No. 91069-3

SUPREME COURT
OF THE STATE OF WASHINGTON

HARTFORD FIRE INSURANCE COMPANY,

Appellant,

v.

COLUMBIA STATE BANK,

Respondent.

COLUMBIA STATE BANK'S ANSWER TO PETITION FOR REVIEW

Alexander S. Kleinberg, WSBA # 34449
Attorney for Respondent Columbia State Bank

EISENHOWER CARLSON PLLC
1201 Pacific Ave., Ste. 1200
Tacoma, WA 98402
Phone: (253) 572-4500
Facsimile: (253) 272-5732
akleinberg@eisenhowerlaw.com

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I. RESTATEMENT OF THE CASE

This case presents a priority dispute between two competing creditors of failed government contractor WAKA Group, Inc. ("**WAKA**"). The dispute arises from an earned progress payment for $103,410.00 that the United States General Services Administration (the "**GSA**") paid for work WAKA did at the Dalton Cache border station in Haines, Alaska (the "**Project**").

The GSA deposited the progress payment into WAKA's collateral control account at Columbia State Bank, the Respondent herein (the "**Bank**"). Per its agreement with WAKA, the Bank had the right to apply this money to WAKA's outstanding line of credit at the Bank, which had matured and was in default on the date at issue, June 21, 2012. CP 219-220; CP 244-245. WAKA had used this line of credit to pay wages and travel expenses that were incurred on the Project, and the Bank regularly applied money from WAKA's collateral control account to WAKA's outstanding line of credit. CP 187; CP 245; CP 248; *Verbatim Report of Proceedings at 4, lines 17-20.* WAKA's collateral control account was separate and apart from WAKA's business checking account at the Bank. *See* CP 247-248.

WAKA's line of credit matured on May 30, 2012, WAKA failed to repay and close out this line as required, and on June 21, 2012, the Bank

exercised its right of setoff by applying the disbursed progress payment in the collateral control account to WAKA's matured line of credit. CP 220. WAKA's surety on the Project, Appellant Hartford Fire Insurance Company ("**Hartford**") subsequently sued the Bank to recover the progress payment based on principles of subrogation and trust law. This despite the fact that Hartford (a) made its first demand on the Bank after the setoff was made; (b) the setoff was made prior to the date that the Bank knew that Hartford had issued a bond to WAKA for the Project; and (c) the setoff occurred prior to the date that Hartford paid out any money at all pursuant to its bond with WAKA. CP 221.

The parties moved for summary judgment, and the trial court granted the Bank's motion and denied Hartford's motion on August 9, 2013. Division Two of the Washington Court of Appeals affirmed this ruling in a published decision dated September 9, 2014 (the "**Opinion**"). Hartford moved for reconsideration, and the Bank filed an answer to this motion per an order of the Court of Appeals on October 20, 2014. On October 23, 2014 Liberty Mutual Insurance Company filed an *amicus curiae* brief in support of Hartford's position, and on October 29, 2014, the Court of Appeals denied Hartford's motion for reconsideration. Hartford filed its petition for review on December 1, 2014.

As for the petition for review, Hartford has made several

misstatements regarding the record that must be corrected. First, Hartford asserts "[t]he GSA acknowledged Hartford's right to the [Project] contract funds and agreed to remit all future payments to Hartford[,]" and Hartford cites to CP 88 in support of this statement. [1] But CP 88 is an email message from the GSA that says nothing at all about the GSA agreeing to remit all future Project payments to Hartford. Hartford also claims that the GSA "acknowledge[ed] Hartford as the completing surety was entitled to the contract balance," and Hartford has cited to CP 65 in support of this assertion. [2] However, CP 65 is a copy of part of a declaration that Hartford employee Tiffany Schaak signed, and this page of Ms. Schaak's declaration makes no mention at all of the GSA acknowledging that Hartford was entitled to the "contract balance." CP 65.

Hartford has also claimed that "[i]n sworn testimony, both Waka and Hartford confirmed their intention to create a trust[,]" [3] and Hartford has cited to CP 100 at 14:12-17, CP 374, and CP 380 in support of this assertion. CP 374 is a copy of part of a declaration that Ms. Schaak signed, and CP 380 is a copy of a letter from WAKA's president, Andrew Wilson, to the GSA dated June 21, 2012. Neither CP 374 nor CP 380 constitutes sworn testimony that shows WAKA confirmed its intention to

[1] Petition for Review at 4.
[2] Petition for Review at 4.
[3] Petition for Review at 5.

create a trust. In fact, CP 380 does not even contain the word trust. Moreover, as seen from CP 100, which is a portion of the deposition transcript of Andrew Wilson, *Mr. Wilson never testified that WAKA intended to create a trust for Hartford's benefit.* CP 100 at 14:12-17. However, Mr. Wilson *did* testify that his letter of June 21, 2012 to the GSA was prepared with Hartford's input, and that WAKA would have had some input from Ms. Schaak at Hartford regarding this letter "just to get the language right." CP 104 at 33:8-23.

Hartford has also claimed that "the subcontractors [on the Project] must have been unpaid when the [June 21, 2012] progress payment was made, since the purpose of the payment was to pay them." [4] However, *there is no evidence in the record that shows the Project's subcontractors were unpaid on June 21, 2012, nor is there any evidence in the record that reflects the purpose of this progress payment.* Even Hartford has implicitly admitted as much by stating later in its petition that the evidence that WAKA's subcontractors were unpaid may be "insufficient." [5]

II. ARGUMENT

A. The Court Of Appeals Correctly Held That The Funds At Issue Were Never Subject To An Express Trust Or Subject To An Equitable Lien.

Express trusts are those trusts which are created by contract of the

[4] Petition for Review at 8.
[5] Petition for Review at 14, footnote 7.

parties and intentionally. *E.g., In re Washington Builders Ben. Trust*, 173 Wn. App. 34, 293 P.3d 1206 (2013). An express trust is created only if the settlor properly manifests an intention to create a trust. *Colman v. Colman*, 25 Wn.2d 606, 171 P.2d 691 (1946).

Here, Hartford failed to prove the existence of an express trust that arose from its general indemnity agreement with WAKA (the "**GIA**"). The record reflects WAKA never testified that it intended to create a trust for Hartford's benefit in connection with the Project. In light of WAKA's actions and inactions toward the Bank that were previously described in great detail to the trial court and the Court of Appeals, the GIA by itself is not enough to establish the existence of an express trust as a matter of law. Nor is the GIA by itself enough to create a genuine issue of material fact as to the existence of an express trust when taken together with the other evidence in the record and the inferences that can properly be drawn from this evidence.

Hartford's breach of trust theory of recovery also fails because Hartford has not established that the purported settlor and trustee of the alleged trust, WAKA, ever had or accepted the GSA progress payment at issue with the express or implied understanding that it was to turn this money over to Hartford as opposed to ensuring that this money was deposited into WAKA's Bank Control Collateral Account. In fact, such

an understanding would be directly contrary to the language in WAKA's Addendum to Business Loan Agreement with the Bank dated May 16, 2011, which is approximately one (1) month before WAKA executed the GIA with Hartford. CP 75; CP 244.

WAKA's Addendum, a copy of which is located at CP 244-45, shows WAKA and the Bank agreed that WAKA "shall deposit all cash, instruments and other proceeds received from the operation of [WAKA's] business into an account established with [the Bank] within two (2) business days after receipt of such amounts (the "Control Account"). Only proceeds received from [WAKA's] non-business operations may be deposited into an account other than the Control Account. [The Bank] is authorized to pay down the unpaid Loan balance, on a daily basis, from funds in the Control Account[.]"

The fact that WAKA executed the Addendum and other loan documents with the Bank when it did shows WAKA intended for the Project proceeds to be deposited into the Control Account and then credited to WAKA's line of credit with the Bank. This cuts against the notion that WAKA had an "express or implied understanding" that it was obligated at any point in time to turn over any Project payments to Hartford as opposed to the Bank.

Tellingly, nowhere in the Addendum or in WAKA's other loan

documents with the Bank does it state that WAKA and the Bank recognize and agree that proceeds from the Project may be subject to a trust in favor of Hartford. Further, WAKA's actions with respect to the control account do not demonstrate any intent to segregate assets for the benefit of Hartford at any point prior to the date of the setoff, June 21, 2012.

What Hartford is still trying to accomplish with its trust theory of recovery is to lay claim to WAKA's earned progress payments when it could not otherwise do so through the traditional vehicle of subrogation. Undoubtedly, it was because of this known limitation that Hartford included in the GIA a brief reference to a "Trust Fund" that Hartford might attempt to use as an additional theory for recovery. Out of the ten-page GIA, only one short paragraph makes reference to the idea that WAKA was to hold its contract proceeds in trust for the benefit of Hartford. CP 71. This trust provision is incredibly broad; on its face, it suggests that no funds received from any WAKA project can be used for any purpose other than completion of the bonded project. In theory, apparently, WAKA could not use any proceeds on a bonded project to fund any other ongoing project, capital expenditure, or other general business expense without breaching its "fiduciary" obligations to Hartford. Hartford essentially admitted at the summary judgment hearing in Pierce County Superior Court that if it had its druthers, these immensely broad

terms would subject any party that ever received a payment from WAKA to liability to Hartford. During the summary judgment hearing, Hartford also admitted that under its reading of the law, the Bank did in fact have a duty to inquire about the nature and source of *each and every deposit that was made into WAKA's collateral control account*. *See* Verbatim Report of Proceedings at 7, lines 1-10; VRP at 8, lines 15-21.

Nevertheless, by allowing proceeds from the Project, without qualification or limitation, to be used to pay down its line of credit with the Bank, WAKA did not demonstrate any intent to hold assets in trust for the benefit of Hartford. Even Hartford has acknowledged that WAKA's line of credit with the Bank was used to complete other projects in addition to the Project. CP 48. As for the actions of Hartford, it also took no actions consistent with the notion that it believed WAKA was holding funds in trust for its benefit until after the Bank's setoff of the progress payment at issue.

In addition, despite knowing that WAKA maintained bank accounts and a line of credit at the Bank, Hartford took no action until after the June 21, 2012 setoff to (i) identify for the Bank that Hartford was the beneficiary of a trust created by WAKA; (ii) contest the application of "trust" funds to WAKA's line of credit; or (iii) direct the application of proceeds received from the Project to any specific party. This despite the

fact that the Bank filed its Uniform Commercial Code Financing Statement on June 20, 2011, over one (1) year before the setoff in question, thereby putting the world on notice of the Bank's perfected security interest in all of WAKA's then existing and thereafter acquired accounts, general intangibles, and the proceeds thereof. CP 236. From the reasonable perspective of the Bank on June 21, 2012, Hartford had no interest in the Project proceeds whatsoever.

Moreover, after the execution of the the Project contract with the federal government (the "**GSA Contract**"), neither WAKA nor Hartford actually took any actions that were consistent with the idea that Project proceeds were to be placed in an express trust for the benefit of Hartford. Therefore, Hartford cannot establish that it has any rights in the Project proceeds that either prime the perfected security interest of the Bank or defeat its right of setoff. Once the subject progress payment was placed in the free flow of commerce and sent to the Bank without limitation, the Bank was free to apply this money to WAKA's delinquent line of credit pursuant to the Addendum and its right of setoff.

Unlike the property owner in *Westview Investments, Ltd. v. U.S. Bank National Ass'n*, 133 Wn. App. 835, 138 P.3d 638 (2006), Hartford, as a surety, cannot simply rely on its GIA as a manifestation of intent by WAKA to create a trust regarding earned progress payments from the

Project. Since WAKA did not possess an interest in any right to payment from the GSA Contract at the time the GIA was executed, the GIA with its trust verbiage was at best a contract to create a trust in the future.

Further, unlike the bank in *Westview*, the Bank had no actual knowledge that the subject payment from the project owner was made to the general contractor with the *specific understanding* that this money was to be used to pay subcontractors on the job. *Westview*, 133 Wn. App. at 842-43, 138 P.3d 638 (emphasis added). In sum, there simply is no doubt that the GIA did not create an express trust for Hartford that would entitle Hartford to lay claim to the earned progress payment at issue.

Similarly, Hartford never had an equitable lien on the funds at issue, and its continued reliance on *Levinson v. Linderman*, 51 Wn.2d 855, 322 P.2d 863 (1958) is misplaced. In *Levinson*, the Washington Supreme Court held that a surety that performed under its bond was entitled to money deposited into the court registry based on the principle of subrogation. *Id.* at 868, 322 P.2d 863. This money was "the unpaid balance on the construction contracts" as opposed to earned progress payments. *Id.* at 858, 322 P.2d 863. The *Levinson* court noted that "[t]he surety's claim to the withheld funds ... rests upon the doctrine of equitable subrogation that where a surety performs under a performance bond after the default of the contractor, it is entitled to an equitable lien on funds

previously withheld by reason of the contractor's default, at least to the extent of the surety's expenses." *Id.* at 869, 322 P.2d 863.

Hartford's continued reliance on *Levinson* brings to mind the landmark United States Supreme Court case of *Pearlman v. Reliance Insurance Company*, 371 U.S. 132 (1962), which established a surety's equitable right, through subrogation, to construction retainage funds. The instant case, in contrast, addresses the relative priorities of a contractor's secured creditor and its surety not to retained funds, but to *earned progress payments previously disbursed by the government.* Once funds are disbursed by the project owner, subrogation no longer supports a surety's claim to those funds because "[f]unds intended from the inception of a contract to settle potential claims [retainages] differ vastly from progress payments, which belong to the free flow of commerce from the time they are properly paid over." *Capitol Indemn. Corp. v. U.S.*, 41 F.3d 320, 325 (7th Cir. 1995); *see also Bank of Arizona v. National Sur. Corp.*, 237 F.2d 90, 93-94 (9th Cir. 1956).

Because progress payments disbursed by the government enter the "free flow of commerce," courts for decades have rejected the notion that a surety's equitable rights divest a contractor's creditors of those payments. The general rule was well stated in *National Shawmut Bank of Boston v. New Amsterdam Cas. Co.*, 411 F.2d 843, 848 (1st Cir. 1969),

when the First Circuit Court of Appeals stated that "[p]rior to default, the contractor had the right to assign progress payments and had the Bank received payment, it could not (absent circumstances amounting to fraud) have been divested by the surety." *See also Capitol*, 41 F.3d at 327 (surety's equitable lien did not attach to earned progress payment approved for disbursement); *United Pacific Ins. Co. v. U.S.*, 362 F.2d 805, 808 (Ct. Cl. 1966); *National Surety Corp. v. Fisher*, 317 S.W.2d 334, 345 (Mo. 1958).

Levinson is different from this case because it concerns retainage, not earned progress payments. As seen from the United States Supreme Court's decision in *Pearlman* and the other decisions set forth above, this is an important distinction. Moreover, the surety in *Levinson* performed under its bond and *then* used this performance to successfully argue its right of subrogation entitled it to the retainage. In contrast, Hartford seeks to recover the subject GSA progress payment from the Bank even though the payment was made to the Bank and applied to WAKA's line of credit before Hartford performed under its bond, and before Hartford had any subrogation rights. Hartford's claim that *Levinson* provides it with an enforceable equitable lien on the funds is incorrect, as the lien in that case arose from principles of subrogation and became enforceable after the surety in that case performed under its bond. The fact is the timing of the

contractor's default is not relevant; the relevant inquiry is the date the surety begain to perform under its bond. As pointed out by the *In re Massart Co.* case that Hartford continues to rely upon, 105 B.R. 610 (W.D. Wash. 1989), a surety's rights are inchoate and unenforceable until the surety suffers an actual loss on the bond: "[T]he lien arises upon the execution of the bond *but does not become enforceable* until the surety suffers a loss by making payments pursuant to the obligation under the bond." 105 B.R. at 612 (citations omitted) (emphasis added);

As seen from a similar case entitled *Reliance Insurance Co. v. U.S. Bank of Washington*, 143 F.3d 502 (9th Cir. 1998) and other legal authority that the Bank has presented to the trial court and the Court of Appeals, the bottom line is a surety like Hartford cannot force its contractor's construction lender to disgorge an earned progress payment when the surety has not yet performed under its bond, the lender has no knowledge of the surety's claim to the funds at the time the setoff is made, and the surety's breach of trust claims are based on boilerplate verbiage in a general indemnity agreement that was signed before the principal ever even had an interest in the bonded project.

Hartford has cited *Fidelity & Deposit Co. of Maryland v. United States*, 393 F.2d 834 (Cl. Ct. 1968) to support its claim that the surety can prevail against the bank with respect to contract funds before the surety

has paid anything under its bond. [6] But the surety in *Fidelity* paid out hundreds of thousands of dollars to unpaid project laborers in accordance with its bond before it sought to recover the contract balance from the project owner. *Id.* Here, Hartford seeks to recover an earned progress payment that the Project owner paid to the Bank before Hartford paid anything under its bond. As such, *Fidelity* provides no support for Hartford's position.

In addition, the ruling of the Court of Appeals is consistent with the law of bank deposits in Washington. Under Washington law, if the bank depositor has a debt with the bank that has matured, the bank may exercise its right of setoff as to the deposit. *E.g., In re Estate of Adler*, 116 Wn. 484, 489, 199 P. 762 (1921). This means "the bank may apply the deposit, or such portion thereof as may be necessary, to the payment of the debt due it by the depositor[.]" *Sterling Savings Bank v. Air Wisconsin Airlines Corp.*, 492 F.Supp.2d 1256, 1261 (E.D.Wash. 2007) (citing *Conner v. First Nat'l Bank of Sedro-Wooley*, 113 Wn. 662, 665, 194 P. 562 (1921)).

In construing Washington law, the Ninth Circuit Court of Appeals has held that a construction lender like the Bank can exercise its right of setoff by laying claim to an earned progress payment paid to the bank's

[6] Petition for Review at 12.

contractor borrower when the contractor's surety has sought to obtain this money for itself. *Reliance,* 143 F.3d 502. [7]

Here, the trial court and Court of Appeals rightly concluded the Bank did nothing wrong when it exercised its common law and contractual right of setoff as to the subject GSA progress payment on June 21, 2012. This setoff occurred three (3) weeks after WAKA's line of credit matured and went into default, and the Bank was free to exercise its right of setoff as to the subject progress payment under applicable case law and the Bank's contract with WAKA. CP 218-222.

B. The Ruling Of The Court Of Appeals Is In Line With Similar Cases From Other Jurisdictions.

As seen from the Bank's answer to Hartford's motion for reconsideration filed in the Court of Appeals, analogous cases from other jurisdictions appear to uniformly hold that the general agreement of indemnity between the surety and the bonded contractor does not create an express trust that enables the surety to lay claim to earned progress payments. *E.g., In re Construction Alternatives, Inc.*, 2 F.3d 670, 677 (6th Cir. 1993) (holding general agreement of indemnity did not create a trust under Ohio law when contractor wasn't required in agreement to keep any portion of progress payments as a separate trust fund); *Acuity v. Planters*

[7] The Bank briefed the trial court on the *Reliance* case, and this case was thoroughly briefed in the Court of Appeals on pages 23 through 27 of the Bank's Brief of Respondent.

Bank, 362 F.Supp.2d 885, 892 (W.D. Ky 2005) (dismissing surety's claims against contractor's bank on summary judgment and holding neither project contract nor general indemnity agreement created express trust under Kentucky law); *In re Eastern Paving Co.*, 293 B.R. 704 (Bankr.E.D.Mich. 2003) (holding general indemnity agreement was insufficient to create an express trust under Michigan law and denying intervenor Hartford's claim to the payments at issue).

The *Acuity* case out of Kentucky is nearly identical to the case at hand from a factual standpoint. In *Acuity*, a contractor's surety, which had issued payment and performance bonds, brought an action against a bank creditor that had seized a contract progress payment to reduce the contractor's debt under its line of credit with the bank. *Acuity,* 362 F.Supp.2d at 888. The surety asserted it was entitled to this money based on principles of subrogation and the existence of an express trust based on the project contract and its general indemnity agreement with the bonded principal. *Id.* at 889. In ruling for the bank on summary judgment, the district court methodically explained why none of the surety's arguments and theories of recovery carried the day and enabled the surety to lay claim to the earned progress payment. [8] *See id.*

Like the contractor in *Acuity*, WAKA executed the GIA long

[8] *Acuity* is discussed in greater detail on pages 17 through 19 of the Bank's Answer to Hartford's Motion for Reconsideration.

before it ever obtained an interest in earned progress payments from the bonded Project. Like the contractor in *Acuity*, WAKA did not take sufficient action to create a trust by declaration. And as was the case in *Acuity*, even if WAKA could be deemed to have agreed to create a trust for Hartford by way of the GIA, "[t]o agree to do so at some future time, unaccompanied by later action or evidence of intent to create a trust, is not enough." *Id.*

C. The Decision Of The Court Of Appeals Is Not In Direct Conflict With A Decision Of The Supreme Court Or Another Decision Of The Court Of Appeals.

The Court of Appeals' decision in this case is not in conflict with a decision of the Washington Supreme Court or another decision of the Court of Appeals. As seen above, unlike the property owner in *Westview* that was a party to the contract that gave rise to the trust and had rights in the project on the date the contract was executed, Hartford, as a surety, cannot simply rely on its GIA as a manifestation of intent by WAKA to create a trust regarding earned progress payments from the Project. Since WAKA did not possess an interest in any right to payment from the GSA Contract at the time the GIA was executed, the GIA with its trust verbiage was at best a contract to create a trust in the future. *See, e.g., Acuity,* 362 F.Supp.2d 885, 892; *see also In re Eastern Paving Co.*, 293 B.R. 704.

Further, unlike the bank in *Westview*, the Bank had no actual

knowledge that the subject payment from the project owner was made to the general contractor with the *specific understanding* that this money was to be used to pay subcontractors on the job. *Westview*, 133 Wn. App. at 842-43, 138 P.3d 638 (emphasis added).

Similarly, the Court of Appeals' ruling is not in conflict with *Levinson* or with any other decision of the Washington Supreme Court. Hartford's continued reliance on *Levinson* is misplaced because the surety in that case performed under its bond and *then* used this performance to invoke the doctrine of equitable subrogation to lay claim to the funds at issue. 51 Wn.2d 855, 322 P.2d 863. Moreover, the disputed funds at issue in *Levinson* concerned retainage, which as seen from the Opinion makes them different from earned progress payments under applicable case law such as *Capitol Indemn. Corp. v. United States,* 41 F.3d 320, 325 (7th Cir. 1994) ("Funds intended from the inception of a contract to settle potential claims differ vastly from progress payments, which belong to the free flow of commerce from the time they are properly paid over.").

In short, the Opinion is not in conflict with a decision from the Washington Supreme Court or any other decision of the Court of Appeals.

D. The Petition For Review Does Not Present A Significant Question Of Constitutional Law Or Involve An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court.

The Court of Appeals was correct when it stated "Hartford's argument that all project payments were immediately impressed with a trust to satisfy some future, contingent bond liability would lead to absurd results" and that "[u]nder this argument, Waka could not use project payments to pay subcontractors or pay for other project expenses until completion of the project and discharge of the bond." Opinion at 8. The Court of Appeals was also correct to state "[o]bviously, this result is not what the parties intended." *Id.* If Hartford's proposed rule was the law of the land, construction lending would grind to a halt. No rational lender would provide credit to contractors.

In addition, there simply is no way that sureties will lose their entitlement to the contract funds upon a contractor's default if the Bank prevails on appeal. Sureties have subrogation rights under state and federal law. They also regularly bargain for guarantors or indemnitors prior to issuing a bond, as seen from this case, in which WAKA's president, Andrew Wilson, and his wife Susan Wilson agreed to personally indemnify Hartford for any loss that Hartford incurred from bonding WAKA. CP 68. Further, sureties like Hartford are also free to

charge higher bond premiums to account for their risk or perceived risk. Sureties are also free to enter into an agreement — prior to the commencement of work on the project — with the contractor and its construction lender, in which the parties could agree up front that all or certain proceeds from the project should be paid into an account that is controlled by the surety as opposed to the lender or contractor.

In sum, the truth is this case does not prevent a significant question of constitutional law, nor does it involve an issue of substantial public interest that should be determined by the Washington Supreme Court.

III. CONCLUSION

The Court should deny Hartford's petition for review. The decision of the Court of Appeals is not in conflict with a decision of the Washington Supreme Court or another decision of the Court of Appeals, and this case does not involve a significant question of constitutional law or an issue of substantial public interest that should be determined by the Washington Supreme Court.

RESPECTFULLY SUBMITTED this 30 day of December, 2014.

EISENHOWER CARLSON PLLC

By: _____
Alexander S. Kleinberg, WSBA # 34449
Attorneys for Columbia State Bank

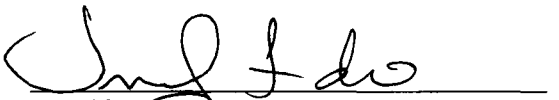
DECLARATION OF SERVICE

I, Jennifer Fernando, am a legal assistant with the firm of Eisenhower Carlson PLLC, and am competent to be a witness herein. On December 30, 2014, at Tacoma, Washington, I caused a true and correct copy o f Columbia State Bank's Answer to Petition for Review to be served upon the following in the manner indicated below:

Todd William Blischke, Esq. Mark S. Davidson, Esq. Williams, Kastner & Gibbs PLLC Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101 *tblischke@williamskastner.com* *mdavidson@williamskastner.com*	■ by Legal Messenger ■ by Electronic Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 30th day of December, 2014, at Tacoma, Washington.



Jennifer Fernando