

No. 66777-7-I

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

---

NORTHWEST INFRASTRUCTURE, INC., a Washington corporation,

Plaintiff/Appellant,

v.

PCL CONSTRUCTION SERVICES, INC. a Washington corporation;  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Defendants/Third-Party Plaintiffs/Respondents

v.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a  
Washington regional transit authority,

Third-Party Defendant/Respondent.

---

ON APPEAL FROM KING COUNTY SUPERIOR COURT  
(Hon. Timothy Bradshaw and Dean S. Lum)

---

**BRIEF OF RESPONDENT SOUND TRANSIT**

---

Stanton Phillip Beck, WSBA No. 16212  
Ryan P. McBride, WSBA No. 33280  
Andrew J. Gabel, WSBA No. 39310  
*Attorneys for Third-Party  
Defendant/Respondent*

LANE POWELL PC  
1420 Fifth Avenue, Suite 4100  
Seattle, Washington 98101-2338  
Telephone: 206.223.7000  
Facsimile: 206.223.7107

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIV I  
2011 JUL 28 AM 10:53

**D. This Court Should Award Sound Transit Its Attorneys' Fees On Appeal Pursuant To RCW 39.04.240.**

Sound Transit is entitled to attorneys' fees and expenses on appeal if permitted by applicable law. RAP 18.1. As discussed above, the trial court properly awarded Sound Transit fees pursuant to RCW 39.04.240. If Sound Transit prevails in this Court, it is likewise entitled to its fees on appeal. *American Safety*, 162 Wn.2d at 773 (RCW 39.04.240 applies on appeal); *Frank Coluccio Const.*, 136 Wn. App. at 780-81 (same).

**V. CONCLUSION**

For the reasons set forth above, (1) the trial court's May 21, 2010 order granting summary judgment to Sound Transit, (2) the denials of NWI's motion for reconsideration and motion to vacate, and (3) the November 12, 2010 order awarding Sound Transit attorneys' fees should be affirmed, and Sound Transit should be awarded its fees on appeal.

RESPECTFULLY SUBMITTED this 28th day of July, 2011.

LANE POWELL PC

By   
Ryan P. McBride, WSBA No. 33280  
Attorneys for Third-Party Defendant/  
Respondent Central Puget Sound Regional  
Transit Authority