No. 103614-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

JODY AUCOIN, individually and as personal representative of the Estate of DUCAS ACOIN; HOLLAND AUCOIN; and TELLIS AUCOIN,

Respondents,

v.

LEONARDI LANDSCAPING, INC.,

Petitioner,

C4DIGS, INC.; HOL-MAC CORPORATION dba DONKEY FORKLIFTS; and JOHN DOES 1-5,

Defendants.

RESPONDENTS' ANSWER TO LEONARDI LANDSCAPING'S PETITION FOR REVIEW

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I. INTRODUCTION

Leonardi Landscaping seeks review of a Court of Appeals' decision concluding that it owed to Ducas Aucoin a duty to exercise reasonable care when Leonardi's own conduct created a reasonably foreseeable risk of physical harm. The Court of Appeals' decision is a straightforward application of a longstanding principle of tort law—that "*every actor* whose conduct involves an unreasonable risk of harm to another 'is under a duty to exercise reasonable care to prevent the risk from taking effect.'" *Minahan v. Western Wash. Fair Ass'n*, 117 Wn. App. 881, 897, 73 P.3d 1019 (2003) (quoting RESTATEMENT (SECOND) OF TORTS § 321 (1965)) (emphasis added). The decision neither conflicts with precedential decisional authority, RAP 13.4(b)(1), (2), nor constitutes an issue of substantial public interest warranting review by this Court. RAP 13.4(b)(4).

Leonardi wholly disregards the basis of the Court of Appeals' decision pertaining to the duty that it owed to Ducas Aucoin. Instead, in an apparent effort to distract from the

absence of an even remotely reviewable issue, Leonardi devotes its petition to criticizing the Court of Appeals' *separate* analysis regarding the duty owed by co-defendant and general contractor C4Digs. The Court of Appeals determined that C4Digs owed to Ducas a duty under the retained control exception to the general rule of nonliability to an employee of an independent contractor—a tort doctrine fully distinct from that underlying Leonardi's duty.

Nevertheless, Leonardi asserts that review is warranted due to questions regarding retention of control and "what constitutes a 'jobsite.'" Petition (Pet.) at 1-2. However, as the Court of Appeals explained, argument regarding whether Leonardi retained control over the work performed by Ducas "misunderstands the source of the duty at issue here." *Aucoin v. C4Digs, et al*., No. 84921-2-I, at *19 (Wash. Ct. App. Sept. 3, 2024). Similarly, the location of the accident—whether on the "jobsite" or an adjacent street—"has no bearing on whether Leonardi had a duty to exercise reasonable care" in *its own*

conduct in relation to Ducas—namely, scheduling the dangerous delivery that ultimately resulted in Ducas's death. *Aucoin*, No. 84921-2-I, at *20.

Leonardi is not aggrieved by the Court of Appeals' opinion regarding the retained control exception, which is pertinent only to the Court's decision as to the duty owed by C4Digs. This Court should consider Leonardi's petition solely on the basis of the Court of Appeals' decision regarding the duty owed by Leonardi itself. RAP 3.1. However, in the event that the Court considers Leonardi's extraneous arguments, the Court of Appeals' application of the retained control exception is also fully consistent with precedential authority. RAP 13.4(b)(1), (2).

Indeed, this Court has made clear that, in applying the retained control exception, "the proper inquiry [is] whether there is a retention of the right to direct *the manner in which the work is performed*." *Kamla v. Space Needle Corp*., 147 Wn.2d 114, 121, 52 P.3d 472 (2002) (emphasis added). *See also Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 731, 452 P.3d 1205 (2019)

("[W]hen a general contractor engages a subcontractor and 'retains control over *some part of the work*,' the general contractor 'has a duty, within the scope of that control, to provide a safe place of work.'") (quoting *Kelley v. Howard S. Wright Const. Co*., 90 Wn.2d 323, 330, 582 P.2d 500 (1978)) (emphasis added). It is the scope of control over the work—not the perimeter of the "jobsite"—that defines the scope of the duty. *See, e.g., Vargas*, 194 Wn.2d at 731; *Farias v. Port Blakely Co*., 22 Wn. App. 2d 467, 475, 512 P.3d 574 (2022). Consistent with that precedent, the Court of Appeals here determined that general contractor C4Digs owed to Ducas a duty to provide a safe workplace "if it had or retained the right to control the manner of [his] work." *Aucoin*, No. 84921-2-I, at *12. Leonardi has identified no conflict between the Court of Appeals' decision and any precedential authority. RAP 13.4(b)(1), (2).

Finally, because Leonardi's petition does not involve an "issue of substantial public interest," review is not warranted under RAP 13.4(b)(4). Leonardi is incorrect that the Court of

Appeals' decision "greatly expands the duty of contractors." Petition at 10. Moreover, even were that true, Leonardi has cited no authority indicating that the imposition of a tort duty under the specific facts of this case is an issue of "substantial public interest." It is not.

Because Leonardi has not met any standard for acceptance of review under RAP 13.4(b), this Court should decline to review the Court of Appeals' well-considered decision.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did subcontractor Leonardi Landscaping owe to Ducas Aucoin, the employee of an independent contractor, a duty to exercise reasonable care when Leonardi's own conduct created a reasonably foreseeable risk of physical harm to Ducas?

2. Did general contractor C4Digs owe to Ducas Aucoin, the employee of an independent contractor, a duty to provide a safe workplace if C4Digs retained the right to control the manner in which Ducas performed the work of delivering materials to the jobsite?

III. COUNTERSTATEMENT OF THE CASE

Ducas Aucoin was delivering heavy stone pavers to a construction site in Seattle when the forklift he was operating

overturned. CP 35-36. Ducas was killed. CP 35-36. Petitioner Leonardi, a subcontractor on the job, had scheduled the delivery of stone pavers from SiteOne Landscape Supply, which employed Ducas. CP 40, 46. Leonardi requested that SiteOne deliver the pavers "[a]ny time" on May 14, 2018, the date when Ducas was ultimately killed while attempting to make that delivery. CP 205.

The general contractor on the job, C4Digs, required that its subcontractors inform it when deliveries would be made—particularly "problem deliveries," like the delivery made by Ducas, that required vehicles to be cleared from the established unloading zone. CP 128-29, 144, 146-47. But Leonardi failed to inform anyone at C4Digs that Ducas would be making the delivery. CP 144, 146-47. When Ducas arrived at the jobsite, the designated unloading area was blocked by parked vehicles. CP 132. Ducas delivered the pavers to a different location on the jobsite, unloading them on the adjacent, steeply sloped street, where the forklift overturned. CP 151-53. Had Leonardi

informed C4Digs of the delivery, the general contractor's project manager "would have directed [Ducas] to park in the designated area and unload the bricks from there," as he had done for prior deliveries. CP 153.

Ducas' wife and daughters ("the Aucoins") filed wrongful death claims against both Leonardi and C4Digs. CP 1-10. The trial court dismissed the Aucoins' claims on summary judgment, concluding that neither Leonardi nor C4Digs owed a duty of care to Ducas. RP 24-28. Division One of the Court of Appeals disagreed, reversing the summary judgment orders. *Aucoin*, No. 84921-2-I.

As to C4Digs, the Court held that the general contractor owed to Ducas a duty "to provide a safe workplace if it had or retained the right to control the manner of [his] work when he delivered the pavers to the site." *Aucoin*, No. 84921-2-I, at *12. The Court determined that issues of material fact remained as to the scope of C4Digs' control over the work, thus precluding summary judgment. *Aucoin*, No. 84921-2-I, at *14. In contrast,

as to Leonardi, the Court of Appeals held that the subcontractor owed a duty to Ducas because *its own conduct*—"scheduling [the] potentially dangerous delivery" of stone pavers—created a reasonably foreseeable risk of harm. *Aucoin*, No. 84921-2-I, at *19-20. In other words, the Court determined that Leonardi and C4Digs owed duties that *grounded in separate and distinct theories of liability*.

In concluding that Leonardi owed a duty to exercise reasonable care in scheduling the delivery, the Court of Appeals relied on the fundamental and longstanding tort principle that every actor has a duty to exercise reasonable care when the actor's own conduct creates a risk of physical harm to another. *Aucoin*, No. 84921-2-I, at *18. The scope of that duty, the Court recognized, is limited by "concepts of foreseeability, with the relevant question being whether the result of the act is within the 'general field of danger' that the actor should have anticipated." *Aucoin*, No. 84921-2-I, at *19 (quoting *Lee v. Willis Enters., Inc*., 194 Wn. App. 394, 402, 377 P.3d 244 (2016)). Applying these

principles, the Court of Appeals determined that Leonardi had "created a foreseeable risk of physical harm by scheduling a potentially dangerous delivery," and, thus, that Leonardi owed to Ducas a duty to exercise reasonable care in the performance of that conduct. *Aucoin*, No. 84921-2-I, at *19.

The Court then explicitly distinguished the duty owed by C4Digs, which is based on the retained control exception, from that owed by Leonardi. Rejecting Leonardi's argument that it owed no duty to Ducas because it had not yet started work on the project, the Court explained that

> [t]his argument misunderstands the source of the duty at issue here. Questions of control over Aucoin's work implicate the statutory and common law duty of general contractors. In contrast, here, Leonardi's own conduct—scheduling a "problem delivery"—created a reasonably foreseeable risk of physical harm, and Leonardi therefore had a duty to exercise care when scheduling the delivery.

Aucoin, No. 84921-2-I, at *19-20. The Court further explained that the location of the accident, on the street adjacent to the construction site,

> has no bearing on whether Leonardi had a duty to exercise reasonable care when scheduling the delivery. The only relevant inquiry is whether an injury to an individual during the course of the delivery is within the general field of danger a reasonable person would anticipate as a risk of scheduling such a delivery. Here, because the harm that Aucoin suffered is squarely within that general field of danger, Leonardi had a duty to exercise reasonable care when scheduling the delivery.

Aucoin, No. 84921-2-I, at *20. Whether Leonardi breached its duty by failing to inform C4Digs of the delivery, the Court explained, "is a separate and conceptually distinct issue" not before the Court in this appeal. *Aucoin*, No. 84921-2-I, at *20-21.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Division One correctly applied well-established principles of summary judgment and tort law to the specific facts of this case in concluding (1) that Leonardi owed a duty to Ducas to exercise reasonable care in scheduling the delivery and (2) that issues of material fact remain regarding whether C4Digs retained the right to control the manner in which the delivery was made.

Leonardi disregards the Court of Appeals' determination that Leonardi's duty is grounded in principles of tort distinct from the retained control doctrine. In this petition, it is the Court's decision regarding Leonardi's duty that is at issue. However, neither that decision nor the Court's analysis of the retention control exception presents a reviewable issue.

First, the Court's decision does not expand the retained control doctrine. Leonardi's argument to the contrary is premised on a mischaracterization of the pertinent decisional authority. That authority holds that control over the manner in which the work is performed—not the perimeter of a "jobsite"—determines the scope of the duty owed. *Vargas*, 194 Wn.2d at 731; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 475. Leonardi identifies no conflict between the Court of Appeals' opinion and any precedential decisional authority. RAP 13.4(b)(1), (2).

Nor does Leonardi's petition involve an issue of substantial public interest warranting review by this Court. RAP

13.4(b)(4). Again, Leonardi's argument that the decision broadens the scope "of what constitutes a jobsite," Pet. at 1., is premised on the erroneous assumption that the perimeter of a "jobsite" defines the scope of the duty arising from the retained control exception. More to the point, that the decision addresses "a critical point for Washington's construction industry," Pet. at 1, does not render the issue presented in this petition an "issue of substantial public interest." RAP 13.4(b)(4). Review should be denied.

A. The Court of Appeals Properly Applied Longstanding Principles of Tort Law in Concluding that Leonardi Owed a Duty to Ducas Aucoin

It is well-established that "*every actor* whose conduct involves an unreasonable risk of harm to another 'is under a duty to exercise reasonable care to prevent the risk from taking effect.'" *Minahan*, 117 Wn. App. at 897 (quoting RESTATEMENT (SECOND) OF TORTS § 321 (1965)) (emphasis added). *See also Washburn v. City of Fed. Way*, 178 Wn.2d 732, 757, 310 P.3d 1275 (2013) ("Actors have a duty to exercise reasonable care to

avoid the foreseeable consequences of their acts."). For purposes of this rule, the risk is "unreasonable" when "a reasonable person would have foreseen it." *Parrilla v. King Cnty*., 138 Wn. App. 427, 436, 157 P.3d 879 (2007). "Accordingly, the existence of a duty turns on the foreseeability of the risk created." *Parrilla*, 138 Wn. App. at 436.

Here, the Court of Appeals properly applied these longstanding tort principles in concluding that Leonardi owed to Ducas a duty to exercise reasonable care when Leonardi's *own conduct* created a risk of physical harm. *See Aucoin*, No. 84921-2-I, at *18-19. The Court correctly applied the concept of foreseeability to determine the scope of the duty, concluding that the accident resulting in Ducas's death was within the "general field of danger" that Leonardi should have anticipated when scheduling the potentially dangerous delivery. *Aucoin*, No. 84921-2-I, at *19. Accordingly, the Court concluded that Leonardi owed to Ducas a duty to exercise reasonable care in its performance of that conduct. *Aucoin*, No. 84921-2-I, at *19.

Leonardi nowhere asserts that the Court of Appeals' analysis pertaining to its own duty conflicts with any precedential decisional authority.[1] RAP 13.4(b)(1), (2). Instead, the subcontractor appears to argue that it could owe no duty to Ducas unless it retained control of the manner in which Ducas delivered the materials. Pet. at 19 ("Aucoin should have had to

[1] Leonardi does not identify a conflict between any precedential authority and the Court of Appeals' determination that the risk was foreseeable. Instead, the subcontractor baldly asserts that the decision is "superficial" and "too broad and imprecise for liability." Pet. at 6. Of course, these assertions do not meet the standard for acceptance of review. RAP 13.4(b).

In any event, Leonardi is wrong that, pursuant to the Court's decision, liability could be imposed for "*any* delivery of materials to a construction site." Pet. at 6. Here, the accident leading to Ducas' death resulted from the dangerous nature of the delivery of materials ordered by Leonardi. Under longstanding decisional authority, the concept of foreseeability itself is the limiting factor in determining the existence of duty. The Court properly applied that authority.

Moreover, as the Court of Appeals made clear, the issue before the Court was "whether the act of scheduling a 'problem delivery' created a risk of the kind that occurred here"—*not* whether Leonardi failed to exercise reasonable care by not notifying C4Digs of the delivery. *Aucoin*, No. 84921-2-I, at *21. That issue—the issue of breach—is "separate and distinct" and was not before the Court. *Aucoin*, No. 84921-2-I, at *20-21.

demonstrate Leonardi's actual control over the jobsite in order for Leonardi to be liable for his injuries."). This argument misapprehends the source of Leonardi's duty to Ducas and erroneously presumes that a duty in negligence can arise solely from one theory of tort liability.

The Court of Appeals did *not* conclude that Leonardi owed a duty to provide a safe workplace under the retained control exception; rather, Leonardi owed a duty, arising from its *own conduct* of scheduling the potentially dangerous delivery, to exercise reasonable care in performing that conduct. *Aucoin*, No. 84921-2-I, at *19-20. Thus, the duty owed by Leonardi is not premised on control over the manner in which Ducas performed the work of delivering the stone pavers. *See, e.g., Kamla,* 147 Wn.2d at 119 (explaining that, under the retained control doctrine, "employers are liable for injuries incurred by employees precisely because the employer retains control over the manner in which the employee works"). Accordingly, as the Court of Appeals made clear, arguments regarding retention of

Leonardi's control over the work "misunderstand[] the source of the duty at issue here." *Aucoin*, No. 84921-2-I, at *19.

Indeed, each of the arguments in Leonardi's petition "misunderstands the source of the duty at issue." *Aucoin*, No. 84921-2-I, at *19. Contrary to Leonardi's assertion, the Court of Appeals' decision does not "treat[] subcontractor control of a jobsite as something of an afterthought." Pet. at 1-2; *see also* Pet. at 5. Rather, it concludes that the duty owed by Leonardi to Ducas arose from Leonardi's own conduct in scheduling the delivery—not from a right to retain control over the performance of the work.[2] The Court's decision regarding Leonardi's duty is not an "afterthought" but a thoroughly considered application of longstanding principles of tort law—though not, perhaps, the tort

[2] Leonardi suggests that, pursuant to the Court of Appeals' decision, it could "be liable if a delivery driver was in a crash a mile away" from a jobsite. Pet. at 10. Of course, this is not true. The Court determined only that Leonardi had a duty to exercise reasonable care when scheduling the delivery. *Aucoin*, No. 84921-2-I, at *20. A car accident while en route to a jobsite is not within the scope of that duty.

doctrine that Leonardi would have preferred the Court to apply. Leonardi further argues that it "had no right to control [Ducas's] performance of his delivery duties, nor did it control the physical location or instrumentality of his harm." Pet. at 19. Again, these arguments have "no bearing on whether Leonardi had a duty to exercise reasonable care when scheduling the delivery." *Aucoin*, No. 84921-2-I, at *20.

Rather than addressing the Court of Appeals' actual analysis regarding its duty to Ducas, Leonardi provides a recitation of decisional authority regarding the retained control exception, concluding that "[i]t is not clear under Washington law if a subcontractor's control over a jobsite in a construction project [is] assumed." Pet. at 19; *see also* Pet. at 15. But, again, the retained control doctrine is not the source of the duty owed by Leonardi. *See Aucoin*, No. 84921-2-I, at *19-20. Thus, even were this Court to accept review on the issue of Leonardi's duty, any decision regarding retention of control by a subcontractor would be wholly advisory on these facts. Moreover, Leonardi's

assertion that the law "is unclear" regarding application of the retained control exception to subcontractors undermines its argument that review should be accepted.[3] *See* RAP 13.4(b)(1), (2).

Finally, Leonardi's assertion—that it must have exercised control to owe a duty to Ducas—erroneously presumes that an employer can be liable in negligence for harm to an independent contractor's employee *only* under the retained control doctrine. This is not the law. Indeed, "every actor" owes a duty to exercise reasonable care when its own conduct creates the risk of harm. *Minahan*, 117 Wn. App. at 897. And an actor may owe a duty of care under multiple theories of negligence. *See, e.g., Afoa v.*

[3] In any event, Leonardi's characterization of the law as lacking in "clarity" is inaccurate. *See* Pet. at 10. A "general contractor's 'general supervisory functions' [are] sufficient to establish control.'" *Vargas*, 194 Wn. 2d at 733 (quoting *Kelley v. Howard S. Wright Const. Co*., 90 Wn.2d 323, 331, 582 P.2d 500 (1978)). But Washington courts have not held that control is presumed with regard to subcontractors, who do not possess the same general supervisory authority. *See, e.g., Ward v. Ceco Corp.*, 40 Wn. App. 619, 626, 699 P.2d 814 (1985).

Port of Seattle, 176 Wn.2d 460, 296 P.3d 800 (2013); *Kamla*, 147 Wn.2d 114. In essence, Leonardi asks this Court to accept review of the Court of Appeals' decision because the Court concluded that Leonardi owed a duty under a theory of liability distinct from the retained control doctrine. But subcontractors—like every other actor in our State—owe a duty to exercise reasonable care when their own conduct creates a risk of harm.

Far from being inconsistent with precedential authority, the Court's decision is a proper application of a fundamental tort principle—that an actor whose conduct creates a risk of harm owes a duty to exercise reasonable care in performing that conduct. Indeed, it is Leonardi's own proposed rule—that the *only* potential source of subcontractor negligence liability is under the retained control exception—that would upend essential and time-honored principles of tort law. Review is not warranted under RAP 13.4(b)(1) or (2).

B. The Court of Appeals' Analysis Regarding the Retained Control Exception is Fully Consistent with Precedential Authority

The Court of Appeals concluded that Leonardi's duty to Ducas arose from Leonardi's own conduct—*not* from the retained control doctrine. However, to the extent that, in ruling on Leonardi's petition, this Court nevertheless considers the Court of Appeals' analysis applying that doctrine, that analysis, too, if fully consistent with precedential decisional authority. Leonardi's assertion to the contrary is premised on a misapprehension of the basis for the duty arising from the retained control exception.

This Court has made clear that "when a general contractor engages a subcontractor and 'retains control *over some part of the work*,' the general contractor 'has a duty, *within the scope of that control*, to provide a safe place of work.'" *Vargas*, 194 Wn.2d at 731 (quoting *Kelley*, 90 Wn.2d at 330) (emphases

added).[4] This rule is "a straightforward application" of the Restatement test, which requires that "'[t]he employer must have retained at least *some degree of control over the manner in which the work is done*. . . . There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.'" *Kamla*, 147 Wn.2d at 475 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c (1965)) (emphasis added). "[T]he proper inquiry is whether there is a retention of the right to direct the manner in which the work is performed." *Kamla*, 147 Wn.2d at 476. Thus, it is the general contractor's control over performance of the work—not the perimeter of a "jobsite"—that defines the scope of the duty under the retained control exception.[5]

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[4] Leonardi appears to acknowledge that this is the law, Pet. at 12, but nevertheless argues that the Court of Appeals should have determined C4Digs' duty based on the perimeter of the "jobsite," rather than the principles of control that underlie this Court's pertinent decisions. Such a holding would be inconsistent with this Court's prior authority.

[5] The retained control exception is based on principles of agency. *See* RESTATEMENT (SECOND) OF TORTS § 414 cmt. a

The Court of Appeals' decision is a straightforward application of that decisional authority. Applying "the same basic control principles" set forth in that authority, *Aucoin*, No. 84921-2-I, at *13, the Court concluded that general contractor C4Digs owed a duty to Ducas "if it had or retained the right to control the manner of [Ducas's] work when he delivered pavers to the [job]site." *Aucoin*, No. 84921-2-I, at *12. The Court recognized that this duty "arises from fundamental tort principles," which demand that "where the general contractor is in the best position to control job safety, it has a duty to do so, and the scope of its control defines the scope of its common law

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(1965). This is unlike, for instance, a duty underlying a premises liability claim, which arises from a dangerous condition on the property itself.

Moreover, this Court has expressly rejected a "cramped reading" of its decisional authority that would restrict general contractor liability to a particular area on a jobsite. *Vargas*, 194 Wn.2d at 732-33. Although, there, this Court addressed whether the duty extended beyond "common work areas," it made clear that the general contractor's retention of control over the work—not a particular area of the jobsite—defined the scope of the duty. *Vargas*, 194 Wn.2d at 733-34.

duty." *Aucoin*, No. 84921-2-I, at *11.

Leonardi nevertheless asserts that the Court of Appeals' decision "represents a substantial expansion" of liability for contractors. Pet. at 1. Not so. Over two decades ago, this Court clarified that the scope of the duty owed by an employer to the employee of an independent contractor is limited by the "retention of the right to direct the manner in which the work is performed." *Kamla*, 147 Wn.2d at 476. Far from being an "expansion" of the scope of that duty, the Court of Appeals' decision is a straightforward application of longstanding authority to the specific facts of this case.

Leonardi additionally faults the Court of Appeals for not "defin[ing] the parameters of a 'jobsite'" under the retained control exception. Pet. at 1. But, again, the scope of the duty arising from that exception is not limited based on the perimeter of the "jobsite." Finally, Leonardi is incorrect that the Court of Appeals' decision "offers no guardrails" for liability under the retained control doctrine. Pet. at 9. The "guardrails" are those

repeatedly established by Washington courts in applying that doctrine—that the duty is limited by the retention of control over the performance of the work. *Vargas*, 194 Wn.2d at 731; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473.

Washington courts have unwaveringly held that the scope of the duty arising from the retained control exception is defined by the "retention of the right to direct the manner in which the work is performed." *Kamla*, 147 Wn.2d at 121; *see also Vargas*, 194 Wn.2d at 731; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473. The Court of Appeals correctly applied this longstanding authority in concluding that C4Digs owed a duty to Ducas here. Because Leonardi has identified no conflict between the Court of Appeals' decision and any precedential authority, this Court should decline to accept review. RAP 13.4(b)(1), (2).

C. Leonardi's Petition Involves No Issue of Substantial Public Interest Warranting Review under RAP 13.4(b)(4)

Leonardi additionally contends that review is warranted

because its petition involves an "issue of substantial public interest" that should be determined by this Court. RAP 13.4(b)(4). According to Leonardi, the Court of Appeals' decision broadens the scope "of what constitutes a 'jobsite,'" and this is a "critical point for Washington's construction industry." Pet. at 1. But the Court's decision does not expand contractor liability, and an appellate decision's import to the construction industry does not implicate the public interest. Accordingly, this Court should decline to grant review.

Contrary to Leonardi's assertion, the Court of Appeals' decision neither expands contractor liability nor "broaden[s] the scope of what constitutes a 'jobsite.'" Pet. at 1; *see also* Pet. at 10. Again, this argument is premised on a mischaracterization of decisional authority regarding the scope of the duty under the retained control doctrine. As discussed herein, the scope of that duty is limited by retention of control over the manner in which the work is performed—not the calculation of the perimeter of a "jobsite." *Vargas*, 194 Wn.2d at 731; *Kamla*, 147 Wn.2d at 121;

Kelley, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 475. The Court of Appeals' decision is a straightforward application of this precedential authority. Leonardi's assertion that the Court's decision expands contractor liability is simply wrong.

More to the point, this Court has never held that an issue of interest to "Washington's construction industry" constitutes an issue of "substantial public interest" for purposes of RAP 13.4(b)(4).[6] Rather, the Court has accepted review under RAP 13.4(b)(4) when the underlying decision implicates: a vast swath of sentencing proceedings and the potential to chill policy actions by attorneys and judges in other proceedings, *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005); questions regarding

[6] Leonardi also asserts that "[t]he question of whether a subcontractor's liability to injured persons in a workplace requires control by that subcontractor over the workplace is a question of major significance to subcontractors throughout our state." Again, Leonardi provides no authority suggesting that private business interest of subcontractors implicates the public interest. Perhaps more significantly, again, the issue of Leonardi's control over Ducas's work was not the basis for the Court of Appeals' decision.

parental rights under the Indian Child Welfare Act, *In re Adoption of TAW*, 184 Wn.2d 1040, 387 P.3d 636, 636-38 (2016); public safety concerns resulting from the removal of "an entire class of sex offenders" from registration requirements, *Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092-93 (2017); and the "constantly changing threat" of and "chaos wrought by COVID-19" in correctional facilities, *Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 446-47 (2021). Leonardi baldly asserts that review is warranted here due to the "importance" of the issues to the construction industry, citing to no authority suggesting that the interest of a specific business constitutes a "substantial issue of public interest." RAP 13.4(b)(4). Leonardi makes no persuasive argument that the standard of RAP 13.4(b)(4) is met here.[7]

[7] Nor is the Court of Appeals' decision regarding the retained control exception "a question of major significance to subcontractors throughout our state." Pet. at 19. The private business interest of subcontractors does not implicate the public interest. Moreover, again, the Court did not determine that subcontractor Leonardi owed a duty under the retained control

The Court of Appeals' decision is a proper application of fundamental principles of tort law to the specific facts of this case. The imposition of a duty on Leonardi and C4Digs pursuant to longstanding decisional authority is not a matter of "substantial public interest." Review is not warranted under RAP 13.4(b)(4).

V. CONCLUSION

The Court of Appeals' decision is consistent with the authority of this Court and other published Court of Appeals' decisions. RAP 13.4(b)(1), (2). Leonardi's petition does not present an issue of substantial public interest. RAP 13.4(b)(4). This Court should deny review.

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exception.

Respectfully submitted this 20th day of December 2024.

The undersigned certifies that this answer consists of 4,965 words in compliance with RAP 18.17(c)(10).

PFAU COCHRAN VERTETIS AMALA PLLC

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CERTIFICATE OF SERVICE

I, Dominika Falkowski, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Amala PLLC and that on this date I served the foregoing on all parties or their counsel of record via email, legal messenger, and/or facsimile by directing delivery addressed to:

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DATED this 20th day of December 2024.

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Dominika Falkowski
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December 20, 2024 - 5:05 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,614-1
Appellate Court Case Title:	Jody Aucoin et al. v. C4DIGS, Inc., et al.

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