WSAMA

Washington State Association of Municipal Attorneys

Tort Law Update

2025 SPRING WSAMA CONFERENCE

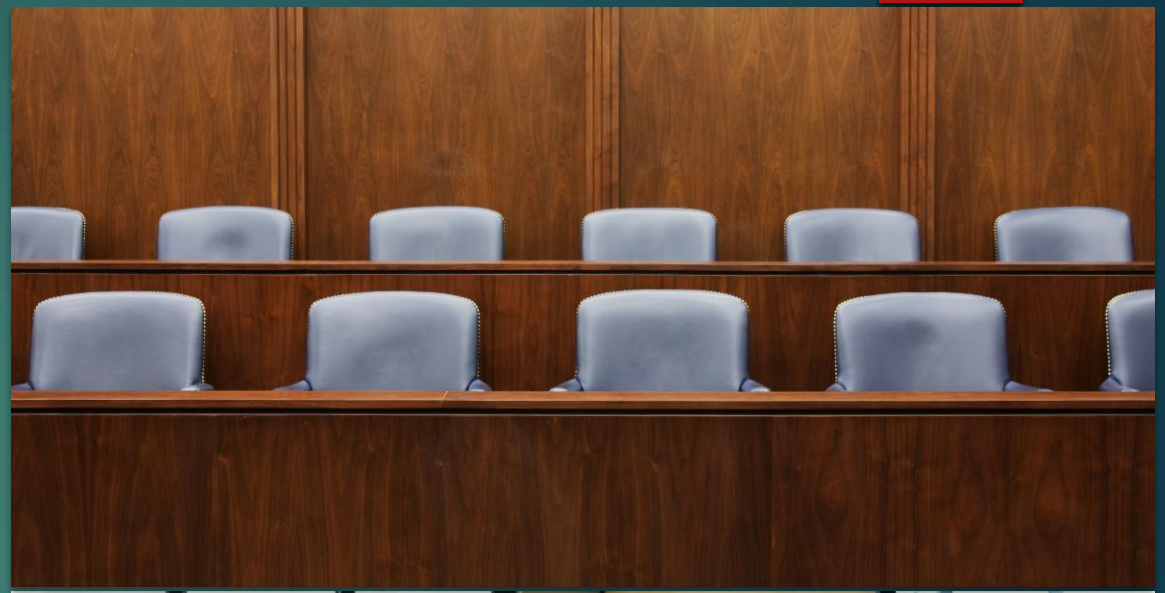
DAN LLOYD

OVERVIEW

- A return to civil procedure and mandatory arbitration
- Negligent investigation: yes it's a thing
- Why is my City paying for the acts of criminals?
- RAPID FIRE TORTS

Mandatory Arbitration (ch. 7.06 RCW)

- Required if amount in controversy < $100K
- Aggrieved party can request "trial de novo"
- Procedures are "strictly enforced"



Crossroads Mgmt, LLC v. Ridgway 2 Wn.3d 528 (2023)

- Landlord-Tenant dispute (intentional withholding of security deposit)
- Settlement offer ($3,800) rejected
- Partial summary judgment, capping damages at amount of deposit
- Arbitration award for plaintiff ($1,695), BUT attorney fees for defendant ($14K)
- Plaintiff requests trial de novo using Pierce County's form
- *But* SCCAR 7.1 changed on 12/3/2019 → now had to be signed by party

SUPERIOR COURT OF WASHINGTON
FOR [_____] COUNTY

_____, Plaintiff, v. _____, Defendant.

No. _____

REQUEST FOR TRIAL DE NOVO

TO: The clerk of the court and all parties:

Please take notice that [*name of aggrieved party*] requests a trial de novo from the award filed ____[*date*]_____.

Dated: _____

_____
[Signature of aggrieved party]
[Printed Name]:
[Title, if applicable]

[Name of attorney for aggrieved party]

Crossroads Mgmt, LLC v. Ridgway 2 Wn.3d 528 (2023)

- COVID-19 not a sufficient reason to deviate from SCCARs
- Because TDN exclusive mechanism for seeking any review, tenants could not appeal partial summary judgment

The Lewises do not argue they complied with the statute or court rule. Instead, they urge us to adopt a narrow exception to the mandatory signature requirement and recognize that a trial court has the power to suspend the rules "arising both in equity and in its inherent power to control its own process." Pet. for Discr. Rev. at 8. Specifically, they claim the trial court properly excused their failure to personally sign the trial de novo request because the county required e-filing during the COVID-19 pandemic yet provided a defective form. We reject this argument.

Our case law has long mandated strict compliance. We have repeatedly and unequivocally held that lack of full compliance with the SCCARs will invalidate a trial de novo request. For example, in *Wiley*, two of the three defendants filed a trial

Crossroads Mgmt, LLC v. Ridgway
2 Wn.3d 528 (2023)

- Mandatory arbitration: all cases < $100K
- The *party* must sign →
  Who has authority in your City?
- Time limit is ***strict*** (20 days from Arb. Award)

NEGLIGENT INVESTIGATION

Negligent Investigation

- Generally, no cause of action
- EXCEPTION → child abuse (ch. 26.44 RCW)
- "Harmful placement decision"
  - Removal from nonabusive home
  - Placement in abusive home
  - Letting child remain in abusive home
- COA: can be asserted against law enforcement

Wolf v. State, 2 Wn.3d 93 (2023)

- SOL on claim based on childhood sexual abuse starts when "victim discover[s] *that the act caused the injury*"
- Victim sexually abused for 8 years while in foster system; family sue abuser in 2008 and case resolves
- Victim speaks with boyfriend in mid-2017 see news story about childhood sexual abuse, discuss possible claim against State
- Victim commits suicide in 2018
- Mother, as personal representative, sues State on March 12, 2020
- Trial court dismisses on statute of limitations, COA affirms

Wolf v. State, 2 Wn.3d 93 (2023)

No. 101477-5

Here, the parties dispute what "act" triggers the three-year statute of limitations for negligence claims based on childhood sexual abuse. The State contends the victim's connection between the intentional act and injury begins the clock for *all* claims and urges us to affirm the Court of Appeals' majority opinion. The Estate argues that the victim's connection between the negligent conduct and resulting harm is the triggering event, in accordance with the dissent. We agree with the Estate.

Wolf v. State, 2 Wn.3d 93 (2023)

The expansive scope of .340(1) makes clear that the three-year statute of limitations applies to the act causing the injury for which a claim is brought. That is, for claims of intentional sexual abuse, the statute of limitations runs when the victim makes the causal connection between the intentional act and resulting injury. For claims of third-party negligence based on intentional sexual abuse, the statute of limitations runs when a victim makes the causal connection between the third party's negligent act and resulting injury.[6] This interpretation furthers the underlying purpose of RCW 4.16.340—to provide broad protection for victims of childhood sexual abuse and generously apply the rules of discovery to "all" tort claims, both intentional and negligent, for which the gravamen of the claim is the childhood sexual abuse. RCW 4.16.340(1); *C.J.C.*, 138 Wn.2d at 709-10, 712.

Atkerson v. State, No. 102,795-8 (Wash. Feb. 5, 2025)

- RCW 4.24.595: immunity for "emergent placement investigations" absent "gross negligence"
  - "Emergent placement investigation are those conducted prior to a shelter care hearing"
  - "Shelter care hearing": hearing required within 72 hours after child taken into protective custody

Atkerson v. State, No. 102,795-8 (Wash. Feb. 5, 2025)

- DCYF received report of 1 YO child (R.A.) sustaining a broken arm, opens investigation
- DCYF: met with mother, requested medical records, spoke with family members
- DCYF receives second report concerning R.A.
- Two weeks later, R.A. taken to hospital for head trauma & dies.
- ***ISSUE***: Does RCW 4.24.595 immunity apply to early stages of investigation, before any shelter care hearing occurs?

Atkerson v. State, No. 102,795-8

But RCW 4.24.595 does not apply only to acts or omissions that result in shelter care hearings. It also applies to "*any* determination to leave a child with a parent . . . or to return a child to a parent." RCW 4.24.595(1) (emphasis added). In that circumstance, *no* decision has been made to remove a child from their home or to petition to remove child from their home. Atkerson's interpretation would make

Based on the plain language of the statute, we conclude that RCW 4.24.595 applies to child abuse investigations conducted under chapter 26.44 RCW.[3]

Takeaways…

- ***Supreme Court***: yet to extend negligent investigation to law enforcement (but likely)
- ***RCW 4.24.595***: should be asserted in any negligent investigation case involving alleged child sex abuse (*Atkerson*)
- ***Statute of limitations***: must show child connected alleged injuries to alleged negligent acts (*Wolf*)

LIABILITY FOR THE ACTS OF CRIMINALS

Zorchenko v. City of Federal Way, 31 Wn. App. 2d 390 (2024)

- FWPD responds to minor rear end vehicle collision between Plaintiff & another driver
- Officer collects information, returns to car
- 3rd driver "violently sideswipe[s]" police car, ends up on side with Plaintiff pinned underneath
- Lawsuit: FWPD negligent in (1) parking vehicle behind first collision & (2) failing to advise drivers to remain in vehicle

Zorchenko v. City of Federal Way, 31 Wn. App. 2d 390 (2024)

- PUBLIC DUTY DOCTRINE RETURNS!!
- "Duty to all" = "Duty to none"
- 911 call did not trigger "special relationship" (contact unrelated to safety)

Zorchenko v. City of Federal Way, 31 Wn. App. 2d 390 (2024)

In contrast to the circumstances in Norg, the City did not undertake to provide "emergency assistance" to the Zorchenkos. See Norg, 200 Wn.2d at 764. There is nothing in the record to indicate a prolonged or in-depth interaction with the 911 dispatcher. The Zorchenkos did not contact the police for the purpose of seeking medical aid, or for any other reason related to their safety. Instead, Nina called law enforcement because the parties involved in the collision were "unclear of the legal obligations associated with leaving the scene of the accident" and sought assistance with "obtaining a police report." Nina reported no injuries and the record reflects that she interacted with the 911 dispatcher for approximately two minutes. There is nothing to suggest that the dispatcher made any assurances to Nina about prioritizing or expediting the response to her request for assistance.

Zorchenko v. City of Federal Way, 31 Wn. App. 2d 390 (2024)

Moreover, police officers may perform an inherently governmental function with duties set forth by statute when they respond to the scene of a motor vehicle collision. Police officers are generally responsible for the enforcement of state

[7] That the government's tort liability is "to the same extent" as the liability of private entities is a statutory mandate and a critical aspect of the analysis in Norg. RCW 4.96.010(1). Contrary to Zorchenko's claim in reply, the Supreme Court has not "rejected" a "distinction . . . as between the liability of public versus private entities." To support his claim that this part of the statute is no longer a part of the public duty doctrine analysis, Zorchenko relies on H.B.H. v. State, 192 Wn.2d 154, 179-180, 429 P.3d 484 (2018), a case involving negligence claims against a state agency for the failure to protect former foster children against tortious or criminal conduct perpetrated by adults to whom the children were entrusted. But in H.B.H., the Supreme Court merely acknowledged that while official conduct must be analogous to chargeable misconduct of a private party, an exact, "direct counterpart in the private sector" is not required. H.B.H., 192 Wn.2d at 180.

criminal and traffic laws. RCW 10.93.070. RCW 46.52.070(1) specifically requires that a police officer who is "present at the scene of any accident" or is "in possession of any facts concerning any accident" through investigation, "shall" make a report. A police officer must investigate and include specific information in the report when a collision results in fatality or serious injury. RCW

In contrast, local governments are authorized, but not required by statute, to provide emergency medical services. RCW 35.21.766(2) (cities and towns may establish ambulance services upon a determination that the municipality is inadequately served by existing services). Various private entities, such as hospitals, private ambulance services, individuals, and corporations may also provide emergency medical services and, in fact, as RCW 35.21.766 implies, those services are primarily delivered by private entities. Cummings, 156 Wn.2d at 872 (Chambers J., concurring). Since both public and private entities provide emergency medical services, when the local government handles such a request, it does not perform an inherent governmental function and must be

Nunley v. Chelan-Douglas Health Dist, 32 Wn. App. 2d 700 (2024)

- Appeal of CR 12(b)(6) dismissal (pleadings)
- 2020: District learns security protocols inadequate
- Hacking attempts in May 2021; District made no improvements
- July 2-4: cyberattack results in PHI & PII removed

Nunley v. Chelan-Douglas HD, 32 Wn. App. 2d 700 (2024)

In the case before us, the Plaintiffs allege that the Health District's act of collecting, retaining, and storing the Plaintiffs' PII and PHI constitutes an affirmative act that created a high degree of risk that third parties would attempt to obtain the personal information. Assuming the Plaintiffs can prove these allegations, we agree that they are sufficient to create a duty upon the Health District to use ordinary care in the collection and storage of the Plaintiffs' personal information.

By collecting numerous records of sensitive data and storing them on network systems that the Health District maintained, the Health District created a new and greater risk that criminals would come after the personal information. Personal information has value. And while its value in singular form may not be enough to create a target for hackers, when the single record is collected and stored with hundreds or thousands of other personal records on a single network, the benefit of hacking a system to obtain these records rises exponentially. By gathering individual records and storing them collectively on a network, the Health District took affirmative steps that created a high degree of risk.

private."); RCW 46.22.010(2) (imposing an affirmative duty on data recipients from the department of licensing "to take all reasonable actions necessary to prevent the unauthorized disclosure and misuse of personal or identity information").

We hold that the Health District owed the Plaintiffs a duty to use reasonable care in the collection and storing of their PII and PHI, and this duty includes taking reasonable steps to prevent unauthorized access and disclosure of the information.

3. COGNIZABLE INJURY

Alternatively, the Health District contends that dismissal for failure to state a

Adgar v. Densmore, 26 Wn. App. 2d 866 (2023)

- Municipal employee observed Densmore (clearly drunk) try to enter another vehicle across the street
- Employee driver left truck unattended with engine running; Densmore then (shockingly) stole municipal truck… head on collision
- Trial court dismissed on MSJ → superseding cause

Adgar v. Densmore, 26 Wn. App. 2d 866 (2023)

Here, Bosma saw an intoxicated person in close proximity to his truck attempting and failing to get into another vehicle. It was foreseeable that such a person might attempt to get into and drive the LWD truck if the truck was left running with the door open and unattended. Doing so created a high degree of risk that was foreseeable for purposes of establishing a duty on the part of LWD. Therefore, under the specific facts of this case, Bosma owed a duty not to leave the truck running and unattended with the door open.

Adgar v. Densmore, 26 Wn. App. 2d 866 (2023)

Here, *Pratt* and *Kim* are factually distinguishable from this case. Unlike *Pratt* and *Kim*, the vehicle theft occurred on a public right-of-way, not a private parking lot. Unlike *Pratt* and *Kim*, Dinsmore did not make at least one temporary stop. The collision here occurred mere moments after the vehicle theft and not some remote time in the future. Additionally, a significant difference between this case and *Pratt* and *Kim* is that Dinsmore was not an unknown individual—Bosma observed his peculiar behavior moments before walking away from the truck until it was out of sight while it was idling and its driver side door left open.

RAPID FIRE TORTS!!!!

BUCKLE THOSE SEAT BELTS…

RAPID. FIRE. TORTS.

- ***Pitoitua v. Gaube*, 28 Wn. App. 2d 141 (2023)** (absent special relationship between employee and customer, no duty to protect from criminal harm—tribal immunity protected business)
- ***Paddock v. Port of Tacoma*, 27 Wn. App. 2d 132 (2023)** (wrongful discharge for false testimony in response to subpoena in underlying personal injury case)
- ***Stocker v. Univ. of Wash.*, 33 Wn. App. 2d 352 (2024)** (UW not entitled to specific instruction that warning bicyclists of speed bump discharged duty)
- ***Chaudhry v. Day*, 31 Wn. App. 225 (2024)** (no actionable duty in negligence to remove tree**)**

RAPID. FIRE. TORTS.

- ***Eylander v. Prologis Targeted U.S. Logistics Fund LP*, 2 Wn.3d 410 (2023)** (premises liability, owner can delegate duty owed to invitees to contractor)
- ***Austin v. King County*, 31 Wn. App. 2d 523 (2024)** (trial court order granting agreed motion for leave to amend complaint not discretionary, meaning defendant retained right to disqualify judge)
- ***Al Hayek v. Miles*, 33 Wn. App. 2d 541 (2025)** (inquiry under GR 37(f) whether objective observer "could" view race/ethnicity as factor in verdict requires "a reasonable possibility") (*petition for review pending)
- ***Roy v. Pioneer Human Res. Inc.*, 27 Wn. App. 2d 273 (2023)** (actions by residential reentry center caused imprisonment of plaintiff by Bureau of Prisons, not susceptible to dismissal under CR 12(b)(6))

Couple of cases in Olympia to watch …

- ***Moore v. Fred Meyer Stores*, 26 Wn. App. 2d 769, *review granted*, 2 Wn.3d 1001 (2023)** (premises liability)
- ***Anderson v. Grant County*, 28 Wn. App. 2d 796 (2023), *review granted*, No. 103,111-4 (10/9/2024)** (felony bar)

Questions?

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