

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

GREGORY S. WEBER and JAE WEBER,
husband and wife, and their marital
community comprised thereof,

Plaintiffs,

v.

CITY OF VANCOUVER, a Municipal
Corporation,

Defendant.

NO. 24-2-00376-06

**COMPLAINT FOR DAMAGES
ARISING FROM NEGLIGENCE**

COME NOW, Plaintiffs Gregory S. Weber and Jae Weber, by and through their
counsel of record, Munish K. Barin of SOUND INJURY LAW PLLC, alleging as follows:

I. INCORPORATION

1.1 By way of this reference, each paragraph contained herein is
incorporated as support for each paragraph which follows.

II. PARTIES

2.1 Plaintiffs, Gregory S. Weber and Jae Weber, are husband and wife, who,
for all times material hereto, reside in Clark County, Washington.

1 4.2 On February 22, 2021, at approximately 3:00 p.m., fire crews from the
2 City of Vancouver Fire Department were dispatched to a reported residential structure
3 fire at 1114 W. 36th Street, Vancouver, WA 98660.

4 4.3 Before any responding fire crew arrived on scene, the Vancouver Fire
5 Department received reports that that all occupants had evacuated the structure.

6 4.4 Vancouver Fire Department fire crews arrived on scene in the following
7 sequence: (1) Unit E1; (2) Unit T1; (3) Unit E2; (4) Unit BC1; (5) Unit E63; (6) Unit E61;
8 (7) Unit E62; (8) TRN1; (9) Unit BC2; (10) FM3; (11) TRN3; and (12) RE4.

9 4.5 Upon information and belief, the Incident Commanders for the February
10 22, 2021 structure fire were Captain Darin Weaver of Unit E1 (officer of the first-arriving
11 engine company), superseded by Battalion Chief Tony Fletcher of Unit BC1.

12 4.6 Battalion Chief Tony Fletcher (Unit BC1) assumed command upon arrival
13 after Units E1, T1, and E2, respectively.

14 4.7 Unit T1 (ladder truck company) included Plaintiff Gregory S. Weber.

15 4.8 The first Incident Commander ordered an offensive strategy and
16 assigned Plaintiff Gregory S. Weber, including the other members of Unit T1, the tasks
17 of fire control and primary search, requiring entry of the structure.

18 4.9 But, before Unit T1, including Plaintiff Gregory S. Weber, entered the
19 structure as ordered, the first Incident Commander did not assign a Rapid Intervention
20 Team (RIT).

21 4.10 Plaintiff Gregory S. Weber followed the orders of the Incident
22 Commander.

23 4.11 Inside the structure, Plaintiff Gregory S. Weber reported, among other

1 things, low visibility and ceiling heat, requiring immediate vertical ventilation.

2 4.12 Unbeknownst to Plaintiff Gregory S. Weber, the first and second Incident
3 Commander had not yet assigned any crew the task of vertical ventilation.

4 4.13 Plaintiff Gregory S. Weber radioed command to request immediate
5 vertical ventilation.

6 4.14 At approximately 12 minutes following the start of the burn timer, the
7 Incident Commander assigned vertical ventilation to Unit E2.

8 4.15 Shortly thereafter, but before any vertical ventilation occurred, a smoke
9 explosion and/or backdraft occurred in the attic space and the ceiling collapsed onto
10 Plaintiff Gregory S. Weber, striking the top of his head, and pushing his body to the
11 floor.

12 4.16 Firefighter Jason Hathaway found Plaintiff Gregory S. Weber under a
13 piece of sheetrock and unconscious.

14 4.17 Firefighter Jason Hathaway grabbed Plaintiff Gregory S. Weber's
15 shoulder straps and pulled him to safety.

16 4.18 No one announced "MAYDAY."

17 4.19 After the smoke explosion and/or backdraft and ceiling collapse, the
18 second Incident Commander announced, among other things: "DO NOT MAKE
19 ENTRY..CEILING COLLAPSE"; "NO CREWS INSIDE"; and "KEEPING CREWS
20 EXTERIOR," respectively.

21 4.20 Yet, the second Incident Commander maintained an offensive strategy
22 throughout the fire response, announcing at each sequential ten-minute burn timer
23 notification, "REMAINING OFFENSIVE STRATEGY [AT BURN TIMER 20],"

1 "REMAINING OFFENSIVE AT 30MIN BURN TIMER," "40MIN BURN
2 TIMER..REMAINING OFFENSIVE," and "50 MIN BURN TIMER EXPIRED,"
3 respectively.

4 4.21 Approximately one hour after the ceiling collapsed onto Plaintiff Gregory
5 S. Weber, a medical unit evaluated Plaintiff Gregory S. Weber.

6 4.22 As a direct and proximate result of the ceiling collapse, Plaintiff Gregory
7 S. Weber suffered serious injuries; the resulting disability continues to present.

8 4.23 As a direct and proximate result of the ceiling collapse and Plaintiff
9 Gregory S. Weber's resultant injuries, Plaintiff Jae Weber suffered loss of consortium.

10 4.24 To date, the Vancouver Fire Department has chosen not to develop a
11 Post Incident Analysis (PIA) regarding the February 22, 2021 structure fire.

12 **V. CAUSE OF ACTION: NEGLIGENCE; RCW 41.26.281**

13 5.1 RCW 41.26.281 permits Plaintiffs to bring a civil action for negligence
14 against Plaintiff Gregory S. Weber's employer, Defendant City of Vancouver, to
15 recover the money damages that exceed the benefits that Plaintiffs have received or
16 may receive under the Law Enforcement Officers' and Firefighter's Retirement System
17 (LEOFF).

18 5.2 At all material times, Defendant owed Plaintiffs a duty of care to assure
19 a safe and healthful working environment as it applies to both non-emergency and
20 emergency conditions.

21 5.3 Defendant's duty of care is established by, among other things,
22 Washington law, Washington regulations, and Vancouver Fire Department's Policies
23 and Procedures, Standard Operating Procedures (SOPs), Administrative Guides,

1 guidelines, and protocols.

2 5.4 The responsibility to establish, supervise, maintain, and enforce safe
3 practices in an effective manner rests with management. WAC 296-305-01509.

4 5.5 Management responsibility rests with Company Officers, Battalion
5 Chiefs, and Incident Commanders in the chain-of-command.

6 5.6 Officers at emergency scenes must ensure that adequate steps are
7 taken to provide for the safety and health of their members. WAC 296-305-05002(9).

8 5.7 Incident Commanders are ultimately responsible for the incident outcome
9 and the safety of all responders operating at a fire scene. WAC 296-305-05000; WAC
10 296-305-05002(9); SOP 400.11.

11 5.8 The safety of firefighters shall be a primary objective in all areas of
12 operation. Policy and Procedure 200.1.

13 5.9 Therefore, Incident Commanders must maintain a constant balance
14 between the urgent need to perform critical tasks and the personal safety of the
15 responders performing those tasks.

16 5.10 The Incident Commander shall determine the overall incident strategy
17 (offensive or defensive) based upon the incident's critical factors. SOP 400.3, 400.10.

18 5.11 An offensive strategy involves interior structural firefighting operations,
19 which present the highest level of risk for firefighters.

20 5.12 A defensive strategy involves exterior structural firefighting operations,
21 which are effective and provide safety to firefighters when there is no life hazard to the
22 public.

23 5.13 The Incident Commander shall not combine offensive and defensive

1 operations in the same fire area. SOP 400.11.

2 5.14 Before beginning interior structural firefighting operations, the Incident
3 Commander must (1) evaluate the situation and risks to operating teams and (2)
4 provide two standby firefighters in full PPE, who shall be maintained for the duration of
5 the incident. WAC 269-305-05002(1), (5); SOP 4009.2.3.1; SOP 4009.2.3.2; AG 300.9.

6 5.15 No standby team members must be permitted to serve as a standby
7 member of the firefighting crew when the other activities in which the firefighter is
8 engaged inhibit the firefighter's ability to assist in or perform firefighter rescue or are of
9 such importance that they cannot be abandoned without placing other firefighters in
10 danger. WAC 296-305-05002(6)(d).

11 5.16 Once a second crew arrives at the hot zone, the incident must no longer
12 be considered in the "initial stage," and at least one rapid intervention team (RIT)
13 should be assigned. WAC 296-305-05002(7).

14 5.17 RIT shall consist of at least two firefighters, and preferably an intact
15 company. AG 300.9.

16 5.18 The objective of the RIT is to have fully equipped firefighters on-site, in a
17 ready state, to immediately react and respond to assist and/or rescue injured or
18 trapped firefighters. AG 300.9.

19 5.19 Risk to the life or health of responders shall only be allowed when there
20 is a corresponding benefit. SOP 400.11.

21 5.20 No property is worth the life or health of a responder of the Vancouver
22 Fire Department. SOP 400.11.

23 5.21 Activities that present a significant risk to the life or health of personnel

1 shall be limited to situations where there is a realistic ability to save savable lives. SOP
2 400.11.

3 5.22 Activities that are routinely employed to protect property shall be
4 recognized as inherent risks to the life or health of responders, and actions shall be
5 taken to reduce or avoid these risks. SOP 400.11.

6 5.23 In the event a firefighter or team becomes injured, has a medical
7 emergency, or finds themselves or any other firefighters in any form of a life-
8 threatening situation, they shall immediately call for help using the term, "MAYDAY."
9 SOP 400.7.

10 5.24 The Incident Commander shall have the responsibility to initiate,
11 maintain, and control effective incident communications. SOP 400.5.

12 5.25 At the announcement of the (ten-minute) burn timer notification, the
13 Incident Commander must re-evaluate the current conditions, consider the length of
14 time that firefighters have been operating in the hazard zone, make a strategic
15 determination, and announce through dispatch the current incident strategy or change
16 to the incident strategy. SOP 400.12.

17 5.26 Collapse potential in wood frame construction buildings is five to 20
18 minutes. VFD Training Article 1.17.01.

19 5.27 Properly coordinated ventilation can contribute to fire extinguishments,
20 reducing fire extension and the chance of collapse. VFD Training Article. 1.17.20.

21 5.28 The Incident Commander shall ensure the investigation of the origin,
22 cause, circumstances, and extent of loss regarding all fires. Policy and Procedure
23 700.0.

1 5.29 After specific incidents, the Incident Commander must develop a post
2 incident analysis (PIA) to determine strengths, weaknesses, and lessons learned about
3 the incident operations. Policy and Procedure 600.7.2.1.1.

4 5.30 A PIA is a performance critique that allows emergency responders to get
5 a clear idea of the effects of their actions on the outcome of the operation (from both a
6 command and operational standpoint). By comparing the expected outcome to the
7 actual consequences, organizational procedures can be verified or improvements can
8 be made. Policy and Procedure 600.7.1.3.

9 5.31 A Department PIA must be completed for any fire resulting in injury to
10 firefighters serious enough to necessitate transport to a medical facility. Moreover, a
11 Department PIA should be completed as soon as possible or within 90 days. Policy
12 and Procedure 600.7.3.5.

13 5.32 On February 22, 2021, the Vancouver Fire Department needlessly
14 endangered the health and safety of Plaintiff Gregory S. Weber, contrary to, among
15 other things, Washington law, Washington regulations, and Vancouver Fire
16 Department's Policies and Procedures, SOPs, Administrative Guides, guidelines, and
17 protocols, in various ways, including, but not limited to, the following:

18 5.22.1 The first Incident Commander should have ordered a defensive
19 strategy at the outset, given the known critical factors present, especially the early
20 report(s) that all occupants had evacuated the structure;

21 5.22.2 Instead, the first Incident Commander ordered an offensive strategy
22 with an interior attack before ensuring it was safe to do so;

23 5.22.2.1 The first Incident Commander failed to take adequate steps to

1 ensure that the conditions were safe enough for Unit T1, including Plaintiff Gregory S.
2 Weber, to enter the structure before ordering entry.

3 5.22.2.2 The first Incident Commander failed to assign a RIT before
4 Plaintiff Gregory S. Weber entered the structure as ordered.

5 5.22.3 The first and/or second Incident Commander failed to timely assign,
6 properly coordinate the task of vertical ventilation;

7 5.22.3.1 Timely vertical ventilation would have improved the smoke, heat,
8 and visibility conditions inside the structure and prevented the smoke explosion and/or
9 backdraft and ceiling collapse.

10 5.22.4 Following the smoke explosion and/or backdraft and ceiling collapse,
11 the second Incident Commander ordered that the ongoing offensive strategy would
12 remain throughout the fire response, combining defensive structure fire operations;

13 5.22.5 The second Incident Commander failed to ensure timely medical
14 evaluation and treatment of Plaintiff Gregory S. Weber; no announcement of
15 "MAYDAY," delayed Plaintiff Gregory S. Weber's initial medical evaluation and
16 treatment by approximately one hour; and

17 5.22.6 The Vancouver Fire Department failed to develop a Post Incident
18 Analysis (PIA) regarding this structure fire.

19 5.23 As a result of one, more, or each of these acts or omissions, among
20 others committed by the first and/or second Incident Commander before, during, and
21 after the February 22, 2021 structure fire, Defendant is negligent.

22 5.24 The negligence of Defendant was a proximate cause of the serious
23 injuries and damages to Plaintiffs.

1 5.25 Plaintiffs are fault-free.

2 **VI. DAMAGES SOUGHT TO BE RECOVERED AGAINST DEFENDANT**

3 6.1 As a direct and proximate result of the negligence, carelessness,
4 recklessness, and/or other fault of Defendant, Plaintiff Gregory S. Weber has suffered
5 and seeks recovery from Defendant all economic and noneconomic damages
6 cognizable at law, in excess of any damages received or receivable under Title 51
7 RCW, including, but not limited to, (1) future lost earning capacity, (2) future retirement
8 benefits under LEOFF, i.e., Chapter 41.26 RCW, (3) past and future pain and suffering,
9 both mental and physical, (4) past and future emotional distress, (5) past and future
10 disability, and (6) past and future loss of enjoyment of life, as able to be established by
11 a preponderance of the evidence.

12 6.2 As a direct and proximate result of the negligence, carelessness,
13 recklessness, and/or other fault of Defendant, and without limitation to the foregoing,
14 Plaintiff Jae Weber has sustained and seeks recovery from Defendant all damages
15 cognizable at law, in excess of any damages received or receivable under Title 51
16 RCW, including, but not limited to, past and future loss of consortium, past and future
17 emotional distress, and other damages to the marital community experienced and to
18 be experienced, as able to be established by a preponderance of the evidence.

19 6.3 Plaintiffs seek reasonable attorneys' fees, costs, and disbursements as
20 permitted by law.

21 6.4 Plaintiffs seek such other and further relief as the Court shall deem just.

22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for Judgment against Defendant in an amount to

