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**HONORABLE THERESA B. DOYLE**

**Date/Time of Hearing: Friday, June 20, 2014 at 10:00 a.m.  
with oral argument.**

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

**STATE FARM FIRE & CASUALTY,  
as subrogee for Joanna Shum-Yee Foo;**

**and**

**STATE FARM FIRE & CASUALTY,  
as subrogee for Wesley Gallagher;**

**and**

**FIRE INSURANCE EXCHANGE,  
as subrogee for Putri Hiendarto;**

**Plaintiffs,**

**v.**

**DAVID K. INGHAM and JANE DOE  
INGHAM, husband and wife; CITY OF  
SEATTLE d/b/a SEATTLE CITY  
LIGHT; and PUGET SOUND ENERGY**

**Defendants**

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**PEMCO MUTUAL Insurance Company,  
a Washington Corporation, as subrogee  
for Ernest D. Scott, Thanh-Thuy To and  
Huxley F. Franco,**

**NO. 13-2-28235-6 SEA**

**THIRD-PARTY PLAINTIFF MAPFRE USA  
CORPORATION'S OPPOSITION TO CITY  
OF SEATTLE'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND PUGET  
SOUND ENERGY, INC.'S JOINDER**

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Third-party Plaintiff,  
v.  
CITY OF SEATTLE d/b/a Seattle City  
Light, a municipal business entity; and  
PUGET SOUND ENERGY, a public  
utility company,

Defendants

MAPFRE USA CORPORATION, as  
subrogee of Abdull Khamis

Third-party Plaintiff,

v.  
PUGET SOUND ENERGY, INC., a  
Washington corporation; and CITY OF  
SEATTLE d/b/a Seattle City Light, a  
municipal business entity; DAVID K.  
INGHAM and HONG PHUNG  
INGHAM, husband and wife,

Defendants

**I. RELIEF REQUESTED.**

Third-party plaintiff Mapfre USA Corporation requests that this Court deny City of Seattle dba Seattle City Light's (the "City") motion for partial summary judgment (including Puget Sound Energy, Inc.'s ("PSE") joinder) because neither the law nor the facts cited by the City support is application. At a minimum, there are genuine issues of material fact in dispute (e.g., the time of the accrual of Mapfre's actions; exercise of due diligence) which render summary judgment inappropriate.

1 **II. STATEMENT OF FACTS.**

2 On or about September 26, 2011, a natural gas explosion and fire ignited destroying a  
3 house located at 12312 5<sup>th</sup> Avenue NE owned by David and Hong Phung Ingham and located in  
4 the Pinehurst neighborhood of Seattle, Washington. The explosion(s), in turn, damaged several  
5 neighboring homes including a home located at 527 N.E. 124<sup>th</sup> Street, Seattle, Washington  
6 owned by Abdull Khamis and insured by third-party plaintiff Mapfre. (Mapfre Third-party  
7 Complaint).

8 The fuel source of the explosion and fire was natural gas. (Mapfre Third-party Complaint  
9 and Ex. "1" thereto entitled WUTC Commission Staff Investigation Report, Docket 111723,  
10 December 26, 2012 hereafter referred to "WUTC Report".) Gas leaked because the day before  
11 the explosion, September 25, 2011, a nearby high voltage power line owned by defendant Seattle  
12 City Light fell to the ground and energized PSE's gas system in the area.<sup>1</sup> The electricity arced  
13 from PSE's gas service line at the Ingham's' house to the Ingham's' sewer pipe (the sewer pipe  
14 acted as a ground), thereby creating a hole in the PSE gas service pipe, from which gas leaked.  
15 The gas migrated to the crawl space under the Ingham's' house, entered the living space, and  
16 was ignited, causing the explosion and fire. (WUTC Report). Alternatively or in combination,  
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21 <sup>1</sup> According to the WUTC Report, at approximately 11:30 a.m. on Sunday, September 25, 2011, during a  
22 windstorm, a Seattle City Light high voltage power line broke near the intersection of N.E. 127<sup>th</sup> Street and 10<sup>th</sup>  
23 Avenue N.E. There were reports that the power line may have been hit by a tree close to the line. The severed end  
24 of the power line fell to the ground. The line was three phase, 26 kilovolts. Electricity from the downed power line  
25 energized a metal fence post, arced to an abandoned water pipe near the fence post, traveled through the water pipe  
and then arced to the gas service pipe at 1016 N.E. 127<sup>th</sup> Street, approximately 80 feet from the fence post. The  
vegetation near the base of the fence post caught fire. The arc energized PSE's gas distribution system throughout  
the Pinehurst neighborhood. (See Exhibit "1" to Mapfre Third-party Complaint, pgs. 2-4 and Exhibit "2" thereto,  
UTC Complaint dated March 1, 2013, paras. 8 and 9).

1 the electrical current running through the gas pipe continued to trespass into the Ingham's' house  
2 causing another gas leak in the Ingham's' fuel line, furnace, or other facilities. (WUTC Report).

3 On September 25, 2011, the day before the explosion, PSE received separate calls  
4 indicating there were three separate leaks in PSE's gas system in the Pinehurst neighborhood.  
5 (WUTC Report). Defendant Hong Ingham reportedly smelled gas that day at or near her home  
6 but after David Ingham investigated her report and did not smell gas himself the Ingham's did  
7 not report it to PSE. (WUTC Report). PSE responded to the calls it did receive and addressed  
8 the three gas leaks. (WUTC Report). PSE recognized that the leaks were caused by electrical  
9 arcing, which is unusual. (WUTC Report). In view of the unusual circumstances, PSE initiated  
10 two special gas leak surveys in the Pinehurst area that same day. (WUTC Report).

11 The first PSE special leak survey ('first special leak survey') began at approximately 5:30  
12 p.m. on September 25, 2011. (WUTC Report). This first special leak survey was for PSE's  
13 wrapped steel gas piping, and it included a walking leak survey. (WUTC Report). The area of  
14 the first special leak survey was 5<sup>th</sup> Avenue N.E. to 12<sup>th</sup> Avenue N.E. and N.E. 115<sup>th</sup> Street to  
15 N.E. 130<sup>th</sup> Street. (WUTC Report). Included within this area were the Ingham's' house, the two  
16 houses neighboring the Ingham's' house and the paved private drive to these three houses.  
17 (WUTC Report).

18 In the first special leak survey, PSE did not leak survey the PSE wrapped steel main  
19 under the private drive to these three houses or the PSE wrapped steel services serving these  
20 three houses. (WUTC Report).

21 The second PSE special leak survey ('second special leak survey') started at  
22 approximately 9:30 p.m. on September 25, 2011. (WUTC Report). This was a mobile leak  
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1 survey using gas detection equipment mounted to motor vehicles. (WUTC Report). PSE  
2 identified the scope of the facilities to be surveyed as PSE gas piping located in the public rights-  
3 of-way accessible to a vehicle. (WUTC Report). The area of the second special leak survey was  
4 5<sup>th</sup> Avenue N.E. to 15<sup>th</sup> Avenue N.E. and N.E. 105<sup>th</sup> Street to N.E. 130<sup>th</sup> Street. (WUTC  
5 Report). Included within this area were the Ingham's' house, the two houses neighboring the  
6 Ingham's' house and the paved private drive to these three houses. (WUTC Report). The paved  
7 private drive is accessible to a vehicle. (WUTC Report).

8 In the second special leak survey, PSE did not leak survey the PSE wrapped steel gas  
9 main under the private drive to the three houses. (WUTC Report).

10 In the second special leak survey, PSE did not leak survey all gas service lines located  
11 outside the public right of way (or inaccessible to vehicles within the public right of way).  
12 (WUTC Report). PSE only leak surveyed a service line of the gas detection equipment on the  
13 vehicle detected gas. (WUTC Report). In that circumstance, PSE would conduct a leak survey  
14 only of service lines around that specific location to the extent necessary to resolve that specific  
15 of gas detection. (WUTC Report).

16 In or about October 2011, the Washington State Utilities and Transportation Commission  
17 ("UTC") with exclusive statutory powers, duties, and jurisdiction under Revised Code of  
18 Washington Chapter 81.88 to investigate the subject explosion began its inquires and study of  
19 what caused the explosion and resulting damage, as well as to identify any violation(s) of safety  
20 standards and/or law pertaining to the provision of gas pipeline facilities at issue. (WUTC  
21 Report).

1 On or about December 26, 2012, after more than a year of investigation by safety  
2 engineer(s) and other specialized/professional staff members, the UTC issued its report and  
3 findings. (WUTC Report and "WUTC Complaint", Ex. "2" to Mapfre Third-party Complaint).

4 As explained in the WUTC Report, the WUTC determined that PSE made several  
5 violations of safety law(s), regulations, and/or its own internal guidelines in performing the leak  
6 surveys while omitting others which could have prevented the explosion(s) and damage  
7 including, among other things, as follows:

8 WAC 480-93-188 entitled "Gas leak surveys" states in part: "(4) Each gas pipeline  
9 company must conduct special leak surveys under the following circumstance:... (d) In areas and  
10 at times of unusual activity....

11 WAC 480-93-180 states in part: "(1) Each gas pipeline company must have and follow a  
12 gas pipeline plan and procedural manual (manual) for operation, maintenance, inspection and  
13 emergency response activities that is specific to the company's system."

14 PSE has a manual of the sort required by WAC 480-93-180. Section 4625.1140 of PSE's  
15 manual addresses "Conducting a Walking Leak Survey", and it instructs, under "Surveying  
16 Buried Pipe", "Step 1": "Walk along the route of the pipeline using the portable FI  
17 instrument...".

18 Section 4625.1130 of PSE's manual addresses "Conducting a Mobile Leak Survey", and  
19 it instructs under "Performing Survey", "Step 2": "In paved locations, drive along the curb where  
20 the main is located or along the street and perform the survey...".

21 The WUTC determined that while the PSE complied with WAC 480-93-188 (4) to the  
22 extent PSE promptly initiated special leak surveys in the area of unusual activity, PSE violated  
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1 WAC 480-93-188 (4) by failing to complete the leak surveys. In particular, PSE failed to  
2 complete the first special leak survey because PSE failed to leak survey the PSE wrapped steel  
3 main located under the private drive to the Ingham's' house and the two neighboring houses and  
4 the PSE wrapped steel services serving these three houses. Further, PSE failed to complete the  
5 second special leak survey because PSE failed to leak survey the PSE gas piping located under  
6 the private drive to the Ingham's' house and all of the PSE gas service pipe located in the area of  
7 the second leak survey. (WUTC Report and WUTC Complaint).

8 The WUTC also determined that PSE violated WAC 480-93-180 because PSE failed to  
9 follow its manual Sections 4625.1140 and 4625.1130 in the following respects: "PSE failed to  
10 follow Section 4625.1140 as to the first leak survey because PSE failed "to walk along the route  
11 of the pipeline using the portable FI instrument" with respect to the section of pipeline consisting  
12 of PSE's wrapped steel main under the paved private drive to the Ingham's' house and the two  
13 neighboring houses and the PSE wrapped steel services serving these three houses. [Further],  
14 PSE failed to follow Section 4625.1140 as to the second special leak survey, because PSE failed  
15 to "drive along the curb where the main is located or along the street" with respect to the section  
16 of pipeline consisting of PSE's wrapped steel main located under the paved private drive to the  
17 Ingham's' house and the two neighboring houses.

18  
19 In its action and Complaint against PSE dated March 1, 2013, the WUTC faulted PSE for  
20 the explosion and sought civil penalties against PSE for violation of Commission gas pipeline  
21 safety rules as well as recommended monetary penalties in excess of \$400,000. (WUTC  
22 Complaint). In or about July 2013, UTC settled its action against PSE with PSE agreeing to pay  
23 a penalty of \$275,000 and other settlement terms for its wrongdoing. In its final order approving  
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1 settlement terms, the WUTC stated that there was "...no dispute that PSE failed to identify or  
2 locate that gas leak at the service line serving the Ingham's home" and that as part of the parties  
3 Settlement Agreement that "PSE concedes that the Company violated the Commission's gas  
4 safety rules." (See Paragraphs 11, 16, and 18 of the WUTC's "Final Order Approving and  
5 Adopting Settlement Agreement on Conditions", Ex. "1" to Johnson Dec.).

6 Mapfre as insurer of the Abdull Khamis house paid Khamis no less than \$54,464.78 for  
7 repairs due to damage to the structure, for loss of other property (contents of the residence) and  
8 for loss of use of the home caused by the explosion(s). (Mapfre Complaint and Dec. of Madelyn  
9 C. Burden). Pursuant to a contract of insurance and such payment(s), Mapfre took an assignment  
10 of Mr. Khamis's right(s) of action against defendant(s) as the parties at fault for the damages.  
11 Mapfre by this action and pursuant to legal and equitable principles of subrogation now seeks  
12 reimbursement from defendant(s) upon the following causes of action.

13  
14 On or about February 24, 2014, Mapfre filed a tort claim for damages with the City of  
15 Seattle d/b/a Seattle City Light (Ex. "2" to Johnson Dec.) and approximately sixty (60) days  
16 thereafter filed its Third-party Complaint in this Court alleging causes of action for negligence;  
17 trespass and waste; Constitutional violations and breach of implied promise; strict liability (for  
18 abnormally dangerous activities) and products liability under the Washington Products Liability  
19 Act, RCW Chapter 7.72.





1 of action especially those involving latent problems or when a connection between a harm and a  
2 cause are technical or complex such as actions alleging products liability<sup>6</sup>; construction defect<sup>7</sup>;  
3 actions seeking penalties for the illegal discharge of pollutants<sup>8</sup>; nuisance, strict liability  
4 (abnormally dangerous activity); negligent injury to real property<sup>9</sup>; breach of implied warranty of  
5 habitability<sup>10</sup>; as well as professional malfeasance and/or related breaches of fiduciary duty  
6 arising in various settings.<sup>11</sup> The discovery rule tolls the date of accrual "until the plaintiff  
7 knows or, through the exercise of due diligence, should have known all the facts necessary to  
8 establish the element(s) of his or her legal claim (i.e., duty, breach, causation and damages)."<sup>12</sup>  
9 The point at which the plaintiff should have acquired such knowledge is a question for the trier  
10 of fact.<sup>13</sup>

11  
12 In the instant case, the discovery rule should apply to toll the running of the two-year  
13 statute of limitations (Revised Code of Washington 4.16.130) applicable to Mapfre's negligence  
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16 <sup>6</sup> See e.g., North Coast Air Servs., Ltd. v. Grumman Corp., 111 Wn.2d 315, 319 (1988).

17 <sup>7</sup> See e.g., 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566 (2004).

18 <sup>8</sup> See e.g., U.S. Oil & Refining Co. v. Department of Ecology, 96 Wn.2d 85 (1981).

19 <sup>9</sup> See e.g., Mayer v. City of Seattle, 102 Wn.App. 66, 76-77 (2000).

20 <sup>10</sup> See e.g., Stuart v. Coldwell Banker Commercial Group, Inc., 109 Wn.2d 406 (1987).

21 <sup>11</sup> See e.g., Gillespie v. Seattle-First Nat. Bank, 70 Wn.App. 150 (1993).

22 <sup>12</sup> In re Estates of Hibbard, 118 Wn.2d 737, 744-50 (1992); Mayer v. City of Seattle, 102 Wn.App. 66,  
23 76-77 (2000) and cases cited therein.

24 <sup>13</sup> Id.

1 claim for largely three reasons. First, Mapfre had no access to the physical evidence supporting  
2 causation of the explosion (e.g., the physical phenomena and result of electrical arcing/energy  
3 contacting underground metal piping) because it was latent (underground) and was subject of  
4 utility provider record(s)/recordings to which Mapfre had no access or understanding. (WUTC  
5 Report). Second, Mapfre had no knowledge or information concerning the manner PSE mapped  
6 and inspected its utility system without access to the same utility provider records and, in any  
7 event, it had no means to interpret the data. Third, the subject matter of this case has been  
8 actively and almost continuously litigated since the September 2011 incident hence the parties'  
9 claims are anything but stale. In determining whether to apply the discovery rule, the possibility  
10 of stale claims must be balanced against the unfairness of precluding justified causes of action.  
11 U.S. Oil & Refining Co. v. Dept. of Ecology, 96 Wn.2d 85, 93 (1981). That balancing test has  
12 dictated the application of the rule where the plaintiff lacks the means or ability to ascertain that  
13 a wrong has been committed (Id. at 93 – 94) and it overwhelming support application of the rule  
14 in the instant case.  
15

16 Counsel for the City suggests that various news report(s) somehow offered Mapfre all the  
17 “essential facts” supporting its cause of action but counsel’s argument defies explanation or  
18 support in law or by the material facts and evidence in the case. (See City’s Brief, 4:8-14; 5:1-6;  
19 7:14-15; 17:1-26 and 18:1-10). Fundamentally, the news reports cited by the City on their face  
20 offered no reliable factual evidence of causation but only speculation and conflicting theories  
21 warning Mapfre to wait for a governmental process designed to determine cause and  
22 responsibility for the damage to conclude. (Dec. of M. Burden; Exs. “13” through “19” to  
23 Groshong Dec.). Further, the cited news reports while noting possible connection(s) between the  
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1 provision of electricity, natural gas and the explosion (City's Brief, 18:8-9) provide nothing to  
2 show or resolve issues of fact concerning whether Mapfre could have reasonably acted upon  
3 them to inquire and discover let alone support a cause of action. The overwhelming evidence  
4 supports the conclusion that Mapfre could not and that the media reports provided little  
5 assistance.

6 As explained by the WUTC Report, the evidence/facts supporting causation of damage or  
7 injury (e.g., *the arc of electricity energizing PSE's largely underground gas distribution system;*  
8 *the electricity's creation of holes in gas piping at each of these location(s) where the electricity*  
9 *grounded; other metal piping that served to convey and ground the electricity; gas leak reports*  
10 *and special surveys of the underground system mapped by PSE; PSE's failure to map and survey*  
11 *critical underground service pipes in the Ingham's private drive that served three homes as well*  
12 *as the gas main under the Ingham's private drive, as well as other critical evidence) all involved*  
13 latent problems and defects, as well as complex operational data possessed by the utility  
14 providers to which Mapfre had no efficient or independent access.<sup>14</sup> (Ex. "1" to Mapfre  
15 Complaint; M. Burden Dec.). It should be readily apparent and beyond dispute that the bases of  
16 Mapfre's negligence claims could not have been discovered by Mapfre (exercising due  
17 diligence) any earlier than the issuance of the WUTC Report detailing the factual bases for the  
18 elements of Mapfre's negligence and other cause(s) of action. (See Ex. "1" (WUTC  
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21 <sup>14</sup> This evidence proves, among other things, that PSE thwarted its own identification of a fix that might  
22 have avoided or mitigated damage caused by the explosion but Mapfre had no way of gathering these  
23 facts without access to and knowledge of PSE's systems, records, as well as of the standards that apply to  
24 inspections and self-assessment and reporting. Instead, all of this latent and complex evidence was  
25 exclusively controlled by the utility providers themselves or given their cooperation gathered and  
analyzed by government investigators. (See Mapfre Complaint and Exhibits "1" and "2" thereto;  
Declaration of Madelyn C. Burden; Declaration of Eric Johnson and Exhibits "1" and "2" thereto).

1 Commission Staff Investigation Report dated December 26, 2012) and Ex. "2" (Complaint  
2 Before the WUTC) to Mapfre Complaint; Dec. of M. Burden; Dec. of Eric Johnson and Ex. "1"  
3 thereto).

4 A related and supporting reason why a discovery rule should apply to Mapfre's claims is  
5 the very nature of the relationship between the public utility provider-defendant(s) and their  
6 customers (including plaintiffs' subrogees). According to Seattle City Light Department's 2012  
7 Annual Report, as a municipally owned public power system, Seattle City Light is governed by  
8 elected Seattle officials and primarily supported by customer revenues and surplus power sales.  
9 According to its Mission Statement': "Seattle City Light is dedicated to exceeding its customers'  
10 expectations in producing and delivering environmentally responsible, safe, low cost and reliable  
11 power." (Ex. "3" to Johnson Dec.). Similarly, PSE's company website promises its customers  
12 that "PSE engineers and construction crews adhere to strict federal and state safety requirements  
13 governing pipeline design, materials and construction" and that "safety is [PSE's] top priority  
14 when it comes to designing, constructing, operating and maintaining our natural gas system.  
15 [PSE] monitor(s) the system every day of the year, 24 hours a day." (Ex. "3" to Johnson Dec.).  
16 The utility-provider defendants' promises to provide their products applying professional  
17 expertise and a vigilance for customer safety no doubt created a fiduciary relationship and  
18 corresponding duties of the utility providers to self-report and advise customers about  
19 malfeasance causing damage to customer property and/or or upon which claim(s) for  
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1 reimbursement might be based.<sup>15</sup> The WUTC investigation and related laws serve to enforce  
2 such duties. For example, the City and PSE had statutory obligation(s) as an “electrical” and/or  
3 “public service company” (RCW 80.04.010; RCW 80.20.010) to cooperate with WUTC  
4 investigation(s) and disclose information as needed to determine acts and omissions causing  
5 damage. See also, RCW 80.04.015 (Conduct of business subject to regulation – Determination  
6 by commission); RCW 80.04.440 (Companies liable for damages); RCW 80.28.010 (Gas  
7 pipelines – Safety – Commission’s duties); RCW 81.88.080 (Pipeline mapping system –  
8 Commission specifications and evaluations) and all other statutory/code provisions cited in the  
9 WUTC Report and related documents. (See also, Ex. “1” to Johnson Dec.). Nonetheless and  
10 despite these duties, it should be no surprise that defendant(s) did not promptly self-report acts  
11 and omissions proving causation directly to plaintiff(s) but rather their disclosures came only  
12 after a protracted governmental investigation lasting more than one year and in the context of a  
13 WUTC report, complaint and settlement agreement. (See Exs. “1” and “2” to Mapfre Complaint  
14 and Ex. “1” to Johnson Dec.).

15  
16 As explained in U.S. Oil & Refining Co. v. Dept. of Ecology, 96 Wn.2d 85 (1981) where  
17 the Washington Supreme Court applied a discovery rule to an action involving penalties for the  
18 illegal discharge of pollutants: “[w]here self-reporting is involved, the probability increases that  
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20 <sup>15</sup> A fiduciary relationship arises in fact when there is “something in the particular circumstances which  
21 approximates a business agency, a professional relationship, or \*\*\* something which itself impels or  
22 induces the trusting party to relax the care and vigilance which he otherwise should, and ordinarily would,  
23 exercise.” Hood v. Cline, 35 Wn.2d 192, 200, 212 P.2d 110 (1949) (quoting Collins v. Nelson, 193 Wash.  
24 334, 345, 75 P.2d 570 (1938). “Superior knowledge and assumption of the role of adviser may contribute  
25 to the establishment of a fiduciary relationship.” Liebergessell v. Evans, 93 Wn.2d 881, 891 (1980). See  
also, Restatement Contracts § 472 Comment C (any person whose relation with another is such that the  
latter justifiably expects his welfare to be cared for by the former can create a fiduciary relationship).

1 the plaintiff will be unaware of any cause of action, for the defendant has an incentive not to  
2 report it. Like the other cases which have employed the rule, this is a case where if the rule were  
3 not applied the plaintiff would be denied a meaningful opportunity to bring a suit. Like those  
4 plaintiffs, this plaintiff lacks the means and resources to detect wrongs within the applicable  
5 limitation period. Not applying the rule in this case would penalize the plaintiff and reward the  
6 clever defendant. Neither the purpose for statutes of limitation nor justice is served when the  
7 statute runs while the information concerning the injury is in the defendant's hands." Id. at 93.

8 In the present case, before the WUTC report and findings were issued, Mapfre plainly  
9 had no reasonable means or resources to discover that the City's provision of electricity caused  
10 holes and gas leaks in underground gas line(s) or in appliances within the Ingham residence  
11 thereby causing damaging explosion(s). Further, Mapfre had no means of discovering (prior to  
12 the issuance of the WUTC Report) that PSE failed to inspect and insure the integrity of its gas  
13 line system (by proper mapping or otherwise). The moving parties provide no evidence to the  
14 contrary and apparently urge this Court to rule that Mapfre's counsel should have violated Civil  
15 Rule 11 instead of waiting for the WUTC Report.  
16

17 If this Court does not apply the discovery rule to plaintiffs' claims, Mapfre will be  
18 unfairly penalized and defendants will be rewarded for stalling and concealing information they  
19 had duties to promptly reveal and share. This is also surely not a case where the court can rule as  
20 a matter of law that Mapfre (employing due diligence) knew or should have known the factual  
21 bases of its cause(s) of action prior to issuance of the WUTC Report. In sum, the material facts  
22 compel application of a discovery rule and a delayed accrual of Mapfre's cause(s) of action not  
23 summary judgment of dismissal.  
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1 **2. Mapfre's action sounding in trespass, and products liability (WPLA) are governed**  
2 **by three-year statutes of limitation and were timely regardless of whether a discovery rule**  
3 **applies.**

4 Contrary to moving parties' contentions, Mapfre's cause of action alleging trespass upon  
5 real property and resulting damage to the Khamis property is governed by a three-year statute of  
6 limitations. See RCW 4.16.080 (1). The City essentially argues that Mapfre's trespass claim is  
7 not distinct from its negligent damage to real property claim and therefore should be subject to  
8 the same two year statute of limitations. However, where a plaintiff includes multiple causes of  
9 action in a complaint, each cause of action must be evaluated under its own statute of limitations.  
10 See Wallace v. Lewis County, 134 Wn.App. 1, 13 (2006) (applying different statute of  
11 limitations for the plaintiff's claims of injury to property, nuisance, and trespass). See also Will  
12 v. Frontier Contractors, Inc., 121 Wn.App. 119 (2004). The plain terms of Revised Code of  
13 Washington 4.16.080 (1) do not support any result other than application of the three-year statute  
14 for the trespass claim at issue.

15 As to Mapfre's action under the Washington Products Liability Act, Revised Code of  
16 Washington Chapter 7.72, a three-year statute of limitations applies to the claim. See RCW  
17 7.72.060 (3). The City further contends that there can be no products liability action against a  
18 public utility provider where there is no evidence that the product was delivered to a customer's  
19 premises and thereby entered the stream of commerce. However, according to the WUTC report  
20 the Commission Staff's investigation "could not eliminate the possibility that the electrical  
21 current running through the gas pipe continued into the [Ingham] home and caused another leak  
22 in the Ingham's fuel line, furnace, or other facilities." (WUTC Report, Ex. "1" to Mapfre  
23 Complaint). Consequently, there is apparently evidence and issues of fact concerning whether  
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1 the City's product entered the stream of commerce and the City's arguments to the contrary are  
2 without merit.

3 **V. CONCLUSION.**

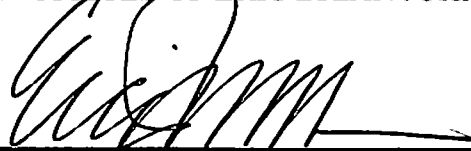
4  
5 The motion for partial summary judgment of the City and PSE should be denied because  
6 at a minimum there are genuine issues of material fact concerning when Mapfre's cause of action  
7 alleging negligent damage to real property accrued. The overwhelming evidence supports that  
8 the action could not have accrued for purposes of applying RCW 4.16.130 until the WUTC  
9 Report was issued in or about December 2012.

10 Mapfre's other causes of action at issue were brought within applicable statutes of  
11 limitation and their viability do not depend upon application of a discovery rule.

12 To the extent this Court may be inclined to dismiss plaintiffs' strict liability claim (for  
13 abnormally dangerous activities), Mapfre joins the other parties in opposition requesting  
14 additional discovery under Civil Rule 56 (f) to obtain affidavit(s) on the issues presented.

15 Respectfully submitted this 9th day of June, 2014.

16 LAW OFFICES OF ERIC BRIAN JOHNSON

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19 ERIC B. JOHNSON, WSBA No. 19340  
20 Attorney for Third-party Plaintiff Mapfre USA  
21 Corporation

HONORABLE THERESA B. DOYLE  
Hearing Date: June 20, 2014 at 10:00 am

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE FARM FIRE & CASUALTY, as subrogee  
for Joanna Shum-Yee Foo; and STATE FARM  
FIRE & CASUALTY, as subrogee for Wesley  
Gallagher; and FIRE INSURANCE EXCHANGE,  
as subrogee for Putri Hiendarto; AMCO Insurance  
Company as subrogee for Evan and Stacey  
Gullicson,

Plaintiffs,

v.

DAVID K. INGHAM and JANE DOE INGHAM,  
husband and wife; CITY OF SEATTLE d/b/a  
Seattle City Light; and PUGET SOUND ENERGY

Defendants

PEMCO MUTUAL INSURANCE COMPANY, a  
Washington Corporation, as subrogee for Ernest D.  
Scott, Thanh-Thuy To, and Huxley F. Franco,  
Third-Party Plaintiff,

v.

CITY OF SEATTLE d/b/a Seattle City Light; and  
PUGET SOUND ENERGY

Defendants

MAPFRE USA CORPORATIONS, as subrogee of  
Abdull Khamis,

Third-Party Plaintiff,

v.

CITY OF SEATTLE d/b/a Seattle City Light; and  
PUGET SOUND ENERGY; DAVID K. INGHAM  
and HONG PHUNG INGHAM, husband and wife,

Defendants.

NO. 13-2-28235-6 SEA

~~PROPOSED~~  
ORDER DENYING IN PART AND  
GRANTING IN PART  
DEFENDANTS CITY OF SEATTLE  
AND PUGET SOUND ENERGY'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND  
GRANTING INGHAMS' CROSS  
MOTION

ORDER DENYING DEFENDANT CITY OF SEATTLE'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
GRANTING INGHAMS' CROSS MOTION - 1

LUVERA LAW FIRM  
ATTORNEYS AT LAW

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ORIGINAL

1           This matter having come upon Defendant City of Seattle's Motion for Partial Summary  
2 Judgment, Joined by Defendant Puget Sound Energy, and Cross Plaintiffs Inghams' Cross  
3 Motion for Partial Summary Judgment to dismiss the City and PSE's statute of limitations  
4 affirmative defenses, and the Court, having considered the records and files, heard argument,  
5 and having had the following additional evidence called to its attention:

- 6           1.     City of Seattle's Motion for Partial Summary Judgment;
- 7           2.     Declaration of Joseph Groshong in Support of City of Seattle's Motion for  
8           Partial Summary Judgment with Exhibits;
- 9           3.     Puget Sound Energy's Joinder in the City of Seattle's Motion for Partial  
10           Summary Judgment;
- 11          4.     Inghams' Response and Cross Motion to Motion for Partial Summary Judgment;
- 12          5.     State Farm/Fire Insurance/AMCO Response to Motion for Partial Summary  
13           Judgment;
- 14          6.     Declaration of Craig Evezich in Support of State Farm et al Response with  
15           Exhibits;
- 16          7.     PEMCO Response to City's Motion for Partial Summary Judgment and Puget  
17           Sound Energy's Joinder;
- 18          8.     Declaration of Mike Schneider in Support of Pemco Response with Exhibits;
- 19          9.     MAPFRE USA Corporation's Opposition;
- 20          10.    Declaration of Madelyn Burden in Support of MAPFRE Opposition;
- 21          11.    Declaration of Eric Johnson in Support of MAPFRE Opposition with Exhibits;
- 22          12.    City of Seattle's Reply in Support of Motion for Partial Summary Judgment;
- 23          13.    Puget Sound Energy's Joinder in the City of Seattle's Reply on Motion for  
                Partial Summary Judgment;
14.    Declaration of Jeffrey M. Thomas with Exhibits.
15.    \_\_\_\_\_

**ORDER DENYING DEFENDANT CITY OF SEATTLE'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
GRANTING INGHAMS' CROSS MOTION - 2**

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1 NOW, THEREFORE, it is hereby ORDERED THAT:

- 2 1. Defendants City of Seattle's Motion for Partial Summary Judgment and Puget Sound  
3 Energy's Joinder seeking dismissal of various negligence claims based on a two year  
4 statute of limitations under RCW 4.16.130, is hereby DENIED with prejudice.
- 5 2. Inghams' Cross-Motion for Partial Summary Judgment is GRANTED. The three  
6 year statute of limitation applies in this case for negligent trespass to real property  
7 under RCW 4.16.080(1) and therefore the claims are timely as a matter of law.
- 8 3. The discovery rule also applies to toll the statute of limitations. The statute of  
9 limitations did not begin to run until the WUTC report was issued on December 26,  
10 2012.
- 11 4. Defendant City and Puget Sound Energy's motion to dismiss claims of abnormally  
12 dangerous activity is GRANTED.
- 13 5. Defendants City and Puget Sound Energy's motion to dismiss claims under the  
14 Washington Product Liability Act is DENIED, without prejudice to renew upon  
15 further briefing.
- 16 6. \_\_\_\_\_  
17 \_\_\_\_\_

18 DATED this 27<sup>th</sup> day of June, 2014.

19   
20 HONORABLE TERESA B. DOYLE


21 Presented By:  
22 LUVERA LAW FIRM  
  
23 David M. Beninger, WSBA 18432  
*Attorney for Defendants/Cross Plaintiffs Inghams*

ORDER DENYING DEFENDANT CITY OF SEATTLE'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
GRANTING INGHAMS' CROSS MOTION - 3

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CARNEY BADLEY SPELLMAN, PS

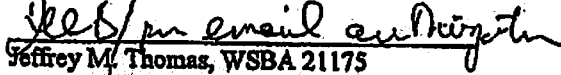
  
Nicholas P. Scarpelli, WSBA 5819  
Attorney for Defendants Ingham

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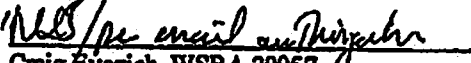
CITY OF SEATTLE, ASSIST. CITY ATTORNEY

  
Joseph G. Groshong, WSBA 41593)  
Tara N. Gillespie, WSBA 38610  
Attorney for Defendant City of Seattle


GORDON TILDEN THOMAS & CORDELL, LLP

  
Jeffrey M. Thomas, WSBA 21175  
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ORDER DENYING DEFENDANT CITY OF SEATTLE'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
GRANTING INGHAMS' CROSS MOTION - 4

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