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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 VIVIAN FISHER, individually and as  
10 Personal Representative of the Estate of  
11 HOWARD LEROY FISHER, deceased;  
12 and on behalf of CONNIE MCKIRDY,  
13 ROY FISHER, DENISE EVANS, and  
14 SCOTT FISHER,

15 Plaintiffs,

16 v.

17 UNITED STATES OF AMERICA,

18 Defendant.

CASE NO. C09-5146BHS

ORDER GRANTING  
PLAINTIFFS' UNOPPOSED  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
REGARDING LIABILITY

19 This matter comes before the Court on Plaintiffs' (collectively "Fisher")  
20 unopposed motion for partial summary judgment on the issue of liability (Dkt. 22). The  
21 Court has considered the pleadings filed in support of the motion and the remainder of the  
22 file and hereby grants the motion for the reasons stated herein.

23 **I. PROCEDURAL AND FACTUAL BACKGROUND**

24 This is a negligent driving case arising out of the death of Howard Leroy Fisher  
25 ("Mr. Fisher"). The Court has jurisdiction over this matter pursuant to 28 U.S.C.  
26 1346(b)(1) (United States as party). On July 26, 2010, Fisher moved the Court to grant  
27 partial summary judgment on the issue of liability. Dkt. 22. On August 10, 2010, the  
28 Defendant ("United States") responded but did not oppose the motion. Dkt. 24.

1 **II. DISCUSSION**

2 **A. Summary Judgment Standard**

3 Partial summary judgment is proper only if the pleadings, the discovery and  
4 disclosure materials on file, and any affidavits show that there is no genuine issue as to  
5 any material fact and that the movant is entitled to judgment as a matter of law. Fed. R.  
6 Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the  
7 nonmoving party fails to make a sufficient showing on an essential element of a claim in  
8 the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*,  
9 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record,  
10 taken as a whole, could not lead a rational trier of fact to find for the nonmoving party.  
11 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving  
12 party must present specific, significant probative evidence, not simply “some  
13 metaphysical doubt”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over  
14 a material fact exists if there is sufficient evidence supporting the claimed factual dispute,  
15 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*  
16 *Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
17 *Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

19 **B. Fisher’s Partial Summary Judgment Motion**

20 The parties do not dispute whether Mr. Fisher’s death resulted from the negligent  
21 driving of the person operating the VA van in which Mr. Fisher was riding on the day of  
22 the accident in question. *Compare* Dkt. 22 with Dkt. 24. The parties agree that the United  
23 States is liable for the death of Mr. Fisher and that partial summary judgment on this issue  
24 is proper. *Id.* The parties also agree that the issue of damages should be reserved for trial.  
25 *Id.*

