

IN THE SUPREME COURT FOR THE STATE OF OREGON

---

STATE OF OREGON,

Plaintiff,

v.

DANIEL ALGEO,

Defendant.

Yamhill County Circuit  
Court CR-100607

SC S060830

---

J.W.P.,

Petitioner on Review

v.

STATE OF OREGON and DANIEL  
ALGEO,

Respondents on  
Review.

---

**PETITIONER'S REPLY BRIEF ON THE MERITS**

---

*Continued . . .*

Erick J. Haynie, OSB No. 982482  
EHaynie@perkinscoie.com  
Nathan R. Christensen, OSB No.  
093129  
NChristensen@perkinscoie.com  
Bryan D. Beel, OSB No. 073408  
BBeel@perkinscoie.com  
PERKINS COIE LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
Telephone: 503.727.2000

*Attorneys for Petitioner on Review*

Paula J. Lawrence, OSB No. 892850  
lawoffice@onlinemac.com  
The Lawrence Law Firm  
235 E. Third Street, Suite 1  
McMinnville, OR 97128  
Telephone: 503.434.9066

*Attorneys for Defendant-Respondent*

Honorable Ronald W. Stone  
ronald.w.stone@ojd.state.or.us  
Yamhill County Circuit Court  
535 NE 5th Street  
McMinnville, OR 97128  
Telephone: 503.434.7485

Meuy F. Chao, OSB No. 020394  
chaom@co.yamhill.or.us  
Deputy District Attorney  
Yamhill County Courthouse  
535 E. Fifth Street  
McMinnville, OR 97128  
Telephone: 503.434.7539

Ellen Rosenblum, OSB No. 753239  
Attorney General  
Ellen.F.Rosenblum@doj.state.or.us  
Anna M. Joyce, OSB No. 013112  
Solicitor General  
anna.joyce@doj.state.or.us  
Paul L. Smith, OSB No. 001870  
Attorney in Charge  
paul.l.smith@state.or.us  
Gregory A. Rios, OSB No. 064830  
Assistant Attorney General  
gregory.a.rios@doj.state.or.us  
Oregon Department of Justice  
Collateral Remedies Appeals  
1162 Court Street NE  
Salem, OR 97301  
Telephone: 503.378.4402

*Attorneys for Respondent on Review  
State of Oregon*

Margaret Garvin, OSB No. 044560  
garvin@lclark.edu  
Amy C. Liu, OSB No. 101232  
aliu@lclark.edu  
National Crime Victim Law Inst.  
310 SW 4th Ave., Suite 540  
Portland, OR 97204  
Telephone: 503.768.6953

*Attorneys for Amicus Curiae*

TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
DISCUSSION .....	2
I.    PETITIONER AND THE STATE AGREE THAT THE CIRCUIT COURT'S ORDER VIOLATED OREGON CONSTITUTIONAL AND STATUTORY LAW .....	2
II.   RESPONDENT ALGEO IS INCORRECT THAT THE AMOUNT OF RESTITUTION IS DISCRETIONARY AND DEPENDENT ON THE VICTIM'S ALLEGED FAULT .....	6
A.   The Amount of Restitution is Not Discretionary.....	6
B.   The Statute's Causation Requirement was Satisfied Here.....	10
C.   The Fact that Mr. Algeo Did Not Plead Guilty to (or was Not Convicted of) Assault in the Third Degree is Irrelevant.....	11
CONCLUSION.....	12

## TABLE OF AUTHORITIES

Page

### Cases

<i>Hughey v. United States</i> , 495 US 411 (1990).....	5
<i>State v. Barrett</i> , 350 Or 390, 255 P3d 472 (2011).....	3, 4
<i>State v. Gaines</i> , 346 Or 160, 206 P3d 1042 (2009).....	6
<i>State v. Irizarry</i> , 207 Or App 99, 139 P3d 1048 (2006).....	12
<i>State v. Renner</i> , 207 Or App 528, 142 P3d 1078 (2006).....	12
<i>State v. White</i> , 249 Or App 166, 274 P3d 313 (2012) .....	8
<i>State v. Yocum</i> , 247 Or App 507, 269 P3d 113 (2011) .....	7, 8

### Statutes

ORS 137.106.....	5, 6
ORS 137.106(1)(a).....	8, 10
ORS 137.106(1)(c).....	8, 10
ORS 147.535(2) .....	4
ORS 147.535(3) .....	4

### Other Authorities

Oregon Constitution Art. I, § 42(1)(d).....	6
Oregon Constitution Art. I, § 42(3)(c).....	6

## INTRODUCTION

Oregon's voters and legislators have written into the constitution and statutes the requirement that convicted criminals be ordered as part of their sentence to repay their victims' economic damages. As Petitioner J.W.P. argued in her opening brief on the merits, the trial court's order in this case reducing Respondent Algeo's restitution order by 90%, on account of its finding that the injuries J.W.P. suffered when Mr. Algeo's truck struck her were caused by her jaywalking across a residential street rather than Mr. Algeo's drunk driving, violated J.W.P.'s constitutional rights and Oregon statute, and must therefore be reversed.

Respondent State of Oregon agrees with J.W.P.'s analysis that comparative fault has no place in criminal restitution, but argues that the Court may remedy the trial court's error only in view of J.W.P.'s constitutional rights, not by correcting the trial court's statutory violation. J.W.P. has no objection to deciding this appeal on constitutional grounds, and agrees with the State that the constitutional and statutory rights at issue are coextensive to the extent that they both entitle a crime victim to full restitution and preclude comparative fault—and were both violated. But for the reasons explained briefly below, both J.W.P.'s constitutional and statutory claims are properly before this Court, and this Court may consider either ground as a basis for reversing the trial court.

Mr. Algeo, on the other hand, argues that the trial court was correct to apply comparative fault because the amount of restitution required under the statute is discretionary, the State presented insufficient evidence of causation, and he is not required to pay for economic damages resulting from a crime to which he did not plead guilty or of which he was not convicted. As discussed below, the causation requirement was satisfied by Mr. Algeo's guilty plea, the amount of restitution is not discretionary, and there is no evidence that J.W.P.'s economic damages are not the result of the physical impairment and pain Mr. Algeo admitted to causing J.W.P.

J.W.P. respectfully requests that this Court confirm her—and other crime victims'—right to receive, and a criminal's obligation to pay, restitution for the full amount of economic damages.

## **DISCUSSION**

### **I. PETITIONER AND THE STATE AGREE THAT THE CIRCUIT COURT'S ORDER VIOLATED OREGON CONSTITUTIONAL AND STATUTORY LAW**

Petitioner J.W.P. and the State agree on three key issues: (1) both Oregon's restitution statute and the Oregon Constitution (according to the State, by operation of the statute) require full restitution to crime victims, precluding comparative fault; (2) by ordering Mr. Algeo to pay only 10% of J.W.P.'s economic damages the trial court violated the restitution statute; and (3) in so doing, the trial court also violated J.W.P.'s constitutional rights.

The State takes issue, however, with J.W.P.'s view that this appeal may be resolved only on statutory grounds. *See* Brief on the Merits of Respondent on Review, State of Oregon (“State Br.”) at 7-11. As mentioned above, J.W.P. agrees with the State that her constitutional rights were violated.<sup>1</sup> J.W.P. also agrees that if the Court does not perceive a procedural path to a statutory remedy, as was the case in *State v. Barrett*, 350 Or 390, 255 P3d 472 (2011), then it may be appropriate for the Court to decide the constitutional issue. J.W.P. does not agree with the State, however, that this Court is forbidden from considering her statutory claim or deciding this appeal as a matter of statutory law.

J.W.P.'s constitutional claim and her parallel claim for statutory violation arise out of the same facts and the same erroneous opinion and order from the trial court. It is true that the constitutional claim provides the jurisdictional hook for this Court's direct review. *See* ORS 147.535(2) (“Jurisdiction for appellate review of an order [addressing a claim for violation of §§ 42 or 43 of Article I of the Oregon Constitution] is vested originally and exclusively in the Supreme Court.”). But Petitioner is aware of no restriction *prohibiting* this

---

<sup>1</sup> The State describes the constitutional right to restitution as *procedural*. *See* State Merits Br. at 3. J.W.P. does not agree with that characterization. If the voters had intended to create only a procedural right, they would have done so, for instance by guaranteeing crime victims the “right to a timely restitution hearing.” Instead, the voters enshrined in the Oregon Bill of Rights a *substantive* right to restitution.

Court from considering other issues related to the underlying constitutional claim or deciding the matter on those issues if they would prove dispositive. According to the statute, this Court's jurisdiction is limited not to constitutional issues, but "to the order for which appellate review is sought." ORS 147.535(3). As mentioned above, J.W.P.'s constitutional and statutory claims arise out of the same order.

Even in *Barrett*, in which this Court elected to address only the constitutional issue, this Court did not indicate that it was precluded from deciding the case on statutory grounds, only that because "[t]he procedural path to a statutory remedy is less clear, \* \* \* this is an appropriate occasion in which to address the victim's constitutional claims without also addressing or resolving whether the victim would be entitled to the remedy she seeks as a result of the violation of her statutory rights." 350 Or at 399.

The path is clearer here. For the reasons explained in J.W.P.'s opening brief, the trial court's order violated the Oregon restitution statute, ORS 137.106, and J.W.P.'s right to receive full restitution. The remedy for this statutory violation is simply to reverse the trial court's erroneous order and remand for an order directing Mr. Algeo to pay the full amount of J.W.P.'s economic damages, as required by the statute.

Because her claim of a statutory violation is dispositive (and necessary to the constitutional analysis in any event), J.W.P. focused her opening brief on



analyzing the statutory issues. But if this Court agrees with the State that it should decide this appeal as a matter of constitutional law, the additional explanation for why J.W.P.'s constitutional rights were violated is straightforward: (1) J.W.P. has a constitutional "right to receive prompt restitution," Oregon Constitution Art. I, § 42(1)(d); (2) "the ordinary meaning of 'restitution' is restoring someone to a position he occupied before a particular event," *Hughey v. United States*, 495 US 411, 416 (1990); (3) the Constitution authorizes the Legislature to further effectuate this right through statute, Oregon Constitution Art. I, § 42(3)(c); (4) in exercising its authority to effectuate the constitutional right to restitution, the Legislature has determined that restitution requires payment for "the full amount of the victim's economic damages as determined by the court," ORS 137.106; and (5) for the reasons explained in J.W.P.'s opening brief on the merits, the trial court's order violated this requirement and thus J.W.P.'s constitutional right to restitution.

As the State observed, both J.W.P. and the State arrive at the same conclusion. The fact that the State argues that this Court should reverse the trial court's order solely on constitutional grounds, while J.W.P. argues that this Court may reverse the trial court's order on statutory or constitutional grounds, is not immaterial but also should not obscure the larger point. Both parties agree that it is unlawful under the Oregon Constitution *and* Oregon statute for a trial court to lessen a convicted criminal's restitution obligation based on the

criminal's claim of fault by the victim, and the trial court's order should be reversed.

## **II. RESPONDENT ALGEO IS INCORRECT THAT THE AMOUNT OF RESTITUTION IS DISCRETIONARY AND DEPENDENT ON THE VICTIM'S ALLEGED FAULT**

Respondent Algoe makes three primary arguments in support of the trial court's ruling denying J.W.P. full restitution: (1) the amount of restitution a trial court must order is a matter of the court's discretion, as evidenced by the statutory text, case law and legislative history; (2) the State's evidence did not satisfy the statute's causation element; and (3) an order for restitution of more than 10% of J.W.P.'s economic damages would violate the rule that a criminal may not be required to pay restitution for crimes for which the criminal was neither convicted nor plead guilty. None of those arguments has merit.

### **A. The Amount of Restitution is Not Discretionary**

Mr. Algoe argues that the amount of restitution is discretionary because the statute incorporates the phrase "as determined by the court," and other similar phrases. Respondent Daniel Algoe's Brief on the Merits ("Algoe Merits Br.") at 7 (quoting ORS 137.106(1)). As J.W.P. argued in her opening brief, however, that phrase must be read in context. *See State v. Gaines*, 346 Or 160, 171, 206 P3d 1042, 1050 (2009) (When determining the meaning of a statutory provision, "text and context remain primary, and must be given primary weight

in the analysis." ). And in context, that phrase does not give trial courts discretion to independently determine the appropriate amount of restitution.

The full sentence from the pertinent statute reads: "A requirement that the defendant pay the victim restitution in a specific amount *that equals the full amount of the victim's economic damages as determined by the court.*"

ORS 137.106(1)(a) (emphasis added). The phrase "as determined by the court" follows the term "economic damages," not the term "restitution," and simply confirms that the victim's *economic damages* must be determined by the court (rather than taken at face value), just as trial courts must find (or "determine") the facts underlying other aspects of a criminal sentence. Once the court determines the "*full amount* of the victim's economic damages," it is obligated to order restitution equaling those damages, and does not have discretion to alter the amount without the victim's consent. *See* ORS 137.106(1)(a) (emphasis added) and (c).

Here, both the State and Mr. Algeo stipulated to the amount of J.W.P.'s economic damages, and the trial court adopted that amount as correct. At that point, the trial court was required to order restitution "in a specific amount that equal[ed]" those economic damages, and was not permitted to adjust that number as a matter of discretion.

Mr. Algeo relies on *State v. Yocum*, 247 Or App 507, 269 P3d 113 (2011), for his position that "the amount of restitution—if any—is unquestionably a

'determination' to be made by the trial judge." *See* Algeo Merits Br. at 7. But the *Yocum* opinion says exactly the opposite. In that case, the Oregon Court of Appeals confirmed that although the amount of the victim's *economic damages* is a matter for the court's determination, "if the trial court finds that a victim has suffered 'economic damages,' *the trial court must order restitution in an amount that equals the amount of the victim's 'economic damages.'*" *Yocum*, 247 Or App at 512 (emphasis added).

Similarly, Mr. Algeo mistakenly relies on *State v. White*, 249 Or App 166, 274 P3d 313 (2012), for the principle that Oregon appellate courts "continue to define restitution as being similar to those damages recoverable in a 'civil action,'" even after the 2005 statutory amendment removed from the definition of available damages the reference to damages "which a person could recover against the defendant in a civil action." *See* Algeo Merits Br. at 11-12. The *White* opinion illustrates, however, the uncontroversial point that the boundary for available damages in restitution is determined by the tort-law definition of "economic damages," less impairment of future earnings. The issue in *White* was whether interest on a judgment fell within or outside of that boundary. *See* 249 Or App at 167-68. The court found that it fell outside and said nothing to indicate that other principles used in civil law, such as comparative fault, should be incorporated into restitution. To the contrary, it acknowledged that "the

damages that can be awarded to a victim in a civil action and the economic damages recoverable as restitution are not necessarily coextensive." *Id.* at 167.

Mr. Algeo also relies on legislative history for his argument that the amount of restitution is discretionary, arguing that it establishes that the purpose of the 2003 statutory amendments requiring restitution for the "full amount" of economic damages was to eliminate the defendant's ability to pay from the restitution equation, not eliminate judicial discretion altogether. *See Algeo Merits Br.* at 13-15. J.W.P. agrees that the 2003 amendments were likely motivated by concern over trial courts' practice of decreasing restitution awards to match criminals' ability to pay. But even if the ability to pay issue was the one that prompted the Legislature to reconsider the discretion it had previously given trial courts, the Legislature did not simply tweak the statute to address that narrow issue, such as by precluding trial courts from taking a defendant's ability to pay into account. It made a global change to the statute, fixing the amount of restitution to the full amount of economic damages and thereby eliminating judicial discretion.

Finally, Mr. Algeo argues that J.W.P.'s (and the State's) position that the amount of restitution is not discretionary renders superfluous the "as determined by the court" phrase and other similar phrases, in contravention of rules of statutory interpretation. To the contrary, it is Mr. Algeo's position that renders numerous clauses in the statute meaningless, including the requirement that the

amount of restitution "equal[] the full amount of the victim's economic damages" and the requirement that an order for less than the full amount of economic damages may be made only "with the consent of the victim." *See* ORS 137.106(1)(a) and (c). Furthermore, the "as determined by the court" language is not superfluous because it establishes who (*i.e.*, the court) determines "the full amount" of economic damages.

### **B. The Statute's Causation Requirement was Satisfied Here**

Mr. Algeo argues extensively that the restitution statute and constitutional right to restitution incorporate a causation requirement. He will find no objection here. *See* Petitioner Merits Br. at 16. But as J.W.P. stated in her opening brief, "there's no dispute that a causal link exists here—Mr. Algeo pleaded guilty to 'intentionally, knowingly or recklessly *caus[ing]* physical injury' to J.W.P. and the other victim." *Id.* (citing Petitioner's Supplemental Excerpt of Record at 1-8) (emphasis added).<sup>2</sup>

---

<sup>2</sup> Because Mr. Algeo pleaded guilty to Assault in the Fourth degree, *i.e.*, causing J.W.P.'s physical injury or substantial pain, his assessment of the evidence of causation is beside the point. Even if it were not, the reconstruction report that Mr. Algeo relies upon for much of his causation analysis is a *partial* reconstruction report (self-identified as such on its first page, see ER-1) and does not include, among other things, an analysis of the driver's response time. It appears this report went unchallenged in the trial court, providing a poignant example of why a comparative fault rule would dramatically change restitution hearings, as victims would need to hire personal counsel (rather than simply rely on the prosecutor working on behalf of the State) to ensure these types of issues did not go unaddressed.

**C. The Fact that Mr. Algeo Did Not Plead Guilty to (or was Not Convicted of) Assault in the Third Degree is Irrelevant**

Finally, Mr. Algeo argues that, as a general matter, a criminal must not be ordered to pay restitution for crimes for which he was not convicted. *See* Algeo Merits Br. at 17-22. He further contends that this rule precludes an order requiring him to pay the full amount of J.W.P.'s economic damages because he pleaded guilty only to causing "impairment of physical condition or substantial pain," and J.W.P.'s economic damages were the result of more serious injuries.

There is no evidentiary support for Mr. Algeo's theory that the overwhelming portion—or even any—of J.W.P.'s economic damages were not the result of the "impairment of physical condition or substantial pain" that Mr. Algeo admitted to causing. To the contrary, J.W.P.'s economic damages did *not* include the costs she has incurred for the protracted nature of many of her injuries.

Further, the restitution statute does not differentiate between severities of economic damage in the way that Mr. Algeo's rule would require. Rather, it seeks only to make the victim whole for her economic damages, regardless of the specific level of crime to which the defendant pleads guilty or of which the defendant is found guilty. Mr. Algeo pleaded guilty to driving drunk and causing physical injury by striking J.W.P. with his truck, and the court determined (and the parties stipulated) that the amount of J.W.P.'s economic

damages from the collision was \$61,367.68. The statute does not require anything more.<sup>3</sup>

To support his position, Mr. Algeo cites several cases for the proposition that a defendant cannot be required to pay restitution for a crime to which he did not plead guilty or of which he was not convicted. But in each case, the defendant's wrongful acts had *no* causal relationship to the injury for which restitution was originally awarded. *See, e.g., State v. Irizarry*, 207 Or App 99, 139 P3d 1048 (2006) (victim not injured during *any* crime of which the defendant was convicted); *State v. Renner*, 207 Or App 528, 142 P3d 1078 (2006) (no causal relationship between criminal act and injury). Here, Mr. Algeo plead guilty to driving drunk and causing J.W.P. physical injury or substantial pain, and was therefore accountable for the full amount of her economic damages flowing from that crime. Mr. Algeo has cited no case to the contrary.

## CONCLUSION

J.W.P. and the State agree on the outcome of this important case: the trial court committed reversible legal error when it refused to award J.W.P. restitution for "the full amount of [her] economic damages." J.W.P. and the

---

<sup>3</sup> Mr. Algeo's position could have serious repercussions for future criminal defendants and plea negotiations in general. If Mr. Algeo is correct, and the State's willingness to dismiss its claims for Assault in the Third Degree absolve Mr. Algeo of the responsibility to pay full restitution, the State would likely be much more reluctant to give future criminal defendants the same offer it apparently gave to Mr. Algeo.



State further agree that the trial court's order contravenes both the Oregon Constitution and the restitution statutes enacted by the Oregon Legislature, although they disagree as to whether both violations may provide a basis for reversal. Mr. Algeo offers a litany of reasons why the trial court was correct to incorporate comparative fault into criminal restitution, but each one is directly contradicted by the constitutional and statutory text, legislative history, case law, and Mr. Algeo's own admissions. For the foregoing reasons, the trial court's order should be reversed and this case should be remanded for an order directing Mr. Algeo to pay the full amount of J.W.P.'s economic damages.

DATED: April 12, 2013

**PERKINS COIE LLP**

By: s/Erick J. Haynie

Erick J. Haynie, OSB No. 982482

EHaynie@perkinscoie.com

Nathan R. Christensen, OSB No. 093129

NChristensen@perkinscoie.com

Bryan D. Beel, OSB No. 073408

BBeel@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

Telephone: 503.727.2000

Attorneys for Petitioner on Review

**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH,  
TYPE SIZE REQUIREMENTS AND PDF TRANSMISSION  
REQUIREMENTS**

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b), and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 3,085 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Virus Scan

I certify pursuant to ORAP 9.17(5)(e) that the electronic form of the Petitioner's Reply Brief on the Merits has been scanned for viruses and that it is virus free.

DATED: April 12, 2013

**PERKINS COIE LLP**

By: s/Erick J. Haynie

Erick J. Haynie, OSB No. 982482

EHaynie@perkinscoie.com

Nathan R. Christensen, OSB No. 093129

NChristensen@perkinscoie.com

Bryan D. Beel, OSB No. 073408

BBeel@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

Telephone: 503.727.2000

Attorneys for Petitioner on Review

## CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2013, I served two true copies of this **PETITIONER'S REPLY BRIEF ON THE MERITS** via Overnight Delivery on:

Meuy F. Chao  
Deputy District Attorney  
Yamhill County Courthouse  
535 E. Fifth Street  
McMinnville, OR 97128

Paula J. Lawrence  
The Lawrence Law Firm  
235 E. Third Street, Suite 1  
McMinnville, OR 97128

Of Attorneys for Defendant-  
Respondent

Honorable Ronald W. Stone  
Yamhill County Circuit Court  
535 NE Fifth Street  
McMinnville, OR 97128-4504

Ellen Rosenblum  
Oregon Attorney General  
Gregory A. Rios, AAG  
Oregon Department of Justice  
Appellate Division  
1162 Court Street NE  
Salem, OR 97301

Margaret Garvin  
Amy Liu  
National Crime Victim Law Institute  
310 SW 4th Avenue, Suite 540  
Portland, OR 97204

Of Attorneys for *Amicus Curiae*

I further certify that on April 12, 2013, I served a true copy of this **PETITIONER'S REPLY BRIEF ON THE MERITS** via electronic notification on:

Anna Marie Joyce  
Paul L. Smith  
Office of the Solicitor General  
400 Justice Building  
1162 Court Street NE  
Salem, OR 97301-4096

Of Attorneys for Respondent on Review State of Oregon

DATED: April 12, 2013

**PERKINS COIE LLP**

By: s/Erick J. Haynie

Erick J. Haynie, OSB No. 982482

EHaynie@perkinscoie.com

Nathan R. Christensen, OSB No. 093129

NChristensen@perkinscoie.com

Bryan D. Beel, OSB No. 073408

BBeel@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

Telephone: 503.727.2000

Attorneys for Petitioner on Review

**CERTIFICATE OF FILING**

I hereby certify that on April 12, 2013, I efiled the original of this  
**PETITIONER'S REPLY BRIEF ON THE MERITS** with the State Court  
Administrator via the Oregon Judicial Department's Appellate e-File system to:

State Court Administrator  
Appellate Court Records Section  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

DATED: April 12, 2013

**PERKINS COIE LLP**

By: *s/Erick J. Haynie*

---

Erick J. Haynie, OSB No. 982482  
EHaynie@perkinscoie.com  
Nathan R. Christensen, OSB No. 093129  
NChristensen@perkinscoie.com  
Bryan D. Beel, OSB No. 073408  
BBeel@perkinscoie.com  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
Telephone: 503.727.2000

Attorneys for Petitioner on Review