

FILED
SUPREME COURT
STATE OF WASHINGTON
12/3/2019 4:43 PM
BY SUSAN L. CARLSON
CLERK

No. 97826-3

[Wash. Ct. App. No. 36528-0-III]

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

CERTIFICATION FROM
THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION III

DANIEL LYON,

Appellant,

v.

OKANOGAN COUNTY ELECTRIC COOPERATIVE, INC., a
Washington corporation; and PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, a public utility district,

Respondents.

REPLY BRIEF

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
shelby@appeal-law.com
Attorneys for Appellant

TABLE OF CONTENTS

INTRODUCTION	1
REPLY ARGUMENT.....	2
A. This Court should abandon the PRD, as have many other jurisdictions, including those upon whose law Washington’s PRD is based.....	2
1. The PRD is an exception to the rule.....	3
2. Those jurisdictions Washington’s PRD is based on have abandoned the rule, as have many others.....	3
3. This Court should strike down the PRD, as it is incorrect and harmful.	7
B. Alternatively, this Court should strike down the PRD as constitutionally infirm.....	19
1. Strict scrutiny applies because the PRD burdens the fundamental right to seek redress for personal injuries.	20
2. The PRD violates the Equal Protection Clause by denying professional rescuers redress for personal injuries.	24
3. There is no rational basis for denying firefighters tort recovery available to workers in more dangerous professions.	26
C. If this Court declines to abandon the PRD or to strike it down as constitutionally infirm, then it should hold that gross negligence is an exception to the PRD.....	28
CONCLUSION.....	32

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Legion Post No. 149 v. Dep’t of Health</i> , 164 Wn.2d 570, 192 P.3d 306 (2008).....	28
<i>Anderson v. King Cnty.</i> , 158 Wn.2d 1, 138 P.3d 963 (2006)	21
<i>Baldonado v. El Paso Natural Gas Co.</i> , 143 N.M. 297, 176 P.3d 286 (Ct. App. 2006, published 2008).....	5, 6, 11, 29
<i>Ballou v. Nelson</i> , 67 Wn. App. 67, 834 P.2d 97 (1992)	3, 27
<i>Banyai v. Arruda</i> , 799 P.2d 441 (Colo. Ct. App. 1990).....	5, 6, 29
<i>Beaupre v. Pierce Cnty.</i> , 161 Wn.2d 568, 166 P.3d 712 (2007).....	3
<i>Christensen v. Murphy</i> , 296 Or. 610, 678 P.2d 1210 (1984).....	<i>passim</i>
<i>Coulter v. State</i> , 93 Wn.2d 205, 608 P.2d 261 (1980).....	22
<i>First United Methodist Church v. Hearing Exam’r</i> , 129 Wn.2d 238, 916 P.2d 374 (1996).....	24
<i>Hansen v. City of Everett</i> , 93 Wn. App. 921, 971 P.2d 111 (1999)	15
<i>Hauber v. Yakima Cnty.</i> , 147 Wn.2d 655, 56 P.3d. 559 (2002).....	15
<i>Holmes v. Adams Marine Ctr.</i> , 2000 Me. Super. LEXIS 162 (unpublished, 2000)	29, 31

Hopkins v. Medeiros, 48 Mass. App. Ct. 600 (2000).....	29
Hunter v. North Mason High Sch., 85 Wn.2d 810, 539 P.2d 845 (1975).....	20, 21, 22, 23
John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 819 P.2d 370 (1991).....	21
Krause v. U.S. Truck Co., Inc., 787 S.W.2d 708 (Mo. banc 1990).....	6, 7
Krauth v. Geller, 31 N.J. 270, 157 A.2d 129 (1960)	3, 4, 5
Lambert v. Shaefer, 839 S.W.2d 27 (Mo. Ct. App. 1992), <i>as amended</i>	6
Loiland v. State, 1 Wn. App. 2d 861, 407 P.3d 377 (2017)	3, 17, 18
Maltman v. Sauer, 84 Wn.2d 975, 530 P.2d 254 (1975).....	3, 4, 11, 13, 23, 27
Markoff v. Puget Sound Energy, 9 Wn. App. 833, 447 P.3d 577 (Aug. 19, 2019).....	<i>passim</i>
McDevitt v. Harborview Med. Ctr., 179 Wn.2d 59, 316 P.3d 469 (2013).....	22, 23
Meunier v. Pizzo, 696 So. 2d 610 (La. Ct. App. 1997).....	30
Midgal v. Stamp, 132 N.H. 171, 564 A.2d 826 (1989).....	6
Mile High Fence Co. v. Radovich, 175 Colo. 537, 489 P.2d 308 (1971).....	5, 6
Minnich v. Med-Waste, Inc., 349 S.C. 567, 564 S.E.2d 98 (2002).....	29

<i>Miranda v. Sims,</i> 98 Wn. App. 898, 991 P.2d 681 (2000)	21
<i>Mull v. Kerstetter,</i> 540 A.2d 951 (1988).....	29
<i>Pendergrast v. Matichuk,</i> 186 Wn.2d 556, 379 P.3d 96 (2016).....	2, 7
<i>Rosa v. Dunkin' Donuts,</i> 122 N.J. 66, 583 A.2d 1129 (1991).....	4, 9
<i>Ruiz v. Mero,</i> 189 N.J. 525, 917 A.2d 239 (2007)	4, 9
<i>Skagit Motel v. Dep't of Labor & Indus.,</i> 107 Wn.2d 856, 734 P.2d 478 (1987).....	26, 27, 28
<i>Spencer v. B.P. John Furniture Corp.,</i> 255 Or. 359, 467 P.2d 429 (1970).....	4
<i>State v. Schaaf,</i> 109 Wn.2d 1, 743 P.2d 240 (1987)	24
<i>United States v. Gaudin,</i> 515 U.S. 521, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).....	2
<i>Volk v. DeMeerleer,</i> 187 Wn.2d 241, 386 P.3d 254 (2016).....	31
<i>W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters,</i> 180 Wn.2d 54, 322 P.3d 1207 (2014).....	2
<i>Walsh v. Madison Park Props., Ltd.,</i> 102 N.J. Super. 134, 245 A.2d 512 (1968)	4
<i>Walters v. Sloan,</i> 20 Cal. 3d 199, 571 P.2d 609 (1977).....	11, 12, 15, 17
<i>Wills v. Bath Excavating & Constr. Co.,</i> 829 P.2d 405 (Colo. Ct. App. 1991).....	9

Constitutions

Equal Protection Clause20, 22, 23, 24, 28

Statutes

Federal Employees Compensation Act.....16

FLA. STAT. § 112.182.....29

MINN. STAT. § 604.0629

N.J. STAT. ANN. § 2A:62A-21.....4, 29

N.Y. GEN. MUN. LAW § 20529

RCW 4.96.020 (1967).....21

VA. CODE § 8.01-226.....30

Court Rules

CR 12(b)(6).....31

Other Authorities

<https://time.com/5074471/most-dangerous-jobs/>10

Prosser, William L., *Law of Torts* § 68 (4th ed. 1971).....13

INTRODUCTION

The PRD denies professional rescuers like Daniel Lyon tort recovery available to lay rescuers and to other professionals in more dangerous occupations. Indeed, neither firefighter nor police officer is among the ten most dangerous jobs in the country. The rest can sue third parties whose negligence causes their injuries. Professional rescuers cannot. It is time for that to change.

The response boils down to this: firefighters knowingly choose a dangerous profession, accept the risk of injury, and are trained and paid accordingly at public expense. PUD and OCEC call Lyon's catastrophic burns over 70 percent of his body "unfortunate," but insist he has been compensated. This is as untrue as it is offensive.

Neither Lyon's salary nor his federal benefits compensate him. His income is not personal-injury compensation. He is paid to do his job, which makes the public safer. He is not paid to be injured.

Denying Lyon compensation does not encourage emergency reporting: 911-callers do not weigh their liability. The PRD does not spread the cost of Lyon's injuries. He bears them. This harms Lyon.

The PRD is incorrect and harmful. The cases upon which it is based have fallen, along with the doctrine in many other states. This Court should join this growing minority and abandon the PRD.

REPLY ARGUMENT

- A. This Court should abandon the PRD, as have many other jurisdictions, including those upon whose law Washington's PRD is based.**

This Court will overturn precedent when it is “incorrect and harmful” or when its “legal underpinnings ... have been eroded.” *Pendergrast v. Matichuk*, 186 Wn.2d 556, 565, 379 P.3d 96 (2016). Only one is required – this Court “can reconsider [its] precedent not only when it has been shown to be incorrect and harmful but also when the legal underpinnings of our precedent have changed or disappeared altogether.” *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (citing *United States v. Gaudin*, 515 U.S. 521, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995) (“stare decisis may yield when a precedent's ‘underpinnings [have been] eroded ...”).

Ignoring the latter, PUD and OCEC argue that Lyon failed to argue the PRD is “incorrect and harmful.” PUD 7-12; OCEC 20. The parties' opening briefs were filed in the Court of Appeals, Division Three, before certification to this Court. The appellate court cannot overturn this Court's precedent.

That said, Lyon argued that the PRD is outdated, unnecessary, and unjust, demonstrating too that its legal

underpinnings have eroded, where both jurisdictions upon whose law Washington's PRD is based have since abrogated the PRD. BA 10-22. Lyon argued too that the rationales underpinning the PRD are incorrect (BA 18-22) and that it is harmful to professional rescuers. BA 6-7, 19-22, 25-28. This Court should strike down the PRD.

1. The PRD is an exception to the rule.

The PRD is a "limitation" to the general rule that a rescuer may recover from the party whose negligence created the needed rescue. *Loiland v. State*, 1 Wn. App. 2d 861, 865, 407 P.3d 377 (2017) (citing *Maltman v. Sauer*, 84 Wn.2d 975, 978, 530 P.2d 254 (1975)). Yet a professional rescuer may not recover for injuries caused by hazards "inherently within the ambit of those dangers which are unique to and generally associated with the particular rescue activity." *Maltman*, 84 Wn.2d at 979. PUD and OCEC agree.¹

2. Those jurisdictions Washington's PRD is based on have abandoned the rule, as have many others.

When this Court first adopted the PRD in 1975, it relied on the New Jersey case *Krauth v. Geller*, 31 N.J. 270, 157 A.2d 129

¹ OCEC states that the PRD is "also known as the Fireman's Rule." OCEC 1. This Court previously recognized that the two doctrines have different theoretical bases. *Beaupre v. Pierce Cnty.*, 161 Wn.2d 568, 572 n.1, 166 P.3d 712 (2007) (citing *Ballou v. Nelson*, 67 Wn. App. 67, 71, 834 P.2d 97 (1992)). The "firefighters' rule," per se, has never been applied in Washington. *Ballou*, 67 Wn. App. at 71.

(1960), and on the Oregon case **Spencer v. B.P. John Furniture Corp.**, 255 Or. 359, 467 P.2d 429 (1970), adopting their “fire fighter’s” rules. **Maltman**, 84 Wn.2d at 976-79.² But in 1993, New Jersey abrogated its firefighters’ rule by statute. **Ruiz v. Mero**, 189 N.J. 525, 537-38, 917 A.2d 239 (2007) (quoting N.J. STAT. ANN. § 2A:62A-21). New Jersey’s highest court noted criticism around the country that the firefighters’ rule fails to “comport with notions of redress and equal treatment underlying modern tort law.” 189 N.J. at 533. The rule, both “obtuse and abstruse,” needlessly immunizes negligent conduct that modern tort law can suitably address. *Id.* at 532 (quoting **Rosa v. Dunkin’ Donuts**, 122 N.J. 66, 85, 583 A.2d 1129 (1991) (Handler, J., dissenting)).

Oregon abolished its firefighters’ rule after abolishing the assumption-of-risk doctrine it was based on. **Christensen v. Murphy**, 296 Or. 610, 620-21, 678 P.2d 1210 (1984). Oregon’s highest court held that the rule singles-out firefighters “as a class,” treating them differently than “other public employees” injured on the job. **Christensen**, 296 Or. at 619-20. In short, “the injured public

² This Court also cited **Walsh v. Madison Park Props., Ltd.**, 102 N.J. Super. 134, 245 A.2d 512 (1968) (re-affirming **Krauth**, *supra*).

safety officer must bear a loss which other public employees are not required to bear.” 296 Or. at 620.

Many more states have abrogated their firefighters’ rules or declined to adopt one in the first instance. BA 10-17; *infra* Argument § C. Most notably, Colorado recognized that the “classification” of rescuer should not determine the duty of care owed, later striking down its firefighters’ rule as an “unwarranted departure from the general duty to exercise due care for the safety of others.” ***Banyai v. Arruda***, 799 P.2d 441, 443 (Colo. Ct. App. 1990); ***Mile High Fence Co. v. Radovich***, 175 Colo. 537, 548, 489 P.2d 308 (1971). ***New Mexico*** likewise “disavow[ed]” its firefighters’ rule, holding that many workers “confront an appreciable risk of physical injury or death” on the job, yet the firefighters’ rule “unjustly singles out firemen and denies them the benefit of generally applicable principles of tort liability.” ***Baldonado v. El Paso Natural Gas Co.***, 143 N.M. 297, 299, 302, 176 P.3d 286 (Ct. App. 2006, published 2008).

Neither PUD nor OCEC address the now-overturned ***Krauth***. OCEC also ignores ***Christensen***, and PUD addresses it only to note that Oregon had abolished its assumption-of-risk doctrine, while Washington has not. PUD 17. That is, both ignore ***Christensen***’s

rejection of each public-policy consideration underlying the rule. **Christensen**, 296 Or. at 619-20.

Both ignore **Banyai** and **Mile High**. OCEC also ignores **Baldonado**, and PUD cites it for the false proposition that New Mexico still applies the firefighters' rule. PUD 13 n.2. The **Baldonado** court could not have been clearer in abolishing its firefighters' rule, recognizing that it was "joining what currently is a distinct minority," but "that support for the fireman's rule is distinguished more by its quantity than its quality." 143 N.M. at 304.

Without any real answer to these cases, PUD argues that most states still recognize the doctrine in some form. PUD 13 & n.2. But PUD does not discuss any of the cases it cites, so proves little, leaving little response. *Id.* Too, many states PUD cites recognize broad exceptions to the PRD. Compare *id.* with BA 32-35. For example, PUD cites **Midgal v. Stamp**, failing to acknowledge that New Hampshire recognizes an exception for positive acts of misconduct. 132 N.H. 171, 175-76, 564 A.2d 826 (1989). PUD also cites **Krause v. U.S. Truck Co., Inc.**, failing to mention that Missouri recognizes exceptions for "(1) acts involving reckless or wanton negligence or willful conduct; (2) separate and independent acts; and (3) intentional torts." Compare **Lambert v. Shaefer**, 839 S.W.2d 27,

29 (Mo. Ct. App. 1992), *as amended, with Krause*, 787 S.W.2d 708, 711 (Mo. banc 1990)).

In any event, Lyon never claimed those states striking down the PRD were in the majority. The trend is clear. This Court has never been afraid to lead the way when justice so requires.

3. This Court should strike down the PRD, as it is incorrect and harmful.

The cases upon which the PRD is based have been reversed, demonstrating (along with others) that the policy considerations underpinning the doctrine have been “eroded.” See *Pendergrast*, 186 Wn.2d at 565. Washington tort law is well equipped to resolve firefighter cases without a PRD. This Court should abolish the PRD, joining the growing minority of states recognizing that the doctrine unnecessarily singles-out firefighters as a class and denies them the fundamental right to recover in tort that other injured workers enjoy.

PUD and OCEC begin by arguing that it is not for this Court, but for the Legislature, to abolish the PRD. PUD 9, 12-14, 25-26; OCEC 7, 21. As PUD admits, the PRD is “rooted in the common law.” PUD 9. It is entirely appropriate for this Court to decide the fate of the common law doctrine it created.

PUD and OCEC next argue that the PRD should stand because it is consistent with assumption of risk. PUD 15-17; OCEC 9-11. That does not follow. Assumption of risk does not bar other workers in potentially hazardous occupations from recovering, nor does it bar lay rescuers from recovering. Washington tort law adequately addresses the injured party's culpability in those settings and can do so for injured professional rescuers too.

On the merits, PUD and OCEC argue that professional rescuers occupy "a unique role in our society" in that the very purpose of their profession is to rescue people. PUD 20-24; OCEC 1,18. This, they argue, contrasts with "ordinary" rescuers who "do not sign up to rescue someone with this degree of intentionality," and with other professionals who "do not sign up with the intention of putting themselves in harm's way in order to protect the public." PUD 21-22; OCEC 22-23. In short, they argue that the fact firefighters undertake to "rescue" as an aspect of their profession justifies denying them the opportunity to recover for catastrophic occupational injuries. PUD 20-24; OCEC 1-2, 18, 22-23.

This argument fails in many regards. The argument that professional rescuers act with greater "intentionality" than lay rescuers is a version of the argument that firefighters possess

training and experience lay rescuers do not, so are more equipped to encounter danger. BA 18-20. This is just a comparative-negligence argument. As Colorado stated in abrogating its firefighters' rule, "while a public safety officer's special skills, training, and experience may be considered with reference to any comparative negligence involved, a per se grant of immunity to those whose negligence created a dangerous situation for the officer is unwarranted." *Wills v. Bath Excavating & Constr. Co.*, 829 P.2d 405, 409 (Colo. Ct. App. 1991). Rather, the common law can "suitably address all the circumstances that surround an officer [or firefighter] who must respond to an emergency on behalf of a private citizen." *Ruiz*, 189 N.J. at 532 (quoting *Rosa*, 122 N.J. at 85 (Handler, J., dissenting)).

PUD attempts to contrast firefighters to other workers facing occupational hazards. PUD 20-22. It accepts, as it must, that many workers confront occupational hazards, but argues that they are "tangential" to their work, while the very purpose of a firefighter's work is to confront hazards. PUD 22. That is false.

PUD and OCEC offer no support for their unwarranted assumption that firefighters "engage in rescue on a daily basis." PUD 21; OCEC 23. Thankfully, there are not enough fires for that to be

the case. But of course, the job is, at times, hazardous. So are many others, including: (1) loggers; (2) fishers and related workers; (3) pilots and flight engineers; (4) roofers; (5) trash and recycling collectors; (6) iron and steel workers; (7) truck and sales drivers; (8) farmers, ranchers, and other agricultural managers; (9) construction trades and extraction workers; and (10) grounds maintenance workers. These are the top ten most dangerous occupations in the United States. <https://time.com/5074471/most-dangerous-jobs/>.³ Professional rescuers are not even on the list. *Id.*

What is left that supposedly makes a professional rescuer's role "unique" is that they confront risk "in order to protect others" and are paid for doing so. PUD 20-22; OCEC 16-19. Neither makes a firefighter unique. Every occupation on the top-ten list is more dangerous than firefighting, each provides an income, and many provide considerable benefits to society, such as removing trash, maintaining roads, and providing food. It is well known that American workers are not compensated based on the good their work bestows. Firefighters should not be denied compensation on that basis.

³ This list is taken from Time magazine's "The Top 10 Most Dangerous Jobs in America," published in 2017. <https://time.com/5074471/most-dangerous-jobs/>. Time's source is the 2016 Census of Fatal Occupational Injuries.

Other states recognized as much when striking down their firefighters' rule:

- New Mexico: the court recognized that many occupations, including oil field workers and constructions workers, "require employees to confront an appreciable risk of physical injury or death in order to carry out their jobs." **Baldonado**, 143 N.M. at 302. But those workers are not barred from recovery in tort when injured in the course of their "inherently risky occupations." 143 N.M. at 302.
- Oregon: the court compared professional rescuers to "other public employees who are injured when confronting dangers on their jobs." **Christensen**, 296 Or. at 620. While both may recover workers' compensation and benefits "from the public," all except professional rescuers "are also allowed additional tort damages" 296 Or. at 620. Simply stated, professional rescuers "must bear a loss which other public employees are not required to bear." *Id.*

Both relied on a California dissent noting that **Maltman's** reliance on assumption of risk to justify the PRD "proves too much." **Walters v. Sloan**, 20 Cal. 3d 199, 212, 571 P.2d 609 (Acting C.J. Tobriner, dissenting) (1977). Applied equally to any class of workers other than professional rescuers, "an employee would routinely be barred from bringing a tort action whenever an injury he suffers at the hands of a negligent tortfeasor could be characterized as a normal inherent risk of his employment." **Walters**, 20 Cal. 3d at 212. But of course, that is not the law. 20 Cal. 3d at 212-13. Rather, "highway workers -- whose jobs obviously subject them to the

'inherent risk' of being injured by a negligent driver -- [may] recover for damages inflicted by such third party negligence" *Id.* The same is true for construction workers – “whose employment poses numerous risks of injury at the hands of another” *Id.* at 213. While “firemen regularly face substantial hazards in the course of their employment ... other employees -- highway repairmen, high rise construction workers, utility repairmen and the like -- frequently encounter comparable risks in performing their jobs” *Id.* All are “theoretically” compensated for such risks. *Id.*

Additional “policy considerations” do not justify the PRD. *Compare* BA 13-17 *with* PUD 18-20 *and* OCEC 15-19. PUD argues that if “even one disaster could be avoided because of a prompt, unhesitating call for help, the professional rescuer doctrine serves its purpose.” PUD 19; *see also* OCEC 16. The idea that it is the tortfeasor who calls for help is a legal fiction. It is often an innocent third party, not the tortfeasor, who notices and reports the fire. That is the case here, and likely with any forest fire. It appears to have been the case in ***Markoff***, where an unidentified caller reported a gas leak, and the negligent parties were Puget Sound Energy, an independent contractor who improperly decommissioned the gas lines, and an unidentified third party who stored personal property on

the line. **Markoff v. Puget Sound Energy**, 9 Wn. App. 833, 835-36, 447 P.3d 577 (Aug. 19, 2019). It was the case in **Maltman**, in which a state trooper who first responded to the scene of an auto accident called for military helicopter assistance. 84 Wn.2d at 976.

But even assuming it is the tortfeasor who makes the emergency call, it is “preposterous rubbish” to think that allowing firefighters to recover would discourage their call. **Christensen**, 296 Or. at 620 (quoting Prosser, William L., *Law of Torts* § 68, 397 (4th ed. 1971)). There simply is no reason to think that a tortfeasor processes their potential liability when weighing whether to call in an emergency. And if they had that thought process, it is unlikely they would resolve it based on an awareness of the PRD. This legal fiction does not sustain an unjust rule.

PUD and OCEC ignore an equally compelling consideration: the PRD discourages would-be firefighters from pursuing the career. Arguing that the PRD promotes reporting assumes public knowledge of the doctrine. Assuming *arguendo* that firefighters learn about the PRD, they may elect a different profession to avoid catastrophic injuries or death without the chance of fair compensation for themselves and their survivors. PUD insists that to maintain “a

civilized and ordered society,” the public must not hesitate to call for help. PUD 18. That call will do no good if no one answers it.

PUD and OCEC also argue that since the public pays taxes to support a fire service, they have an expectation, “based on a social contract, that professional rescuers will not seek to hold negligent citizens responsible for their injuries sustained in combating a negligently created hazard.” PUD 23-24; OCEC 16-17, 22-23. The theory that people forming a society agree to surrender some freedoms in exchange for the protection of their remaining rights is unrelated to immunizing a tortfeasor from suit by an injured firefighter. And nothing supports this mindreading about public expectations. Taxes allocated to public services pay for the service, such as emergency response, public education, waste collection, road and park maintenance, utilities, and the like. They do not buy the right to be negligent without consequence, or insulate other negligent actors from liability. They do not provide a set-aside risk pool for injured rescuers. No such pool exists.

Equally meritless is the argument that allowing tort recovery is a second “tax” on the public. PUD 24; OCEC 16. PUD apparently makes this argument because it is a public entity and could pass on the cost of tort liability to its taxpayers. Of course, many defendants

are not so lucky, but that is no basis to affirm an incorrect and harmful doctrine. PUD and OCEC both ignore that the only real cost-spreading mechanism is insurance. PUD 23-24; OCEC 16-17, 22-23; **Walters**, 20 Cal. 3d at 216 (Acting C.J. Tobriner, dissenting).

PUD and OCEC next claim that there already exists “statutory compensation schemes to ensure that an injured professional rescuer is adequately compensated.” PUD 24; OCEC 16-17. Although PUD does not elaborate, it appears to refer to Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF), which creates a reserve to ensure firefighters and law enforcement “sure and certain recovery.” **Hansen v. City of Everett**, 93 Wn. App. 921, 926, 971 P.2d 111 (1999). PUD argues that through LEOFF, firefighters are actually better off than other workers, where they can sue their employers for job-related negligence. PUD 25-26 n.9 (citing **Hauber v. Yakima Cnty.**, 147 Wn.2d 655, 660, 56 P.3d. 559 (2002)). PUD agrees that this “extra protection is warranted because of the ‘vital and dangerous nature of their work.’” *Id.* Yet it would take away with one hand what the Legislature gave with the other.

Forced to admit that LEOFF is not available to Lyon, a federal employee, PUD argues that allowing Lyon to sue entities like PUD,

whose negligence causes a massive out-of-control forest fire, does not further LEOFF's policy of "improved safety." PUD 26 n.9 (cont.).⁴ It may be accurate that allowing Lyon to sue PUD and OCEC would not prompt the fire department to improve safety, but it undoubtedly would prompt entities like PUD and OCEC to improve safety. Since they, and entities like them, cause the most catastrophic forest fires the public faces, that would certainly help "the public" for whom PUD and OCEC profess so much concern.

PUD worries that allowing firefighters to sue negligent third parties "creates a reverse incentive," under which a firefighter elects to sue only the negligent third party and not his employer, and left "unconcerned about liability, the employer will not adopt safeguards." *Id.* Accepting for the sake of argument the rather dubious proposition that an injured firefighter would elect not to sue his at-fault employer, it is the fact that LEOFF subjects employers to suit – not the existence of a suit – that prompts the adoption of safer practices. But

⁴ Also acknowledging that Lyon is not entitled to LEOFF benefits, OCEC argues that Lyon is adequately compensated by the Department of Labor under the Federal Employees Compensation Act. OCEC 16-17. Coverage for medical bills does not come close to compensating Lyon for his tremendous pain and suffering. And the availability of some compensation does not justify denying firefighters compensation other injured workers are permitted to pursue.

in any event, any tortfeasor could cure this make-believe problem by bringing cross-claims against the department.

Finally, PUD and OCEC utterly fail to respond to Lyon's argument that the PRD is not a cost-spreading mechanism in the first instance. BA 26-27. By denying Lyon the right to pursue claims against PUD and OCEC, the PRD does not take that cost – *i.e.*, what a jury might award Lyon against PUD and OCEC – and spread it amongst others. **Walters**, 20 Cal. 3d at 216 (Acting C.J. Tobriner, dissenting). Rather, the PRD requires injured firefighters to bear those costs alone. 20 Cal. 3d at 216.

Moreover, cost spreading is not a compelling reason for the PRD, even if it actually occurred. There is no reason that an entity like PUD or OCEC should be entitled to cost spreading for their tortious conduct. Subjecting them to liability would increase safety.

Finally, OCEC argues that the PRD is “well settled law,” relying on **Loiland** and **Markoff**, *supra*, two recent appellate decisions reaffirming the PRD. This Court is not bound by appellate decisions. Rather, it is for this Court to determine whether the PRD is “here to stay.” OCEC 15.

In **Loiland**, the first officer to arrive at an auto-accident scene on an icy roadway left the scene with the driver, leaving his truck

abandoned in the ditch. 1 Wn. App. 2d at 863. When firefighter Loiland later responded to 911 calls reporting an abandoned vehicle, he was struck and injured by another vehicle that lost control on the ice. 1 Wn. App. 2d at 863. Loiland's principal argument was that DOT's failure to de-ice after the first crash, and the police department's failure to mark the accident scene, were negligent acts independent from the collision Loiland was responding to. *Id.* at 870-71. The appellate court rejected that argument and declined to address Loiland's request to abandon the PRD, stating only that it was bound by this Court's precedent. *Id.* at 863 n.1.

In ***Markoff***, nine firefighters injured responding to a gas leak argued that Puget Sound Energy "created a hidden, unknown or extrahazardous danger," bringing its negligence into a recognized PRD exception. 9 Wn. App. 2d at 835, 843. They claimed too that PSE's negligent failure to deactivate the gas lines created a risk that was not present when the firefighters first responded. 9 Wn. App. 2d at 843. The court rejected both on similar grounds as in ***Loiland*** – the negligence was not independent of that which brought the firefighters to the scene. *Id.* at 843-44.

The ***Markoff*** firefighters did not, as OCEC claims, ask the appellate court to abandon the PRD. OCEC 14. They did ask the

court to adopt an exception for willful, wanton, or reckless conduct, and the court declined to do so, holding that the “intent of the person whose actions caused the need for rescue has never been a relevant inquiry in determining whether a professional rescuer assumed a risk.” *Id.* at 846. In other words, the court followed the law simply because it is the law. It did not, as OCEA claims, reject each argument Lyon raises. OCEC 13-15.

In sum, the PRD is premised on overturned law, and is incorrect and harmful, where it singles-out firefighters and denies them tort recovery available to other rescuers, and, more importantly, available to other workers in more dangerous professions. This Court should abandon this unjust doctrine.

B. Alternatively, this Court should strike down the PRD as constitutionally infirm.

If this Court declines to abandon the PRD as inconsistent with precedent, incorrect, and harmful, then it should strike it down as unconstitutional. The PRD singles-out professional rescuers, denying them the right to redress for personal injuries available to ordinary rescuers and to other professionals in potentially dangerous occupations. Unlike other public employees injured confronting occupational hazards, firefighters are limited to workers’

compensation and salary benefits, but denied tort recovery. **Christensen**, 296 Or. at 620. That is, “the injured public safety officer must bear a loss which other public employees are not required to bear.” 296 Or. at 620. This violates the Equal Protection Clause.

1. Strict scrutiny applies because the PRD burdens the fundamental right to seek redress for personal injuries.

Neither PUD nor OCEC disagrees that if strict scrutiny applies, then the PRD fails under the Equal Protection Clause. Rather, both argue only that rational basis review applies and that the PRD satisfies that standard.⁵ PUD 30-39; OCEC 21-27.

This Court previously recognized that personal injury claims are entitled to equal protection of the law:

A claim for personal injury was afforded the constitutional right of equal protection in **Hunter v. North Mason High Sch.**, 85 Wn.2d 810, 814, 539 P.2d 845 (1975), where the court held: “The right to be indemnified for personal injuries is a substantial property right”

⁵ OCEC also argues that professional rescuers are not similarly situated to lay rescuers, where professional rescuers are trained to confront risk, do so on a “daily basis,” and are compensated. OCEC 22-23; *see also* PUD 21. This argument fails for the same reasons addressed above: (1) while firefighters do confront risk, they do not confront risk on a “daily basis,” and actually face less occupational risk than many other workers who are allowed tort recovery; (2) their training does not set them apart from other workers who are permitted tort recovery; and (3) neither does their compensation. *Supra*, Argument § A.3.

John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 782, 819 P.2d 370 (1991).⁶ The right to indemnification for personal injury is not only a “substantial property right,” but often is also “fundamental to the injured person’s physical well-being and ability to continue to live a decent life.” ***Hunter***, 85 Wn.2d at 814.

PUD argues that while there is a fundamental right to access the courts, the PRD “does not deny Lyon redress in the courts of this state; it limits his ability to hold certain people liable for his injuries.” PUD 31-38.⁷ Both PUD and OCEC argue that Lyon merely asserts an economic right. PUD 33-34; OCEC 24-25.⁸

In ***Hunter***, this Court invalidated former RCW 4.96.020 (1967), requiring parties to provide notice of a tort claim against the

⁶ PUD complains that ***John Doe*** is not an equal protection case. PUD 34-35. Lyon never said it was. He cites ***John Doe*** for its plain statement that “A claim for personal injury was afforded the constitutional right of equal protection in ***Hunter***”

⁷ OCEC goes a step further, arguing that there is no fundamental right to access the courts or to indemnification for personal injury. OCEC 23-24 (citing ***Miranda v. Sims***, 98 Wn. App. 898, 907, 991 P.2d 681 (2000)). ***Miranda*** does not address personal injury claims or access to the courts, but the right to counsel in an inquest proceeding, “a nonbinding factual inquiry and does not result in a determination of guilt or responsibility.” 98 Wn. App. at 903. Washington “courts have repeatedly rejected the argument that an inquest is equivalent to a trial.” 98 Wn. App. at 903.

⁸ PUD argues that Lyon is not a member of a suspect class. PUD 28-30. Lyon does not claim otherwise. BA 23-24. Strict scrutiny applies where there is a suspect class, or a fundamental right is implicated. ***Anderson v. King Cnty.***, 158 Wn.2d 1, 18, 138 P.3d 963 (2006).

state within 120 days from the date the claim arose. 85 Wn.2d at 813, 818-19. That statute effectively created a shorter statute of limitations for claims against government entities, where plaintiffs proceeding against private entities were entitled to the full three-year limitations period. 85 Wn.2d at 818-19. Thus, this Court invalidated the statute under the Equal Protection Clause, ruling that it “produce[d] two classes of tort victims and place[d] a substantial burden on the right to bring an action of one of them.” *Id.* at 813.

PUD argues that this Court subsequently limited *Hunter's* equal protection analysis to “legislation that essentially shortens the statute of limitations for suits against state defendants.” PUD 37. (quoting *McDevitt v. Harborview Med. Ctr.*, 179 Wn.2d 59, 68, 316 P.3d 469 (2013) (citations omitted)). In context, that statement refers to the distinction between the notice of claim statute that effectively shortened the limitations period, and pre-suit notice requirements that did not have that effect. *McDevitt*, 179 Wn.2d at 70-71. This Court explained that “if ‘[t]he plaintiff has a filing time requirement equal to the statutory limitations for bringing an action,’ a pre-suit notice requirement ‘does not involve nor deny equal protection.’” 179 Wn.2d at 71 (quoting *Coulter v. State*, 93 Wn.2d 205, 207, 608 P.2d 261 (1980)). That is, the equal protection violation is the loss of the

full limitations period, not the notice requirement. *Id.* This does not mean, as PUD suggests, that the only equal protection violation is a shortened limitations period for one class of plaintiffs. PUD 35-36.

The effect of the notice of claim statute was to deny a class of plaintiffs their cause of action, resulting in the loss of the “*right to be indemnified for personal injuries.*” ***Hunter***, 85 Wn.2d at 814 (emphasis added). Classifications that substantially burden “such rights” must satisfy the Equal Protection Clause. 85 Wn. 2d at 814.

Like the plaintiff who loses his personal injury claim to the statute of limitations, Lyon lost his claim to the PRD. The same was true for the firefighters in ***Markoff***, dismissing all nine firefighters’ claims. 9 Wn. App. 2d at 850-51. The same was true in ***Maltman***. 84 Wn.2d at 983.

In a telling final attempt to distinguish ***Hunter***, PUD argues that it “involved a rule that often operated to completely bar a plaintiff’s claims.” PUD 37-38. PUD argues that the PRD is more limited in that it bars only those claims for injuries inherent in the dangers associated with the rescue. PUD 38. A bar is a bar. The PRD is no less offensive to the Equal Protection Clause simply because it affects fewer people than the non-claim statute this Court struck down in ***Hunter***.

2. The PRD violates the Equal Protection Clause by denying professional rescuers redress for personal injuries.

Under strict scrutiny review, this Court will uphold the PRD only if it is “necessary to accomplish a compelling state interest.” ***State v. Schaaf***, 109 Wn.2d 1, 17, 743 P.2d 240 (1987). Where, as here, the complaining party demonstrates that strict scrutiny applies, the burden shifts to the party defending the rule “to show the restrictions serve a compelling state interest and are the least restrictive means for achieving the government objective.” ***First United Methodist Church v. Hearing Exam’r***, 129 Wn.2d 238, 246, 916 P.2d 374 (1996)). If there is no compelling state interest, then the restrictions are unconstitutional. ***First United Methodist Church***, 129 Wn. 2d at 246.

PUD and OCEC do not argue that there is a compelling state interest in singling out professional rescuers from other rescuers, and from other professionals, or that the PRD is the least restrictive means to accomplish that unidentified interest. 129 Wn.2d at 246. Indeed, they have no real answer to the point that many workers face more occupational risk than firefighters, but are allowed to recover in tort against negligent third parties. The simple fact is that many other workers, including garbage collectors, construction workers, fishers,

and ranchers: (1) face greater occupational risk than firefighters; (2) like firefighters, are trained, and paid; but (3) unlike firefighters, may sue negligent third parties for occupational injuries. This Court should strike down the PRD as constitutionally infirm.

In any event, there are no compelling state interests underlying the PRD. PUD and OCEC argue that the interests underlying the PRD are: (1) encouraging “the reporting of dangerous conditions”; and (2) “spread[ing] the foreseeable risk of injury to the public through salary and workers’ compensation.” PUD 39; OCEC 16-17. Neither is a compelling state interest and neither is accomplished by the PRD.

As above, it is pure legal fiction that denying firefighters tort recovery promotes reporting emergencies: (1) the reporter often is not the tortious third party; (2) there is no reason to believe that someone in the midst of an emergency weighs potential liability; and (3) even if they do, there is no reason to believe that they are aware of the PRD (by name or effect). This is, indeed, preposterous rubbish. *Supra*, Argument § A 3.

The same is true for the cost-spreading rationale. Neither salary, nor workers’ compensation, nor federal employees’ compensation fully compensates Lyon for his injuries. *Id.* Lyon’s

income is for his work – not his injuries. Even if that were not the case, he is not paid nearly enough to compensate him for burns over 70% of his body. CP 23, 366. What little he received in federal benefits does not make him whole. To suggest otherwise is offensive.

Yet Lyon, and others like him, don't even receive what other injured workers receive, including those in more dangerous occupations. Others may sue negligent third parties, while firefighters cannot. There is a legitimate government interest furthered by workers' compensation, but there is not one furthered by denying firefighters the same tort recovery others are permitted.

3. There is no rational basis for denying firefighters tort recovery available to workers in more dangerous professions.

The interests PUD and OCEC identify fail rational basis review as well. Rationale basis review poses three questions: (1) Does the classification apply alike to all members within the designated class? (2) Do reasonable grounds exist to support the classification's distinction between those within and without each class? and (3) Does the classification have a rational relationship to the purpose of the legislation? *Skagit Motel v. Dep't of Labor & Indus.*, 107 Wn.2d 856, 860, 734 P.2d 478 (1987). Lyon accepts that the PRD applies

alike to all professional rescuers (question 1). As to the second question, PUD and OCEC again lean heavily on the distinction between lay and professional rescuers on the basis that the latter is trained, more regularly confronts danger, and does so as part of their occupation. PUD 39; OCEC 26-27. But the better comparison is to other workers who regularly face even greater occupational risk than firefighters. There is no rational reason to deny firefighters the tort recovery those in more dangerous occupations are permitted.

OCEC argues the PRD itself is rationally based on the professional's willingness to submit to a dangerous profession for which he is compensated. OCEC 25-26 (citing *Maltman*, 84 W.2d at 977-78; *Ballou*, 67 Wn. App. at 71). But these are merely the bases for distinguishing between lay and professional rescuers (the second question). *Skagit Motel*, 107 Wn.2d at 860. OCEC does not identify a government interest related to that distinction (the third question). 107 Wn.2d at 860. There is none.

Rather, denying firefighters the right to indemnification for catastrophic personal injuries sustained protecting the public is not rationally related to encouraging "the reporting of dangerous conditions," or spreading "the foreseeable risk of injury to the public through salary and workers' compensation." PUD 39; OCEC 26-27;

Am. Legion Post No. 149 v. Dep't of Health, 164 Wn.2d 570, 604, 192 P.3d 306 (2008); ***Skagit Motel***, 107 Wn.2d at 860. Again, it is pure fiction that it is the tortfeasor who calls in an emergency, and rank speculation that any potential caller stops to weigh their potential liability, much less resolves that imaginary thought process based on the PRD. And the equally – if not more – compelling point is that potential firefighters who learn about the PRD, may elect a profession that does not curtail their recovery.

The cost-spreading rationale similarly fails. The PRD is not rationally related to cost-spreading, where it does not spread costs at all, but foists them entirely on the injured firefighter. The public does not share the cost of Lyon's injuries that are left uncovered by paltry federal benefits. He bears them alone.

In short, the PRD violates the Equal Protection Clause, where it singles-out firefighters as a class, denying them recovery for injuries available to other workers in more dangerous professions.

C. If this Court declines to abandon the PRD or to strike it down as constitutionally infirm, then it should hold that gross negligence is an exception to the PRD.

If this Court declines to abandon or strike down the PRD, then it should create an exception for gross negligence. BA 28-36. PUD and OCEC do not respond to Lyon's arguments that Washington has

continued to read exceptions into the PRD since its inception, as have numerous states around the country. BA 29-35. Instead, PUD argues that there is no compelling reason for a gross-negligence exception and that none has been adopted elsewhere. PUD 41-43. OCEC takes a different position, acknowledging that while it is a “minority view,” nine states have a gross negligence exception to the PRD. OCEC 29-30 (citing CP 101-05).

As above, where neither PUD nor OCEC address any out-of-state cases, their argument on this score are unpersuasive and impossible to address. They are also misleading.

Both PUD and OCEC ignore numerous states that declined to adopt the PRD at all, or abrogated it entirely. Colorado (*Banyai*, 799 P.2d at 443); Florida (FLA. STAT. § 112.182); Massachusetts (*Hopkins v. Medeiros*, 48 Mass. App. Ct. 600, 607-09 (2000)); Maine (*Holmes v. Adams Marine Ctr.*, 2000 Me. Super. LEXIS 162, *7-8 (unpublished, 2000); Minnesota (MINN. STAT. § 604.06); New Jersey, (N.J. STAT. § 2A:62A-21); New Mexico (*Baldonado*, 143 N.M. at 299); New York (N.Y. GEN. MUN. LAW § 205); Oregon (*Christensen*, 296 Ore. at 619-20); Pennsylvania (*Mull v. Kerstetter*, 540 A.2d 951, 954 (1988); South Carolina (*Minnich v. Med-Waste, Inc.*, 349 S.C. 567, 575, 564 S.E.2d 98 (2002); and

Virginia⁹ (VA. CODE § 8.01-226). And PUD is simply incorrect in claiming that no state excepts gross negligence. PUD 43. In Louisiana, “a professional rescuer may recover for injuries caused by the defendant’s gross or wanton negligence.” ***Meunier v. Pizzo***, 696 So. 2d 610, 613 (La. Ct. App. 1997). Many more recognize exceptions for willful, wanton, or reckless conduct. BA 32-35.

PUD’s remaining arguments are unavailing as well. It argues that an exception that focuses on the tortfeasor’s “blameworthiness” is “antithetical” to the PRD. PUD 41-42. That is only because the PRD is premised on assumption of risk, under which the tortfeasor’s conduct is irrelevant. The question is not whether the tortfeasor’s negligence *is* irrelevant, but whether it *should be* irrelevant. The answer is no – the balance between a tortfeasor’s negligence and a firefighter’s fault can be struck by applying the same tort principals that govern any other injured worker’s claims against a negligent third party.

PUD also argues that a gross-negligence exception would “swallow the rule.” PUD 42. Maine correctly rejected a similar

⁹ While Virginia maintains a “fireman’s rule,” owners and occupiers of land owe firefighters the same duty to maintain the premises in a reasonably safe condition as is owed to the general public.

floodgates argument in declining to adopt a firefighters' rule, succinctly stating that Maine "has never adopted the firefighters' rule and the courts have not been flooded." *Holmes, supra*, at 6.

Finally, PUD and OCEC also ask this Court not to reach this issue, claiming that Lyon's Complaint fails to allege facts establishing gross negligence. PUD 43-45; OCEC 6, 27-28, 31-32. The trial court did not reach this issue, ruling only that the PRD bars Lyon's claims. CP 427. This Court should not decide this issue in the first instance, particularly on the scant record on the CR 12(b)(6) dismissal.

In any event, the Complaint raises a gross-negligence question sufficient to go to a jury. See e.g., *Volk v. DeMeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016) (gross negligence is typically a jury question). OCEC owned, operated, and maintained high-voltage power lines that started the Twisp River Fire on PUD property. CP 25-28. OCEC, who was responsible for maintaining the vegetation surrounding the power lines, claimed that every three years it cleared vegetation and debris to ten feet from the lines. CP 27. But OCEC allowed fast-growing trees to invade the power-line corridor and contact the lines. CP 27. A branch estimated to be four-and-one-half years old started the fire. *Id.*

A jury could easily find gross negligence. This Court should not take that question from the jury. Rather, if this Court declines to abandon or strike down the PRD, it should hold that gross negligence is an exception to the PRD.

CONCLUSION

The PRD is incorrect, harmful, and unsupported by the law upon which it is based. Without even rational basis, it singles-out firefighters and denies them the chance of tort recovery permitted to others in far more dangerous professions. Its underpinnings are simply wrong – it does not promote emergency reporting or spread costs. The precedent upon which it is based has been eroded.

This Court should abandon the PRD, or strike it down as constitutionally infirm. At the barest minimum, this Court should adopt a gross negligence exception.

RESPECTFULLY SUBMITTED this 3rd day of December 2019.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
shelby@appeal-law.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **REPLY BRIEF** on the 3rd day of December 2019 as follows:

Co-counsel for Appellant

Evergreen Personal Injury Counsel	___	U.S. Mail
Stephen L. Bulzomi	<u> x </u>	E-Service
James W. McCormick	___	Facsimile

100 South Ninth Street
Tacoma, WA 98402
sbulzomi@epic-law.com
jmccormick@epic-law.com

Counsel for Respondent OCEC

Forsberg & Umlaugh, PS	___	U.S. Mail
Aloysius G. Lingg	<u> x </u>	E-Service
Scott A. Samuelson	___	Facsimile

901 – 5th Avenue, Suite 1400
Seattle, WA 98164
glingg@foum.law
ssamuelson@foum.law
jbranaman@foum.law

Carney Badley Spellman, P.S.	___	U.S. Mail
Mike B. King	<u> x </u>	E-Service
701 Fifth Avenue, Suite 3600	___	Facsimile

Seattle, WA 98104
king@carneylaw.com

Counsel for Respondent PUD

Paine Hamblen, LLP	___	U.S. Mail
Daniel W. Short	<u> x </u>	E-Service
717 West Sprague Avenue, Suite 1200	___	Facsimile

Spokane, WA 99201
dan.short@painehamblen.com
julie.heath@painehamblen.com

Counsel for Washington Department of Natural Resources

Washington State Attorney General	<input type="checkbox"/>	U.S. Mail
Paul F. James	<input checked="" type="checkbox"/>	E-Service
1125 Washington Street SE	<input type="checkbox"/>	Facsimile
Olympia, WA 98504		
paulj@atg.wa.gov		
resolyef@atg.wa.gov		

Counsel for Washington Department of Fish & Wildlife

Washington State Attorney General	<input type="checkbox"/>	U.S. Mail
Michael J. Throgmorton	<input checked="" type="checkbox"/>	E-Service
Jennifer D. Loynd	<input type="checkbox"/>	Facsimile
7141 Clearwater Drive SWA		
Olympia, WA 98504		
michaelt3@atg.wa.gov		
jennifer.loynd@atg.wa.gov		



Shelby R. Frost Lemmel, WSBA 33099
Attorney for Appellant

MASTERS LAW GROUP

December 03, 2019 - 4:43 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97826-3
Appellate Court Case Title: Daniel Lyon v. Okanogan County Electric Cooperative, et al
Superior Court Case Number: 18-2-00235-6

The following documents have been uploaded:

- 978263_Briefs_20191203164212SC559660_8621.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was Reply Brief.pdf

A copy of the uploaded files will be sent to:

- Jennifer.Loynd@atg.wa.gov
- RESOlyEF@atg.wa.gov
- dan.short@painehamblen.com
- glingg@foum.law
- jbranaman@foum.law
- jmccormick@epic-law.com
- julie.heath@painehamblen.com
- ken@appeal-law.com
- king@carneylaw.com
- michael3@atg.wa.gov
- paulj@atg.wa.gov
- sbulzomi@epic-law.com
- ssamuelson@foum.law

Comments:

Sender Name: Tami Cole - Email: paralegal@appeal-law.com

Filing on Behalf of: Shelby R Frost Lemmel - Email: shelby@appeal-law.com (Alternate Email: paralegal@appeal-law.com)

Address:
241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20191203164212SC559660