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COURT OF APPEALS DIV I
STATE OF WASHINGTON

No. 673432

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COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

Justin Leonard,

Appellant,

v.

Grubb & Ellis Equity Advisors, Property Management, Inc.,

Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court erred in entering its August 12, 2011 order granting Respondent's motion for summary judgment and dismissing Mr. Leonard's claims against Respondent.

B. Issue Pertaining to Assignment of Error

Whether the trial court erred in dismissing Mr. Leonard's claims against Respondent when Mr. Leonard raised genuine issues of material fact and presented sufficient evidence to sustain a negligence claim against Respondent; when it was foreseeable that Mr. Leonard, an employee for Microsoft on the Microsoft Campus in Redmond, Washington on July 25, 2007, would be caused harm and injury should Respondent fail to adequately operate, maintain, and manage electrical equipment in their control on the Microsoft Campus in Redmond, Washington; when a declaration from a registered professional electrical engineer, unrefuted by Respondent, states that Respondent failed to adequately operate, maintain, and manage electrical equipment in their control on the Microsoft Campus in Redmond, Washington and failed to adhere to industry standards and customs and due diligence and therefore proximately caused the harm and injury suffered by Mr. Leonard on July 25, 2007; and when it is

undisputed that Mr. Leonard did, in fact, suffer harm and injury of an extensive nature requiring a surgical procedure.

II. STATEMENT OF THE CASE

A. Factual Background

This action arises from an injury suffered by Mr. Leonard while he was a passenger on an elevator on the Microsoft Campus in Redmond, Washington on or about July 25, 2007. CP 14, 133-35, 155.

On or about July 25, 2007, while employed by Microsoft, Mr. Leonard was a passenger on elevator 2 in Building 26 on the Microsoft Campus in Redmond, Washington. CP 14, 133-35, 155. After pushing the button for his desired floor destination, the elevator suddenly lost power. CP 14, 155. As a result of the power outage, the elevator was caused to drop, bounce, and jerk, and come to an abrupt stop, causing Mr. Leonard to suffer harm and injury of an extensive nature. CP 14, 133-35, 155. Subsequently, Mr. Leonard required surgery on May 26, 2010 due to the harm and injury suffered on July 25, 2007 as a result of the elevator losing power. CP 155.

The Respondent in this matter, Grubb & Ellis, were, and are, the property managers for the Microsoft Campus in Redmond, Washington where the incident involving Mr. Leonard took place. CP 63-67, 133-35,

143-47. As property managers, Respondent was responsible for electrical and related services for Microsoft facilities in the Puget Sound (14 million square foot portfolio), as well as being responsible for “troubleshooting power anomalies[,]” to include power bumps, power surges, and power outages. CP 63-67, 133-35, 143-47. Respondent also admittedly had prior experiences and knowledge of power anomalies and the like, to include the power outage on July 25, 2007 which caused Mr. Leonard to suffer harm and injury, and also knew that there were no restrictions in place regarding the amount of power the Microsoft Campus received from Puget Sound Energy, Inc. CP 63-67, 133-35, 143-47.

On July 25, 2007, without a power restriction plan in place from Respondent, a power fluctuation went unrestricted and caused three chiller plants to shut down on the Microsoft Campus. CP 65, 93-95, 134, 143-47. Respondent was notified of this power fluctuation by the building automation control team on that same day at 2:45pm. CP 65, 93-95, 134, 143-47. Following their loss of power, the three chiller plants started up simultaneously which overloaded the electrical system due to an inrush of electrical current. CP 65, 93-95, 134, 143-47. A fuse in the control of Respondent, titled B28.S1, failed to isolate the fault during the overload of the electrical system which subsequently resulted in the fault having to be isolated further down the line at a fuse controlled and owned by Puget

Sound Energy, Inc., titled SW CAB U2332. CP 65-66, 112-13, 134, 143-47, 157-58. The fuse isolated the fault due to the inrush of electrical current which caused one of the phases of the three phase system to open up. CP 65, 112, 134-35, 143-47. The fuse controlled by Respondent, titled B28.S1, and the fuse controlled by Puget Sound Energy, Inc., titled SW CAB U2332, were not coordinated, and any coordination between the fuses would have to come at the request of those responsible for the customer's electrical and related services, in this case Respondent. CP 134-35, 143-47, 157-58. Isolating the fault at SW CAB U2332 instead of at B28.S1 caused various facilities on the Microsoft Campus in Redmond, Washington to lose power, including Building 26 and elevator 2. CP 65, 135, 143-47.

B. Procedural Background

Mr. Leonard filed a complaint for damages for personal injuries associated with the above Factual Background on July 22, 2010. CP 13-17, 37-41. On July 15, 2011, Respondent filed a motion for summary judgment. CP 1-9. Mr. Leonard opposed Respondent's motion on July 29, 2011. CP 133-58. Respondent replied to Mr. Leonard's opposition on August 8, 2011. CP 159-64. The King County Superior Court granted Respondent's motion for summary judgment and dismissed Mr. Leonard's claims against Respondent on August 12, 2011. CP 167-69. Mr. Leonard

filed a timely Notice of Appeal to Court of Appeals on September 7, 2011. CP 165-66. Mr. Leonard filed the Designation of Clerk's Papers by the required deadline and further notified the Court, at the Clerk's request, that no Statement of Arrangements was filed as there was no transcription or recording of the relevant proceedings at the trial court level.

III. SUMMARY OF ARGUMENT

The trial court erred when it granted Respondent's motion for summary judgment because genuine issues of material facts exist as to Mr. Leonard's claim against Respondent, and Mr. Leonard has provided sufficient evidence, to include uncontested expert witness evidence, to sustain a negligence claim against Respondent.

Mr. Leonard has shown that Respondent owed him a duty as it was foreseeable that, as an employee of Microsoft on the Microsoft Campus in Redmond, Washington, he would be caused harm and injury should Respondent fail to adequately operate, maintain, and manage electrical equipment in Respondent's control on the Microsoft Campus in Redmond, Washington and fail to adhere to industry standards and customs. Mr. Leonard has provided evidence that Respondent breached the duty owed to him by Respondent when Respondent failed to adhere to industry standards and customs and failed to adequately operate, maintain, and

manage electrical equipment in Respondent's control. Mr. Leonard has provided evidence that Respondent's negligence and failure to adhere to industry standards and customs proximately caused the harm and injuries he suffered on July 25, 2007.

IV. ARGUMENT

A. Standard for Review

A party may appeal as a matter of right any Superior Court order "affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." *See* Wash. R. App. P. 2.2.

Orders granting summary judgment are reviewed de novo, and the court of appeals "engag[es] in the same inquiry as the trial court." S & K Motors, Inc. v. Harco Nat. Ins. Co., 151 Wash. App. 633, 683, 213 P.3d 630, 632 (Div. I 2009) (*citing* Woo v. Fireman's Fund Ins. Co., 161 Wash.2d 43, 52, 164 P.3d 454 (2007)).

B. The King County Superior Court Erred in Granting Respondent's Motion for Summary Judgment When It Departed from Washington State Case Law and the Applicable Summary Judgment Standard as set out in Civil Rule 56 Even Though Mr. Leonard Presented Genuine Issues of Material Fact and Set Forth Evidence to Establish a Negligence Claim Against Respondent.

The King County Superior Court failed to adhere to the summary judgment standard set forth in Civil Rule 56 and Washington State case law when it determined that no genuine issue of material fact existed and granted Respondent's motion for summary judgment. A genuine issue of material fact clearly exists regarding the circumstances surrounding the electrical equipment in Respondent's control on the Microsoft Campus in Redmond, Washington and therefore the King County Superior Court order must be reversed and remanded. Further, and contrary to Respondent's assertion, Mr. Leonard has provided evidence sufficient to support a negligence claim against Respondent.

Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to prevail as a matter of law. Wash. R. Civ. P. 56(c); Pub. Employees Mut. Ins. Co. v. Fitzgerald, 65 Wash. App. 307, 838 P.2d 63 (Div. II 1992). The moving party is held to a strict standard. Atherton Condo Apartment-Owners Ass'n Bd. Of Dirs. v. Blume Dev. Co., 115 Wash.2d 506, 516, 799 P.2d 250 (1990). In determining if summary judgment is appropriate, the court must consider all evidence and inferences in a light most favorable to the non-moving party. Davis v. Niagara Mach. Co., 90 Wash.2d 342, 581 P.2d 1344 (1978). Any doubts as to the existence of a genuine issue of material fact are resolved against the moving party. Atherton, 154 Wash.2d at 516.

Summary judgment can be granted only where reasonable persons could reach but one conclusion, and that being in favor of the moving party. Weatherbee v. Gustavson, 64 Wash. App. 128, 833 P.2d 1257 (Div. I 1992). If any genuine issue of material fact exists, there must be a trial. Klossner v. San Juan County, 21 Wash. App. 689, 586 P.2d 899 (Div. I 1978), *aff'd* 93 Wash.2d 42 (1979). A material issue precluding summary judgment is one upon which the outcome of the litigation depends, in whole or in part. Vacova Co. v. Farrell, 62 Wash. App. 386, 814 P.2d 255 (Div. I 1991). In negligence cases, summary judgment is rarely granted. Martinez v. Korea Shipping Corp., 903 F.2d 606, 609 (9th Cir. 1990). “Whether the defendant acted reasonably is ordinarily a question for the trier of fact.” Id. (*citing* Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d §2729 (2nd ed. 1983); *see also* Bueno v. United States, 687 F.2d 318 (9th Cir. 1982)).

As discussed below, Mr. Leonard has presented sufficient evidence to sustain a negligence claim against Respondent for their role in the accident of July 25, 2007 which caused Mr. Leonard to suffer harm and injury. As property manager for the Microsoft Campus in Redmond, Washington and self admittedly in control of and responsible for delivery of electrical services and “troubleshooting power anomalies” on the said campus, Respondent has failed to show an absence of genuine issue of

material fact and therefore this matter should be decided by a trier of fact. CP 64. Clearly there is a genuine issue of material fact regarding the duty owed to Mr. Leonard¹ as well as whether Respondent inadequately operated, maintained, and managed electrical equipment in their control on the Microsoft Campus in Redmond, Washington.

- 1. As an employee of Microsoft at the time of the accident and who was expected to be on the Microsoft Campus in Redmond, Washington and use their facilities, it was foreseeable that Mr. Leonard would be harmed or injured when Respondent failed to adequately operate, maintain, and manage electrical equipment in their control on the Microsoft Campus in Redmond, Washington and therefore owed Mr. Leonard a duty of care.**

As an employee of Microsoft who worked on the Microsoft Campus in Redmond, Washington, it was foreseeable that Mr. Leonard would be harmed by Respondent's failure to adhere to industry standards and customs by failing to adequately operate, maintain, and manage electrical equipment in their control on the Microsoft Campus in Redmond, Washington.

To establish a claim of negligence, the plaintiff must show "the existence of a duty, breach of that duty, resulting injury, and proximate causation." Alhadeff v. Meridian on Bainbridge Island, LLC, 167

¹ It should be noted that Respondent did not refute Mr. Leonard's claims of breach of duty, resulting injury, and proximate causation. CP 1-9. The only time Respondent mentions breach of duty is in their reply to Mr. Leonard's opposition to summary judgment, and even at this juncture Respondent misconstrues the evidence in support of breach. CP 163; *compare* CP 143-47. This will be addressed below.

Wash.2d 601, 618, 220 P.3d 1214, 1222 (2009) (en banc) (*citing* Curtis v. Lein, 150 Wash.App. 96, 102-03, 206 P.3d 1264 (Div. I 2009)). In deciding whether a duty was owed, foreseeability of the risk created by the defendant is determined. Higgins v. Intex Recreation Corp., 123 Wash.App. 821, 837, 99 P.3d 421, 429 (Div. III 2004). “The class protected generally includes anyone foreseeably harmed by the defendant’s conduct regardless of that person’s own fault.” Keller v. City of Spokane, 146 Wash.2d 237, 243, 44 P.3d 845, 848 (2002) (en banc) (*citing* Hansen v. Friend, 118 Wash.2d 476, 824 P.2d 483 (1992)). Also determined when addressing foreseeability is the scope of the duty owed by the defendant. Higgins, 123 Wash.App. at 837.

When it is determined that a defendant owed the plaintiff a duty, the standard of care required for that duty is “the degree of care ... which a reasonably prudent person would have exercised under the same or similar circumstances.” Ulve v. City of Raymond, 51 Wash.2d 241, 245, 317 P.2d 908, 911 (1957) (*citing* Ewer v. Johnson, 44 Wash.2d 746, 270 P.2d 813 (1954)). Evidence that a defendant failed to follow industry standards and customs is relevant in determining whether the defendant was negligent and breached their duty of care. *See* Andrews v. Burke, 55 Wash.App. 622, 626, 779 P.2d 740, 742-43 (Div. I 1989); *see generally* Helling v. Carey, 83 Wash.2d 514, 519 P.2d 981 (1974) (en banc).

Standards and customs in a particular industry are evidence of what should be done if a defendant was to exercise reasonable care within that particular industry. Ranger Ins. Co. v. Pierce County, 164 Wash.2d 545, 553-54, 192 P.3d 886, 889-90 (2008) (en banc); *see generally* Helling, 83 Wash.2d at 514. Industry standards and customs are to be considered the floor for reasonable care, not the ceiling; a defendant is held to a standard of reasonable prudence, whether it requires more than industry standards and customs or is directly in sync with industry standards and customs. Id.

If immunity is not available to the defendant, the defendant will be held “responsible for the foreseeable consequences of their acts.” Burkart v. Harrod, 110 Wash.2d 381, 395, 755 P.2d 759, 766 (1988) (en banc). “[The] doing of an act which a reasonable man would not have done, or in the failure to do an act which a reasonable man would have done under similar circumstances[.]” effectually breaches the duty owed by one individual or entity to another. Burkart, 110 Wash.2d at 396 (*citing* System Tank Lines, Inc. v. Dixon, 47 Wash.2d 147, 151, 286 P.2d 704 (1955)).

“Negligence is generally a question of fact for the jury, and should be decided as a matter of law only ‘in the clearest of cases and when reasonable minds could not have differed in their interpretation’ of the

facts.” Bodin v. City of Stanwood, 130 Wash.2d 726, 741, 927 P.2d 240, 248 (1996) (en banc) (*quoting* Young v. Caravan Corp., 99 Wash.2d 655, 661, 663 P.2d 834 (1983); *accord* Thomas v. Wilfac, Inc., 65 Wash.App. 255, 261, 828 P.2d 597, *review denied*, 119 Wash.2d 1020, 838 P.2d 692 (1992)). The issue of foreseeability, too, is typically left to be presented before a jury, except where reasonable minds cannot differ. Rikstad v. Holmberg, 76 Wash.2d 265, 270, 456 P.2d 355, 369-70 (1969); *see* Christen v. Lee, 113 Wash. 2d 479, 780 P.2d 1307 (1989); *see also* Estate of Jones v. State, 107 Wash. App. 510, 15 P.3d 180 (Div. I 2000).

The harm and injury sustained by Mr. Leonard was a clearly foreseeable consequence of the negligent actions of Respondent. Although not contained in their motion for summary judgment or their reply to Mr. Leonard’s opposition to summary judgment, Respondent argued for the first time the Palsgraf case, regarding foreseeability, during the hearing of their motion. CP 1-9, 133-42, 159-64; *see* Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99 (1928). To argue that the facts of this case are in line with Palsgraf is inaccurate and misguided. In Palsgraf, the famous and heavily cited case out of New York, the plaintiff filed a lawsuit against a railroad company for injuries sustained while she was waiting for a train on the railroad company’s platform. *See generally* Palsgraf, 248 N.Y. at 339. In trying to prove that the railroad company

was liable, the plaintiff had to connect numerous and various actions of others:

A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform many feet away. The scales struck the plaintiff, causing injuries....

Id. at 340-41. In deciding to reverse and remand with instructions to dismiss the plaintiff's complaint, the Court determined that liability does not attach to the negligent actor "for any and all consequences" of the negligent act. Id. at 346-47. If it is not foreseeable that the plaintiff would be harmed by the negligent conduct of the actor then the actor will not be held liable for any harm suffered by the plaintiff. *See generally id.*

It cannot be said that the facts of the matter at hand are similar to the facts of Palsgraf. In fact, when comparing the current facts to Palsgraf, the difference in facts are clear and obviously show that these are very different situations and quite distinguishable. The facts of the case at hand

clearly place Mr. Leonard within the “zone of danger” and therefore foreseeable that Mr. Leonard would suffer harm and injury should Respondent fail to adequately operate, maintain, and manage the electrical equipment in their control on the Microsoft Campus in Redmond, Washington. Comparing the facts of Palsgraf to the facts of Mr. Leonard’s case is actually beneficial in showing why Mr. Leonard was in the “zone of danger” and therefore owed a duty, which was subsequently breached, by Respondent. On the date of the accident, July 25, 2007, Mr. Leonard was an employee of Microsoft and carried out his employment on the Microsoft Campus in Redmond, Washington. CP 155, 160. Also as of the date of the accident, Respondent was the property manager for the Microsoft Corporation, to include the same Microsoft Campus which Mr. Leonard was employed at. CP 63-64. As the property manager, Respondent was “responsible for delivery of integrated facility management services...,” to include delivery of “electrical ... and related services.” CP 64. Further, Respondent had knowledge of past power anomalies and outages and was “responsible for troubleshooting power anomalies[.]” and power outages. CP 64.

It is foreseeable that a Microsoft employee would be on the Microsoft Campus in Redmond, Washington. It is also foreseeable that a Microsoft employee on the Microsoft Campus in Redmond, Washington

would use facilities and equipment on said campus that relies on the delivery of electrical services, to include elevators. Further, it is unmistakably foreseeable that a Microsoft employee who is using facilities and equipment that rely on the delivery of electrical services would suffer harm and injury should the property manager in charge of delivering integrated facility management services, such as delivery of electrical and related services, fail to adequately operate, maintain, and manage the electrical equipment in their control that is responsible for delivery of the electrical services. Foreseeability in this matter is undoubtedly evident. At a minimum, reasonable minds can differ as to foreseeability in this matter and therefore it should not be determined as a matter of law but should be presented to a jury. Respondent owed Mr. Leonard a duty of care which was subsequently breached and was the proximate cause of Mr. Leonard's harm and injury.

2. Respondent did not refute the fact that Mr. Leonard suffered harm and injury as a result of the inadequate operation, maintenance, and management of electrical equipment in the control of Respondent on the Microsoft Campus in Redmond, Washington.

Respondent focused strictly on foreseeability and whether a duty was owed to Mr. Leonard, and failed to address breach of their duty owed to Mr. Leonard which proximately caused the harm and injury sustained by Mr. Leonard. CP 1-9, 133-42, 143-47, 159-64. Instead of addressing

their failure to adequately operate, maintain, and manage electrical equipment in their control, Respondent briefly discussed inspection and maintenance of the elevator which Mr. Leonard was a passenger on at the time of the accident. CP 163. Mr. Leonard does not contend that Respondent failed to inspect and/or maintain this particular elevator in a negligent manner. CP 133-47.

A Washington State Supreme Court case, Wells v. City of Vancouver, is instructive and the reasoning of the Court is applicable in this current matter. *See Wells v. City of Vancouver*, 77 Wash.2d 800, 467 P.2d 292 (1970) (en banc). Similarities can be drawn between the facts and circumstances of Wells and those of the case at hand, and the case also touches on foreseeability which was discussed above. *Id.*; CP 133-35, 143-47, 155. In Wells, the plaintiff filed suit, and prevailed, against the City of Vancouver for injuries sustained at the municipal airport when high wind weather conditions caused debris to come off of a hangar while the plaintiff was there to check on his plane. *See Wells*, 77 Wash.2d at 800. The plaintiff contended that the city was negligent in the design of the hangar, that the city didn't abide by the applicable building code, and that the city had prior knowledge and was put on notice of the possibility of high winds and adverse weather conditions in this particular area. Wells, 77 Wash.2d at 801-02. The plaintiff provided expert testimony to

this effect. Id. The defendant argued that it could not be held responsible for acts of God, stating that the high winds weren't foreseeable, and that building code provisions cited by the plaintiff were not applicable. Id. at 802-05. The Court affirmed the verdict for the plaintiff, stating that "the duty to use ordinary care is bounded by the foreseeable range of danger [and] [i]t is for the jury to decide whether a general field of danger should have been anticipated[,]" and that this issue was properly put before the jury. Id. at 803 (*citing* McLeod v. Grant County School Dist. No. 128, 42 Wash.2d 316, 255 P.2d 360 (1953)). Further, the Court determined that the applicable provisions "were intended to protect all persons who might be injured by flying debris" due to the defendant's failure to have the hangar meet minimum standards in withstanding high winds, and, because the plaintiff provided expert testimony that these provisions were violated, that these provisions were correctly submitted to the jury for a determination of whether these provisions were violated. Id. at 804-05.

In a similar fashion to the plaintiff in Wells, Mr. Leonard contends that Respondent failed to adequately operate, maintain, and manage the electrical equipment in their control at the Microsoft Campus in Redmond, Washington, that Respondent failed to adhere to applicable industry standards and customs which, if followed, would have avoided the power outage altogether, and that Respondent had prior knowledge and notice of

power anomalies that presented themselves to the electrical equipment on Microsoft's Campus. Also similar to Wells, Mr. Leonard provided uncontested evidence of his claims from an expert witness. CP 143-47.

Although violations of a statute and/or code are considered to be evidence of negligence per se, failure to adhere to industry standards and customs is also considered relevant in determining whether the defendant was negligent and breached their duty of care and what should have been done if the defendant was to exercise reasonable care within that particular industry. Id. at 803-04; *see Andrews v. Burke*, 55 Wash.App. 622, 626, 779 P.2d 740, 742-43 (Div. I 1989); *see generally Helling v. Carey*, 83 Wash.2d 514, 519 P.2d 981 (1974) (en banc); Ranger Ins. Co. v. Pierce County, 164 Wash.2d 545, 553-54, 192 P.3d 886, 889-90 (2008) (en banc). Mr. Leonard provided uncontested evidence from a registered professional electrical engineer, Mr. John R. Beebe, that Respondent was negligent in operating, maintaining, and managing electrical equipment in their control on the Microsoft Campus in Redmond, Washington and failed to adhere to industry standards and customs. CP 133-47. The power outage to the elevator occupied by Mr. Leonard should have, and could have, been avoided. CP 143-47. Mr. Beebe stated, *inter alia*, that the chiller plants should not have been started simultaneously, but instead should have been started sequentially. CP 145. Starting the chiller plants

in a simultaneous manner caused the in rush current which subsequently overloaded Microsoft's electrical system and caused the elevator occupied by Mr. Leonard to lose power and proximately caused him to suffer harm and injury. CP 145-47. There were methods and routines available to Respondent to achieve sequential start up of the chiller plants. CP 145. It is not industry standard or custom to allow chiller plants to start up simultaneously. CP 145. Further, Respondent asserted that they had knowledge of power anomalies suffered by Microsoft in the past. CP 64, 145. Therefore, as property manager responsible for the delivery of electrical and related services, Respondent should have, and could have, "placed restrictions on the quality of power Microsoft received." CP 145. Coordination of fuses between Puget Sound Energy, Inc. and Microsoft would have avoided the power outage which proximately caused Mr. Leonard's injuries. CP 145-46. Coordination of the fuses was available and, if coordination was to be accomplished, the request would come from the customer, not Puget Sound Energy, Inc. CP 145-46. In this case, as the property manager responsible for delivery of electrical and related services, the request for coordination would come from Respondent. CP 145-46. Coordinating the fuses of Puget Sound Energy, Inc. with those in control of Respondent would have avoided the power outage altogether. CP 145-46. Not implementing coordination of fuses when coordination is

available is not in line with industry standard and custom. CP 146. More so, this particular power outage was considered a single phase power outage, meaning that only one of the three fuses protecting phases A, B, and C opened up causing the power outage. CP 146. When this occurs, it means that the phase, the one which connected to the blown fuse, was loaded at a higher amperage than the other two phases that didn't cause a fuse to blow. CP 146. Respondents, as the property manager responsible for electrical and related services, should have balanced the amperage on the three phases equally. CP 146. Doing so would have made it highly probable that the power outage would not have occurred. CP 146. Respondent failed to follow industry standard and custom by not balancing the load between the three phases. CP 146. By failing to adhere to industry standards and customs as herein mentioned and depicted in more detail in the Declaration of Mr. Beebe, Respondent's negligent actions, or inactions, proximately caused the harm and injury suffered by Mr. Leonard. CP 143-47. As with Wells, the issues present in Mr. Leonard's matter should be put before a jury.

Also of note, Respondent did not dispute Mr. Leonard's assertion that he suffered harm and injury, which was proximately caused by Respondent's breach of their duty owed to Mr. Leonard. CP 1-9, 133-42, 143-47, 159-64. Mr. Leonard did suffer harm and injury on July 25, 2007,

which required a subsequent surgical procedure, as a result of Respondent's negligent actions and failure to adhere to industry standards and customs. CP 133-47, 155.

V. CONCLUSION

For the foregoing reasons, Mr. Leonard respectfully requests that this Court reverse and remand this matter to the trial court as Mr. Leonard has presented sufficient evidence to sustain a negligence claim against Respondent and has shown that genuine issues of material fact do exist.

RESPECTFULLY SUBMITTED this 14th day of December, 2011.



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