hose to explode?

24 A I said it got clogged up and then the pressure pushed it
25 through.

EXHIBIT 22

1 out. A blow out is when there is a clog in the pump line that stops the flow of concrete. Air is
2 trapped in the line, but as the pressure builds, the block lets go with powerful force out of the
3 hose end. You can hear the pressure rise before it lets go. The blow out makes a loud bang,
4 and the clog gets blown out with force, causing the rubber hose to whip. When the operator
5 realized the hose was clogged, he should have backed off the pressure, cleaned out the hose
6 and restarted the pump process.

7 7. The time between the sound of the pump revving and the blow out was a few
8 seconds. The two crew members working with Gildardo moved to duck out of the way before
9 the blow out occurred, once they heard the sound of the pump truck. However, Gildardo did not
10 duck, but instead tried to keep hold of the hose.

11 8. When the blow out occurred, the hose whipped and hit Gildardo on the head. He
12 was wearing his hard hat, which came off his head after he got hit. He immediately lost
13 consciousness and slumped down. The two workers who had ducked immediately grabbed him,
14 and began lowering him from the scaffolding. I was on the deck to help Gildardo down from the
15 scaffolding. He was not breathing. We placed him on his back and performed a couple chest
16 compressions, which caused him to gasp and begin breathing. I immediately called 911.

17 9. All employees with Hilltop, including Gildardo, are familiar with blow outs like this
18 one. They happen a lot, though it is unpredictable when they do. Through experience and
19 continuing on-the-job training, Hilltop workers, including Gildardo, know the familiar sound the
20 pump truck makes before a blow out occurs, and are taught to stop working, drop what they are
21 doing, and duck out of the way immediately as soon as they hear the sound of the pump
22 signaling that a blow out is about to happen. This training is repeated and exercised throughout
23 the work of all Hilltop employees.

24 10. I affirm the foregoing is true to the best of my knowledge under the laws of
25 perjury of the State of Washington.

DECLARATION OF MATT SKOOG - 3

EXHIBIT 23



1620 RAINIER AVENUE SOUTH
SEATTLE, WA 98144
(206) 328-3088

EEO Employer

RENTAL AGREEMENT

Job Date: 05/23/2013
Work Order #643128
Unit Number: 205
Time on Job: 02:00
Concrete Time: 00:00

PO # JOB #05013

Billing Address -

HILLTOP CONCRETE CONSTRUCTION LLC
PMD 111
ARLINGTON WA 98023

Site Address - HL210-02130

NORTH CITY APARTMENTS
1220 NE 176TH ST
SHORELINE WA 98133

Handwritten: JW 269221

Size Requested: 47	Employee: TONHOW	FdyMk: CONCRETE NORTHWEST
Size Sent: 47		Phone: 360-691-6314
PUMP TYPE: COLUMN WALLS Est. Yards: 95.00		

STATE / DAMAGE WAIVER

I ACCEPT RESPONSIBILITY FOR ALL EXPENSES ASSOCIATED WITH REMOVAL OF PUMP FROM THE JOBSITE IN THE EVENT IT BECOMES STUCK

SIGNATURE _____ DATE _____

I ACCEPT RESPONSIBILITY FOR ANY DAMAGE CAUSED TO -

SIDEWALK	APRWAY	DRIVEWAY	OTHER
----------	--------	----------	-------

COMMENTS _____ SIGNATURE _____ DATE _____

JOBSITE INCIDENT REPORT

DATE & TIME OF INCIDENT: _____

TYPE OF INCIDENT (Specify User):	Potential Injury	Property	Equipment
----------------------------------	------------------	----------	-----------

DESCRIBE INCIDENT: _____

_____ SIGNATURE _____ SUPERVISOR SIGNATURE _____ DATE _____

"IF IT'S DANGEROUS DON'T DO IT! ADVISE THE OFFICE OF THE PROBLEM!"

Handwritten: 15

Handwritten: W O S

Arrive Job: 7:00 Leave Job: 12:00 Yards: 4.00 Mileage: _____

I have read the Terms and Conditions, on the reverse side, and understand and accept them. I have noted the arrival time, departure time and pump size and accept them. I am aware of my safety responsibilities per the Terms and accept them. I understand that I am renting equipment, and if any equipment is supplied by Relata, the operator is a trained servant under my direction and control. Any individual signing this Rental Agreement represents and warrants that he/she is of legal age and has authority and power to sign this Rental Agreement for or on behalf of the Customer.

Signature: _____ Date: 5/23/13 Time: _____

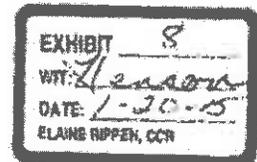
Map Code:
Directions:

System Required:

Comments:

Lot / Job #'s:

Handwritten: Job Cancelled Due to Incident at Site



CUSTOMER ACKNOWLEDGES OFF SITE CLEAN-UP CHARGE OF:

\$ _____ X _____

BACK CHARGES NOT TO EXCEED PRICE OF PUMP FOR THE DAY

EXHIBIT 24

Number	Controling Employer	Sub-Contractors	Employers On Site
318003044	No	No	
Immediate Restrict	Red Tag Number	Union	Hospitalization
No		Yes	No
Employees On Site	Employees Covered By Inspection	Employees Controlled Statewide	
1	1	00	
Employee Participation	Closing Conference Date	Citation Issued/Date	Case Received Date
Walkthrough, interviewed	7/17/2013	Yes 8/15/2013	6/8/2013
Citation Sent Date	Citation Delivery Status	Citation Delivery Status Date	
8/15/2013			
Citation and Notice Messages			
<p>Polices and procedures directly related to the beginning of a concrete pour using a concrete pump fully extended to maximum capacity should be evaluated to ensure that a possible plug, could be minimized during startup operations. The pump should slurry out enough mud into an acc-pan to ensure that a pumpable concrete mix is flowable throughout the system. After the boom is extended and above the work area vertically, a hole is released from the end hose and the pump should begin slowly pouring. If the flexible concrete hose is not directly above the work space and attached to another flexible hose lying horizontally, the chances of a plug will increase under these conditions.</p> <p>If the pump operator can determine that a plug may occur he must take immediate steps to alert all workers participating in placement activities to evacuate the danger zone area, and reverse the pump before restarting forward pumping.</p>			
Route to F&TE	Reason	Other Reason	
No			
Anticipatory Warrant/ Subpoena Served	Non-Anticipatory Warrant/ Subpoena Served	Date Decided	Date Re-entered
None	None		
OSHO Approved Date / CSHO Approved	OSHO Supervisor	Supervisor Approved Date / Supervisor Approved	Send C & Cases Closed Date
7/18/2013 / H8499 KYLE GRAYSON	K0806 ANN BENSON	7/23/2013 / K0806 ANN BENSON	Yes 7/17/2013
Inspection Summary			
<p>Inspection Summary</p> <p>OSHO Kyle Grayson H8499 OSHO Troy Woodard E8948 OSHO Roberto Gonzalez F8328</p> <p>Opening Conference Date 6/23/13 held with Tim Hanson, Owner.</p> <p>Closing Conference Date 7/17/12 held with Tim Hanson, Owner.</p> <p>This was an unprogrammed related inspection based upon an accident which occurred when an employee of Hilltop Concrete was injured by a concrete pump operated by Ralph's Concrete Pumping located at 1220 NE 1799 St Shoreline WA, 98144. CSHO established that a 47 Meter Putzmeister concrete pump was beginning a wall pour, and the operator had trouble with radio control signals so he moved closer to the pump. He then hit the controls for two strokes before a violent event took place in the form of a plug, seriously injuring the Hilltop employee. After introductions CSHO opened the inspection with Ralph's Concrete Pumping Owner, Tim Hanson. At this time all elements of the 1A were covered. Interviews took place with the pump operator regarding the accident. Ralph's Concrete Pumping, has an experience factor of 0.0700.</p> <p>The results of the inspection are as followed.</p> <p>No Violations.</p>			

OSHA 300 Information

<http://wsha.apps-1ns1dc.int.wa.gov/win2/Enforcement/EnfCaseFile.aspx?CaseID=108750&print=yes>

8/9/2013

PPR 93839 4

EXHIBIT 25

Operating Instructions

for machine operator and maintenance staff

always keep by the machine

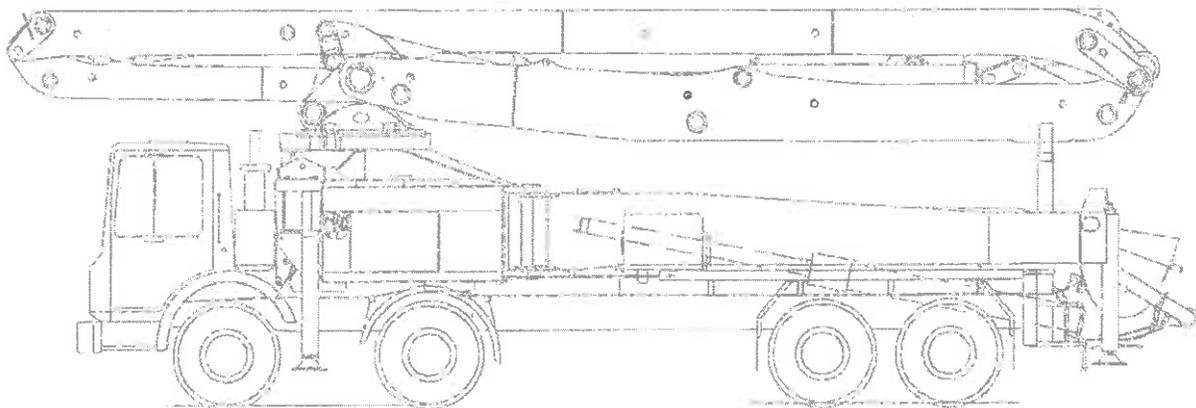
Truck-mounted
concrete pump

BSF46



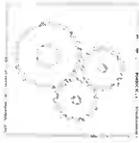
Machine no.

Boom no.



P/N A820085
Rev. B
September 2002

EXHIBIT 26

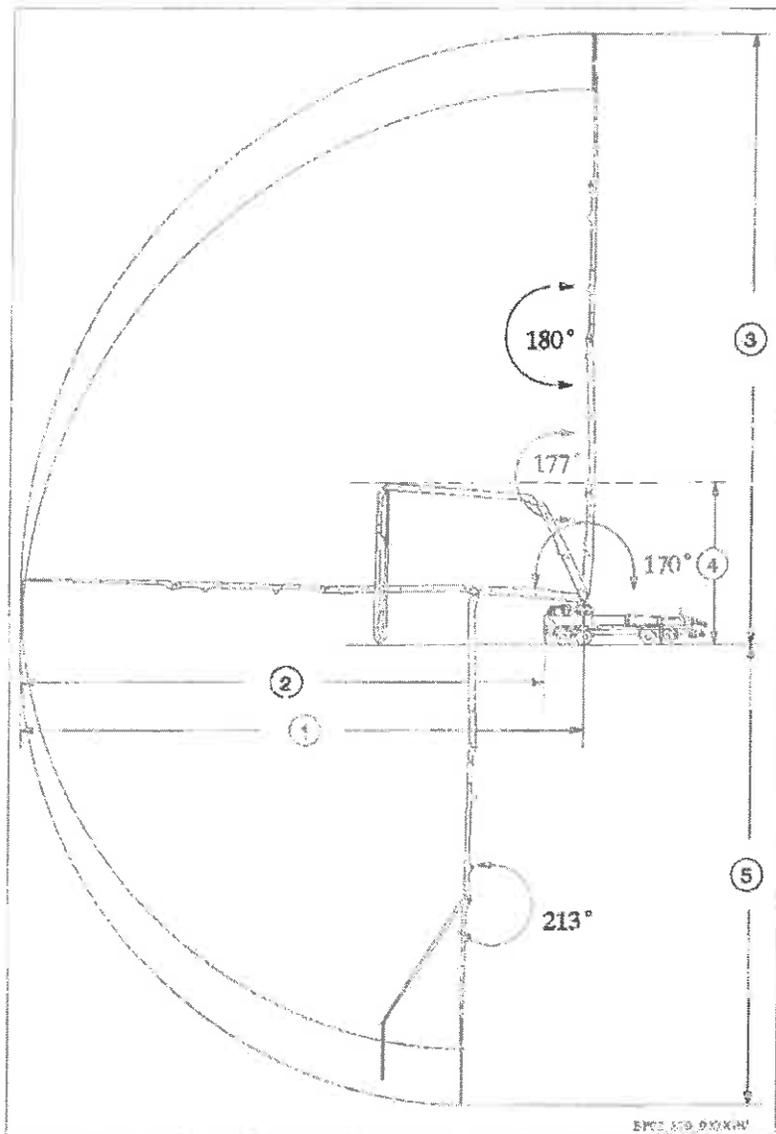


General technical description



3.2.6 Net reaches

The M 46 has the net reaches listed below.



1	Net reach from middle of slewing unit	41.5 m
2	Net reach from front edge of truck	36.6 m
3	Vertical reach	45.2 m
4	Unfolding height	12.3 m
5	Depth of reach with 4 m end hose	33.0 m
	Depth of reach with 3 m end hose	32.0 m

EXHIBIT 27

1 Q So in the last couple of years?

2 A Last two years

3 Q You say most. Is that 81 percent or over 90 percent?

4 A Eighty percent. It's just a guess

5 Q But more than three-fourths of your business comes from

6 inland over the last two years, is that accurate?

7 A Well, it just depends what years you're talking about.

8 Right now we're not working for them, so that would be zero.

9 Back in '06 '09 it was zero. If you're talking about 2012,

10 2013, the percentage grows, so it's impossible for me to

11 tell you.

12 Q So is the most work that you were doing for Inland in 2012

13 to 2013?

14 A That was the highest dollar amounts, but that was mainly

15 because we were doing a couple of jobs at the same time for

16 them.

17 Q How about in 2010 or 2011, how much work were you doing for

18 Inland?

19 A You're asking for dates and I can't give you dates. I think

20 in '07 we were doing some work in the Shoreline area for

21 them, and between '07 and like 2012 I think we did two other

22 projects for them.

23 Q And you say now you're doing no work for Inland?

24 A Right. The jobs are completed. That's not true. We might

25 be doing a little bit of punch list clean-up work on one job

1 Q What companies were involved in the concrete work at the

2 time of the incident in May of 2013?

3 A Well, it's just our company, which included Ralph's and

4 NorWest.

5 Q And any other companies?

6 A Well, there was a testing lab.

7 Q Who was the testing lab?

8 A You asked me that. I don't know.

9 Q Who hired the testing lab?

10 A Inland.

11 Q And what was the testing lab testing for?

12 A It's an inspection. They inspect the rebar and they test

13 the concrete for quality and they inspect to make sure

14 you're pouring properly.

15 Q And did the testing lab, did they have somebody out on the

16 job site?

17 A Like I said, they were there.

18 Q Do you know when they were there?

19 A During the pouring.

20 Q But you don't remember any names?

21 A I do not.

22 Q How about Inland? Did Inland have any involvement in the

23 pour at the time of the incident?

24 MR WALLACE: Object to the form.

25 MR. HANSEN: Join.

1 to them.

2 Q Do you know why you're not doing much work for Inland now?

3 A They were busy doing the jobs that we were doing and I

4 didn't want to go to Olympia.

5 Q Did they say they had work for you or concrete work to be

6 done in Olympia?

7 A No, they just had a job for me to bid.

8 Q Did you bid on the Olympia job?

9 A No.

10 Q Did anyone from Inland ever tell you that you were not

11 welcome to bid on their jobs anymore?

12 A No.

13 Q Other than Ralph's Concrete, and Concrete NorWest, Inland

14 Group, and Hilltop, were there any other companies involved

15 in the concrete work at the time of the incident?

16 MR HANSEN: Object to the form the question.

17 That's not correct.

18 MR MOORE: I'll ask it this way.

19 MR HANSEN: You've seen the subcontract, haven't

20 you?

21 MR MOORE: I'm asking him. He's the witness.

22 He's testifying, I'm not.

23 MR. HANSEN: Yes, you are.

24 MR MOORE: Let me restate the question. I'll try

25 to accommodate.

1 A Inland did not have anybody involved in the pouring.

2 Q What was Ralph's Concrete Pumping's involvement in the

3 project?

4 A Ralph's Concrete Pumping was there to pump the concrete.

5 Q Describe in as much detail as possible what they were

6 brought on to do.

7 MR WALLACE: Object to the form.

8 A They were to pump the concrete from the street up and into

9 the forms.

10 Q And what equipment did they bring to do their part of the

11 job?

12 MR WALLACE: Object to the form.

13 Q If any.

14 A That picture right there (indicating).

15 Q You're pointing to the truck shown in Exhibit 2?

16 A I am.

17 Q Do you know if that was owned by Ralph's Concrete Pumping or

18 if they got it from someone else?

19 A That's not for me to know.

20 Q But that truck was something that Ralph's brought on to the

21 site?

22 A Like I said, that was what they brought.

23 Q How did Ralph's get this job?

24 A How did they get this job? They're just a concrete pumping

25 company that's been pumping for me for many, many years.

EXHIBIT 28

Page 29

1 parts apart to get it to come out. Like if you plug a
 2 reducer, take it out through the big end, so you have to
 3 take it off to get it out. It just depends on what you're
 4 plugged on, how solidly it's plugged, things like that.

5 Q Can you explain what the parts of this machinery is from the
 6 pump to the end of the hose? You mentioned some terms,
 7 Reducers, for example. Can you kind of explain what each of
 8 those parts are?

9 A Well, a concrete pump is a piston-actuated pump, so it has
 10 two pistons in it. One is going in reverse while the other
 11 is going forward. So when one is in reverse, it's pulling
 12 concrete into it out of the hopper, the one going forward
 13 shoves it up the boom. It starts out in either an eight- or
 14 ten-inch cylinder. It quickly reduces at the back of the
 15 pump to a five-inch pipe. Then it travels -- well, can we
 16 just talk specifically about this pump?

17 Q Certainly. Just describe specifically this pump.

18 MR. WALLACE: I don't mean to interrupt, but just
 19 slow down just a little bit so the court reporter can keep
 20 up.

21 A So then it travels up the entire length of the boom through
 22 a five-inch pipe. At the end of the boom we can reduce it
 23 down to as many reductions of the hose that the customer
 24 requires, which is also controlled by whatever mix we're
 25 pumping. So generally we put on a five-inch reducer that

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1 reduces down to four-inch, and then we can go from four-inch
 2 down to three-and-a-half-inch or four-inch down to
 3 three-inch. We can also reduce all the way down to
 4 one-inch. But as I recall, Tony had either a three- or a
 5 three-and-a-half-inch hose on the end of this. So it would
 6 have had a five-by-four reducer, and either a four-by-three
 7 or a four-by-three-and-a-half reducer.

8 Q So at the base of the boom itself there's a reducer from
 9 eight inches to five inches; is that correct?

10 A Correct, but it's before the base of the boom. Coming out
 11 of the hopper it turns and starts to go up the deck of the
 12 concrete pump. By the time it gets to the deck it has
 13 reduced in that swooping elbow that starts up.

14 Q So when we're talking about reduction or reducing, does that
 15 refer to the diameter of the hose?

16 A Yes.

17 Q So by the time it goes up the boom it's five inches in
 18 diameter; is that correct?

19 A Correct.

20 Q Then on this particular pump and hose configuration, at the
 21 time of the incident it was ultimately reduced to either
 22 three or three-and-a-half inches in diameter at the end; is
 23 that correct?

24 A As I recall, that would be a better question for Tony. He
 25 would know for certain, but that's what I recall.

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1 Q Do you know where the plug was on this equipment prior to
 2 the incident?

3 A I don't know that there was a plug. I don't think there was
 4 a plug.

5 Q Could you define plug for the record?

6 A Anything that is in the system that prevents the concrete
 7 from going in a forward direction.

8 Q So is it your understanding that there was or was not a plug
 9 involved in the incident?

10 A I don't believe there was a plug involved in the incident.

11 Q Why not?

12 A Well, because the way that I understand this happened and
 13 the violent nature that this came out is not indicative of a
 14 plug. It's more indicative of either air in the system or a
 15 hose that has been kinked and then the pressure of the
 16 concrete pump forces the kink out of the hose. A plug
 17 generally just stops the action of pumping concrete and you
 18 have to shut it off to get it out of there. It doesn't
 19 create this violent incident that occurred here. I've never
 20 seen that occur.

21 Q How does air get into the system?

22 A Well, the only way it can get in is if the hopper's allowed
 23 to run dry and those piston pumps that I was referring to
 24 take a stroke of air and then you introduce concrete back
 25 into the system so that you get a plug of air in between two

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1 plugs of concrete. And then as you pump it up the boom, it
 2 gets more and more and more compressed so that when it gets
 3 to the end it comes out of there like it was shot out of a
 4 shotgun, similar to that violent of an explosion.

5 Q Do you have any information to show that the hopper was
 6 allowed to run empty?

7 A No.

8 Q Is it your understanding that the induction of air was or
 9 was not involved in this incident?

10 A Do I know? I don't. I can't -- I know what I believe
 11 probably occurred, but I have no proof of what happened, no,
 12 I wasn't there.

13 Q What do you believe happened?

14 A Well, as I already stated, I believe that either air was
 15 allowed to get into the system or one of the people at the
 16 end of the boom inadvertently kinked the hose that was
 17 laying on top of the wall.

18 Q And how would a kinked hose cause an incident?

19 A Well, these concrete pumps put out 3500 PSI pressure on the
 20 concrete. So if you kink one of these hoses and the
 21 operator doesn't see it's kinked and turns the machine on,
 22 the machine is going to create enough force to straighten
 23 the hose back out. A human being cannot hold it kinked.
 24 It's going to straighten back out. And when it does, you're
 25 going to go for a ride.

EXHIBIT 29

radio control of the pump and turned the machine back on. At that point something caused the hose to come off the top of the wall striking Mr. Vargas, as I understand it, in the head.

Now, as to the specifics of why that occurred, I don't know. I don't know if one of the workers kinked the hose, I don't know if there was air in the system, nor do I think anybody knows or will ever be able to know exactly what caused that to occur.

Q You said that the boom was too short. Did I understand that? What did you mean by the boom being too short?

A Well, the concrete pump has a boom on it that reaches a certain distance. And as far as he could reach, it was still 10 or 15 feet from reaching the end of the wall they were attempting to pour, so they had to lay the hose down on top of the wall to get the additional 15 feet of length to reach the end.

(Exhibit 1 marked for identification.)

Q You've been handed that which has been marked Exhibit 1 to your deposition today. Do you recognize the pictures shown in Exhibit 1?

A It looks to be the job site where this incident occurred.

Q All of those pictures on both pages of Exhibit 1?

A Well, it's difficult to tell. There's no identifying surrounding stuff, so it's hard for me to be 100 percent

A I have no specific knowledge of whether or not he could. However, I would find it extremely difficult to believe that he could not. I'm relatively certain he could see Mr. Vargas.

Q How far away from the wall do you understand the pump was?

A Well, he was running a 45-meter concrete pump which didn't reach the end of the wall, so he was stretched out 120 feet or so. So the machine was probably 140, 135 feet from the end of the wall.

Q Now, can you describe the radio control that's used in this particular pump?

A It's a radio -- it's a remote control that operates by radio waves. It's not corded, it just operates over radio waves.

Q And what does this remote control do?

A It controls all the boom functions, turns the pump on and off, puts the pump in forward and reverse.

Q What do you mean by puts the pump in forward and reverse?

A The operator has the ability to either pump in a forward direction or turn the machine in reverse and go and relieve the pressure by going in reverse.

Q So by putting the pump in forward, that means pump concrete out of the hose?

A Correct.

Q And to put it in reverse would be to suck it back towards the pump?

certain, but I would be relatively sure that that's what this is.

Q Okay. Do you have an understanding of where Mr. Vargas was when he was injured?

A I believe Mr. Vargas was on the scaffolding at the end of the wall they were attempting to pour.

Q And you're indicating the scaffolding on the upper left picture of the first page of Exhibit 1; is that correct?

A Correct.

Q Do you know where Ralph's operator was in relation to where Mr. Vargas was standing when the incident occurred?

A Not specifically, no.

Q Generally do you know?

A I really don't. I don't recall. I think I know where he was, but not well enough to tell you an answer that I would be sure of.

Q And I understand you were not an eyewitness to the incident; is that right?

A No, I was not there.

Q Do you have any knowledge as to whether the Ralph's operator could see Mr. Vargas when he was operating the pump? "He" being your operator.

A No.

Q Is that no, you have no knowledge or no, your understanding is that he could not see Mr. Vargas?

A Correct.

Q How often do pump hoses get clogged?

A Well, we're pumping gravel, so it's a pretty common occurrence.

Q And what is the proper procedure for unclogging pumps? Or unclogging hoses, I should say.

A Identify where the plug is, shut the machine off -- excuse me. Shut the machine off, identify where the plug is, put the machine in reverse to relieve the pressure, remove the clog, resume pumping.

Q How does one identify where the plug is?

A Well, there are several methods to identify where the plug is. If it's in the hose, you can walk down the hose until you feel where the hard spot is. In a metal pipe you can tap on the boom until you find the sound where the plug is. Over many years of experience you just learn where they're most apt to plug at, in a reducer more than anywhere else where you go from a larger size to a smaller size where the plug will be. I would say with experience you almost always know where they are. If in doubt, you have to tap on things and walk on things to find them.

Q And what is the procedure to remove these plugs after the plug is identified?

A Well, it can be as simple as just tapping on the end of the reducer and it will fall out to having to take pieces and

EXHIBIT 30

1 A No.

2 Q Did Gildardo have anything to do with telling Anthony Howell
3 how to operate the pumping operation of the truck in any
4 way?

5 A No.

6 Q Did anybody else at Hilltop have anything to do with telling
7 Mr. Howell how to operate the pump in any way?

8 A No.

9 Q They would just say, well, we want the mud to go here in
10 this form, and that was about it; is that accurate?

11 MR. CASEY: Object to form.

12 A Yes.

13 Q And you were asked some questions about the dimensions of
14 the 2-by-4 and what we talked about in your earlier
15 deposition; right?

16 A Uh-huh.

17 Q And you would never actually take a ruler or a laser
18 measurement tool and actually measure the measurements of
19 the 2-by-4s and the other dimensions of the lumber that we
20 talked about on the job; is that correct?

21 A Correct.

22 Q But do you agree that more likely than not a 2-by-4 is
23 three-and-a-half by one-and-a-half inches?

24 MR. MUSE: Object to form.

25 A No.

EXHIBIT 31

1 A 2012
 2 Q The incident happened in May of 2013.
 3 A Then it wasn't 2012. Okay, let's try 2013.
 4 Q So just last year? It's 2014 now. Last year was 2013. Was
 5 Hilltop still on the job last Thanksgiving?
 6 A I don't think so.
 7 MR. WALLACE: And I don't want to interrupt, but
 8 given the corrected date, does that change when this job
 9 began? Did it still begin in the summer of 2011 or were you
 10 a year off on that?
 11 THE WITNESS: I was a year off, yeah.
 12 MR. WALLACE: Thank you.
 13 Q So it started maybe in the summer of 2012?
 14 A Yes.
 15 Q So do you know if it was winter or fall of 2013 when
 16 Hilltop's role in the project stopped?
 17 A I would say it was probably fall. It could have been
 18 summer. Fall comes right after summer, so it's probably in
 19 there someplace.
 20 Q Are you sure it wasn't winter?
 21 A I was out of town last week. It's kind of hard for me to
 22 remember a whole lot.
 23 Q Did Hilltop finish all the work that it was initially
 24 brought on to do?
 25 A Yes.

1 were in the vicinity of the incident when it happened?
 2 A No.
 3 Q Did Hilltop hire any subcontractors on this project?
 4 A We did.
 5 Q Who?
 6 A We hired Ralph's to pour the concrete, we hired Bulwark to
 7 place the rebar and tendons, and we hired a finisher named
 8 LangCo, L-a-n-g-C-o.
 9 Q So what did Bulwark do?
 10 A They placed the rebar and tendons.
 11 Q And what did LangCo do?
 12 A They were the flat workers. They poured the slabs.
 13 Q Other than Ralph's, did any other Hilltop subcontractor do
 14 any work on the project at the time of the incident?
 15 A Well, the supplier was Concrete NorWest, I don't know if
 16 you think of them as a subcontractor, and Inland was there,
 17 and then the inspection agency.
 18 Q Did the supplier have people on the site at the time?
 19 A Yes.
 20 Q Do you know who was there?
 21 A I don't know names.
 22 Q The inspection agency, who was that?
 23 A I don't know.
 24 Q Was that somebody from L & I?
 25 A No, this is an independent inspection agency that inspects

1 (Recessed 11:06 a.m. to 11:13 a.m.)
 2 Q Other than Hilltop, how many other subcontractors were on
 3 the North City Apartment job that you know of?
 4 A I would have no idea to how many.
 5 Q How many can you think of?
 6 A There could be ten or more. How many contractors does it
 7 take to build a house? You've got plumbers, electricians,
 8 I have no idea.
 9 Q How many do you recall being on the site at the same time
 10 that Hilltop was working?
 11 A Well, you would have a plumber, an electrician, you'd have
 12 a sprinkler, depending on what you put in the slab whether you
 13 have conduits for securities. I have no idea.
 14 Q How about in May of 2013 around when the incident happened?
 15 A I'm going to give you the same answer. I don't have a clue.
 16 I don't know.
 17 Q But there were several other contractors for different
 18 trades on the site at that time; is that accurate?
 19 A When the accident happened it was pretty much just our
 20 company in that area.
 21 Q Do you know of any other companies that were near that area
 22 at that time?
 23 A I'm sure there's people from the plumbers, electricians,
 24 things like that. I just don't know.
 25 Q But you don't know of anybody other than Hilltop people who

1 the rebar and concrete
 2 Q Do you remember the name of the agency?
 3 A No, I don't.
 4 Q Do you know who hired them?
 5 A Inland.
 6 Q Inland Group or Inland Washington?
 7 MR. HANSEN: Object to the form.
 8 A I don't know.
 9 Q You said you've done two other projects with Inland?
 10 A No, I said I've done several others.
 11 Q Several others?
 12 A Yes.
 13 Q How many others have you done with Inland?
 14 A I don't count them. I might have done a dozen buildings for
 15 them.
 16 Q What percentage of Hilltop's work is done for Inland?
 17 MR. HICKS: Objection to the form. Do you mean
 18 what percentage of Inland is Hilltop or what percentage of
 19 Hilltop - I'm confused what you're talking about. Whose
 20 percentage to whom?
 21 Q What percentage of Hilltop's work comes from Inland?
 22 A That's impossible for me to say. Inland is our biggest
 23 client, but the percentage like in '08 and '09 was zero, but
 24 in the last couple years it's been, I'd say, most of it. It
 25 just depends what year.

EXHIBIT 32

1 2. I was working as Hilltop's foreman at the North City Apartments project on May
2 23, 2013, the date of the accident involving Hilltop employee Gildardo Vargas.

3 3. On that day, Hilltop was forming and pouring part of the north concrete wall of the
4 Building "B" parking garage structure. We had been doing work on pouring the concrete for the
5 garage structure for several days before. Ralph's Concrete Pumping was doing all of the
6 concrete pumping for that structure. Ralph's showed up on the site that morning, parking the
7 pump truck on the west side of the project site. The west side was the only place where the
8 pump truck could be stationed, and was where it had been stationed previously.

9 4. The Ralph's operator set up the pump, performed the slurry-up procedure near
10 the pump truck, dumped the slurry, then extended the boom to the north wall where Hilltop
11 forms and crew were ready to place the concrete.

12 5. Gildardo Vargas was the lead Hilltop worker for the pour that morning. With him
13 were two other Hilltop workers. They were positioned on the scaffolding next to the concrete
14 forms. The Ralph's operator moved the boom and flexible pump hose into position. Gildardo
15 was holding the hose, ready to guide the concrete into the forms. Another worker was operating
16 the vibrator. I was on the concrete deck, observing the work being done on the scaffolding,
17 about 10-20 feet away. The Ralph's operator was nearby on the concrete deck near the pour
18 location, using the pump remote controller. There were no other trade workers near our work
19 site. This was important, so that we could focus on doing our work properly and safely during
20 the pour.

21 6. The Ralph's operator began to operate the pump, and concrete started flowing
22 through the hose and into the form. Shortly after the concrete began flowing into the form, the
23 flow stopped. The Ralph's operator mentioned something about the signal between his
24 controller and the pump truck. After the flow stopped, the operator tried to re-start the flow. At
25 that time, I heard the revving sound of the pump, which signals a clog that could lead to a blow

DECLARATION OF MATT SKOOG - 2

EXHIBIT 33

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1 Q But it would have been either you or Gordon?
 2 A Yes.
 3 Q Do you recall setting up cones on the outside of the truck
 4 in the street area in order to mark off traffic?
 5 A I don't recall.
 6 Q Is that something that you would have typically done or
 7 somebody else would have done it?
 8 A I believe the general contractor would typically do that.
 9 Q How long were you near the truck when the shuffling process
 10 was going on?
 11 A I don't recall.
 12 Q Do you recall the amount of time between the shuffling
 13 process concluding and the start of the pour?
 14 A No.
 15 Q At some point you went out onto the slab; is that right?
 16 A The deck?
 17 Q Yeah, the deck.
 18 A Yes.
 19 Q And you were standing how close to where the pour was
 20 occurring?
 21 A Ten to twenty feet.
 22 Q And Mr. Howell, or the pump truck operator, was right next
 23 to you?
 24 A At some point.
 25 Q Do you recall any communication prior to the pour occurring

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1 or in this interim process when you're standing on the deck,
 2 do you recall any communication between you and Mr. Howell?
 3 A I recall him saying his remote wasn't working properly.
 4 Q Before he said that, to the extent that he did say that, did
 5 you hear any concrete being poured into the form?
 6 A I don't recall.
 7 Q Do you recall any concrete at any point coming out and being
 8 poured into the form?
 9 A Only right during the incident is what I remember.
 10 Q And you would hear the splattering of concrete down inside
 11 the wooden structure; is that correct?
 12 A There was not much. There was very little, so not really.
 13 Q And that was subsequent to what we just talked about right
 14 at the time of the incident itself?
 15 A Yes.
 16 Q Prior to that do you recall any noise in terms of concrete
 17 coming out and going into the form?
 18 A I don't recall.
 19 Q In terms of your practice, the pump truck operator wouldn't
 20 just typically start up without giving a signal to either
 21 the pourers or you giving a signal to him; is that fair?
 22 MR. MOORE: Object to form.
 23 A Yes.
 24 Q And was it your communication with him that signaled that it
 25 was okay to attempt to start the pour?

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1 A Yes.
 2 Q Were you authorized to stop the pour at any point?
 3 A Yes.
 4 Q And in terms of your role standing next to him or near him,
 5 did you ever signal for him to stop on that day?
 6 A No.
 7 Q And on the day in question did any of the other pourers up
 8 on the scaffolding signal that it was okay to start?
 9 A I don't recall.
 10 Q Do you know if they gave a thumbs up and said we're ready or
 11 let's go?
 12 A I don't recall.
 13 Q Is that something that would typically happen?
 14 A Yes.
 15 Q Do the pourers also have authority to tell the pump truck
 16 operator to pause or stop the pour?
 17 A Yes.
 18 Q And is that because it's common during the pouring process
 19 that there would be reason to pause to catch up or something
 20 else?
 21 A Yes.
 22 Q And that occurs frequently throughout any given pour; is
 23 that fair?
 24 A Yes.
 25 Q During your average pour, how many times would you say that

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1 there is a pause at some point for some duration based upon
 2 pourers telling the operator to stop?
 3 A It's hard to put a number on it. It's different on every
 4 pour.
 5 Q But it's not infrequent?
 6 A No.
 7 Q And in terms of telling the operator to pause, that could
 8 be, for example, because you're moving from one form to
 9 another form somewhere nearby?
 10 A Yes.
 11 Q And you don't just pour concrete all across the location
 12 where you're working?
 13 A No.
 14 Q Between the time that you were initially standing next to
 15 Mr. Howell on the slab or on the deck, how long was it
 16 between that point and when the pour was re-attempted?
 17 A I don't recall.
 18 Q Was it a matter of seconds?
 19 A Yes, I believe so. I'm sorry, I don't recall. I cannot say
 20 yes or no for sure, so I don't recall.
 21 Q In your mind was it a long time?
 22 A No.
 23 Q And when you say that he then walked away from you, how
 24 close were you at the point that he turned around and things
 25 were restarting?

EXHIBIT 34

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1 pumping?
 2 MR. CASEY: Object to form.
 3 A I don't know the pricing.
 4 Q Let's take a look at what's marked as Exhibit 24 here. Have
 5 you seen what's been marked as Exhibit 24 before?
 6 A It appears that I wrote this statement.
 7 Q Is that your handwriting?
 8 A Unfortunately.
 9 Q Why do you say unfortunately?
 10 A Sorry. I have bad handwriting. Yes, that is my
 11 handwriting.
 12 Q On the second page, and this one's PRR 97551 48, do you see
 13 that?
 14 A Yeah.
 15 Q And is that your signature highlighted there on the bottom
 16 right?
 17 A Yes, it appears so.
 18 Q And so you had declared under the penalty of perjury that
 19 what you had written is true and correct; is that correct?
 20 MR. CASEY: Object to form.
 21 A Yes.
 22 Q So reading through this, you wrote: Gilberto was about to
 23 run the hose, Juan was ready to use the vibrator, and
 24 Enrique was going to operate the motor on the vibrator. Is
 25 that true and accurate?

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1 A Yes.
 2 Q And does anything in this statement: true refresh your
 3 recollection as to what happened and where everybody was?
 4 A It refreshes my memory as to who the other two people were.
 5 Q Who is Juan?
 6 A Gilberto's brother.
 7 Q Juan Cristobal Vargas?
 8 A Yes.
 9 Q And who is Enrique?
 10 A Another employee of Hilltop Concrete.
 11 Q Was that Enrique Cruz Medina?
 12 A I don't know his last name.
 13 Q Now, you wrote: When we started, the pump operator could
 14 not get his boom pump to work where he was standing, which
 15 was next to where the pour was starting. Is that correct?
 16 A That is what I wrote.
 17 Q Do you know where he was standing at that time?
 18 A I don't recall exactly.
 19 Q So you indicate that he was standing next to where the pour
 20 was starting; is that accurate?
 21 A I don't think it says that, no.
 22 Q Does this tell you or refresh your recollection as to where
 23 the pump operator was when he couldn't get his pump to work?
 24 A No.
 25 Q Do you remember if the pump operator said that his pump

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1 needed a new antenna?
 2 MR. CASEY: Object to form.
 3 A I don't recall exactly.
 4 Q What do you recall now about anything that he said about the
 5 antenna?
 6 A I don't recall anything about the antenna specifically.
 7 Q Do you have any reason to believe that anything you wrote in
 8 your statement in Exhibit 24 is inaccurate?
 9 MR. CASEY: Object to form.
 10 A I do not.
 11 Q You also stated it wasn't primed out properly. What did you
 12 mean by that?
 13 MR. CASEY: Object to form; misstates what is
 14 written.
 15 MR. MOORE: Okay. It states maybe it wasn't primed
 16 out properly. I see that now.
 17 MR. CASEY: Same objection.
 18 Q Why do you think it may have not been primed out properly?
 19 MR. CASEY: Object to form.
 20 A Because it clogged.
 21 Q Now looking at the second page, up at the top you wrote that
 22 he moved about 50 feet closer to his pump. Do you see that?
 23 A I see that.
 24 Q So his remote would work; is that right?
 25 MR. CASEY: Object to form.

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1 A That's what it says.
 2 MR. BUTLER: Counsel, is there another continuation
 3 sheet for this document that is not attached to this
 4 exhibit?
 5 MR. MOORE: It may be in another exhibit. I think
 6 we'll get there.
 7 Q So considering this and your recollection, do you remember
 8 where the pump operator was when he started pumping again?
 9 A On the deck between the end of the hose and his pump
 10 somewhere.
 11 Q Was he at least 50 feet away from the end of the hose?
 12 MR. CASEY: Object to form.
 13 A I don't recall.
 14 Q Well, in your statement you wrote that he was next to where
 15 the pour was starting when the pump stopped; is that right?
 16 MR. CASEY: Are you paraphrasing or are you
 17 quoting?
 18 MR. MOORE: Paraphrasing a little.
 19 Q I'll quote directly. It says: When we started, the pump
 20 operator could not get his boom bump to work where he was
 21 standing, which was next to where the pour was starting.
 22 Did I read that correctly?
 23 A Yes.
 24 Q And is that accurate as to what happened when you started?
 25 MR. CASEY: Object to form.

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1 A That's what I wrote at the time. That's what I remembered
 2 at the time.
 3 Q So then on the next page you wrote that he moved about 50
 4 feet closer to his pump so his remote would work, and that's
 5 a direct quote. Is that accurate?
 6 A That's correct.
 7 Q So would you agree that he was at least 50 feet away from
 8 the end of the hose when he started the pump again?
 9 MR. CASEY: Object to form.
 10 A No.
 11 Q Why not?
 12 MR. CASEY: Same objection.
 13 A I said about 50 feet and he could have been standing past
 14 the hose. I don't know how far away he was.
 15 Q Well, you didn't actually measure him; right?
 16 A Yeah.
 17 Q But you estimated that he was about 50 feet closer to his
 18 pump when he started again?
 19 A That's what it says, yes.
 20 Q And did you write this on the day of the incident?
 21 A The date is the same, but I don't recall.
 22 Q Well, on the bottom it says 05/23/13 and then you signed it.
 23 A Yes.
 24 Q So you wrote this and at least signed it on the date of the
 25 incident; is that correct?

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1 A It appears so.
 2 Q And would you have a better memory of the events as it
 3 happened when you're writing them on the day of the incident
 4 than you would now several years later?
 5 MR. CASEY: Object to form.
 6 A I don't know.
 7 Q Let's look at what's been marked Exhibit 25. Have you seen
 8 what's been marked Exhibit 25 before?
 9 A No.
 10 Q I'll represent to you that this was one of the Labor and
 11 Industries inspector's notes of the conversation with you.
 12 A Okay.
 13 Q Do you remember anyone from L. & I asking you where it's
 14 highlighted toward the bottom of the first page on Exhibit
 15 25, is there anything that could alleviate the situation
 16 from happening? Do you remember being asked that or
 17 something to that effect by the L. & I investigator?
 18 A I don't recall.
 19 Q And the answer states, I don't think so. Is that something
 20 that you said?
 21 MR. CASEY: Object to form. Counsel, could you
 22 please read the whole statement?
 23 Q "I don't think so. The operator is good at his job. This
 24 has not happened before."
 25 A I don't recall.

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1 Q Now looking at the next page of Exhibit 25, do you remember
 2 being asked: Why didn't the operator get the guys out of
 3 the way?
 4 A No, I don't recall.
 5 Q And it indicates the answer was, Two pumps.
 6 Do you remember any conversations with the L & I
 7 investigator where you would have referred to two pumps as
 8 an answer to a question such as this?
 9 A No, I don't recall.
 10 MR. MUSE: Object to the form of the question to
 11 the extent that there's nothing on here that those are Mr.
 12 Skoog's answers.
 13 Q Do you know what you would have meant by two pumps?
 14 MR. CASEY: Object to form.
 15 A No.
 16 Q Does that refresh your recollection or ring any bells as to
 17 how the incident happened?
 18 A No.
 19 Q And looking at number one on these notes, again this is the
 20 second page of Exhibit 25, the L & I inspector - well, it's
 21 written: They don't usually know and we hold onto the hose
 22 ride it out.
 23 Do you know what that means?
 24 MR. BUTLER: Object to form.
 25 A No, I don't.

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1 Q Again have you ever heard the phrase "hold onto the hose
 2 ride it out" in conjunction with training on how to avoid
 3 hose whip injuries?
 4 A No.
 5 Q And at the bottom, at least Exhibit 25 shows or indicates
 6 that you were asked: Did Gildardo get hit by the reducer?
 7 And the answer was: End of hose. Do you see where that's
 8 written?
 9 MR. CASEY: Object to form. There's another word
 10 underneath the question.
 11 Q And it says no.
 12 A I see where it's written, yes.
 13 Q And is it your testimony today that Gildardo was not hit by
 14 the reducer?
 15 A Yes.
 16 Q And is it also your testimony today that he was hit by the
 17 end of the hose rather than the reducer?
 18 A He was hit by the hose.
 19 Q What part of the hose?
 20 A I can't say for sure.
 21 Q Was it any other part of the hose rather than the end?
 22 MR. CASEY: Object to form.
 23 A Possibly.
 24 Q Let's turn your attention to Exhibit 26. Have you seen
 25 what's been marked as Exhibit 26?

EXHIBIT 35

1 2. I was working as Hilltop's foreman at the North City Apartments project on May
2 23, 2013, the date of the accident involving Hilltop employee Gildardo Vargas.

3 3. On that day, Hilltop was forming and pouring part of the north concrete wall of the
4 Building "B" parking garage structure. We had been doing work on pouring the concrete for the
5 garage structure for several days before. Ralph's Concrete Pumping was doing all of the
6 concrete pumping for that structure. Ralph's showed up on the site that morning, parking the
7 pump truck on the west side of the project site. The west side was the only place where the
8 pump truck could be stationed, and was where it had been stationed previously.

9 4. The Ralph's operator set up the pump, performed the slurry-up procedure near
10 the pump truck, dumped the slurry, then extended the boom to the north wall where Hilltop
11 forms and crew were ready to place the concrete.

12 5. Gildardo Vargas was the lead Hilltop worker for the pour that morning. With him
13 were two other Hilltop workers. They were positioned on the scaffolding next to the concrete
14 forms. The Ralph's operator moved the boom and flexible pump hose into position. Gildardo
15 was holding the hose, ready to guide the concrete into the forms. Another worker was operating
16 the vibrator. I was on the concrete deck, observing the work being done on the scaffolding,
17 about 10-20 feet away. The Ralph's operator was nearby on the concrete deck near the pour
18 location, using the pump remote controller. There were no other trade workers near our work
19 site. This was important, so that we could focus on doing our work properly and safely during
20 the pour.

21 6. The Ralph's operator began to operate the pump, and concrete started flowing
22 through the hose and into the form. Shortly after the concrete began flowing into the form, the
23 flow stopped. The Ralph's operator mentioned something about the signal between his
24 controller and the pump truck. After the flow stopped, the operator tried to re-start the flow. At
25 that time, I heard the revving sound of the pump, which signals a clog that could lead to a blow

DECLARATION OF MATT SKOOG - 2

EXHIBIT 36

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1 theories or opinions come out and you are refusing to answer
 2 the question now on the record, that will be noted as well.
 3 MR. MOORE: That I'm refusing to answer the
 4 question?
 5 MR. BUTLER: The scope objection and inquiry about
 6 the scope, yes.
 7 MR. MOORE: Well, we're talking about what happened
 8 in this incident and we're talking about what happened to
 9 cause this hose to lift and injure my client. What more do
 10 you need? I'm just asking him some facts.
 11 MR. BUTLER: I'm asking for the disclosure of
 12 expert opinions and conclusions with regard to the operation
 13 of the pump, pump hose, the aggregate, and aggregate size,
 14 the mix, the mix design, the duties of the general
 15 contractor, the subcontractors, and suppliers. That's what
 16 I'm looking for is what your expert is going to testify to
 17 at trial with regard to the breach of duty of care. If it
 18 hasn't been fully disclosed as we understand it currently,
 19 then we will move to exclude it, and I'm asking you on the
 20 record to clarify it right now. This is the same thing I've
 21 recorded in prior depositions and prior objections with
 22 regard to questions on the issue and down the line of
 23 questioning relating to power supply to the project. I've
 24 been given no opinions or conclusions that relates to the
 25 particular issue.

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1 MR. MOORE: Well, that's not the place for here.
 2 If you're talking about expert disclosures, this is not the
 3 place to argue this during the deposition. I'm just asking
 4 the man for some facts.
 5 MR. BUTLER: Right. And I'm asking you to clarify
 6 why this is within the scope of this lawsuit.
 7 MR. MOORE: Well, it should be apparent.
 8 MR. BUTLER: What theory of liability other than --
 9 MR. MOORE: No, I don't have to tell you the theory
 10 of liability. The theories of liability have been
 11 extensively briefed in this case. You can look at my
 12 briefing.
 13 MR. BUTLER: If there's nothing new, that's all you
 14 have to say.
 15 MR. MOORE: Well, I'm just asking the question. He
 16 was there.
 17 MR. BUTLER: You're not saying no, are you.
 18 MR. MOORE: If you have something to take up with
 19 the court, I think this whole objection is frivolous,
 20 frankly, but...
 21 MR. BUTLER: It was just a scope objection. I'm
 22 not going to instruct him not to answer. I'm just seeking
 23 on the record to determine what the relevance is to the
 24 scope of this lawsuit. You haven't answered the question.
 25 MR. MOORE: I can say that asking him about his

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1 observations of the scene and the facts and his knowledge of
 2 pumping equipment and concrete pouring equipment, it is
 3 under CR 26 reasonably calculated to lead the discovery of
 4 admissible evidence, and that's all you need to know. Let's
 5 move on.
 6 MR. BUTLER: We're within a month of the end of
 7 discovery cutoff, so that's why I'm asking it.
 8 Q On this job do you know if there was any attempt to make
 9 sure that the rock size did not exceed a
 10 one-third-of-the-hose diameter?
 11 MR. BUTLER: Object to form.
 12 A I don't know. May I take a break?
 13 Q Sure.
 14 (Recessed 2:20 p.m. to 2:25 p.m.)
 15 Q To your knowledge on this job on the day of the incident was
 16 there any attempt to coordinate the rock size with the end
 17 pipe to make sure that the pipe was big enough to hold the
 18 concrete that was going through it?
 19 MR. MUSE: Object to form.
 20 MR. CASEY: Same objection.
 21 A I don't know.
 22 MR. BUTLER: Off the record counsel mentioned the
 23 preservation of all form objections. As to all defendants,
 24 I'll take him up on that offer. And there may be a knee
 25 jerk response to say a form objection, but I'll try not to.

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1 Thank you.
 2 MR. MOORE: That should help us get through this
 3 faster, since they object to form on every question anyway.
 4 Q Again did you actually see Mr. Cristostomo Vargas get hit by
 5 the hose?
 6 A Yes.
 7 Q And do you know if the hose had been hanging down or laying
 8 flat against a wall or form or anything?
 9 MR. CASEY: Object to form.
 10 A No.
 11 Q So you don't know either way?
 12 A I believe it was going down into the form.
 13 Q Do you know if the end of the hose was touching anything at
 14 the time of the incident?
 15 A I don't recall.
 16 Q Do you know if the reducer was touching anything?
 17 A I don't recall. I don't think so.
 18 Q Do you know if either the boom or the reducer or the hose
 19 was stretched out in any way?
 20 MR. CASEY: Object to form.
 21 A The boom was stretched out as in the pictures.
 22 Q And was the hose hanging down or laying flat?
 23 MR. CASEY: Same objection.
 24 A The hose was hanging.
 25 Q Do you recall how many people were near the hose at the time?

117	<p>1 of the incident?</p> <p>2 A Three.</p> <p>3 Q Do you know who they were?</p> <p>4 A Gildardo and two others.</p> <p>5 Q Do you remember who the two others were?</p> <p>6 A I do not.</p> <p>7 Q Where was Gildardo at the time?</p> <p>8 A Holding the hose.</p> <p>9 Q What part of the hose was he holding?</p> <p>10 A The end.</p> <p>11 Q What this the end by the reducer or the other end where the</p> <p>12 concrete was going to come out?</p> <p>13 A Where the concrete comes out.</p> <p>14 Q Now, earlier in your deposition in November you were asked</p> <p>15 about some training regarding hose whip incidents. Do you</p> <p>16 remember that?</p> <p>17 A Yes.</p> <p>18 Q To your knowledge was Gildardo given any training as to how</p> <p>19 to avoid hose whip incidents?</p> <p>20 A I believe so, yes.</p> <p>21 Q What training was he given?</p> <p>22 A If the hose is going to whip, to get out of the way.</p> <p>23 Q And when was he told that?</p> <p>24 A I don't recall.</p> <p>25 Q And did you tell him that?</p>	119	<p>1 provided the availability for these photographs in 2014. We</p> <p>2 were asked to provide them by plaintiffs recently.</p> <p>3 MR. MOORE: Objection noted. Not necessarily</p> <p>4 agreed with, but we're not going to have that argument here.</p> <p>5 MR. BUTLER: I just want to make sure the record's</p> <p>6 accurate.</p> <p>7 Q What's been marked Exhibit 18, do you identify this as being</p> <p>8 the North City Apartments job?</p> <p>9 A It appears so, yes.</p> <p>10 Q And up in the upper right it's marked 05/13/2013. Does this</p> <p>11 appear to accurately depict the state of construction on</p> <p>12 that date?</p> <p>13 A It does.</p> <p>14 Q And does this picture show the location of where the injury</p> <p>15 was?</p> <p>16 A Maybe a little. That's a bad answer, isn't it. It's on the</p> <p>17 edge of the picture, I believe.</p> <p>18 Q And looking at where the hose is coming down and the wall</p> <p>19 it's coming down into, do you see that?</p> <p>20 A Yes.</p> <p>21 Q And did the incident happen anywhere along the wall that's</p> <p>22 shown here, the wall or the wall forms, I should say?</p> <p>23 MR. CASEY: Object to form. Can you be more</p> <p>24 specific? I apologize.</p> <p>25 A I agree. Please be more specific.</p>
118	<p>1 A I don't recall.</p> <p>2 Q How do you know that he was told that?</p> <p>3 A I said I believe so.</p> <p>4 Q Do you have any personal knowledge of any training that was</p> <p>5 given to Gildardo as to how to avoid hose whip injury?</p> <p>6 A I do not personally remember an exact moment.</p> <p>7 Q We talked about the duck-and-cover exhibit, Exhibit Number</p> <p>8 2, and I believe there was also some information saying that</p> <p>9 Hilltop employees may have also been told to ride it out.</p> <p>10 Does that sound familiar?</p> <p>11 A No.</p> <p>12 Q Well, prior to this incident have you ever heard that duck</p> <p>13 and cover was the way to avoid hose whip injury?</p> <p>14 A Yeah.</p> <p>15 Q And who did you hear that from?</p> <p>16 A I don't recall.</p> <p>17 Q Have you ever heard "ride it out", or something to that</p> <p>18 effect, being used as a method to avoid hose whip injury?</p> <p>19 A No.</p> <p>20 Q And I'll turn your attention to what's been marked Exhibit</p> <p>21 Number 18 to your deposition today, and I'll represent that</p> <p>22 this was one that was provided to us by Inland recently</p> <p>23 showing -- well, I'll ask you. Does this show the North</p> <p>24 City Apartments?</p> <p>25 MR. BUTLER: A misrepresentation on the record. We</p>	120	<p>1 Q Was this wall form there there at the time of the incident?</p> <p>2 MR. CASEY: For the record, counsel's pointing to</p> <p>3 the far wall closest to the houses.</p> <p>4 A At the time of the incident that wall was concrete.</p> <p>5 Q Okay. Can you just point to it, if you can, if you know,</p> <p>6 where exactly the incident happened? Where was Gildardo on</p> <p>7 the project when the incident happened?</p> <p>8 A I cannot point exactly, but it is in this area.</p> <p>9 Q Could you circle the general area?</p> <p>10 A (Witness so doing.)</p> <p>11 Q And were you there on the job at the time on May 13th of</p> <p>12 2013?</p> <p>13 A I don't know.</p> <p>14 Q And Exhibit 18 shows a swing pump being used. Do you agree</p> <p>15 with that, at least the label up here?</p> <p>16 MR. CASEY: Object to form.</p> <p>17 A I believe that's a brand. Yeah, it says Schwing or Swing or</p> <p>18 whatever.</p> <p>19 Q Do you know if Ralph's was doing the pumping at this time?</p> <p>20 A Yes.</p> <p>21 Q And was Ralph's doing the pumping at the time on May 13th?</p> <p>22 A Yes, it appears that way.</p> <p>23 Q Do you know what size boom that was being used on May 13th?</p> <p>24 A No.</p> <p>25 Q And let's look at what's been marked as Exhibit 19. And is</p>

EXHIBIT 37

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1 A That's what I wrote at the time. That's what I remembered
 2 at this time.
 3 Q So then on the next page you wrote that he moved about 50
 4 feet closer to his pump so his remote would work, and that's
 5 a direct quote. Is that accurate?
 6 A That's correct.
 7 Q So would you agree that he was at least 50 feet away from
 8 the end of the hose when he started the pump again?
 9 MR. CASEY: Object to form.
 10 A No.
 11 Q Why not?
 12 MR. CASEY: Same objection.
 13 A I said about 50 feet and he could have been standing past
 14 the hose. I don't know how far away he was.
 15 Q Well, you didn't actually measure him; right?
 16 A Yeah.
 17 Q But you estimated that he was about 50 feet closer to his
 18 pump when he started again?
 19 A That's what it says, yes.
 20 Q And did you write this on the day of the incident?
 21 A The date is the same, but I don't recall.
 22 Q Well, on the bottom it says 05/23/13 and then you signed it.
 23 A Yes.
 24 Q So you wrote this and at least signed it on the date of the
 25 incident; is that correct?

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1 A It appears so.
 2 Q And would you have a better memory of the events as it
 3 happened when you're writing them on the day of the incident
 4 than you would now several years later?
 5 MR. CASEY: Object to form.
 6 A I don't know.
 7 Q Let's look at what's been marked Exhibit 25. Have you seen
 8 what's been marked Exhibit 25 before?
 9 A No.
 10 Q I'll represent to you that this was one of the Labor and
 11 Industries inspector's notes of the conversation with you.
 12 A Okay.
 13 Q Do you remember anyone from L & I asking you where it's
 14 highlighted toward the bottom of the first page on Exhibit
 15 25, is there anything that could alleviate the situation
 16 from happening? Do you remember being asked that or
 17 something to that effect by the L & I investigator?
 18 A I don't recall.
 19 Q And the answer states, I don't think so. Is that something
 20 that you said?
 21 MR. CASEY: Object to form. Counsel, could you
 22 please read the whole statement?
 23 Q "I don't think so. The operator is good at his job. This
 24 has not happened before."
 25 A I don't recall.

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1 Q Now looking at the next page of Exhibit 25, do you remember
 2 being asked: Why didn't the operator get the guys out of
 3 the way?
 4 A No, I don't recall.
 5 Q And it indicates the answer was, Two pumps.
 6 Do you remember any conversations with the L & I
 7 investigator where you would have referred to two pumps as
 8 an answer to a question such as this?
 9 A No, I don't recall.
 10 MR. MUSE: Object to the form of the question to
 11 the extent that there's nothing on here that those are Mr.
 12 Skoog's answers.
 13 Q Do you know what you would have meant by two pumps?
 14 MR. CASEY: Object to form.
 15 A No.
 16 Q Does that refresh your recollection or ring any bells as to
 17 how the incident happened?
 18 A No.
 19 Q And looking at number one on these notes, again this is the
 20 second page of Exhibit 25, the L & I inspector -- well, it's
 21 written: They don't usually know and we hold onto the hose
 22 ride it out.
 23 Do you know what that means?
 24 MR. BUTLER: Object to form.
 25 A No, I don't.

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1 Q Again have you ever heard the phrase "hold onto the hose
 2 ride it out" in conjunction with training on how to avoid
 3 hose whip injuries?
 4 A No.
 5 Q And at the bottom, at least Exhibit 25 shows or indicates
 6 that you were asked: Did Gildardo get hit by the reducer?
 7 And the answer was: End of hose. Do you see where that's
 8 written?
 9 MR. CASEY: Object to form. There's another word
 10 underneath the question.
 11 Q And it says no.
 12 A I see where it's written, yes.
 13 Q And is it your testimony today that Gildardo was not hit by
 14 the reducer?
 15 A Yes.
 16 Q And is it also your testimony today that he was hit by the
 17 end of the hose rather than the reducer?
 18 A He was hit by the hose.
 19 Q What part of the hose?
 20 A I can't say for sure.
 21 Q Was it any other part of the hose rather than the end?
 22 MR. CASEY: Object to form.
 23 A Possibly.
 24 Q Let's turn your attention to Exhibit 26. Have you seen
 25 what's been marked as Exhibit 26?

EXHIBIT 38

139	<p>1 It's so long ago. I can't remember.</p> <p>2 Q Do you remember whether Ralph's -- strike that.</p> <p>3 Do you remember whether the concrete pumping truck</p> <p>4 had been moved from where it was when the accident</p> <p>5 occurred?</p> <p>6 A When the accident occurred, when I got there, it appears</p> <p>7 that it had been moved, but I can't remember. There are</p> <p>8 other folks that might know that answer.</p> <p>9 Q Okay. And then, not to belabor a point, but if you</p> <p>10 could please look to page 19 of Exhibit 14.</p> <p>11 Before we go to this page, a moment ago you said</p> <p>12 that it looked like the driver was cleaning out, but you</p> <p>13 can't remember exactly?</p> <p>14 A I don't remember. That's all I can say.</p> <p>15 Q What does cleaning out mean?</p> <p>16 A The hopper had water in it or whatever. How about that?</p> <p>17 Q I don't want you to guess.</p> <p>18 A I don't remember. That's my answer.</p> <p>19 Q I'm asking, in general, in all of your years of</p> <p>20 experience as a laborer, when you use the term "cleaning</p> <p>21 out," what does that mean, to you?</p> <p>22 A He's got to drop his hopper into an eco pan or drop it</p> <p>23 somewhere on the site.</p> <p>24 Q And then clean it?</p> <p>25 A Yeah, yeah.</p>	141	<p>1 John Butler, from Inland Washington.</p> <p>2</p> <p>3 EXAMINATION</p> <p>4 BY MR. BUTLER:</p> <p>5 Q I'll try to be quick, Mr. Grayson.</p> <p>6 A You're not here so I can't read your lips. So I'm just</p> <p>7 telling you, I may have to ask what a couple times.</p> <p>8 Q That's fine. I'll try to be as clear as I can.</p> <p>9 A Okay.</p> <p>10 Q Am I understanding correctly that your job as an</p> <p>11 inspector is to identify any WISHA regulation</p> <p>12 violations?</p> <p>13 A Yeah.</p> <p>14 Q Okay. That was what you were there for that day?</p> <p>15 A We were there to find out the cause of the accident, not</p> <p>16 to fine the company but to find out what the accident</p> <p>17 was caused by.</p> <p>18 Q Did the results of your investigation result in a report</p> <p>19 that found citations for WISHA violation?</p> <p>20 A Which inspection are you referring to, sir?</p> <p>21 Q Inland Washington.</p> <p>22 A Inland.</p> <p>23 Q Yes.</p> <p>24 A There were no violations for Inland.</p> <p>25 Q Thank you. I can refer you generally to Exhibit 13, but</p>
140	<p>1 Q Going now to page 19, when did you talk to the concrete</p> <p>2 truck driver?</p> <p>3 A I believe, the same day.</p> <p>4 Q That morning?</p> <p>5 A Yeah.</p> <p>6 Q Or whenever you were doing your investigation?</p> <p>7 A When we were there.</p> <p>8 Q Okay. Did you have any follow-up interviews with the</p> <p>9 concrete truck driver?</p> <p>10 A I don't believe so.</p> <p>11 Q Did you ask for any additional information from the</p> <p>12 concrete truck driver, any follow-up information?</p> <p>13 A I don't believe so.</p> <p>14 Q Do you know whether you got copies of the ticket,</p> <p>15 concrete ticket, and the mix design sheet for the</p> <p>16 concrete?</p> <p>17 A Through the course of the inspection, someone sent it to</p> <p>18 us. We requested it. But again, I don't know when.</p> <p>19 Q Just to be clear, though, when there was this follow-up</p> <p>20 request, there was no additional interview held; is that</p> <p>21 correct?</p> <p>22 A Not with Derek.</p> <p>23 MR. MUSE: Thank you.</p> <p>24 MR. MOORE: David, John, any questions?</p> <p>25 MR. BUTLER: I have a few follow-up.</p>	142	<p>1 I'm going to try to cut to the chase.</p> <p>2 Based on the note that I believe you prepared or</p> <p>3 your team prepared, you talked with Inland</p> <p>4 representatives about their safety plan.</p> <p>5 Did you convey to them any requirements that they</p> <p>6 have any additional inspection oversight by the general</p> <p>7 contractor any time?</p> <p>8 MR. MOORE: Object to form.</p> <p>9 A Say the question, again?</p> <p>10 Q (By Mr. Butler) Let me rephrase it.</p> <p>11 In your notes, I did not see anything wherein you</p> <p>12 indicated to the general contractor that additional</p> <p>13 contractor personnel would be required to perform</p> <p>14 inspection services. Am I incorrect in reading your</p> <p>15 report and documents?</p> <p>16 A I guess I'm not understanding what you mean by</p> <p>17 additional personnel be required. I'm a little confused</p> <p>18 by your question, sir.</p> <p>19 Q I understand. I didn't see anything in the report or</p> <p>20 any of Exhibit 13 wherein you or anybody from L and I</p> <p>21 suggested to Inland Washington that they staff the</p> <p>22 inspection and safety protocols with additional workers.</p> <p>23 MR. MOORE: Object to form.</p> <p>24 A You know, I'm just going to have to say I don't</p> <p>25 understand your question.</p>

EXHIBIT 39

EXHIBIT 13
Witness Grayson
Date 2/21/17



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Division of Occupational Safety and Health
PO Box 44600 • Olympia, Washington 98504-4600

June 19, 2013
INLAND CONSTRUCTION & DEVELOPMENT CO
INLAND CONSTRUCTION & DEVELOPM
1620 N Mamer Rd Bldg B
Spokane Valley, WA 99216

Inspection: 316802677
UBI: 602415295
Region: 2-Safety
Inspector: KYLE GRAYSON (H8499)
Reference: 203179684

Dear Employer:

Enclosed are the results of the safety inspection of your workplace.

This inspection resulted in no violations.

You must immediately post the results of this inspection where employees can easily find and read it, or where employees normally receive posted information. This document must remain posted for three working days (RCW 49.17.120). "Working day" means a calendar day, except Saturdays, Sundays and all legal state holidays.

The Occupational Safety and Health Administration (OSHA) publishes Division of Occupational Safety and Health (DOSH) inspection results on the Internet at www.osha.gov, since this information is available under provisions of the Federal Freedom of Information Act. It is posted 30 days after the date the results are issued.

If you have questions, call the compliance supervisor, Scott Reiquam, at (206) 835-1051.

Respectfully,

Anne F. Soiza

Anne F. Soiza
Assistant Director
Division of Occupational Safety & Health

Enclosure(s)

EXHIBIT 40



Washington State Department of
Labor & Industries
Division of Occupational Safety and Health

Results of Inspection

Inspection: 316802677

UBI: 602415295
Legal Name: INLAND CONSTRUCTION &
DEVELOPMENT CO
DBA Name: INLAND CONSTRUCTION &
DEVELOPM
Inspection Site: 1220 NE 175th St., Shoreline, WA,
98155

Issued: June 19, 2013
Opening Conference: May 23, 2013
Closing Conference: June 3, 2013
Inspector: KYLE GRAYSON (H8499)

No violations were cited.

No penalties were assessed.

We appreciate your interest in and concern for workplace safety and health.

POST THIS DOCUMENT

EXHIBIT 41



Results of Inspection
Inspection: 316802651

URL: 570905490
Legal Name: RALPES CONCRETE PUMPING INC
DBA Name: RALPES CONCRETE PUMPING INC
Inspection: 1220 NE 17th St, Shoreline, WA, 98155
State:

Issued: August 19, 2013
Opening Conference: May 23, 2013
Closing Conference: July 17, 2013
Inspector: KYLE GRAYSON (80497)

No violations were cited.

No penalties were assessed.

We appreciate your interest in and concern for workplace safety and health.

Message

Policies and procedures directly related to the beginning of a concrete pour using a concrete pump fully extended to maximum capacity, should be evaluated to assure that a possible plug, could be minimized during startup operations. The pump should slurry out enough sand into an ooo-poo to ensure that a pumpable concrete mix is flowable throughout the system. After the boom is extended and above the work area vertically, a link is released from the end hose and the pump should begin slowly pouring. If the flexible concrete hose is not directly above the work space and attached to another flexible hose lying horizontally, the chances of a plug will increase under these conditions. If the pump operator can determine that a plug may occur he must take immediate steps to shut all workers participating in placement activities to evacuate the danger zone area, and reverse the pump before restarting forward pumping.

PPR 93839 2

EXHIBIT 42

1 **ANSWER:**

2 See Plaintiff's Response to Interrogatory No. 13.

3 **INTERROGATORY NO. 15:** State the name and address of each witness or other
4 person known to you or your attorney having any relevant knowledge concerning the alleged
5 occurrence, or any damages or injuries sustained by you as a result of the alleged occurrence,
6 and a brief explanation of what you understand their knowledge to be.

6 **ANSWER:**

7 Objection to the extent that this interrogatory requires Plaintiff to describe in detail the evidence Plaintiff
8 will rely upon to prove any fact or facts, to the extent it calls for legal conclusions, the mental
9 impressions of counsel, disclosure of consulting experts, or other information protected by work
10 product and / or privilege. Plaintiff also objects to the extent that this interrogatory calls for speculation
11 as to the knowledge of others.


Derek K. Moore, WSBA No. 37921

10 Without waiving said objection, the Plaintiff answers:

11 Plaintiff Gildardo Crisostomo Flores
12 c/o Bishop Legal
13 19743 1st Ave. S.
14 Normandy Park, WA 98148

14 Plaintiff Gildardo Crisostomo Flores may be able to recall facts related to the incident, to the
15 operations on the jobsite, to the parties and the relationships between them and his direct
16 employer, and to the general and special damages of all plaintiffs in this action.

17 Plaintiff Lucina Flores
18 c/o Bishop Legal
19 19743 1st Ave. S.
20 Normandy Park, WA 98148

20 Plaintiff Lucina Flores has knowledge related to her husband's injuries and damages and the
21 general and special damages of all plaintiffs in this action. She may also have knowledge
22 related to her husband's work and the jobsite, as well as second hand knowledge of facts
23 related to the incident.

22 Plaintiffs Patricia and Rosario Crisostomo Flores
23 c/o Bishop Legal
24 19743 1st Ave. S.

24 Def Inland Group P.S., LLC's 1st Rog/Req to Plf - 11
25 Cause No.: 13-2-32219-6 SEA
26 (0164-9; inland wash) 20131119

Plaintiffs answers to Defendant Inland ROGS and RPPS.
AKEN, ST. LOUIS & SILJED, P.S.
ATTORNEYS AT LAW
801 SECOND AVENUE
SUITE 1900
SEATTLE, WASHINGTON 98104
(206) 624-2660 / FAX (206) 623-6764

1 Normandy Park, WA 98148

2 Plaintiffs Patricia and Rosario Crisostomo Flores have knowledge related to their father's
3 injuries and damages and the general and special damages of all plaintiffs in this action.

4 Oscar Crisostomo Flores
5 c/o Bishop Legal
6 19743 1st Ave. S.
7 Normandy Park, WA 98148

8 Oscar Crisostomo Flores is Plaintiff's son who also worked for Plaintiff's direct employer.
9 He may have knowledge of facts related to the incident, to the operations on the jobsite, to the
10 parties and the relationships between them and his direct employer, and to the general and
11 special damages of all plaintiffs in this action.

12 Juan Crisostomo Vargas
13 10300 Des Moines Memorial Drive S., # 206
14 Seattle, WA 98168.

15 Juan Crisostomo Vargas is Plaintiff's brother who also worked for Plaintiff's direct employer,
16 and was working with Plaintiff at the time of the incident. He may have knowledge of facts of
17 the incident, of the operations on the jobsite, of the parties and the relationships between them
18 and his direct employer, and to the general and special damages of all plaintiffs in this action.

19 William Dussault
20 c/o Bishop Legal
21 19743 1st Ave. S.
22 Normandy Park, WA 98148

23 William Dussault is Plaintiff's court appointed Guardian ad Litem, who has knowledge of the
24 facts of this case including knowledge of Plaintiff's injuries and damages. Much or all of this
information is protected by work product and / or privilege.

Gordon Skoog, Brian Skoog, Matthew Skoog, Martin Crisostomo, Humberto Gomez, and
other officers, employees, representatives, agents, records custodians and corporate designees
of Hilltop Concrete Construction, LLC
c/o A. Shawn Hicks
800 5th Ave. Ste. 3825
Seattle, WA 98104-3178
Seattle, WA 98101-3929

Def Inland Group P.S., LLC's 1st Rogu/Req to Plif - 12
Cause No.: 13-2-32219-6 SEA
(0164-9; inland wash) 20131119

Plaintiffs answer to Defendant Inland ROGS and RFP's.

AIKEN, ST. LOUIS & SILJEG, P.S.
ATTORNEYS AT LAW
801 SECOND AVENUE
SUITE 1200
SEATTLE, WASHINGTON 98104
(206) 624-2050 / FAX (206) 628-5784

1 Gordon Skoog, Brian Skoog, Matthew Skoog, Martin Crisostomo, Humberto Gomez, and
2 other Hilltop Concrete Construction, LLC personnel may have knowledge of facts of the
3 incident, of the operations on the jobsite, of the parties and the relationships between them
and between them and Plaintiff's direct employer, of Plaintiff's employment and wages, and
to the general and special damages of Plaintiff.

4 Defendant Inland Group P.S. LLC and Inland Washington LLC
5 c/o David P. Hansen
6 Aiken, St. Louis & Siljeg, P.S.
7 801 Second Ave. Suite 1200
8 Seattle, WA 98104

9 Officers, employees, agents, representatives, records custodians and corporate designees of
10 Defendant Inland Group P.S. LLC and related entities including Inland Washington LLC may
11 have knowledge of facts of the incident, of the operations on the jobsite, of the parties and the
12 relationships between them and between them and Plaintiff's direct employer, of Plaintiff's
13 employment and wages, and to the general and special damages of Plaintiff.

14 Defendant Ralph's Concrete Pumping, Inc.
15 c/o William J. O'Brien and
16 Gregory G. Wallace
17 Law Office of William J. O'Brien
18 800 Fifth Ave, Suite 3810-3176
19 Seattle, WA 98104-3176

20 Officers, employees, agents, representatives, records custodians and corporate designees of
21 Defendant Ralph's Concrete Pumping, Inc. may have knowledge of facts of the incident, of
22 the operations on the jobsite, of the concrete and equipment used, of the parties and the
23 relationships between them and between them and Plaintiff's direct employer, and to the
24 general and special damages of Plaintiff.

25 Defendant Miles Sand & Gravel Co. d/b/a Concrete Nor'West.
26 c/o Steven G. Wraith
27 Leo Smart, P.S. Inc.
28 1800 One Convention Place
29 701 Pike Street

30 Officers, employees, agents, representatives, records custodians and corporate designees of
31 Defendant Miles Sand & Gravel Co. d/b/a Concrete Nor'West may have knowledge of facts
32 of the incident, of the operations on the jobsite, of the concrete and equipment used, of the

33 Def Inland Group P.S., LLC's 1st Resp/Req to Ptf - 13
34 Cause No.: 13-2-32219-6 SEA
(0164-9; inland wash) 20131119Plaintiff's answers to Defendant Inland ROG6 and RFP 8.30

AIKEN, ST. LOUIS & SILJEG, P.S.
ATTORNEYS AT LAW
801 SECOND AVENUE
SUITE 1200
SEATTLE, WASHINGTON 98104
(206) 624-2880 / FAX (206) 622-5784

1 parties and the relationships between them and between them and Plaintiff's direct employer,
2 and to the general and special damages of Plaintiff.

3 See also Plaintiff's health care providers as listed in Plaintiff's response to Interrogatory No. 9
4 and in Plaintiff's medical records, as well as staff, corporate designees and records custodians
5 thereof. See also Plaintiff's expert witnesses including those listed in Plaintiff's response to
6 Interrogatory No. 14, as well as all witnesses listed or identified by Defendants, and / or each
7 of them, or referenced in materials provided by Defendants in response to Plaintiff's
8 Discovery Requests.

9 In addition, Plaintiff's attorneys and representatives thereof, as well as consulting experts may
10 have such knowledge, over which Plaintiff asserts privilege and work product protections.
11 Likewise, such knowledge may be held by representatives of the Washington Department of
12 Labor and Industries, under claim No. AV48798, over which Plaintiff asserts work product
13 protection under Washington law including CR 26(b)(4) and Harris v. Drake, 152 Wn.2d 480,
14 99 P.3d 872 (2004).

15 **INTERROGATORY NO. 16:** Give the name and address of all expert witnesses,
16 including physicians and other persons of the healing arts, whom you or your attorney intend
17 to call as a witness at trial. For each such expert, please state:

- 18 (a) The subject matter on which the expert is expected to testify;
19 (b) The substance of the facts and opinions to which the expert is expected to
20 testify; and
21 (c) A summary of the grounds for each position.

22 **ANSWER:**

23 Plaintiff lists all of his health care providers as experts with respect to their fields of practice,
24 and fields with which they are familiar who may testify concerning the extent of his injuries,
the treatment and care thereof, and his prognosis. The subject matter, substance of facts and
opinions, and grounds for their opinions are detailed in their chart notes, billing statements,
and other related medical records.

25 Wendy B. Marlowe, Ph.D. A.B.P.P.
26 901 Boren Ave., Suite 610
27 Seattle, WA 98104

28 Plaintiff lists neuropsychologist Wendy B. Marlowe, Ph.D. A.B.P.P., who may perform a
29 neuropsychological examination of Plaintiff and render an opinion based on her examination
30 of Plaintiff, interviews with his family, and her review of his medical records and other

31 Def Inland Group P.S., LLC's 1st Resp/Req to Ptf - 14
32 Cause No.: 13-2-32219-6 SEA

33 (0164-9; inland wash) 20131119

34 Plaintiff's answer to Defendant Inland ROG's and RPT's. 20131119
35 **AKEN, ST. LOUIS & SUIJES, P.S.**
36 ATTORNEYS AT LAW
37 601 SECOND AVENUE
38 SUITE 1300
39 SEATTLE, WASHINGTON 98104
40 (206) 624-2860 / Fax (206) 623-5784

1 information obtained in discovery. Although she has been retained, she has not yet performed
2 this examination or records review and has not yet formed an opinion in this matter.

3 As treatment and discovery continues, Plaintiffs reserve the right to amend or otherwise
4 supplement this disclosure to include additional experts including engineering experts, safety
5 experts, vocational experts, and economic experts as well as additional health care providers,
6 medical experts, and medical billing experts.

7 Plaintiffs also reserve the right to call any witnesses named by the Defendants and/or needed
8 to rebut and/or impeach Defendants' witnesses, as well as any and all prior treating doctors
9 who have been disclosed through discovery.

10 **INTERROGATORY NO. 17:** Excluding child birth, if applicable, please identify all
11 hospitals that you have been admitted to or examined at for the past fifteen (15) years,
12 excluding hospitals previously identified, and provide the date(s) of admission and brief
13 reason for admission or examination.

14 **ANSWER:**

15 Objection. Overly burdensome. Plaintiff cannot be expected to recall every time he may have been
16 admitted to or examined at a hospital. Plaintiff also objects to the extent this interrogatory calls for
17 medical opinions that are out of the scope of Plaintiff's personal knowledge.


Derek K. Moore, WSBA No. 37921

18 Without waiving said objection, Plaintiff answers:

19 Plaintiff does not recall being admitted to any other hospitals other than the hospitals
20 previously listed in his responses to Interrogatories No. 7 and 9.

21 **INTERROGATORY NO. 18:** If you claim you are not fully recovered from the
22 injuries you allege from the subject occurrence, please state the nature of the injuries,
23 conditions and disability from which you are presently suffering.

24 **ANSWER:**

Objection to the extent that this interrogatory requires Plaintiff to describe in detail the evidence Plaintiff
will rely upon to prove any fact or facts, to the extent it calls for legal conclusions regarding causation
and regarding the term "disability" and to the extent this interrogatory calls for medical opinions that are
out of the scope of Plaintiff's personal knowledge.


Derek K. Moore, WSBA No. 37921

Def Island Group P.S., LLC's 1st Rogs/Req to Plff - 15
Cause No.: 13-2-32219-6 SEA
(0164-9; Inland wash) 20131119Plaintiff's answers to Defendant Island ROGS and RPT's.

ST. LOUIS & SILJEG, P.S.
ATTORNEYS AT LAW
601 SECOND AVENUE
SUITE 1800
SEATTLE, WASHINGTON 98104
(206) 424-2880 / FAX (206) 423-5784

EXHIBIT 43

1 5.11 At all times material hereto, defendant MILES SAND & GRAVEL COMPANY d/b/a
2 CONCRETE NOR'WEST was an agent of the other defendants named herein, and each
3 of them, acting within the course and scope of its agency.

4 PLAINTIFFS' CLAIMS AGAINST DEFENDANTS, AND EACH OF THEM.

5 6.1 Plaintiffs re-allege each and every allegation contained in the preceding paragraphs.

6 6.2 Defendants, and each of them, failed to ensure the safe operation of the concrete pouring
7 equipment necessary for plaintiff GILDARDO CRISOSTOMO VARGAS and other
8 workers on the job site to safely perform their work.

9 6.3 Defendants, and each of them, failed to properly maintain, inspect, and operate the
10 concrete pouring equipment necessary for plaintiff GILDARDO CRISOSTOMO
11 VARGAS and other workers on the job site to safely perform their work.

12 6.4 Defendants, and each of them, failed to ensure that the concrete pouring equipment was
13 properly operated, inspected, and / or maintained by a properly qualified person.

14 6.5 Defendants, and each of them, failed to provide plaintiff GILDARDO CRISOSTOMO
15 VARGAS and other workers on the job site with sufficient equipment, materials, and / or
16 manpower assistance to safely perform the work.

17 6.6 Defendants, and each of them, failed to ensure that plaintiff GILDARDO CRISOSTOMO
18 VARGAS had proper personal protective equipment to protect him from the hazard
19 posed by the concrete pouring equipment.

20 6.7 Defendants, and each of them failed to provide plaintiff GILDARDO CRISOSTOMO
21 VARGAS and other workers on the job site with sufficient instruction, supervision, and /
22 or training to safely perform their work.

23
24 FIRST AMENDED COMPLAINT FOR DAMAGES -
TORT - CONSTRUCTION SITE INJURY

PAGE 11 of 16

 **bishoplegal**
19743 First Avenue South
Seattle, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

1 6.8 Defendants, and each of them failed to establish and provide plaintiff GILDARDO
2 CRISOSTOMO VARGAS and other workers on the job site with a site specific safety
3 plan that was effective in practice that would have allowed them to safely perform their
4 work.

5 6.9 The incident causing plaintiff GILDARDO CRISOSTOMO VARGAS's injuries was
6 caused and proximately caused by unsafe and / or hazardous conditions on the job site
7 and / or by unsafe practices of Defendants, and each of them.

8 6.10 At all times material hereto Defendants, and each of them, were negligent in failing to
9 properly design, plan, coordinate, manage, inspect, equip, and / or otherwise supervise
10 the work of the contractors performing work at the aforesaid construction site such that
11 they caused the plaintiff GILDARDO CRISOSTOMO VARGAS's injuries.

12 6.11 At all times material hereto, Defendants, and each of them were negligent in violating
13 and / or unlawfully permitting to be violated the Washington Industrial Safety and Health
14 Act, RCW Title 49, Chapter 17, and administrative regulations promulgated under the
15 authority of said statute including but not limited to those codified under Title 296 WAC.

16 6.12 At all times material hereto Defendants, and each of them, were negligent in violating
17 and / or unlawfully permitting the Federal Occupational Safety and Health Act, USC
18 Title 29, Chapter 15, and administrative regulations promulgated under the authority of
19 said statute, to the extent that such federal regulations apply and / or are incorporated in
20 the Washington Industrial Safety and Health Act, RCW Title 49, Chapter 17.

21 6.13 The aforesaid statutory and / or regulatory violations include, but are not limited to,
22 failure to ensure that plaintiff GILDARDO CRISOSTOMO VARGAS and other workers
23 on the job site were provided with a workplace that complied with the safety standards

1 for construction work required by Chapter 296-155 WAC and with specific requirements
2 for equipment, tools, training, and operational procedures set forth in WAC 296-155-682
3 for concrete construction work.

4 6.14 Plaintiff GILDARDO CRISOSTOMO VARGAS's injuries were caused and proximately
5 caused by the aforesaid statutory and / or regulatory violations which Defendants, and
6 each of them, had a duty to prevent.

7 6.15 Plaintiff GILDARDO CRISOSTOMO VARGAS's injuries were caused and proximately
8 caused by the aforesaid negligence of Defendants, and each of them, by failing to provide
9 him with a place of employment that is reasonably safe and free from recognized hazards
10 likely to cause serious injury or death to employees, and in directing or permitting him to
11 be directed as part of his usual employment to work in a foreseeably dangerous place and
12 in a foreseeably dangerous manner.

13 6.16 Plaintiff GILDARDO CRISOSTOMO VARGAS's injuries were caused and proximately
14 caused by the breach of common law duties of ordinary care owed to said plaintiff by
15 Defendants, and each of them.

16 6.17 Plaintiff GILDARDO CRISOSTOMO VARGAS's injuries were caused and proximately
17 caused by the breach of duties owed by a possessor of land to said plaintiff by
18 Defendants, and each of them.

19 INJURIES AND DAMAGES SUSTAINED BY GILDARDO CRISOSTOMO VARGAS

20 7.1 Plaintiffs re-allege each and every allegation contained in the preceding paragraphs.

21 7.2 As a direct and proximate result of the negligence and / or statutory violations alleged
22 herein, plaintiff GILDARDO CRISOSTOMO VARGAS suffered severe, permanent and
23 disabling personal injuries, including but not limited to coma, closed head injury,

24

EXHIBIT 44

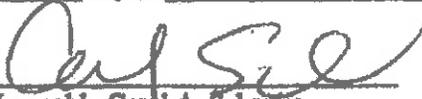
3. Defendant's Reply in Support of Motion for Summary Judgment with Declaration(s) in support and exhibits thereto, ~~if any~~;
4. Plaintiffs' Supplemental Brief in Opposition to Defendant Inland Washington, LLC's Motion for Summary Judgment, with declaration in support and exhibits thereto;
5. ~~Responses and Replies to Plaintiffs' Supplemental Brief, if any~~; with declarations in support and exhibits thereto, ~~if any~~;
6. Declarations of Mark LaLous and Rick Ekason, ;
7. with exhibits; Plaintiffs' Reply to Supplemental Reply, with ; and
declaration + exhibits
8. The Court having considered the above materials from Plaintiff and Defendants, having heard the oral argument of counsel, and reviewing the Court file, deems itself fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendant INLAND WASHINGTON, LLC's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that:

Inland WASHINGTON LLC owes non-delegable duties under State;
Rick Ekason's testimony is permitted; and
Inland WA is not vicariously liable

DONE IN OPEN COURT this 26th day of JUNE, 2015.

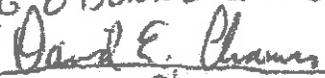

 Honorable Carol A. Schapira
 King County Superior Court Judge

Presented By:

BISHOP LEGAL


 Derek K. Moore, WSBA No. 37921
 Attorneys for Plaintiffs

Approved as to Form.
 PREG, O'DONNELL & GILLET


 David E. Chavez WSBA
 36322
 Attorney for Inland Washington LLC

ORDER DENYING DEFENDANT INLAND WASHINGTON, LLC'S MOTION FOR SUMMARY JUDGMENT

PAGE 2 of 2

 **bishoplegal**
 19743 First Avenue South
 Normandy Park, WA 98148-2401
 Tel: (206) 592-9000
 Fax: (206) 592-9001

EXHIBIT 45

FILED
KING COUNTY, WASHINGTON

MAR 31 2017

SUPERIOR COURT CLERK
BY Kim Noble
DEPUTY

Honorable Jeffrey M. Ramsdell
Hearing: March 31, 2017 at 1:00 p.m.
With Oral Argument

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

GILDARDO CRISOSTOMO VARGAS, et al.,

Plaintiffs,

v.

INLAND GROUP P.S., LLC, et al.

Defendants.

NO. 13-2-32219-6 SEA

ORDER GRANTING DEFENDANT INLAND
WASHINGTON, LLC'S MOTION FOR
SUMMARY JUDGMENT OF DISMISSAL

[Revised & Proposed]

Amended
3/31/17

THIS MATTER having come before the above-entitled Court on Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal, and the Court having considered the files and records herein, including:

1. Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal, dated March 3, 2017;
2. Declaration of David E. Chawes in Support of Inland Washington, LLC's Motion for Summary Judgment of Dismissal, dated March 3, 2017, with attached exhibits;

ORDER GRANTING DEFENDANT INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL - 1
10526-0003 5397611 NO. 13-2-32219-6 SEA

PREG O'DONNELL & GILLETT PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

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3. Plaintiffs' Opposition to Inland Washington LLC's (Second) Motion for Summary Judgment of Dismissal;

4. Declaration of Derek K. Moore in Support of Plaintiffs' Opposition to Defendant Ralph's Concrete Pumping, Inc.'s Motion for Summary Judgment and Inland Washington LLC's Motion for Summary Judgment of Dismissal, with attached exhibits;

5. Defendant Inland Washington LLC's Reply Re: Motion for Summary Judgment of Dismissal;

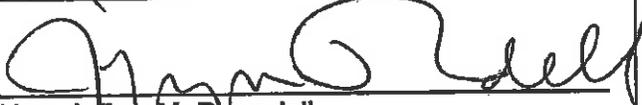
6. _____
and having heard argument of counsel in open court, and being otherwise fully advised in the premises, now, therefore, it is hereby

ORDERED that Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal is **GRANTED**; and that all claims against Defendant Inland Washington, LLC are **DISMISSED** with prejudice.

Or in the alternative:

ORDERED that Plaintiffs shall not assert any vicarious liability or concert of action theories against Inland Washington LLC at the trial of this matter.

DATED this 31st day of March, 2017.



Hon. Jeffrey M. Ramsdell
King County Superior Court Judge

1 Presented by:

2 PREG O'DONNELL & GILLETT PLLC

3

4 By /s/ David E. Chawes

John K. Butler, WSBA #28528

David E. Chawes, WSBA #36322

Michelle Q. Pham, WSBA #44286

Attorneys for Defendant Inland Washington,
LLC

7

8 Copy Received; Approved as to Form; Notice
of Presentation Waived:

9

BISHOP LEGAL

10

11 By

Raymond E. S. Bishop, Esq., WSBA #22794

12 Derek K. Moore, Esq., WSBA #37921

Ruby Aliment, Esq., WSBA #51242

13 Attorneys for Plaintiffs

14

AIKEN, ST. LOUIS & SILJEG, P.S.

15

16 By

David P. Hansen, Esq., WSBA #10755

17 Attorneys for Defendant Inland Group P.S.,

LLC

18

19

LEE SMART, P.S., INC.

20

21 By

Steven G. Wraith, Esq., WSBA #17364

22 Attorneys for Defendant Miles Sand & Gravel

Company, d/b/a Concrete Nor-West

23

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25

ORDER GRANTING DEFENDANT INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL - 3
10526-0003 5397611 NO. 13-2-32219-6 SEA

PREG O'DONNELL & GILLETT PLLC

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SEATTLE, WASHINGTON 98164-2026

TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 CHRISTIE LAW GROUP, PLLC

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By _____
Robert L. Christie, Esq., WSBA #10895
Thomas P. Miller, Esq., WSBA #34473
Alexander J. Casey, Esq., WSBA #10895
Attorneys for Defendant Ralph's Concrete
Pumping, Inc.

EXHIBIT 46

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Honorable Jeffrey M. Ramsdell

FILED
KING COUNTY, WASHINGTON

APR 21 2017

SUPERIOR COURT CLERK
BY ~~Natalie Wood~~
DEPUTY

FREEMAN

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

GILDARDO CRISOSTOMO VARGAS, an
incapacitated person, by and through
WILLIAM DUSSAULT, his Litigation
Guardian ad Litem; LUCINA FLORES, an
individual; and LUCINA FLORES as
Guardian ad Litem for PATRICIA
CRISOSTOMO FLORES and ROSARIO
CRISOSTOMO FLORES, minor children,

Plaintiff(s),

v.

INLAND GROUP P.S., LLC, a Washington
limited liability company; INLAND
WASHINGTON, LLC, a Washington limited
liability company; RALPH'S CONCRETE
PUMPING, INC., a Washington corporation;
and MILES SAND & GRAVEL COMPANY,
d/b/a CONCRETE NOR'WEST, a
Washington corporation,

Defendant(s).

NO. 13-2-32219-6 SEA

ORDER DENYING PLAINTIFFS' MOTION
FOR RECONSIDERATION OF ORDER
GRANTING INLAND WASHINGTON, LLC'S
MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the above-entitled Court on Plaintiffs' Motion for
Reconsideration of Order Granting Inland Washington, LLC's Motion for Summary Judgment,
and the Court having considered the files and records herein, including:

ORDER DENYING PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER GRANTING INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT - 1

10526-0003 5403419

Cause No. 13-2-32219-6 SEA

PREG O'DONNELL & GILLET PLLC

901 FIFTH AVE., SUITE 3400

SEATTLE, WASHINGTON 98164-2026

TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 1. Plaintiffs' Motion for Reconsideration of Order Granting Inland Washington, LLC's
2 Motion for Summary Judgment;

3 2. Declaration of Derek K. Moore in Support of Plaintiffs' Motion for Reconsideration
4 of Order Granting Inland Washington, LLC's Motion for Summary Judgment, with attached
5 exhibits;

6 3. Declaration of Oscar Flores In Support of Plaintiffs' Motion for Reconsideration of
7 Order Granting Inland Washington, LLC's Motion for Summary Judgment;

8 4. Defendant Inland Washington, LLC's Opposition to Plaintiffs' Motion for
9 Reconsideration of Order Granting Inland Washington, LLC's Motion for Summary Judgment

10 5. Declaration of John K. Butler in Support of Defendant Inland Washington LLC's
11 Opposition to Plaintiffs' Motion for Reconsideration of Order Granting Inland Washington, LLC's
12 Motion for Summary Judgment, with attached exhibits;

13 6. _____ ;
14 7. _____ ;
15 8. _____ ;

16 and the Court having determined the following findings of fact and having made the following
17 conclusions of law:

18 1. _____ ;
19 2. _____ ;
20 3. _____ ;
21 4. _____ ;
22 5. _____ ;

23 and being otherwise fully advised in the premises, now, therefore, it is hereby

Jmm
1/21/17

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ORDERED that Plaintiffs' Motion for Reconsideration of Order Granting Inland Washington, LLC's Motion for Summary Judgment is DENIED, and

Handwritten: JMR 4/21/17

IT IS FURTHER ORDERED that
DATED this 21st day of April, 2017.

Signature of Jeffrey M. Ramsdell
Honorable Jeffrey M. Ramsdell
King County Superior Court Judge

Presented by:
PREG O'DONNELL & GILLET PLLC

By /s/ John K. Butler
John K. Butler, WSBA #28528
David E. Chawes, WSBA #36322
Michelle Pham, WSBA #44286
Attorneys for Defendant Inland Washington, LLC

Copy Received; Approved as to Form;
Notice of Presentation Waived:

BISHOP LEGAL

By _____
Raymond E.S. Bishop, WSBA #22794
Derek K. Moore, WSBA #37921
Ruby Aliment, WSBA #51242
Attorneys for Plaintiffs

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER GRANTING INLAND WASHINGTON, LLC'S MOTION FOR SUMMARY JUDGMENT - 3
10526-0003 5403419
Cause No. 13-2-32219-6 SEA

PREG O'DONNELL & GILLET PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
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1 Copy Received; Approved as to Form;
Notice of Presentation Waived:

2 AIKEN, ST. LOUIS & SILJEG, P.S.

3

4 By _____
David P. Hansen, WSBA #10755
5 Attorneys for Defendant Inland Group P.S., LLC

6 Copy Received; Approved as to Form;
7 Notice of Presentation Waived:

8 LEE SMART, P.S., INC.

9

10 By _____
Steven G. Wraith, WSBA #17364
Dirk J. Muse, WSBA #28911
11 Attorneys for Defendant Miles Sand &
Gravel Company, d/b/a Concrete Nor-West

12

13 Copy Received; Approved as to Form;
14 Notice of Presentation Waived:

15 CHRISTIE LAW GROUP, PLLC

16

17 By _____
Robert L. Christie, Esq., WSBA #10895
Thomas P. Miller, Esq., WSBA #34473
Alexander J. Casey, Esq., WSBA #43520
18 Attorneys for Defendant Ralph's Concrete Pumping, Inc.

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ORDER DENYING PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER GRANTING INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT - 4
10526-0003 5403419
Cause No. 13-2-32219-6 SEA

PREG O'DONNELL & GILLETT PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document directed to the following individuals:

Counsel for Plaintiffs Oscar Crisostomo Flores, as GAL for Gildardo Crisostomo Vargas; Lucina Flores, as GAL for Patricia Crisostomo Flores and Rosario Crisostomo Flores:

Raymond E.S. Bishop, Esq.
Derek K. Moore, Esq.
Ruby Aliment, Esq.
Bishop Legal
19743 First Avenue South
Normandy Park, WA 98148-2401

- Via Messenger
- Via Facsimile – (206) 592-9001
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email with recipient’s approval *ray@bishoplegal.com*

Counsel for Defendant Inland Group P.S., LLC:

David P. Hansen, Esq.
Aiken, St. Louis & Siljeg, P.S.
801 Second Ave., Suite 1200
Seattle, WA 98104

- Via Messenger
- Via Facsimile – (206) 623-5764
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email with recipient’s approval *hansen@aiken.com*

Counsel for Defendant Miles Sand & Gravel Company, d/b/a Concrete Nor-West:

Steven G. Wraith, Esq.
Dirk J. Muse, Esq.
Lee Smart, P.S., Inc.
1800 One Convention Plaza
701 Pike Street
Seattle, WA 98101-3929

- Via Messenger
- Via Facsimile – (206) 624-5944
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email with recipient’s approval *sgw@leesmart.com*

Counsel for Defendant Ralph’s Concrete Pumping, Inc.:

Robert L. Christie, Esq.
Thomas P. Miller, Esq.
Alexander J. Casey, Esq.
Christie Law Group, PLLC
2100 Westlake Avenue North, Suite 206
Seattle, WA 98109

- Via Messenger
- Via Facsimile – (206) 352-7875
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email with recipient’s approval *bob@christielawgroup.com*

ORDER DENYING PLAINTIFFS’ MOTION FOR RECONSIDERATION OF ORDER GRANTING INLAND WASHINGTON, LLC’S MOTION FOR SUMMARY JUDGMENT - 5

10526-0003 5403419

Cause No. 13-2-32219-6 SEA

PREG O'DONNELL & GILLETT PLLC

901 FIFTH AVE., SUITE 3400

SEATTLE, WASHINGTON 98164-2026

TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

DATED in Seattle, Washington, this _____ day of April, 2017.

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Mary R. Munson-Allen

ORDER DENYING PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER GRANTING INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT - 6
10526-0003 5403419
Cause No. 13-2-32219-6 SEA

PREG O'DONNELL & GILLET PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

EXHIBIT 47

Hon. Jeffrey M. Ramsdell

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STATE OF WASHINGTON KING COUNTY SUPERIOR COURT

GILDARDO CRISOSTOMO VARGAS, an
incapacitated person, by and through WILLIAM
DUSSAULT, his Litigation Guardian ad Litem;
LUCINA FLORES, an individual; and LUCINA
FLORES as Guardian ad Litem for PATRICIA
CRISOSTOMO FLORES, and ROSARIO
CRISOSTOMO FLORES, minor children,
Plaintiffs,

vs.

INLAND GROUP P.S., LLC, a Washington
limited liability company, INLAND
WASHINGTON, LLC, a Washington limited
liability company, RALPH'S CONCRETE
PUMPING, INC., a Washington corporation,
and MILES SAND & GRAVEL COMPANY
d/b/a CONCRETE NOR'WEST, a Washington
corporation,
Defendants.

Case No. 13-2-32219-6 SEA

~~PROPOSED~~

ORDER GRANTING PLAINTIFFS'
MOTION TO CERTIFY ORDER
GRANTING INLAND WASHINGTON,
LLC'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL TO THE
COURT OF APPEALS

gmr
4/24/12

This matter came before the Court on Plaintiffs' Motion to Certify Order Granting
Inland Washington, LLC's ("Inland WA") Motion for Summary Judgment of Dismissal to the
Court of Appeals, the Court reviewed the pleadings and files on record, including:

ORDER GRANTING PLAINTIFFS' MOTION TO
CERTIFY ORDER GRANTING INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL TO THE COURT OF
APPEALS
PAGE 1 of 3

 **bischoflegal**
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Normandy Park, WA 98148-2401
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- 1. Plaintiffs' Motion to Certify Order Granting Inland WA's Motion for Summary Judgment of Dismissal to the Court of Appeals, with Declarations in support and Exhibits;
- 2. Defendants' Response(s) to Plaintiff's Motion to Certify Order Granting Inland Washington, LLC's ("Inland WA") Motion for Summary Judgment of Dismissal to the Court of Appeals, if any, with Declarations in support and Exhibits, if any;
- ~~3. Plaintiffs' Reply to Defendants' Response(s), if any;~~
- 4. Inland WA's March 3, 2017 Motion for Summary Judgment of Dismissal, and Responses and Replies, with Declarations in support and Exhibits;
- 5. _____; and
- 6. _____

Jmr
4/21/17

Therefore, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion is GRANTED. The Court hereby CERTIFIES that the March 21, 2017 Order Granting Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal, and the Court's affirmation of its finding that Inland WA is not vicariously liable involve a controlling question of law as to which there is substantial ground for difference of opinion and that immediate review of the order and finding may materially advance the ultimate termination of the litigation.

~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that:~~

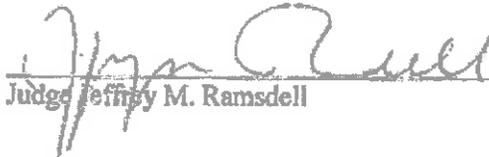
~~_____~~

Jmr
4/21/17

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DATED this 21st day of April, 2017.



Judge Jeffrey M. Ramsdell

Presented By:

BISHOP LEGAL

Derek K. Moore, WSBA No. 37921
Attorneys for Plaintiff

Notice of Presentation Waived, Approved as to Form:

Christie Law Group

Aiken, St. Louis & Siljeg, P.S.

By: _____
Bob Christie, WSBA #10895
Alexander Casey, WSBA # 43520
Attorneys for Defendant
Ralph's Concrete Pumping

By: _____
David P. Hansen, WSBA #10755
Attorneys for Inland Group, P.S.

Lee Smart, P.S., Inc.

Preg O'Donnell & Gillet

By: _____
Steven G. Wraith, WSBA #17364
Attorneys for Miles Sand & Gravel

By: _____
David Chawes, WSBA #36322
John K. Butler, WSBA #28528
Attorneys for Inland Washington, LLC

ORDER GRANTING PLAINTIFFS' MOTION TO
CERTIFY ORDER GRANTING INLAND
WASHINGTON, LLC'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL TO THE COURT OF
APPEALS
PAGE 3 of 3

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2580

EXHIBIT 48

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- 1. Plaintiffs' Motion to Certify Order Granting Inland WA's Motion for Summary Judgment of Dismissal to the Court of Appeals, with Declarations in support and Exhibits;
- 2. Defendants' Response(s) to Plaintiff's Motion to Certify Order Granting Inland Washington, LLC's ("Inland WA") Motion for Summary Judgment of Dismissal to the Court of Appeals, if any, with Declarations in support and Exhibits, if any;
- ~~3. Plaintiffs' Reply to Defendants' Response(s), if any;~~
- 4. Inland WA's March 3, 2017 Motion for Summary Judgment of Dismissal, and Responses and Replies, with Declarations in support and Exhibits;
- 5. _____ ; and
- 6. _____

Jmr
4/21/17

Therefore, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion is GRANTED. The Court hereby CERTIFIES that the March 21, 2017 Order Granting Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal, and the Court's affirmation of its finding that Inland WA is not vicariously liable involve a controlling question of law as to which there is substantial ground for difference of opinion and that immediate review of the order and finding may materially advance the ultimate termination of the litigation.

~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that:~~

~~_____~~
~~_____~~
~~_____~~

Jmr
4/21/17

2599

EXHIBIT 49

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STATE OF WASHINGTON KING COUNTY SUPERIOR COURT

GILDARDO CRISOSTOMO VARGAS, an incapacitated person, by and through WILLIAM DUSSAULT, his Litigation Guardian ad Litem; LUCINA FLORES, an individual; and LUCINA FLORES as Guardian ad Litem for PATRICIA CRISOSTOMO FLORES, and ROSARIO CRISOSTOMO FLORES, minor children,
Plaintiffs,

vs.

INLAND GROUP P.S., LLC, a Washington limited liability company, INLAND WASHINGTON, LLC, a Washington limited liability company, RALPH'S CONCRETE PUMPING, INC., a Washington corporation, and MILES SAND & GRAVEL COMPANY d/b/a CONCRETE NOR'WEST, a Washington corporation,
Defendants.

Case No. 13-2-32219-6 SEA

~~PROPOSED~~

ORDER GRANTING PLAINTIFFS' MOTION TO CERTIFY ORDER GRANTING INLAND WASHINGTON, LLC'S MOTION FOR SUMMARY JUDGMENT OF DISMISSAL TO THE COURT OF APPEALS

*Amr
4/21/12*

This matter came before the Court on Plaintiffs' Motion to Certify Order Granting Inland Washington, LLC's ("Inland WA") Motion for Summary Judgment of Dismissal to the Court of Appeals, the Court reviewed the pleadings and files on record, including:

ORDER GRANTING PLAINTIFFS' MOTION TO CERTIFY ORDER GRANTING INLAND WASHINGTON, LLC'S MOTION FOR SUMMARY JUDGMENT OF DISMISSAL TO THE COURT OF APPEALS
PAGE 1 of 3

 **bioloegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

2578

- 1 1. Plaintiffs' Motion to Certify Order Granting Inland WA's Motion for Summary
- 2 Judgment of Dismissal to the Court of Appeals, with Declarations in support and
- 3 Exhibits;
- 4 2. Defendants' Response(s) to Plaintiff's Motion to Certify Order Granting Inland
- 5 Washington, LLC's ("Inland WA") Motion for Summary Judgment of Dismissal
- 6 to the Court of Appeals, if any, with Declarations in support and Exhibits, if
- 7 any;
- 8 ~~3. Plaintiff's Reply to Defendants' Response(s), if any;~~
- 9 4. Inland WA's March 3, 2017 Motion for Summary Judgment of Dismissal, and
- 10 Reponses and Replies, with Declarations in support and Exhibits;
- 11 5. _____ ; and
- 12 6. _____

Jmr
4/21/17

13 Therefore, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiffs'
14 Motion is GRANTED. The Court hereby CERTIFIES that the March 21, 2017 Order Granting
15 Defendant Inland Washington, LLC's Motion for Summary Judgment of Dismissal, and the
16 Court's affirmation of its finding that Inland WA is not vicariously liable involve a controlling
17 question of law as to which there is substantial ground for difference of opinion and that
18 immediate review of the order and finding may materially advance the ultimate termination of
19 the litigation.

20 ~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that:~~

Jmr
4/21/17

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1
2 DATED this 21st day of April, 2017.

3
4 
5 Judge Jeffrey M. Ramsdell

6 Presented By:

7 BISHOP LEGAL

8 Derek K. Moore, WSBA No. 37921
9 Attorneys for Plaintiff

10 Notice of Presentation Waived, Approved as to Form:

11 Christie Law Group Aiken, St. Louis & Siljeg, P.S.

12 By: _____ By: _____
13 Bob Christie, WSBA #10895 David P. Hansen, WSBA #10755
14 Alexander Casey, WSBA # 43520 Attorneys for Inland Group, P.S.
15 Ralph's Concrete Pumping

16 Lee Smart, P.S., Inc. Preg O'Donnell & Gillet

17 By: _____ By: _____
18 Steven G. Wraith, WSBA #17364 David Chawes, WSBA #36322
19 Attorneys for Miles Sand & Gravel John K. Butler, WSBA #28528
20 Attorneys for Inland Washington, LLC

2580

EXHIBIT 50

816802651



AIR POCKET TRAPPED IN CONCRETE POLICY

Pockets of air that become trapped in the booms of concrete pumps can create an extremely dangerous situation if they explode out of the tip hose. As pump operators you need to always be diligent about keeping people away from the end of the hose when in a situation where air could have possibly become trapped in the boom. Be aware of and always follow the procedures below.

- 1) After setting up on the jobsite determine from the Superintendent/ Foreman where to slurry up your pump. While slurring up your pump keep everyone a minimum of 25 feet away from the tip hose. Pump until you have a continuous flow of concrete before allowing anyone to handle the tip hose.
- 2) Whenever possible remind every mixer driver of the importance of not allowing your hopper to run low, allowing air into the system. If they do allow this to happen tell them to hit the emergency shut off and make you aware of the situation.
- 3) Whenever you have to reverse the concrete pump to clear a blockage keep everyone 25 feet from the tip hose when you re-start until you have a full flow of concrete again.
- 4) Whenever you fold up and move to a new location on the jobsite repeat the slurry up procedure and keep everyone 25 feet away from the tip hose until you have a full flow of concrete out of the hose.

Anthony Howell
Signature

10.20.12
Date

PG 15 OF 40

EXHIBIT 51

316802651



To: ALL OPERATORS

One of our employees was injured on Monday (2/17/03). As he was blowing his boom out with water he became plugged. At this point he either tried to push the plug through while holding the hose or, he beat on the reducer without putting the pump in reverse to relieve the pressure. The result was the plug blew through his 3" whip causing it to whip violently throwing him approximately 15 feet into the front of his truck causing him to sustain a severely broken arm.

All of you need to remember:

- 1.) Stay away (and keep everyone else away) from the end of the hose when blowing out your boom.
- 2.) **DO NOT** ever try to blow plugs through your reducer.
- 3.) If you become plugged up, put the pump in reverse and stroke it a couple of times to relieve the pressure. Then (and only then) beat the plug through the reducer or take the hose and reducer off the boom to remove the plug.

Please adhere to these safety rules, as they will prevent you or someone else from becoming injured.

Thank you,

Tim

Signed: _____

A handwritten signature in cursive script that reads "Cathy Howell".

Date: _____

6.20.12

PG 24 OF 40

EXHIBIT 52

1 A A kink in the hose? No.

2 Q Was there any indication that there was a kink in the hose?

3 A Not at that point, no.

4 Q At any time?

5 A Only when I slurried up and put it up on the deck.

6 Q But not at any time close to the time of the incident?

7 A It was sitting on top of the wall where I couldn't see it,
8 but I wouldn't guess, no. You've got to be pretty strong to
9 hold it if you're going to kink that hose, and you're going
10 to go for a ride because it will straighten out.

11 Q Do you know what a zone of danger is pertaining to the area
12 around a hose?

13 A A zone of danger?

14 Q Have you heard of that?

15 A We have a zone that protects you when you're slurrying up
16 and when you're blowing the boom out. That's a 25-foot
17 buffer both times.

18 Q But you've never heard anything described as a zone of
19 danger?

20 A No. We've got the guys hanging onto the whip placing it, so
21 it wouldn't be -- I've never heard it put that way before.

22 Q Do you know if there's anything describing the distance that
23 a worker needs to stay away from a hose when the pump is
24 turned on?

25 A You have to have a nozzle man to place the concrete, so

1 they're right on the hose. There's no buffer, there's
2 nothing. They are hanging onto the hose.

3 Q Had you inspected the pump that day prior to the incident?

4 A We did our walk-around, yes, I did before we left the yard.

5 Q Did you inspect the hoses that day?

6 A You always look at your whip before you put it on.

7 Q When did you look at the whip?

8 A When I was setting the pump up.

9 Q Were there any recent repairs made to the pump truck?

10 A Honestly, I don't know. We just had it for a few days
11 before, or a couple weeks, it might have been, but I don't
12 know what repairs were made to it. It wasn't my normal
13 truck.

14 Q Had you ever had any trouble with air in the system prior to
15 this incident?

16 A On that job site or any job site?

17 Q On this job site.

18 A No.

19 Q At any time using this truck?

20 A Not that I know of, no.

21 Q On any job site?

22 A Yes.

23 Q When?

24 A It's usually when a mixer lets the hopper go down for
25 whatever reason, they're standing back there talking with

EXHIBIT 53

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GILDARDO CRISOSTOMO VARGAS,)
an incapacitated person, by and)
through WILLIAM DUSSAULT, his)
Litigation Guardian ad Litem; LUCINA)
FLORES, an individual; and LUCINA)
FLORES as Guardian ad Litem for)
PATRICIA CRISOSTOMO FLORES,)
And ROSARIO CRISOSTOMO)
FLORES, minor children,)

Petitioners,)

v.)

INLAND WASHINGTON, LLC, a)
Washington limited liability company,)

Respondent,)

INLAND GROUP P.S., LLC, a)
Washington limited liability company;)
RALPH'S CONCRETE PUMPING,)
INC., a Washington corporation; and)
MILES SAND & GRAVEL COMPANY)
d/b/a CONCRETE NOR'WEST, a)
Washington corporation,)

Defendants.)

DIVISION ONE

No. 76717-8-I

UNPUBLISHED OPINION

FILED: September 17, 2018

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2018 SEP 17 AM 10:51

DWYER, J. – In light of the Supreme Court's decision in Afoa v. Port of Seattle, 191 Wn.2d 110, 421 P.3d 903 (2018), which reversed this court's decision in Afoa v. Port of Seattle, 198 Wn. App. 206, 393 P.3d 802 (2017), the standards for discretionary

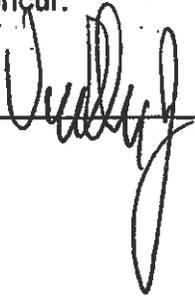
No. 76717-8-1/2

review set forth in RAP 2.3(b)(4) are not met. Accordingly, we deem review improvidently granted.

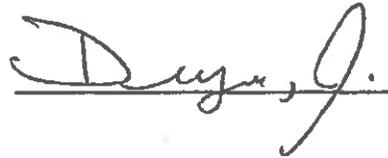
This matter is remanded to the superior court for further proceedings, as if review had never been granted by this court in the first instance.

Dismissed.

We concur:



A handwritten signature in black ink, appearing to be 'D. J. [unclear]', written over a horizontal line.



A handwritten signature in black ink, appearing to be 'D. J. [unclear]', written over a horizontal line.



A handwritten signature in black ink, appearing to be 'L. J. [unclear]', written over a horizontal line.

EXHIBIT 54

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Honorable Carol A. Schapira

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

GILDARDO CRISOSTOMO VARGAS, et al.,

Plaintiffs,

v.

INLAND GROUP P.S., LLC, et al.

Defendants.

NO. 13-2-32219-6 SEA

ORDER GRANTING IN PART AND
CONTINUING IN PART DEFENDANT
INLAND WASHINGTON, LLC'S MOTION
FOR SUMMARY JUDGMENT

[Proposed]

THIS MATTER having come before the above-entitled Court on Defendant Inland Washington, LLC's Motion for Summary Judgment on April 10, 2015, and the Court having considered the files and records herein, including:

1. Defendant Inland Washington, LLC's Motion for Summary Judgment;
2. Declaration of David E. Chawes in Support of Inland Washington, LLC's Motion for Summary Judgment, with attached exhibits;
3. Plaintiffs' Opposition to Defendants' Motions for Summary Judgment;
4. Declaration of Derek Moore in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment, with attached exhibits;
5. Inland Washington LLC's Strict Reply Re: Motion for Summary Judgment;

ORDER GRANTING IN PART AND CONTINUING IN
PART DEFENDANT INLAND WASHINGTON, LLC'S
MOTION FOR SUMMARY JUDGMENT - 1
10526-0003 5254758

PREG O'DONNELL & GILLET PLLC
591 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 and having heard argument of counsel in open court, and being otherwise fully advised in the
2 premises, now, therefore, it is hereby

3 ORDERED that Defendant Inland Washington, LLC's Motion for Summary Judgment is
4 GRANTED in part, as to the claim that Defendant Inland Washington, LLC had a duty as a
5 possessor of land. Further, it is CONTINUED in part, regarding the remaining claims against
6 Defendant Inland Washington, LLC;

7 IT IS FURTHER ORDERED that no later than May 10, 2015, Plaintiffs shall supplement
8 their briefing and produce additional evidence or expert opinions in support of their claims that
9 genuine issues of material fact exist as to whether and how Inland Washington breached duties
10 of care of a general contractor which proximately caused Plaintiffs' damages;

11 IT IS FURTHER ORDERED that Defendant Inland Washington, LLC may conduct
12 additional discovery and/or take depositions, and shall file its reply to Plaintiff's memorandum,
13 with supporting affidavits if necessary, by June 10, 2015; and

14 IT IS FURTHER ORDERED that the hearing of the remaining claims addressed by
15 Defendant Inland Washington, LLC's Motion for Summary Judgment will be conducted on
16 June 26, 2015, commencing at 10:00 a.m.;

17 IT IS FURTHER ORDERED that if Defendant Inland Washington requires additional
18 time, it may submit a request to the Court for such time as required to respond to Plaintiffs'
19 possible additional evidence.

20 _____
21 DATED this 22 day of April, 2015.

22 _____
23 Judge Carol A. Schapira
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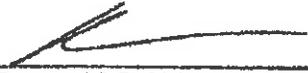
Presented by:

PREG O'DONNELL & GILLETT PLLC

By 
John K. Butler, WSBA #26528
David E. Chaves, WSBA #38322
Attorneys for Defendant Inland Washington, LLC

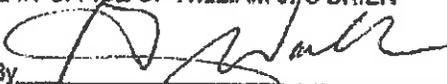
Approved as to Form and
Notice of Presentation Waived:

BISHOP LAW FIRM

By 
Raymond E.S. Bishop, WSBA #22794
Derek K. Moore, WSBA #37921
Attorneys for Plaintiffs Gildardo Crisostomo
Vargas, et al.

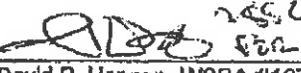
Approved as to Form and
Notice of Presentation Waived:

LAW OFFICE OF WILLIAM J. O'BRIEN

By 
William J. O'Brien, WSBA #5907
Gregory G. Wallace, WSBA #29029
Attorneys for Defendant Ralph's Concrete
Pumping, Inc.

Approved as to Form and
Notice of Presentation Waived:

AIKEN, ST. LOUIS & SILJEG, P.S.

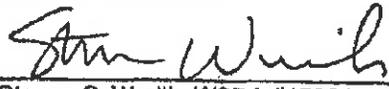
By  *REGS PER E-MAIL NOTIFICATION*
David P. Hanson, WSBA #10765
Attorneys for Defendant Inland Group, P.S., Inc.

ORDER GRANTING IN PART AND CONTINUING IN
PART DEFENDANT INLAND WASHINGTON, LLC'S
MOTION FOR SUMMARY JUDGMENT - 3
10526-0003 5254758

PREG O'DONNELL & GILLETT PLLC
901 FIFTH AVE, SUITE 3400
SEATTLE, WASHINGTON 98164-2036
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 Approved as to Form and
Notice of Presentation Waived:

2 LEE SMART, P.S., INC.

3 
4 By Steven G. Wraith, WSBA #17364
5 Attorneys for Defendant Miles Sand & Gravel
Company, d/b/a Concrete Nor-West

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ORDER GRANTING IN PART AND CONTINUING IN
PART DEFENDANT INLAND WASHINGTON, LLC'S
MOTION FOR SUMMARY JUDGMENT - 4
10626-0003 5254758

PREG O'DONNELL & GILLET PLLC
601 FIFTH AVE, SUITE 3400
SEATTLE, WASHINGTON 98164-3026
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EXHIBIT 55

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

GILDARDO CRISOSTOMO VARGAS,)
an incapacitated person, by and through)
WILLIAM DUSSAULT, his Litigation)
Guardian ad Litem; LUCINA FLORES,)
an individual; and LUCINA FLORES as)
Guardian ad Litem for PATRICIA)
CRISOSTOMO FLORES, and)
ROSARIO CRISOSTOMO FLORES,)
minor children,)

Plaintiffs/Petitioners,)

v.)

INLAND WASHINGTON, LLC, a)
Washington limited liability company,)
and RALPH'S CONCRETE PUMPING,)
INC., a Washington corporation,)

Defendants/Respondents,)

INLAND GROUP P.S., LLC, a)
Washington limited liability company,)
and MILES SAND & GRAVEL)
COMPANY d/b/a CONCRETE)
NORWEST, a Washington corporation,)

Defendants.)

GILDARDO CRISOSTOMO VARGAS,)
an incapacitated person, by and through)
WILLIAM DUSSAULT, his Litigation)
Guardian ad Litem; LUCINA FLORES,)
an individual; and LUCINA FLORES as)
Guardian ad Litem for PATRICIA)
CRISOSTOMO FLORES, and)
ROSARIO CRISOSTOMO FLORES,)
minor children,)

Plaintiffs/Respondents,)

v.)

No. 76717-8-I

RULING GRANTING
DISCRETIONARY REVIEW IN PART

No. 76893-0-I

RULING GRANTING
DISCRETIONARY REVIEW

RALPH'S CONCRETE PUMPING,)
INC., a Washington corporation,)
)
Defendant/Petitioner,)
)
INLAND WASHINGTON, LLC, a)
Washington limited liability company,)
)
Defendant/Respondent,)
)
INLAND GROUP P.S., LLC, a)
Washington limited liability company,)
and MILES SAND & GRAVEL)
COMPANY d/b/a CONCRETE)
NOR'WEST, a Washington corporation,)
)
Defendants.)
_____)

This case involves a serious injury sustained in a construction worksite during a concrete pumping operation. Injured worker Gildardo Vargas (through his litigation guardian ad litem) and his wife and children seek interlocutory review of the summary judgment dismissal of their claims against Inland Washington, LLC, the general contractor. The plaintiffs also seek review of certain discovery rulings related to their immigration status. Defendant Ralph's Concrete Pumping (Ralph's) seeks review of the denial of its summary judgment motion in which Ralph's argued that its concrete pump operator was a borrowed servant of Vargas's employer and is thus immune from liability under Title 51 RCW. The trial court certified all of these rulings for immediate review.

I accept the trial court's certification on the summary judgment dismissal of Inland. The dismissal appears to involve a controlling question of law as to which there is a substantial ground for a difference of opinion on the scope of Inland's WISHA (Washington Industrial Safety and Health Act, chapter 49.17 RCW) and common law

Nos. 76717-8-I & 76893-0-I

duties and liability as a general contractor under the Stute line of cases.¹ The denial of Ralph's' summary judgment motion on the borrowed servant issue appears to involve largely a question of fact under established precedent as to whether Vargas's employer had exclusive control of Ralph's' operator for the transaction causing injury. The trial court concluded that there is an issue of fact on this issue. But the evidence relevant to the Stute issue overlaps with that relevant to the borrowed servant issue. To facilitate the resolution of this case, review is also granted on the borrowed servant issue. On the other hand, the discovery rulings appear largely moot, and immediate review may not materially advance the ultimate termination of the litigation. Review is granted in No. 76717-8 solely on the dismissal of Inland. Review is also granted in No. 76893-0.

FACTS

The injury at issue occurred on an apartment complex construction site in Shoreline, Washington. Below is a brief summary of the facts relevant to this ruling.

Inland was the general contractor of the construction project. To install concrete, it hired Hilltop Concrete Construction, Inc. (Hilltop), Vargas's employer. The trial court

¹ See Stute v. P.B.M.C., Inc., 114 Wn.2d 454, 464, 788 P.2d 545 (1990) (WISHA imposes a specific statutory duty on a general contractor to comply with WISHA regulations for the benefit of employees of independent contractors because "the general contractor's innate supervisory authority constitutes sufficient control over the workplace"); Kelley v. Howard S. Wright Constr. Co., 90 Wn.2d 323, 330, 582 P.2d 500 (1978) (general contractor who retains control over the work of the employee of an independent contractor has a common law duty "within the scope of that control, to provide a safe place of work"); Afoa v. Port of Seattle, 176 Wn.2d 460, 472, 296 P.3d 800 (2013) (Afoa I) ("jobsite owners have a specific duty to comply with WISHA regulations if they retain control over the manner and instrumentalities of work being done on the jobsite," and "this duty extends to all workers on the jobsite that may be harmed by WISHA violations"); Kamla v. Space Needle Corp., 147 Wn.2d 114, 125-27, 52 P.3d 472 (2002) (jobsite owner, who does not retain control over the manner in which an independent contractor performs work, is not liable under common law or WISHA for the manner in which the contractor performed work); Afoa v. Port of Seattle, 198 Wn. App. 206, 217-34, 393 P.3d 802 (2017) (Afoa II) (Port of Seattle, which retained control over the manner of work done on a worksite, had a nondelegable duty to maintain a safe workplace, is vicariously liable for any breach of that duty, and is not entitled to allocate fault to four nonparty airlines to proportionately reduce its liability). In Afoa II, a petition for review is currently pending in the Supreme Court.

has previously ruled, and there is no dispute, that Hilltop, as Vargas's employer, is responsible for workers' compensation but is otherwise immune from liability for his injury under Title 51 RCW and that his co-workers at Hilltop are also immune.

Vargas's employer Hilltop hired Miles Sand and Gravel Co. (Miles) to supply the concrete mix for the project. Hilltop contracted with Ralph's to provide a concrete pump truck and a certified pump operator to pump the concrete into forms built by Hilltop carpenters. Ralph's asserts that Hilltop exercised control over the work of its pump operator Anthony Howell such that Howell was Hilltop's borrowed servant immune from liability for Vargas's injury under Title 51 RCW. The plaintiffs dispute this claim.

On the day of the injury, Hilltop supervisor Matt Skoog was at the worksite. He testified that he oversaw the concrete portion of the work. No Inland employee was in the vicinity. To build the concrete walls, Miles' truck operator would pour concrete mix into the hopper of Ralph's' pump truck, which would pump the concrete through a boom to a hose at the end, which Hilltop workers would use to pour the concrete into the forms. Ralph's' concrete pump operator Howell arrived at the site. Hilltop supervisor Skoog told him where to set up the pump and showed him the walls they were pumping that day. Howell set up the pump and hooked up the end hose. Vargas and several other Hilltop workers were on the scaffolding next to the concrete forms. Vargas held the end of the hose. Howell controlled the boom and the pump by a remote control. After Howell turned on the pump, it momentarily stopped due to a loss of the wireless signal. Howell reestablished the connection and re-started the pump. The hose whipped and hit Vargas in the head, causing him serious injuries.

Vargas and his wife and children filed a lawsuit in King County Superior Court

against Inland, Ralph's, and Miles. In June 2015, the trial court (Judge Carol Schapira) denied Inland's summary judgment motion. The summary judgment order stated that Inland owed "non-delegable duties under Stute" but was "not vicariously liable."² No party sought reconsideration or interlocutory review of this order.

In March 2017, Inland filed another summary judgment motion to dismiss the plaintiffs' claims against it. It argued that it was not liable for the acts or omissions of others, did not owe Vargas a duty to provide a safe *non-common* work area under the sole control of his employer Hilltop, and violated no applicable WISHA rules causing his injury. Inland pointed out Hilltop supervisor Skoog's testimony that Hilltop was in charge of pouring concrete, that he oversaw the concrete work, and that Vargas was the lead of the pouring team. Inland argued that a general contractor is not liable for injuries sustained by an employee of its subcontractor *outside common work areas* over which the general contractor lacks control. In response, the plaintiffs argued that Inland, as a general contractor, had per se control over the worksite as a matter of law under Stute. The plaintiffs asked the trial court to vacate its prior vicarious liability ruling as contrary to Division Three's 2013 opinion in Millican³ and this Court's recent opinion in Afoa II.

Judge Jeffrey Ramsdell declined to "revisit Judge Schapira's earlier ruling" on vicarious liability, stating that Afoa II (decided after the prior ruling) did not present a major change in the law.⁴ The court granted summary judgment for Inland because the plaintiffs failed to show any WISHA violation for which Inland had a non-delegable duty:

² Appendix to Answer to Motion for Discretionary Review (Inland App. 76717-8) 9.

³ Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 896, 313 P.3d 1215 (2013) ("The label 'nondelegable duty' does not mean that an actor is not permitted to delegate the activity to an independent contractor. Rather, the term signals that the actor will be vicariously liable for the contractor's tortious conduct in the course of carrying out the activity.").

⁴ Inland App. (No. 76717-8) 1339; RP (Mar. 31, 2017) 76.

As far as the Stute issue and the non-delegable duty issue that we've just been arguing about, I'm inclined to grant Inland's motion. And the reason for that is, I'm really not seeing much in the way of substance from the Plaintiff as to what the actual violation is of what non-delegable duty we're talking about. It sounds like a generalized guarantor of safety across the board which I don't think is what Stute contemplates. And so I'm going to grant Inland's motion and dismiss the claim against them.⁵

On the plaintiffs' motion, the trial court certified for immediate review its summary judgment order, including its "affirmation" of its prior vicarious liability ruling.

Meanwhile, the plaintiffs filed a motion for a protective order to prevent discovery of their immigration status. Inland filed a motion to compel continued depositions of the plaintiffs in part to question them about their immigration status as relevant to their economic damages claim. The trial court granted a protective order as to non-party witnesses, but not as to the plaintiffs, and granted Inland's motion to compel. The court denied the plaintiffs' motion to depose Inland and Hilltop about their use of undocumented labor. Pursuant to the trial court's ruling, Inland deposed the plaintiffs. The court later denied reconsideration of the discovery rulings but, on the plaintiffs' motion, certified the rulings for immediate review.

Previously, in September 2015, Commissioner Mary Neel of this Court denied Ralph's motion for discretionary review of Judge Schapira's denial of its summary judgment motion.⁶ In its prior summary judgment motion (as in its later motion at issue here), Ralph's argued that its concrete pump operator Howell was Hilltop's borrowed employee and is immune from liability under Title 51 RCW. In denying review, Commissioner Neel pointed out that whether a person is a borrowed servant is ordinarily a question of fact and that Ralph's failed to demonstrate an obvious error in

⁵ Inland App. (No. 76717-8) 1340 (emphasis added); RP 77.

⁶ Ruling Denying Discretionary Review (No. 73503-9-I).

the trial court's denial of summary judgment:

Here, there is evidence that Hilltop told Howell where to set up and where the concrete was to be poured and that Hilltop employees handled the hose; there is also evidence that Howell moved the boom to the appropriate location, turned on the pump, and restarted it when it stopped shortly before it whipped and hit Vargas in the head. Although the language in the lease makes Howell the loaned servant of Hilltop, Ralph's acknowledges that the lease is not controlling. Ralph's has not shown that the trial court's decision denying summary judgment dismissal as a matter of law was obvious error.^[7]

A three-judge panel of this Court denied Ralph's' motion to modify the ruling denying review. In March 2017, Ralph's again filed a summary judgment motion on the borrowed servant issue. The trial court again denied the motion. Judge Ramsdell explained that beyond Hilltop's instructions as to where to park the truck and where to pour the concrete, Howell apparently did the work "from the determination as to where to put the boom and how long it should be, et cetera et cetera."⁸ The court stated:

I keep coming back to the fundamental question of, if this is all it takes, then virtually every subcontractor who comes on site that brings equipment with him is a borrowed servant. And I just can't - - I can't believe that that should be the state of the law.^[9]

On Ralph's' motion, the trial court certified the issue for immediate review.

DECISION

The plaintiffs seek review of the summary judgment dismissal of their claims against Inland as well as the discovery orders related to their immigration status. Ralph's seeks review of the denial of summary judgment on the borrowed servant issue.

"Interlocutory review is disfavored."¹⁰ "It is not the function of an appellate court

⁷ Ruling Denying Discretionary Review at 7-8 (No. 73503-9-I).

⁸ Inland App. (No. 76717-8) 1304-05; RP 41-42.

⁹ Inland App. (No. 76717-8) 1305; RP 42.

¹⁰ Minehart v. Morning Star Boys Ranch, Inc., 156 Wn. App. 457, 462, 232 P.3d 591 (2010) (citing Maybury v. City of Seattle, 53 Wn.2d 716, 721, 336 P.2d 878 (1959)).

to inject itself into the middle of a lawsuit and undertake to direct the trial judge in the conduct of the case.”¹¹ RAP 2.3(b) defines four situations in which this Court may grant pretrial review. The plaintiffs and Ralph’s primarily rely on RAP 2.3(b)(4). Under that rule, this Court may accept review when the trial court certifies that its decision “involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.” The trial court’s certification is not binding on this Court.

A. Summary Judgment Dismissal of Inland: *Stute* and Vicarious Liability

The plaintiffs argue that the trial court erred in applying a retained control analysis when Inland, the general contractor, had per se control over the workplace and is vicariously liable for breaches of WISHA and common law duties. Inland argues that a general contractor owes no duty to an injured employee of its subcontractor when the injury occurs *outside a common work area* over which the general did not retain control.

Under common law, a general contractor who engages an independent contractor is generally not liable for the injuries of the employees of the independent contractor resulting from their work.¹² An exception exists when the general contractor “retains control over some part of the work. The general then has a duty, within the scope of that control, to provide a safe place of work.”¹³ In Kelley, our Supreme Court explained the policy reasons for requiring the general contractor to bear ultimate responsibility for job safety “in common work areas.”¹⁴ In Stute, our Supreme Court followed the “policy reasons” articulated in Kelley and other cases as well as the

¹¹ Maybury, 53 Wn.2d at 720.

¹² Kelley, 90 Wn.2d at 330.

¹³ Id.

¹⁴ Id.

language of WISHA to hold that a general contractor has a non-delegable statutory duty to comply with applicable WISHA regulations to protect the employees of independent contractors "because the general contractor's innate supervisory authority constitutes sufficient control over the workplace."¹⁵ "A general contractor's supervisory authority is per se control over the workplace, and the duty is placed upon the general contractor as a matter of law."¹⁶ In Afoa II, this Court discussed Kelley and Stute and noted that "[b]oth the common law theory of retained control based on the *Restatement* and the WISHA specific duty standard depend on control over the manner of work."¹⁷ This Court also held that nondelegable duties "involve a form of vicarious liability."¹⁸

It appears that the trial court granted summary judgment for Inland on the ground that the plaintiffs failed to articulate "what the actual violation is of what non-delegable duty we're talking about."¹⁹ The court's decision involves a fact question as to whether the plaintiffs presented sufficient evidence of any WISHA violation. But the court also reaffirmed its prior ruling that Inland is not vicariously liable for the breaches of WISHA or common law duties by the other defendants. This conclusion appears to involve a question of law as to the scope of Inland's WISHA and common law duties and liability as the general contractor. The issue is dispositive of the plaintiffs' claims against Inland when the plaintiffs assert that Inland is primarily responsible for Vargas's injury. In light of the cases discussed above, there is a substantial ground for a difference of opinion

¹⁵ Stute, 114 Wn.2d at 464.

¹⁶ Id.

¹⁷ Afoa II, 198 Wn. App. at 218. Afoa I and Afoa II involved a jobsite owner Port of Seattle, which was found to have retained the right to control the manner of the work performed by an injured employee of a contractor licensed by the Port to provide ground service work.

¹⁸ Id. at 231 (quoting 6 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 12.09 cmt. At 161 (6th ed. 2012) and 16 DAVID K. DEWOLF & KELLER W. ALLEN, WASHINGTON PRACTICE: TORT AND LAW PRACTICE § 4:15, at 204-06 (4th ed. 2013)).

¹⁹ Inland App. (No. 76717-8) 1340; RP 77.

on the issue, and immediate review may materially advance the ultimate termination of the litigation. Review is granted on this issue under RAP 2.3(b)(4).

B. Discovery Rulings Related to the Plaintiffs' Immigration Status

The plaintiffs argue that the trial court erred in allowing Inland to question them about their immigration status in discovery when they presented a declaration stating that no deportation proceedings were pending against them. But the issue appears largely moot when Inland has already conducted their depositions. The plaintiffs did not seek emergency relief before then. Further, they fail to demonstrate that the discovery rulings may materially advance the ultimate termination of the litigation. Nor do they demonstrate a probable error that would otherwise warrant review. Although they rely on Salas, that case turned on the balancing under ER 403 of the probative value and unfairly prejudicial effect of plaintiff's immigration status, not discoverability.²⁰ I respectfully decline to accept the trial court's certification on the discovery rulings.

C. Denial of Summary Judgment on Ralph's' Borrowed Servant Defense

Ralph's' motion for discretionary review appears to present a question of fact based on established precedent. "Normally the question of whether or not a particular individual was a 'loaned servant' is a factual one, to be determined by the jury."²¹ "The borrowed servant defense is a legal fiction that expands the concept of respondeat superior."²² An employer is vicariously liable to third parties for torts committed by its

²⁰ See Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 670-72, 230 P.3d 583 (2010) (although plaintiff's immigration status was relevant to his lost future earnings, "the probative value of [his] undocumented status, by itself, is substantially outweighed by the danger of unfair prejudice"); see also Diaz v. Wash. State Migrant Council, 165 Wn. App. 59, 75, 265 P.3d 956 (2011) ("There is nothing in Salas that supports cutting off inquiry at the outset of discovery.").

²¹ Nyman v. MacRae Bros. Constr. Co., 69 Wn.2d 285, 288, 418 P.2d 253 (1966).

²² Wilcox v. Basehore, 187 Wn.2d 772, 783, 389 P.3d 531 (2017).

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employee within the scope of employment.²³ An exception exists when the employee's "general employer loans the [employee] to another, or 'special,' employer."²⁴ "For those activities over which the special employer exercises *complete control*, the special employer also assumes vicarious liability under the 'borrowed servant' doctrine."²⁵ The borrowed servant doctrine "does not require complete and exclusive control over all aspects of the loaned worker's conduct. Liability arises out of *those particular transactions over which the special employer has exclusive control*."²⁶

Ralph's argues that immediate review is appropriate based on the trial court's certification. It argues that the trial court was inconsistent in granting summary judgment for Inland (where Inland argued that Hilltop had exclusive control over the worksite) while finding an issue of fact preventing Ralph's' summary judgment motion on Hilltop's control over Howell's work. But a general contractor's duty based on its supervisory control over a worksite under Stute involves different considerations than those involved in the exclusive control analysis under the borrowed servant doctrine. Also, the operative facts presented in the prior motion for discretionary review denied by this Court in No. 73503-9-1 appear essentially the same as those presented here.

Ralph's argues that what constitutes the "transaction" over which the borrowing employer must have control and what facts are "material" in this case under the borrowed servant doctrine present questions of law. Ralph's argues that the resolution of these issues will facilitate the termination of this litigation. The evidence relevant to the Stute issue overlaps with that relevant to the borrowed servant issue. The plaintiffs

²³ Wilcox, 187 Wn.2d at 783.

²⁴ Id.

²⁵ Id. (emphasis added).

²⁶ Id. (emphasis added).

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support review on the borrowed servant issue, although Inland opposes review. Because review is granted on the Stute issue, I grant review on the borrowed servant issue to facilitate the ultimate resolution of the litigation.

Therefore, it is

ORDERED that discretionary review is granted of the orders granting Inland's summary judgment motion and denying reconsideration in No. 76717-8-I. Review of the discovery rulings is denied. It is further

ORDERED that discretionary review is granted of the order denying summary judgment in No. 76893-0-I. It is further

ORDERED that these cases are linked.

Done this 21st day of July, 2017.

Mariko Hanagawa
Court Commissioner

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2017 JUL 21 AM 11:07

EXHIBIT 56

1 admissible. We're arguing the exact opposite, Your
2 Honor.

3 We're arguing that we met and complied with our
4 duties by providing a top to bottom approach to safety
5 for this site including all parties. All
6 subcontractors.

7 THE COURT: Okay. Thank you. Let me look at
8 my notes here and make sure I got everything I wanted.

9 All right. With regard to what we talked about
10 earlier. I'm disinclined to revisit Judge Shapiro's
11 ruling, as I said before, because I don't see a major
12 C-change arising from Afoa. The other part of this
13 calculous too is that the certificate of finality has
14 not even been issued in this latest Afoa case.

15 There's 30 days before mandate issues. So
16 technically it's not even a final case at this
17 juncture, as far as I can tell. But in any event, I
18 don't see it as being such a C-change as to warrant
19 going back to see -- to revisit Judge Shapiro's earlier
20 ruling.

21 For what it's worth, I don't think the law of the
22 case applies here. Law of the case is generally a
23 decision by an appellate court and sent back down to
24 the trial court, and the trial court is stuck with that
25 court's opinion because that court is higher than this

1 court.

2 When it comes to judges making rulings on a
3 collateral authority basis, the law of the case is not
4 really applicable. So I'm not relying on that at all.

5 As far as the Stute issue and the non-delegable
6 duty issue that we've just been arguing about, I'm
7 inclined to grant Inland's motion. And the reason for
8 that is, I'm really not seeing much in the way of
9 substance from the Plaintiff as to what the actual
10 violation is of what non-delegable duty we're talking
11 about.

12 It sounds like a generalized guarantor of safety
13 across the board which I don't think is what Stute
14 contemplates. And so I'm going to grant Inland's
15 motion and dismiss the claim against them.

16 So with that -- and Counsel, do you have a
17 proposed order? I tried to collect them all, but I
18 can't find yours unfortunately in the pile that I
19 brought out here with me. So here's the order denying
20 Ralph's Concrete's motion for summary judgment. And
21 let me enter this one and then we'll talk about the
22 rest of the items that are on the table for this
23 afternoon.

24 And my goal is to try and jump start this and get
25 you guys postured for a trial that's pending on

PREG O'DONNELL & GILLETT

January 14, 2019 - 4:18 PM

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