No. 1037414

SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN NEICE,

vs.

PIERCE COUNTY RECYCLING, COMPOSTING AND DISPOSAL, LLC DBA LRI, a for profit Washington LLC doing business in Pierce County, and STEARNS, CONRAD AND SCHMIDT, CONSULTING ENGINEERS, INC. DBA SCS ENGINEERS, a for profit foreign environmental and general contractor,

and

STEARNS, CONRAD AND SCHMIDT, CONSULTING ENGINEERS, INC. DBA SCS ENGINEERS, a foreign corporation,

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PIERCE COUNTY RECYCLING, COMPOSTING AND DISPOSAL, LLC DBA LRI ANSWER TO PETITION FOR DISCRETIONARY REVIEW TO WASHINGTON SUPREME COURT BY NEICE

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I. Identity of Answering Party

Pierce County Recycling, Composting and Disposal, LLC dba LRI (hereinafter, "LRI").

II. Court of Appeals Decision

Although LRI has requested discretionary review as to the reversal of the claim for premises liability (addressed in LRI's separate motion), this Court should deny review of the remainder of the opinion, upon which Neice now seeks review. Specifically, the portion of Division II's decision that affirms summary dismissal of Plaintiff's claims arising under the Safe Workplace Doctrine and WISHA, as well as Division II's opinion affirming dismissal of all claims against SCS Engineering.

III. Re-statement of Issues Presented for Review

1. Has Neice failed to establish a basis under RAP 13.4(b) for review of the portion of Division II's decision affirming dismissal of Neice's claims under the safe workplace doctrine and WISHA? Yes.

2. Was Division II's decision affirming summary judgment of claims regarding the safe workplace doctrine and WISHA be premises liability correct, based on the extent to which a landowner may delegate safety protocols and workplace safety to a qualified general contractor? Yes.

IV. Re-Statement of the Case

A. Plaintiff's Alleged Injury Occurred During His Employment for the Sole General Contractor, Scarsella.

LRI, which owns and operates a landfill, contracted with Scarsella to serve as the general contractor for a specific project consisting of the construction of Cell 8A, and repairs on the west slope. CP 130, 170, 207, 229. The west slope was where Plaintiff alleges he was injured. CP 27-29, CP 110-136. The work Plaintiff was performing when injured was as Scarsella's employee and pursuant to the Scarsella/LRI contract no. 219024. CP 215, 216, 218, 223-224, 229, CP 11-12, 40-43.

B. Scarsella was the General Contractor

Scarsella admits that it was the sole general contractor for the project. CP 218, 229.

The Scarsella contract with LRI provides in relevant part:

> 4.2. Supervision.
>
> 4.2.1. CONTRACTOR shall supervise and direct the Work…CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures
> of construction.
>
> 4.4. Labor, Materials, and Equipment.
>
> 4.4.1. CONTRACTOR shall provide adequate numbers of competent, suitably qualified personnel to perform all aspects of the Work. CONTRACTOR shall, at all times, maintain good discipline and order at the site.
> …
>
> 4.4.3 Unless otherwise specified in the Contract Documents, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment…
>
> 4.14. Safety and Protection.
>
> 4.14.1. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work…CONTRACTOR shall be solely responsible for

> the safety of its employees, subcontractors, agents, representatives, and invitees.
> …
>
> 4.14.3. CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents.
>
> …
>
> 6.3 … Neither OWNER nor Engineer shall be responsible for CONTRACTOR means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto…
>
> 6.4 Neither OWNER nor Engineer shall be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor…

CP 114, 117, 120.

Pursuant to the above contract language (CP 114, 117, 120), Scarsella was responsible for providing qualified personnel, the supervision and direction of such employees (Paragraph 4.2.1), and sole responsibility for its employees' safety, training, equipment, and supervision (Paragraph 4.14). Scarsella was also responsible for the "means, methods, techniques, sequences and procedures of construction."

(Paragraphs 4.2.1, 6.3, 6.4). LRI was expressly *not* liable for either the means, methods or techniques of construction, **OR for the safety precautions and programs incident to the project.** (Paragraph 6.3).

The testimony of Scarsella's 30(b)(6) witness, is consistent with the plain and unambiguous contract language. CP 63, 65-67. There is zero evidence LRI controlled the means or methods of construction, supervision or direction of Scarsella's employees, including Plaintiff, or Plaintiff's work for Scarsella, in any way.

C. The Trial Court Dismissed Plaintiff's Claims Against LRI On Summary Judgment

On January 14, 2022, Plaintiff filed a complaint against LRI and SCS. CP 494. Plaintiff's allegations stemmed from a theory of negligent supervisory conduct, based on the allegation that both LRI and SCS each functioned "as a General Contractor, or the equivalent of a General Contractor." CP 494, CP 497, 500.

SCS and LRI filed a motions for summary judgment. CP 386, 253. LRI's motion pointed out that LRI did not breach any

duty owed to Plaintiff or cause his injuries, because the undisputed evidence shows that Scarsella was the general contractor, Scarsella had sole responsibility for its employee's training and Safety, and that Plaintiff had provided no evidence to establish any duty on LRI's part to Plaintiff, and no evidence that LRI was the proximate cause of his claimed injuries.

In rebuttal, Plaintiff came forward with no competent evidence creating any question of fact precluding summary dismissal. He argued only that LRI had not sufficiently addressed his claim for "premises liability." As such, all of Plaintiff's claims were dismissed due to Plaintiff's failure to establish any breach of any duty of care, and his failure to establish proximate cause. CP 478-479.

Plaintiff has identified no conflict in the law or public policy requiring a different result. Division II correctly applied the law regarding the extent to which a landowner (LRI) may delegate safety protocols and workplace safety to a qualified general contractor (Scarsella) and confirmed the dismissal of

Neice's claims against LRI under the safe workplace doctrine and for WISHA violations based this applicable law. This portion of the decision was correct, and Neice has identified no published Court of Appeals that this decision conflicts with, nor any issue of substantial public interest that should otherwise be addressed. Indeed, Division II applied the controlling law correctly to these issues. Therefore, Neice's Petition for review should be denied.

Division II *did* fail to apply controlling standards and Washington law to Neice's premises liability claim, and reversed summary judgment on that claim. However, that issue is addressed separately and in more detail in Neice's own Motion for Discretionary Review.

V. Argument

A. Division II Correctly Cited and applied the Duties of Care imposed by the Common Law Safe Workplace Doctrine and WISHA.

As set forth in Division II's opinion:

> The common law safe workplace doctrine imposes duties on both general contractors and jobsite owners. *Payne,* 30

> Wn. App. 2d at 711. The general rule is that "'a general contractor owes a duty to all employees on a jobsite to provide a safe place to work in all areas under its supervision." *Id.* (internal citations omitted). But if a general contractor hires an independent contractor, it is not liable for injuries to the independent contractor's employees unless it retains control over those employees' work. *Id.* If the general contractor retains such control, it has "a common law duty within the scope of control to provide a safe workplace." *Id.* "Like general contractors, jobsite owners have a common law duty to the employees of independent contractors if they 'retain[] control over the manner in which work is done on a work site.'" *Id.* at 712 (quoting *Afoa* I, 176 Wn.2d at 478) (alteration in original).
>
> Retention of control is "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). It is not enough for the employer to have "'merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports,'" or "'to prescribe alterations and deviations.'" *Id.* (quoting RESTATEMENT § 414 cmt. c). Rather, there must be "'such a retention of a right of supervision that the contractor is not entirely free to do the work in [its] own way.'" *Id.* (quoting RESTATEMENT § 414 cmt. c).

Division II found *Kamla v. Space Needle Corp*., 147 Wn.2d 114, 121, 52 P.3d 472 (2002) analogous. It is. In *Kamla,* the Space Needle hired a contractor to install a fireworks display, and Kamla, an employee of that contractor was injured. Kamla

brought a lawsuit against the Space Needle Corp., alleging that the Space Needle had had a duty to make the workplace safe. The Washington Supreme Court concluded that the Space Needle did not owe a common law duty of care to Kamla, because it had not retained the right to interfere with the way the contractor worked nor did it "affirmatively assume responsibility for workers' safety." *Id.* at 121-22.

Here, LRI did not retain any right to interfere with the way in which Scarsella or its employees worked- nor did it affirmatively assume responsibility for Scarsella employee safety. In fact, LRI specifically retained a qualified, experienced contractor (Scarsella) who would specifically control the means and methods of the work performed in the project, as well as assume sole responsibility for the safety and supervision of that contractor's employees.

The Contract between Scarsella and LRI does permit LRI to inspect the work and require compliance with the contract, but this Court has specifically held that such activity does not

constitute "retained control" sufficient to establish a workplace safety duty of care applicable to the site owner. *Cano-Garcia v King County*, 168 Wn. App. 223, 234, 277 P. 3d 34 (2012).

As set forth in *Kamla,* "It is not enough for the employer to have "'merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports,'" or "'to prescribe alterations and deviations.'" *Id.* (quoting RESTATEMENT § 414 cmt. c). Rather, there must be "'such a retention of a right of supervision that the contractor is not entirely free to do the work in [its] own way.'" Id. (quoting RESTATEMENT § 414 cmt. c).

As set forth in *Farias,* the Washington Supreme Court has clarified "the degree of control that must be exerted in order for a principal—in that case, a *jobsite owner and employer*— in order for that employer to owe a common law duty to provide a safe workplace:

> '[T]he employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the

> work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. 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.'"

Farias, 22 Wash. App. 2d at 473 (quoting *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 121, 52 P.3d 472 (2002) (quoting Restatement (Second) of Agency § 2(3) (Am. L. Inst. 1958))(underline emphasis added).

Payne v. Weyerhaeuser Co., 30 Wash. App. 2d 696, 721, 546 P.3d 485, 498 (2024), (an opinion that came out after briefing in the underlying appeal was closed), is also analogous. *Payne* involved various theories of liability- including whether the landowner Weyerhaeuser- owed a duty to the Plaintiff to make its premises safe- and if it had reasonably delegated this duty to Safway. The Court of Appeals in that matter concluded that it *had:*

> There is no dispute that Weyerhaeuser owed Payne a duty as a business invitee to make its premises safe. **The question is whether Weyerhaeuser delegated this duty to Safway, and if so, whether the delegation was reasonable.** *Eylander*, 2 Wash.3d at 409, 539 P.3d 376. **Weyerhaeuser delegated its duty through its contract with Safway, in which Safway agreed to prepare an extensive loss/safety plan and ensure compliance with WISHA and Weyerhaeuser's safety requirements**. Because Safway accepted the terms of the contract, Weyerhaeuser "unambiguously and explicitly" delegated its duty to Safway to exercise reasonable care to make Tank #2 safe for entry. *Eylander*, 2 Wash.3d at 415, 539 P.3d 376.

Payne v. Weyerhaeuser Co., 30 Wash. App. 2d 696, 721, 546 P.3d 485, 498 (2024).

Based on Scarsella's qualifications and prior experience on similar projects, LRI retained Scarsella specifically provide ALL means, methods and procedures of construction, personnel for the project (Paragraph 4.2.1), as well as SOLE responsibility for Scarsella's employees' safety, training, equipment, and supervision (Paragraph 4.14). CP 218, 229. LRI's contract with Scarsella expressly provided that Scarsella was "solely responsible for the means, methods, techniques, sequences[,] and

procedures of construction." CP at 114. It also provided that Scarsella was "responsible for initiating, maintaining[,] and supervising all safety precautions and programs." CP at 117. Scarsella *agreed* that it was the sole General Contractor, responsible for all means and methods of construction and for the safety and training of its employees, including Neice. CP 63-67.

LRI did not retain any right to control either the work, or safety precautions for itself. Indeed, the Contract specifically provides that LRI is *not* responsible the means/methods of construction or safety precautions or programs incident to the project, (Paragraph 6.3).

In response to summary judgment, Neice did not present any evidence that LRI retained the right to direct the manner in which Scarsella employees carried out their work, nor did he submit any testimony or evidence or that LRI assumed responsibility for their safety. Neice's superintendent testified that LRI required Scarsella "to make the leachate go down instead of out," but this does not amount to testimony that LRI

controlled the manner in which Scarsella employees achieved that goal. CP at 47; Division II opinion, p. 15.

Neice also argues that his *own expert's conclusion*, that LRI had "general supervisory authority" provides evidence of LRI's control. Neice Pet., p. 12. But this conclusion is entirely speculative, not supported by any evidence. "Conclusory statements and speculation will not preclude a grant of summary judgment." *Elcon Construction, Inc. v Eastern Washington University,* 174 Wn.2d 157, 273 P.3d 965 (2012). Where there is no basis for the expert opinion other than theoretical speculation, the expert testimony should be excluded". *Queen City Farms v. Cent. Nat'l Ins. Co*. 126 Wn.2d 50, 87, 88, 882 P.2d 703 (1994).

Finally, Neice argues that LRI's own safety policies and procedures generally applicable to "employee and contractor" workplace safety, establish LRI's "control" over safety of the site (Neice Pet, p. 4). But these policies and procedures apply to "Landfill" activities carried out by *LRI- not to construction projects*. As discussed above, LRI specifically retained Scarsella

to for the project, and expressly retained and paid Scarsella to assume sole responsibility for the means and methods of construction and for all safety guidelines, policies and procedures.

In opposition to summary judgment, Neice could come up with *no evidence* that LRI retained any degree of control over Scarsella's work or over the safety instructions and protocols that Scarsella was expressly retained to provide for the project.

Neice argued on appeal (and now) that a "daily report" log shows that Scarsella employees had to wait for direction on action from LRI, thereby creating a question of fact as to LRI's control. (Neice Pet., p. 20.) But this document is just a daily report log- it does *not* confirm LRI's control over safety policies or procedures, or over the contract. Regardless, this "log" was provided *ONLY as an exhibit to Plaintiff's appeal*- it was NEVER part of the Court Record. As a result- the Court of Appeals correctly declined to consider such material per RAP

9.12 and controlling Washington law (Division II opinion, p. 16-17).

B. The cases identified by Neice as justifying review under RAP 13.4(b)(1) and (2), do not conflict with Division II's Opinion affirming dismissal of Neice's claims under the Safe Workplace Doctrine or WISHA.

RAP 13.4(b)(1) and (2) set forth a potential basis for discretionary review when the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, and when it is in conflict with another published decision of the Court of Appeals.

Neice claims to seek review of Division II's determination of "strict liability," "the degree of control, and the duty owed," by SCS Engineers and by LRI, which Neice claims were both the "general contractor." Neice also seeks review of Division II's interpretation and application of "RCW 51.24.035 statutory immunity as to SCS." Although not clearly specified in Neice's Petition, Neice appears to be seeking review of Division II's affirming of the summary dismissal of

his claims against LRI under the common law Safe Workplace Doctrine and WISHA, (See Division II opinion, p. 13-22), as well as Division II's decision to affirm dismissal of the claims against SCS Engineers based on immunity under RCW 51.24.035.

Neice's argues that Division II's opinion addressing the duty of care owed by LRI to Neice conflicts with *Michaels v. CH2M Hill, Inc*., 171 Wn.2d 587, 606, 257 P.3d 532 (2011) and *Aucoin v. C4Digs, Inc*., 32 Wn. App. 2d 103, 555 P.3d 884 (2024). (Neice Pet. for R., p. 7-8). In fact, both opinions are *completely distinguishable* and do not conflict in any way with Division II's opinion addressing controlling Washington law regarding the duty of care owed by LRI (or SCS) to Neice.

1. Aucoin v. C4Digs does not conflict with Division II's opinion and this case does not provide a basis for review under RAP 13.4(b)(2).

Neice claims that Division II's opinion conflicts with *Aucoin v. C4Digs, Inc.*, 32 Wn. App. 2d 103, 555 P.3d 884 (2024), which requires every employer to provide a safe

workplace (pursuant to WISHA) to all employees on the worksite, because and that as LRI and SCS allegedly retained control and direction of the work, they were in the best position to provide a safe workplace. (Neice Pet. for R., p. 8). The opinion in *Aucoin* is not analogous. Regardless, Division II's opinion does not conflict with this opinion, nor does *Aucoin* suggest or require a different result with respect to Division II's decision to affirm dismissal of the Workplace Safety and WISHA claims asserted against LRI.

Aucoin involved a worker (Aucoin) who was killed when his forklift rolled as he was delivering pavers to a steeply sloped location adjacent to a construction site, because the designated loading/unloading site was inaccessible. *Id.* at 106. The estate of the worker sued the General Contractor (C4Digs) as well as the Landscaping company who had hired C4Digs. *Id.* The trial court dismissed all claims on summary judgment- finding that neither the GC nor Landscaping company who had hired Mr. Aucoin's employer- owed any duty of care because the location of the

injury was not at the construction site that the GC controlled. *Id.* at 108. Aucoin appealed.

The primary issue in *Aucoin* addressed by Division I, was whether and how the controlling Washington law addressing the circumstances under which a General Contractor owes a Subcontractor a duty to make the workplace safe applies ***when the accident occurs at an adjacent site.*** *Id.* Division I (applying controlling Washington law), concluded that because there were questions of fact as to the control C4Digs had retained with respect to deliveries to the site, and therefore reversed summary judgment and remanded for further findings. *Id.* at 117, 123.

The facts and circumstances of this matter are not applicable here. This case does not involve liability arising from an adjacent site. Nor does this matter involve liability of the *General Contractor*. The General Contractor in this matter, was Scarsella. Also in *Aucoin,* there was very clear evidence (testimony by C4Digs) provided in response to summary judgment that showed that the General Contractor C4Digs *had*

stopped and re-directed delivery attempts by Aucoin, which showed that it did exercise control over the manner of control over Aucoin's work. *Id.* at 118. There is no similar testimony by Scarsella or Neice, nor any evidence whatsoever that LRI retained any control over Scarsella's employees. Indeed, per the contract language discussed above, Scarsella was expressly retained to provide all means and methods of construction as well as all safety protocols and procedures, and LRI expressly did not retain control over these aspects of the project. Accordingly, *Aucoin* does not establish a conflict with a Washington Court of Appeals decision, justifying review under RAP 13.4(b)(2). Neice's petition for review should be denied.

2. Michaels v. CH2M Hill does not conflict with Division II's opinion and does not provide a basis for review under RAP 13.4(b)(1).

Division II's opinion, at least with respect to the issues in Neice's Petition, also do not conflict with *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 606, 257 P.3d 532 (2011).

This opinion appears to apply only to the claim by Neice that SCS Engineers do not qualify for the immunity applicable to design professionals set forth under RCW 51.24.035(1).

RCW 51.24.035(1) provides that an injured worker "may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project" except if "the design professional actually exercised control over the portion of the premises where the worker was injured." RCW 51.24.035(1).

In *Michaels*, the city hired an engineering firm both to retrofit a water treatment plant and, separately, to perform "'on call'" maintenance for plant facilities. *Id.* at 594. The Court held that the engineering firm was not entitled to immunity for injuries related to its maintenance work because the work did not occur on a construction site, and although the engineering firm had helped construct the water treatment plant on one part of the facility, there was no relationship between the two. The projects were several hundred feet apart and the maintenance work

"would have been needed whether or not there was any construction occurring on the campus." *Id.* at 602.

The *Michaels* opinion, which was addressed in detail in Division II's decision, is clearly distinguishable. (Division II opinion, p. 19.) Division II explained that unlike the engineer in *Michaels,* SCS Engineers was not under a general maintenance contract. SCS Engineers had contracted to consult on a construction project for which LRI also hired Scarcella, a general manager whose role was to manage the construction. LRI had asked SCS Engineers to help move soil from the cell construction site to the west slope. The west slope was a necessary and pre-imagined location in the construction plan. So repairing the leachate seeps on the west slope that could have posed a danger to workers or contaminated the groundwater at the landfill, even if it was separately billed work, was part of the overarching construction project and occurred on part of the construction site. Nor did SCS assume responsibility for Scarsella employee safety practices via contract. In fact, the contract expressly provides

that SCS would not "advise on, issue directions regarding, or assume control over safety conditions and programs for others at the jobsite". CP 89.

Additionally, SCS Engineers did not assume responsibility for Scarsella employees' safety practices through contract. There was no contract between SCS Engineers and Scarsella. The master service agreement between SCS Engineers and LRI provided that SCS Engineers would not "advise on, issue directions regarding, or assume control over safety conditions and programs for others at the [jobsite]." CP at 89. The project addendum addressing SCS Engineers' work on the landfill does not include any language about assuming responsibility for other contractors' safety practices. And the contract between Scarsella and LRI provided, "Neither [LRI] nor [SCS Engineers] shall be responsible for [Scarsella's] means, methods, techniques, sequences[,] or procedures of construction, or the safety precautions and programs incident thereto." CP at 120.

Division II's opinion does not conflict with the *Michaels* opinion, and therefore this opinion does not create a basis for review under RAP 13.4(b)(1). Neice's petition for review should be denied.

C. Neice's Petition Does Not Identify Any Public Policy Reason Justifying Review under RAP 13.4(b)(4).

Neice claims that review is justified under RAP 13.4(b)(4), which provides a potential basis for review if the petition "involves an issue of substantial public interest that should be determined by the Supreme Court." Neice Petition, p. 7. However, Neice's Petition does not actually identify any "substantial public interest" other than the "employee safety and the responsibility of those entities that control aspects of employment at a job site." Neice Petition, p. 9.

The "responsibility" of site owners, such as LRI, is established in the Washington law cited above, and in Washington statute. Neice's general reference to "employee safety" does provide any basis for the Washington Supreme

Court to step in and issue a ruling on the issues identified by Neice. Neice's Petition for Review should be denied.

D. Neice's Strict Liability Arguments are Without Merit and Do Not Justify Review.

Neice's petition seeks Supreme Court as to whether LRI was "strictly liable" in this matter– but he does not identify any basis under RAP 13.4(b) justifying review. Regardless, this claim is *entirely unsupported* by the law or facts.

A claim for strict liability is limited to harm caused by an activity that is *abnormally dangerous*. Restatement (Second) of Torts, § 519; *see also e.g. Stout v. Warren*, 176 Wn.2d 263, 270, 290 P.3d 972, 977 (2012). To determine whether an activity is abnormally dangerous, Washington courts consider six factors:

> (1) the existence of a high degree of risk of some harm to the person, land, or chattels of others;
>
> (2) the likelihood that the harm that results from it will be great;
>
> (3) the inability to eliminate the risk by the exercise of reasonable care;
>
> (4) the extent to which the activity is not a matter of common usage;

> (5) the inappropriateness of the activity to the place where it is carried on; and
>
> (6) the extent to which its value to the community is outweighed by its dangerous attributes.

Stout, 176 Wn.2d at 266.

The work being performed at the LRI landfill may entail some risk of harm; however, there was no evidence or authority that it demonstrates the requisite "high degree of risk" when reasonable care is exercised. *Stout*, 176 Wn.2d at 272 (finding requisite degree of risk not met where the harm is an infrequent result of such activity). Neice provided no evidence whatsoever that anyone has ever sustained the injury alleged by Plaintiff as a result of engaging in construction/repair at a landfill. And Scarsella itself had excavated *17 prior seeps*, prior to the one where Plaintiff alleges he was injured. CP 31. And, while the need for safety precautions outlined in the project documents indicates there may be a risk of some harm, the activities to be

carried out do not demonstrate the requisite "high degree of risk" had reasonable care been exercised.

Moreover, *LRI was not directly engaged in the allegedly ultra-hazardous activity that resulted in Plaintiff's alleged injury*. Rather, it was Scarsella who was "currently placing soil on the west slope and excavating seeps". CP 232. By way of example, in *Klein v. Pyrodyne* Corp., 117 Wash.2d 1, 810 P.2d 917 (1991), the Court found that pyrotechnic company was strictly liable for damages caused by fireworks, as detonating fireworks displays constituted an abnormally dangerous activity. In *Langan v. Valicopters, Inc*., 88 Wash.2d 855 567 P.2d 218 (1977), the Court found a crop duster was strictly liable for spraying chemical on organic farmer's land because crop dusting was abnormally dangerous activity.

Even if landfill activities could be considered abnormally dangerous," (and *no Court has ever found this to be the case*), the activity in which Plaintiff was injured, was not "landfill work" but the construction work that Scarsella, a qualified and

experienced contractor who had performed similar jobs 17 times before, had been retained to provide. LRI was not directly involved in the Scarsella's excavation or the decision to direct Neice's work amid strong landfill gas fumes.

The "strict liability" argument also makes little sense when Neice is *also* arguing that LRI is the "proximate cause" of his injury, because LRI should have required/offered that he wear a gas monitor and that this failure to so require, caused his injury. If that were the case, than the activity at issue (surveying construction at a landfill) would not involve a "high degree of risk" even when "reasonable care" is followed.

Neice's strict liability arguments were and are without merit, and do not justify Supreme Court review. Neice's petition should be denied.

VI. CONCLUSION

For the foregoing reasons, LRI respectfully requests the Supreme Court deny Neice's petition for review.

Certificate of Compliance pursuant to RAP 18.17(b): I certify this Petition for Review contains 4,715 words.

Respectfully submitted this 27th day of January, 2025.

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CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be filed with Supreme Court of the State of Washington, and served via the Court's efiling application a true and correct copy of the foregoing upon the following:

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DATED at Seattle, Washington this 27th day of January, 2025.

s/ Traci Jay
Traci Jay

WILSON SMITH COCHRAN DICKERSON

January 27, 2025 - 4:10 PM

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Appellate Court Case Number:	103,741-4
Appellate Court Case Title:	John Neice v. Pierce County Recycling Composting and Disposal
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