

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Wednesday, May 2, 2012
Location: Spokane, 500 North Cedar

9:00 a.m.

1) **No.: 27701-1-III**

Case Name: Delbert Williams v. Leone & Keeble, Inc.

County: Spokane

Case Summary: Washington corporation Leone & Keeble, Inc. (L&K) was the general contractor on a school remodeling project in Idaho. Delbert Williams, a Washington resident, was injured in a fall while working for a subcontractor on the project. Williams collected Idaho workers' compensation and later sued L&K in Washington. The superior court dismissed for lack of jurisdiction and ruled that Idaho law would have applied. On appeal, this court affirmed on the jurisdiction issue. The Washington Supreme Court accepted review, found that jurisdiction was proper in Washington, and remanded the case to this court for review of the choice of law issues.

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- 2) **Nos.: 29672-5-III, consolidated with 29673-3-III**
Case Name: A&W Farms, et al v. Sunshine Lend & Lease, Inc., et al
County: Spokane

Case Summary: A&W Farms sued Sunshine Lend & Lease, Inc., Sunshine's owner (Cook), and Cook's mother-in-law for payment for timber Sunshine logged on A&W's land. The superior court found that Cook fraudulently transferred a ranch to his mother-in-law. The court then quieted title to the ranch in Cook—making the ranch an asset subject to judgment—and entered judgment for A&W. Cook and his mother-in-law appeal.

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- 3) **No.: 29555-9-III**
Case Name: State of Washington v. Lacey Kae Hirst-Pavek
County: Okanogan

Case Summary: Lacey Hirst-Pavek's husband was having an affair with Michelle Kitterman. According to police investigators, Hirst-Pavek arranged for a drug dealer to "take care of" Kitterman, who was pregnant with Hirst-Pavek's husband's child. Kitterman and her unborn child were stabbed to death and Hirst-Pavek was convicted of aggravated first degree murder and first degree manslaughter. Hirst-Pavek appeals.

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- 4) **Nos.: 28332-1-III, consolidated with 28395-0-III**
Case Name: State of Washington v. David Phillip Webster
County: Franklin

Case Summary: While awaiting sentencing for an assault conviction, David Webster sexually assaulted his cell mate in the Franklin County jail. The State charged Webster in 2005 with three counts of first degree rape. After multiple continuances—sometimes with and sometimes without Webster’s waiver of speedy trial rights—and the withdrawal of several defense attorneys, Webster finally represented himself in a jury trial held in April 2009. The jury found him guilty of one count of second degree rape. He appeals.

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11:00 a.m.

- 5) **No.: 29782-9-III**
Case Name: Jerrie Vander Houwen, et al v. State of Washington,
Department of Ecology
County: Yakima

Case Summary: Jerrie Vander Houwen applied for water rights permits for two wells on his land. The Department of Ecology denied his applications and he appealed to the Pollution Control Hearings Board, which affirmed. Vander Houwen petitioned for review of the Board’s decision with the superior court, which remanded to the Board for additional evidence to support the Board’s decision. After a hearing, the Board again affirmed Ecology’s denial of the applications. The superior court affirmed the Board’s decision. Vander Houwen appeals.

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6) **No.: 30429-9-III**

Case Name: Janet Barnhart v. Liberty Mutual Insurance Co., et al

County: Spokane

Case Summary: Reva Barnhart had two children, Morris and Janet. After Reva died in 1995, the Lincoln County superior court confirmed Janet as personal representative of Reva's estate. In 1997, Morris signed a waiver of his right to inherit from Reva's estate because he had already borrowed more than one-half of the estate.

Morris died in 2001 and his surviving spouse, Kathleen, was appointed special administrator of his estate by a California probate court. In 2009, Kathleen filed suit in Washington to set aside Morris's waiver of inheritance and to remove Janet as the personal representative of Reva's estate. The trial court ruled against Kathleen. On appeal, this court reversed, holding that Kathleen had no standing as an individual to assert a claim against Reva's estate. Kathleen then had the California court appoint her special administrator of Morris's estate in the action against Reva's estate. The California court required Kathleen to post a bond, which she obtained from Liberty Mutual Insurance. The Washington superior court allowed her to substitute herself as personal representative in the proceedings against Reva's estate. After a bench trial, the court dismissed Kathleen's petition, finding that Morris had already received the benefit of around one-half of Reva's estate and that the waiver of inheritance was invalid because Morris's signature was forged.

Janet sued Liberty Mutual on the bond. The Washington superior court dismissed Janet's lawsuit with prejudice, concluding that California law governed the question of Liberty Mutual's liability under the bond. Janet appeals.

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7) **No.: 29495-1-III**

Case Name: State of Washington v. Robert Lee Doney, Jr.

County: Spokane

Case Summary: Robert Doney pleaded guilty in 2005 to first degree murder. The trial court empanelled a jury that found aggravating factors and the trial court imposed an exceptional sentence. On appeal, the Washington Supreme Court reversed and remanded for resentencing, holding that the trial court had no authority to empanel a jury to decide the aggravating factors. On remand, the trial court found that newly-enacted RCW 9.94A.537(2) allowed the court to empanel a jury to decide aggravating factors. A jury was empanelled, and again found aggravating factors to support an exceptional sentence. Mr. Doney appeals.

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