# WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

## Amicus Program Update

## 2020 WSAJ Annual Convention
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By

by Valerie McOmie and Dan Huntington

# ***2019-20 Decisions in Which the Foundation Filed Amicus Briefs***

• ***Strauss v. Premera Blue Cross***, 194 Wn.2d 296, 449 P.3d 640 (2019). This case concerns coverage under a medical insurance policy. Strauss sued Premera because of a denial of coverage for proton beam therapy (PBT) radiation treatment for prostate cancer. Strauss' policy with Premera included coverage for "medically necessary" treatment, and the definition of "medically necessary" included treatment "not more costly than an alternative service… at least as likely to produce equivalent therapeutic or diagnostic results." Premera denied Strauss' request for PBT on the basis that clinical outcomes with PBT have not been shown to be superior to intensity-modulated radiation therapy (IMRT), yet PBT is more costly. The trial court granted summary judgment for Premera, which was affirmed by the court of appeals on the basis that "[b]ecause the record establishes there are peer-reviewed medical studies that show the side effects of PBT may be superior to IMRT and other peer-reviewed medical studies that show the side effects of IMRT may be superior to PBT, reasonable minds could only conclude that absent clinical evidence directly comparing PBT and IMRT, the treatments are equivalent and Strauss cannot show PBT was medically necessary." *Strauss*, 1 Wn. App. 2d at 683-84 (brackets added). In a 5-4 decision, the Supreme Court reversed, holding that clinical evidence directly comparing PBT to IMRT was not required to create a fact issue as to whether PBT had a superior side effect profile and thus was medically necessary within the meaning of the insurance contract. WSAJ Foundation filed an amicus brief on the merits. *See* WSAJ Fdn. Am. Br. # A-418. **Plaintiff Attorneys – Patrick Trudell; Howard Goodfriend, Victoria Ainsworth.**

• ***Keodalah v. Allstate Ins. Co***., 194 Wn.2d 339, 449 P.3d 1040 (2019). In a 5-4 decision, the Supreme Court held that an employee adjuster of an insurance company cannot be held liable for bad faith or a CPA violation based on a violation of the duty of good faith announced in RCW 48.01.030. The 4-Justice dissent stated that claims for breach of the duty of good faith should be available against an adjuster under both the common law and the CPA. WSAJ Foundation filed an amicus brief arguing: 1) under the common law, an agent is liable for acts undertaken within the scope of the agency relationship if the agent owes an independent duty to the plaintiff; 2) public policy and precedent reflected in the Insurance Code's statutory and regulatory provisions, as well as the Supreme Court's bad faith jurisprudence, warrant the recognition of a common law duty of good faith owed by adjusters to insureds; and 3) relevant CPA and Insurance Code provisions, as well as the Supreme Court's jurisprudence clarifying their application, support a CPA claim predicated on breach of the duty of good faith by an adjuster engaged in the business of insurance. *See* WSAJ Fdn. Am. Br. # A- 423. **Plaintiff Attorneys – Vonda M. Sargent, Carol Farr; Scott David Smith, C. Steven Fury.**

***Weaver v. City of Everett and Dep't of Labor & Indus***., 194 Wn.2d 464, 450 P.3d 177 (2019). This case asked the Court to examine the circumstances under which the common law doctrines of res judicata and collateral estoppel should operate to bar a worker from initiating a claim for worker's compensation benefits based on a prior proceeding. In a unanimous opinion, the Court held that neither doctrine barred the worker's subsequent claim on the facts of this case. Weaver missed five weeks of work following surgical removal of a cancerous (malignant melanoma) mole. He filed an application for worker's compensation benefits, seeking less than $10,000 in wage loss, claiming his melanoma was caused by sun exposure in his work as a

firefighter. DLI denied the application and Weaver appealed to the Board. The Industrial Appeals Judge weighed the testimony of the employer's expert dermatologist and oncologist who testified that Weaver's melanoma likely did not arise out of his employment, against the testimony of Weaver's expert, who had no training in oncology or dermatology. The Board issued a final order denying the application for benefits. Weaver filed a *pro se* petition for review to the superior court, but eventually stipulated to an order of dismissal in light of the limited funds at issue and the expense of proceeding further. Shortly thereafter, Weaver was diagnosed with a brain tumor, and it was determined that this tumor had metastasized from the earlier diagnosed malignant melanoma. Weaver filed a second application for benefits, this time seeking permanent total disability benefits. The Department denied his application on the basis that the initial denial in the prior proceeding was binding under the doctrines of res judicata and collateral estoppel. Weaver appealed, and the Board held that the earlier determination that his cancerous mole did not arise out of his employment was binding in the subsequent action because the brain tumor arose out of the same malignancy. Weaver appealed to the superior court, which affirmed the Board's order, ruling that res judicata and/or collateral estoppel barred his claim. The Court of Appeals reversed, and the Supreme Court affirmed the Court of Appeals. The Supreme Court held that res judicata, or claim preclusion, was inapplicable because that doctrine requires identity of subject matter, which was absent here. It further held that collateral estoppel, or issue preclusion, would be inappropriate because its application in Mr. Weaver's particular case would work an injustice. WSAJ Foundation filed an amicus brief arguing: 1) claim preclusion (res judicata) should generally not bar a subsequent claim based on an earlier IIA Board order denying an application for benefits, because the initial determination of whether a worker's claim concerns an injury or disease that arises naturally and proximately out of an occupational exposure constitutes an "issue"

rather than a "claim" under common law res judicata/collateral estoppel principles; 2) whether issue preclusion (collateral estoppel) should bar a subsequent claim for benefits requires an examination of whether the doctrine will work an injustice. *See* WSAJ Fdn. Br. #A-427. **Plaintiff Attorney – T. Jeffrey Keane.**

• ***Vargas v. Inland Washington LLC*, *et al.***, 194 Wn.2d 720, 452 P.3d 1205 (2019). This case concerns a general contractor's duty to ensure the safety of all workers on a multi-employer jobsite, and whether that duty was altered by *Afoa v. Port of Seattle*, 191 Wn.2d 110, 421 P.3d 903 (2018) (*Afoa II*). The trial court entered a summary judgment order stating the general contractor was not vicariously liable for subcontractors' WISHA violations or other common law duties owed by the subcontractors. The Court of Appeals initially granted discretionary review, but then dismissed review in light of the *Afoa II* decision. The Supreme Court reversed and remanded for further proceedings, finding genuine issues of material fact precluded summary judgment. The Court held that the general contractor may be directly liable for a failure to comply with its common law duty to provide a safe place to work in all areas under its supervision, regardless of whether the general contractor is present, regardless of whether an expert other than the general contractor happens to be in charge of a specific job in the area, and regardless of whether multiple subcontractors happen to be working in the area at the same time. The Court held the general contractor can also be directly liable for a failure to comply with its statutory duty to comply with WISHA, and this duty was not altered by *Afoa II*. The Court held that a general contractor may not delegate its statutory duty to comply with WISHA, and if it delegates anyway it will be vicariously liable for the negligence of the entity subject to its delegation. Finally, the Court held that a general contractor will be vicariously liable for the negligence of any entity over which it

exercises control, and the test of control is not the actual interference with the work of the entity, but the right to exercise control. WSAJ Foundation filed an amicus brief on the merits. *See* WSAJ Fdn. Am. Br. # A-429. **Plaintiff Attorneys – Raymond Bishop, Derek Moore.**

• ***Peoples v. USAA***, ***et al***.; ***Stedman v. Progressive Direct Ins. Co***., 194 Wn.2d 771, 452 P.3d 1218 (2019) (on certification from the federal district court for the Western District of Washington). These consolidated cases concern whether an insured's claim under the Consumer Protection Act against a PIP insurer for wrongfully denied payment of medical expenses is a claim for "personal injury" damages and thus does not constitute an injury to "business or property" as required by RCW 19.86.090. The Supreme Court held that the wrongful denial of PIP benefits is an injury to "business or property" under RCW 19.86.090, and insureds wrongfully denied benefits may recover actual damages, including out-of-pocket medical expenses that should have been covered, and can seek injunctive relief to compel the payment of benefits to medical providers. The Court held that while personal injuries are not cognizable under the CPA, the deprivation of contracted-for insurance benefits is an injury to "business or property" regardless of the type of benefits secured by the policy. Further, when a CPA claim is predicated on an insurer's mishandling of a PIP claim, investigation costs and the time an insured takes away from business in order to respond to unfair practices are cognizable claims for damages under the CPA. WSAJ Foundation filed an amicus brief on the merits. *See* WSAJ Foundation Amicus Brief # A-430. **Plaintiff Attorneys – Randall Johnson, Daniel Whitmore, Duncan Turner, Daniel Rogers; David Breskin, Brandon Donckers, Young-Ji Ham.**

- ***Ehrhart v. King County***, 195 Wn.2d 388, 460 P.3d 612 (2020). *Ehrhart* raises issues related to the tort duties owed by Public Health Departments arising out of outbreaks of "notifiable conditions" under WAC 246-101-505, and whether the public duty doctrine offers protection from liability in this context. Brian Ehrhart, a resident of King County, died as a result of the Hantavirus, a rare and often fatal disease that presents similar to the flu and is contracted by exposure to deer mouse droppings. An incident of the Hantavirus occurred in King County approximately two months prior to Ehrhart's death, and in accordance with WAC 246-101-105, which requires that Hantavirus cases be reported to local health departments within 24 hours, the incident was reported to the King County Department of Health. WAC 246-101-505 requires local health departments to "review and determine appropriate action" for each reported case of a notifiable condition, which may include issuance of public health advisories. For over a month following the first reported Hantavirus incident, the King County Health Department did not issue an advisory to local providers, and instead advised the infected party to seek an exterminator. However, when the County learned that the Seattle Times planned to publish an article regarding the outbreak, it issued an advisory. Ehrhart's estate sued the County for negligence in failing to reasonably discharge its duty to take appropriate action under WAC 246-101-505. The County responded that the claim was barred by the public duty doctrine, as any duty it owed was owed to the public as a whole and not to any individual plaintiff or class of persons. Ehrhart responded that the case fell within two exceptions to the Doctrine: the "failure to enforce" exception and the "rescue doctrine" exception. In a unanimous opinion, the Supreme Court held that the county health department's responsibility to issue health advisories under the WAC provision did not create a legal duty owed to the decedent individually and no exception to the public duty doctrine applied. WSAJ Foundation filed an amicus brief urging the Washington Supreme Court to abandon the public duty doctrine. The Court

acknowledged the argument but elected not to reach the issue. *See* WSAJ Fdn. Am. Br. # A-431. **Plaintiff Attorneys – Adam Rosenberg, Jessica M. Cox, Daniel A. Brown.**

- ***Rocha, et al. v. King County***, 195 Wn.2d 412, 460 P.3d 624 (2020). Plaintiffs were summoned for jury duty in King County. Plaintiffs filed suit alleging the minimal amount paid jurors for jury service ($10 per day plus mileage) had the effect of excluding people of low and moderate economic status from jury service at a disproportionate rate in violation of the requirement in RCW 2.36.080(3) that "[a] citizen shall not be excluded from jury service… on account of economic status" (brackets added). The plaintiffs also sought a declaratory judgment that jurors are "employees" within the meaning of the Minimum Wage Act (MWA), ch. 49.46 RCW, and an injunction requiring King County to pay jurors for their time if they are not already compensated by an employer. The Supreme Court held that 1) jurors are not employees entitled to minimum wage for purposes of the MWA because no employer-employee relationship exists under the statutory language of ch. 49.46 RCW or otherwise; and 2) RCW 2.36.080(3) does not imply a cause of action for economic status discrimination and does not create an implied cause of action to allow jurors to sue for increased reimbursement rates. WSAJ Foundation filed an amicus brief arguing that the Court may compel payment to jurors for jury service pursuant to its inherent judicial authority to control and administer court functions and ensure the efficient and competent administration of justice, and its judicial authority to protect the right to a jury trial. *See* WSAJ Fdn. Am. Br. # A-432. **Plaintiff Attorneys – Jeffrey L. Needle; Toby J. Marshall.**

- ***W.H. v. Olympia Sch. Dist.***, 195 Wn.2d 779, 465 P.3d 322 (2020). A school district employee sexually abused the minor plaintiffs. Plaintiffs sued the district asserting a number of

causes of action, including a claim under the Washington Law Against Discrimination (WLAD), which alleged that the assault on the minor plaintiffs constituted sex discrimination in a place of public accommodation. Further, in light of the Court's decision in *Floeting v. Group Health Cooperative*, 192 Wn.2d 848, 434 P.3d 39 (2019), the school, as a public accommodation, is strictly liable for the discriminatory conduct of its employee. The Supreme Court held: 1) in a WLAD public accommodations claim, a school district is subject to strict liability for discrimination by its employees; 2) "discrimination" for the purposes of a WLAD public accommodations cause of action encompasses intentional sexual misconduct. WSAJ Foundation filed an amicus brief on the merits. *See* WSAJ Fdn. Am. Br. # A-436. **Plaintiff Attorneys: Darrell L. Cochran, Kevin M. Hastings, Christopher E. Love.**

- ***Burnett v. Pagliacci Pizza, Inc.*,** 2020 WL 4876925 (August 20, 2020). This case asks the Court to determine whether and under what circumstances an employer may use provisions inserted into employee handbooks to impose binding contractual obligations, like arbitration agreements, upon their employees. Burnett began working for Pagliacci Pizza as a delivery driver in October of 2015. At his employee orientation, Burnett was directed to sign several forms before he could begin working, including an "Employee Relationship Agreement" (ERA). Burnett signed the ERA. The ERA referenced the company's employee handbook, the "Little Book of Answers." Pagliacci told him to take the Little Book home and read it on his own time. On page 16 of the unsigned 23-page handbook was a mandatory arbitration policy. Two years later, when he was terminated and brought suit against Pagliacci for wage and hour violations on behalf of himself and a putative class, Pagliacci moved to compel arbitration. Burnett opposed arbitration, arguing the arbitration policy was substantively and procedurally unconscionable. In a unanimous opinion,

the Washington Supreme Court held: 1) because the employee did not have notice of the arbitration provision when he signed the employment agreement, he never assented to the arbitration provision and accordingly there was no enforceable agreement to arbitrate; 2) even assuming a valid agreement was formed, the claimed arbitration agreement was procedurally unconscionable because the arbitration requirement was hidden in the pages of the employee handbook and the employee had no reasonable opportunity to understand the arbitration agreement before he signed the employment agreement; 3) even assuming a valid agreement was formed, the claimed arbitration agreement was substantively unconscionable because limitations in the arbitration procedures unfairly favored the employer and were overly harsh. WSAJ Foundation filed an amicus brief on the merits. *See* WSAJ Fdn. Am. Br. # A-434. **Plaintiff attorneys: Toby J. Marshall, Erika L. Nusser, Blythe H. Chandler**.

• ***Gerlach v. The Cove Apartments, LLC, et al.,*** 2020 WL 5048574 (August 27, 2020). Gerlach was injured when she fell from a balcony that was a portion of premises leased to her friend. Gerlach filed suit against the landlord alleging common law negligence and violations of the Residential Landlord Tenant Act (RLTA), ch. 59.18 RCW. The defendants alleged as an affirmative defense that Gerlach was intoxicated and that pursuant to RCW 5.40.060(1) she was not entitled to recovery. The trial court instructed the jury that Gerlach admitted to intoxication, but excluded the BAC measurement (.238) on the basis that it would be unfairly prejudicial under ER 403. The jury returned a verdict finding the landlord was negligent, its negligence was a proximate cause of Gerlach's injuries, and that Gerlach was comparatively negligent and 7% at fault. The landlord appealed and the Court of Appeals reversed, holding that the trial court erred in excluding the evidence concerning Gerlach's BAC measurement and in instructing the jury that

the landlord owed a duty to Gerlach based on the RLTA. In a 6-3 opinion, the Supreme Court reversed and reinstated the jury verdict, holding: 1) the trial court did not abuse its discretion in excluding evidence of the plaintiff's blood alcohol measurement and related defense expert testimony on the basis that it would be overly prejudicial; 2) Washington recognizes a cause of action for tenants and their guests for personal injuries caused by a landlord's violation of the common law warranty of habitability; 3) the RLTA does not support a cause of action for personal injury by the guest of the tenant. WSAJ Foundation filed an amicus brief on the merits arguing: 1) the judicial adoption of the implied warranty of habitability and the enactment of the RLTA provide landlords with the requisite access and control over the leased premises necessary to recognize tort liability; 2) a rule recognizing the common law liability of landlords for personal injuries should apply both to tenants and their guests; 3) residential tenants and their guests should be permitted to bring claims for personal injuries under *Restatement (Second) of Property* § 17.6 (1977) based upon a landlord's breach of the common law and statutory implied warranty of habitability and violation of the duties enumerated in the RLTA. *See* WSAJ Fdn. Am. Br. # A-435. **Plaintiff Attorneys: Ben F. Barcus; Simon H. Forgette; Howard M. Goodfriend.**

## ***2020 Amicus Briefs Filed; Awaiting Decision***

• ***Mancini v. City of Tacoma***, *noted at* 8 Wn. App. 2d 1066, *review granted*, 194 Wn.2d 1009 (2019). This case concerns whether a person injured as the result of a negligent police investigation may bring a claim under Washington common law. Based upon a tip from a confidential informant, the Tacoma Police Department conducted an investigation, obtained a search warrant and sent a team of police officers into Mancini's apartment while she slept. Mancini was pushed to the ground, handcuffed and forced to wait outside of her apartment in her nightgown

during the search. Mancini was a 60 year-old nurse; the police had identified and raided the wrong apartment. Mancini filed suit on several claims, including negligence. A jury returned a verdict for Mancini on the negligence claim, and the Court of Appeals reversed on the basis that Mancini's claim constituted a "negligent investigation" claim, which it concluded is not recognized under Washington law. WSAJ Foundation filed an amicus brief on review in the Washington Supreme Court, arguing: 1) the Supreme Court has never squarely examined court of appeals' decisions barring common law negligent investigation claims; 2) a rule that there is no duty to exercise reasonable care when conducting an investigation is not reconcilable with the Court's precedent, is not consistent with public policy, undermines justice and defies logic and common sense; 3) whether there is a duty to exercise reasonable care when conducting an investigation should not be altered by case law governing probable cause or constitutional requisites for obtaining search warrants. *See* WSAJ Fdn. Am. Br. # A-437. **Plaintiff Attorneys: Lori S. Haskell; Gary Manca.**

• ***McLaughlin v. Travelers Commercial Ins. Co.***, 9 Wn. App. 2d 675, 446 P.3d 654 (2019), *review granted*, 194 Wn.2d 1016 (2020). McLaughlin was a named insured on a California automobile insurance policy issued by Travelers. The policy included "medical payments coverage," which has wording similar to PIP coverage in Washington policies. In March, 2017, McLaughlin moved from California to Washington, and in July, 2017, he was injured while riding his bicycle when the occupant of an automobile opened the car door and struck McLaughlin. Travelers denied payment under the medical payments coverage on the basis that McLaughlin did not come under the policy definition of an "insured" because he was neither occupying a motor vehicle nor a pedestrian struck by a motor vehicle. McLaughlin filed suit and both parties moved for summary judgment. The parties advised the trial court that there was no need for a choice of

law analysis because the policy would be interpreted the same under either Washington or California law. The trial court granted Travelers' motion and denied McLaughlin's motion. On appeal, McLaughlin argued that "pedestrian" as used in the policy should be defined in accordance with the definition of pedestrian set forth in Washington statutes regarding PIP coverage, and that under that statutory definition should include a bicyclist. Travelers equated its medical payments coverage with PIP coverage and again stated there was no conflict between Washington and California law. The Court of Appeals affirmed, concluding that the plain and ordinary meaning of "pedestrian" does not include a bicyclist, and held that the plain and ordinary meaning of a term in an insurance policy should not be displaced by a definition of the same term in an insurance statute. In its opinion, the Court of Appeals described the coverage as "PIP" coverage, applied Washington law concerning insurance policy and statutory interpretation, interpreted Washington insurance code and vehicle code statutes, and reviewed Washington case law in its analysis. WSAJ Foundation filed an amicus brief on review, arguing: 1) having advised both the trial court and the Court of Appeals that it wished to apply Washington law, Travelers is bound to an interpretation of its coverage as if it were PIP coverage under Washington law; 2) under Washington law, a named insured who suffers injury in an automobile accident is entitled to recover PIP coverage; 3) Washington statutes are read into contracts of insurance, and to the extent insurance policy provisions conflict they are supplanted by Washington statutory law; 4) McLaughlin is entitled to benefits pursuant to Washington statutes governing PIP coverage. *See* WSAJ Fdn. Am. Br. # A-438. **Plaintiff Attorneys: Robert Levin; Philip A. Talmadge, Aaron P. Orheim.**

• ***Young v Toyota Motor Sales, Inc.***, 9 Wn. App. 2d 26, 442 P.3d 5 (2019), *review granted*, 194 Wn.2d 1023 (2020). Toyota's advertising and vehicle sticker incorrectly represented that a

vehicle that Young purchased contained equipment that it did not. Young filed suit alleging fraud, negligent misrepresentation, and direct and per se violations of the CPA. The fraud claim was dismissed on summary judgment, and in a bench trial the court ruled against Young on both the negligent misrepresentation and CPA claims. The Court of Appeals affirmed. With respect to the CPA claims, the court held that Young failed to meet 2 of the 5 required elements of a CPA claim as established in *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co*., 105 Wn.2d 778, 719 P.2d 531 (1986): an unfair or deceptive act or practice, and causation. The court held that Young failed to show a deceptive act or practice because he failed to prove that Toyota's error was of "material importance." It held that Young failed to prove causation because he did not take any action in reliance on Toyota's misrepresentation. WSAJ Foundation filed an amicus brief on review, arguing: 1) if a plaintiff who has been injured by a defendant's deceptive act is able to prove that the defendant's deception also had the capacity to deceive a substantial portion of the public, and that this deception actually injured, or has the capacity to injure, the public, such conduct necessarily constitutes a matter of material importance within the meaning of the CPA; 2) under the CPA, proximate cause may be shown by proof that but for the defendant's deceptive conduct, the plaintiff would not have suffered injury, and the plaintiff does not have to prove reliance. *See* WSAJ Fdn. Am. Br. # A-439. **Plaintiff Attorneys: Brian G. Cameron, Kirk D. Miller.**

• ***Hermanson v. MultiCare Health System, Inc.***, 10 Wn. App. 2d 343, 448 P.3d 153 (2019), *review granted*, 194 Wn.2d 1023 (2020). Hermanson was involved in an automobile accident and treated for his injuries at a MultiCare hospital by MultiCare-employed health care workers and by an ER physician employed by an independent contractor. Hermanson alleged that his healthcare

providers gave the results of his blood-alcohol screen to police officers without Hermanson's consent. Hermanson filed suit against MultiCare and unnamed employees, alleging causes of action for negligence, defamation, false imprisonment and violation of the physician-patient privilege under RCW 5.60.060(4). Hermanson did not allege medical malpractice. Even though the ER physician and his employer were not named as defendants, MultiCare, the ER physician and the ER physician's employer retained a single law firm to represent all of those entities under a "joint representation" agreement. Defense counsel sought a protective order confirming its right to have ex parte privileged communications with its clients, including the ER physician and the MultiCare employees who had direct knowledge concerning the incidents in Hermanson's complaint. Both plaintiff and defendants sought discretionary review of the trial court's order allowing some, but not all, of the requested ex parte communications. In a 2-1 decision, the Court of Appeals held: 1) MultiCare's counsel was prohibited from ex parte privileged communication with the ER physician, because he was not a MultiCare employee; 2) ex parte privileged communication was allowed with MultiCare's employed nurses and social worker who treated Hermanson and had knowledge of the incidents in his complaint. Both plaintiff and defendants petitioned for review. WSAJ Foundation filed an amicus brief on review, arguing: 1) the corporate attorney-client privilege is limited to corporate employees and does not extend to independent contractors; 2) if the Court concludes the corporate attorney-client privilege extends to independent contractors, the entity asserting the privilege should have the burden of proving agency, which in Washington requires proof of the principal's retention of the right to control the manner of the agent's work; 3) prohibiting ex parte privileged contact in this context will not prevent corporate defendants and their attorneys' preparation of a defense, as they can access

necessary information through traditional discovery. *See* WSAJ Fdn. Am. Br. # A-440. **Plaintiff Attorney: Dan'l W. Bridges.**

- ***Meyers v. Ferndale Sch. Dist.,*** 12 Wn. App. 2d 254, 457 P.3d 483, *review granted*, 195 Wn.2d 1023 (2020). Plaintiff's decedent was a student in the defendant school district. He was killed while out on an off-campus walk with the rest of his class and his P.E. teacher when an automobile driver fell asleep, crossed the road, drove up on the sidewalk and struck him. Plaintiff brought a negligence action against the driver and the school district, alleging that the district had a duty to protect its students based on the special relationship between a school and its students. The trial court dismissed the claim against the school district, holding that the manner in which the accident occurred was unforeseeable as a matter of law. The Court of Appeals reversed, holding that the issue of foreseeability was whether the harm suffered fell within the general field of danger that should have been anticipated, and not whether the particular mechanism of injury was foreseeable. The appellate court held that there is a question of fact in this case as to whether the injury was reasonably foreseeable. WSAJ foundation filed an amicus brief on review arguing that a defendant with a special relationship duty to protect a plaintiff from reasonably foreseeable harm may not obtain a dismissal on the basis of a lack of legal causation. *See* WSAJ Fdn. Am. Br. # A-441. **Plaintiff Attorneys: John R. Connelly, Jr., Marta L. O'Brien, Jackson Pahlke; Philip A. Talmadge.**