NO. 321223 Consolidated with
No. 316874

COURT OF APPEALS STATE OF WASHINGTON
DIVISION III

DANA WIDRIG, Plaintiff,

v.

THE VILLAS AT MEADOW SPRINGS, LLC, et al.,
Defendants,

HSC REAL ESTATE, INC,
Appellant,

and

VMSI, LLC,
Respondent.

BRIEF OF RESPONDENT VMSI, LLC

Joel E. Wright, WSBA No. 8625
William L. Cameron, WSBA No. 5108
Of Attorneys for VMSI, LLC

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

Table of Contents

TABLE OF AUTHORITIES

Page

Washington Cases

Other Cases

Federal Cases

Rules

Other Authorities

I. INTRODUCTION

VMSI's insurer, Fireman's Fund, paid for the defense of both HSC and VMSI in this action. VMSI had purchased liability insurance that included HSC as an additional insured in accord with the terms of the Management Agreement for plaintiff Widrig's apartment complex. Early on the trial court dismissed HSC's claim that it could wait until the end of the case to determine if there was adequate insurance. HSC pursued its remaining cross-claim against VMSI after the case by Widrig was settled. HSC insists that even though all of Widrig's allegations were allegations of negligence, and even though VMSI was not obliged to indemnify for HSC's own negligence, HSC is still entitled to indemnity directly from VMSI for attorneys' fees expended while their respective insurers sorted out which was primarily responsible for defense.

Benton County Superior Court Judge Cameron Mitchell dismissed the indemnity claim, basing his decision on the language of the Agreement's indemnity clause. Because the Agreement contained an attorneys' fee provision, Judge Mitchell awarded VMSI its reasonable attorneys' fees. HSC appealed that decision, which is pending before this court under cause no. No. 316874. Once the trial court had settled the fees, HSC again appealed not just the amount of fees but their propriety.

II. ASSIGNMENTS OF ERROR

Assignments of Error

VMSI, LLC assigns no error to the trial court's decision.

Issues Pertaining to Assignments of Error

HSC has misstated the issue before this court, which VMSI, LLC believes is more correctly stated as:

1. HSC claims that awarding VMSI its attorneys' fees is subrogating Fireman's Fund against its own insured. Is there any evidence that Fireman's Fund is being subrogated against its own insured? (Assignment of Error No. 1)

2. Is this a subrogation claim? (Assignment of Error No. 1)

3. Did HSC properly raise the issue of subrogation in the trial court? (Assignment of Error No. 1)

4. The trial court made extensive findings of fact and conclusions of law about the proper hourly fee and the number of hours worked. Was the superior court required to make findings over a reasonable hourly fee to which the parties agreed? (Assignment of Error No. 2)

5. Did the trial court make adequate findings concerning the proper hourly fee? (Assignment of Error No. 2)

6. Did the superior court made adequate findings to support its conclusion that VMSI's attorneys reasonably incurred 236.1 hours in defense of HSC's cross-claims? (Assignment of Error No. 2)

III. STATEMENT OF THE CASE

HSC's Statement of the Case is again, argumentative and inaccurate. This is addressed in part in the Argument section, *infra*. Otherwise the facts and proceedings are more accurately set out below.

Fireman's Fund hired Lee Smart, P.S. Inc. to defend VMSI against Dana Widrig's claims. CP2 22-23.[1] Chartis hired Martens + Associates to represent HSC. CP 91. Fireman's Fund confirmed that HSC was an additional insured under VMSI's policy and that Fireman's Fund was primary and responsible for the defense. CP2 335-36. Fireman's Fund appointed Gordon Hauschild as defense counsel for HSC and agreed to reimburse Chartis for reasonable and necessary fees and costs incurred by Chartis to defend HSC. CP2 331-32. The cross-claim at issue was filed by Martens. CP2 4-7.

Before trial, the trial court entered the following order:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant HSC Real Estate, Inc.'s Motion for Partial Summary Judgment on Cross-Claims Regarding Insurance, Defense, and Indemnity is hereby GRANTED as to the validity and enforceability of sections 10 and 11 of

[1] This brief refers to Clerk's Papers filed March 18, 2014, as CP2 to avoid any confusion. As the cases have been consolidated, the entire record in both appeals is before the court.

> the Management Agreement between HSC Real Estate, Inc. and VMSI, LLC, but the remainder of the motion is DENIED; and defendant VMSI, LLC's Motion for Summary Judgment dismissal of HSC Real Estate, Inc.'s Cross-Claim Regarding Insurance, Defense, and Indemnity is hereby GRANTED insofar as HSC is barred from contesting the sufficiency of the dollar limits of the insurance policies obtained by VMSI, but is otherwise DENIED.

CP 52. Following settlement of Widrig's tort claims, HSC renewed its motion for indemnity against VMSI under the Management Agreement. CP 313-24. The trial court denied HSC's claim and awarded costs and reasonable attorneys' fees to VMSI as the prevailing party under §20 of the Agreement, which provides:

> Any action brought to enforce or to interpret the terms and provisions of this Agreement shall be brought in the Superior Court of the State of Washington, in and for Benton County. The prevailing party in any such action shall be entitled to recover the reasonable costs and expenses of such litigation, including, but not limited to, the reasonable fees and expenses of attorneys and certified public accountants.

CP2 105, 393-95. The trial court denied HSC's motion for reconsideration. CP2 396-98.

The trial court initially did not grant VMSI's application for fees[2] but VMSI reapplied. CP2 149-241. HSC deposed VMSI's counsel. CP2 284-301. HSC made a detailed response to VMSI's request for fees, CP2 245-349 and claimed Fireman's Fund was obtaining subrogation from its

[2] This was not memorialized in writing.

insured. CP2 246-47. The court made a detailed analysis of the claim for fees and awarded VMSI reasonable attorneys' fees of $53,729.15. CP2 430-41. This second appeal followed.

IV. SUMMARY OF ARGUMENT

As the prevailing party in this contract litigation, VMSI was entitled to reasonable attorneys' fees under the Agreement. The trial court acted well within its sound discretion in awarding those fees. HSC did not raise the issue of subrogation until after the trial court had ruled that VMSI was entitled to its fees. Therefore, this issue is not properly before this court. Even if the issue of Fireman's Fund being subrogated against HSC is considered on appeal, there is no evidence to support that assertion, and it is legally without merit. HSC's Statement of the Case is argument, incorrectly sets out the facts. VMSI is entitled to reasonable attorneys' fees on appeal.

V. ARGUMENT

A. The standard of review for a motion for summary judgment is de novo, for a motion for reconsideration manifest abuse of discretion and for an award of attorneys' fees, abuse of discretion.

The proper standard of review for a motion for summary judgment is de novo. "Whether a party is entitled to attorney fees is an issue of law which is reviewed de novo." *Ethridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001). Section 20 of the Management Agreement provides

that the prevailing party is entitled to reasonable attorneys' fees. CP 105. VMSI has prevailed on its claims against HSC. "[A] prevailing party or substantially prevailing party is the one that receives judgment in its favor at the conclusion of the entire case." *Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.*, 160 Wn. App. 728, 739-40, 253 P.3d 101 (2011). VMSI is entitled to recover its reasonable attorneys' fees on appeal.

The proper standard of review for a motion for reconsideration is manifest abuse of discretion.

> "Motions for reconsideration are addressed to the sound discretion of the trial court and a reviewing court will not reverse a trial court's ruling absent a showing of manifest abuse of discretion." *Wilcox v. Lexington Eye Inst.,* 130 Wn. App. 234, 241, 122 P.3d 729 (2005). An abuse of discretion exists only if no reasonable person would have taken the view the trial court adopted, the trial court applied the wrong legal standard, or it relied on unsupported facts. *Salas v. Hi–Tech Erectors,* 168 Wn.2d 664, 668–69, 230 P.3d 583 (2010).

Fishburn v. Pierce Cny. Planning & Land Servs. Dep't., 161 Wn. App. 452, 472, 250 P.3d 146 (2011).

The amount of attorneys' fees awarded is reviewed for abuse of discretion. *Rettowski v. Dept. of Ecology*, 128 Wn.2d 508, 910 P.2d 462 (1996).

B. The trial court properly considered the applications for fees and did not abuse its discretion in awarding those fees.

HSC claims that fees, which cannot be determined exactly, should not be awarded, but mathematical precision is never required for fee calculations and fee calculations have often been made on after the fact reconstruction of hours work by counsel.

> The determination of the fee award should not become an unduly burdensome proceeding for the court or the parties. An "explicit hour-by-hour analysis of each lawyer's time sheets" is unnecessary as long as the award is made with a consideration of the relevant factors and reasons sufficient for review are given for the amount awarded.

Absher Const. Co. v. Kent School Dist. No. 415, 79 Wn. App. 841, 848, 917 P.2d 1086 (1995). The fees in this case were based on time recorded contemporaneously. CP2 286-87. This accuracy is much higher than required, and HSC was able to contest items line by line and with particularity. *See, e.g.*, CP2 248-50. Judge Mitchell's analysis of these hours does not require any further support because it is thorough. CP2 430-35.

HSC claims Judge Mitchell should have made a detailed analysis of every objection HSC raised. App. Br. At 21-28. HSC's reliance on *Berryman v. Metcalf*, 177 Wn. App. 644, 312 P.3d 745 (2013) *review denied,* 179 Wn.2d 1026, 320 P.3d 718 (2014); is misplaced. Berryman sued over a minor soft-tissue injury caused by a rear-end accident. After

mandatory arbitration, he offered to take $30,000 in settlement, but the defendant refused. When a jury awarded him $ 36,542, his attorneys were awarded $281,400 in fees. The Court of Appeals made clear in their remand that "the defendant is not required to pay for a Cadillac approach to a Chevrolet case." *Berryman*, 177 Wn. App. at 662. HSC's snippets from this case must be viewed in the context of highly questionable claims for fees:

> The block billing entries tend to be obscure. For example, on November 3, 2011, Kang billed 11.7 hours for meeting with Berryman about trial preparation and also for drafting a reply brief in support of plaintiffs motions in limine. How many hours were devoted to meeting with Berryman, and how many to drafting a reply brief, is impossible to tell, but either way, the amount of time spent is questionable, particularly since Epstein billed 2.5 hours on the same day for witness preparation of Berryman and her fiancé. The trial court must make an independent judgment about how much time is reasonably spent in "client and witness preparation" where all but one of six witnesses had testified in the arbitration, and one of the expert witnesses testified by videotape. The court should keep in mind that the attorney's reasonable hourly rate encompasses the attorney's efficiency, or "ability to produce results in the minimum time." *Bowers* [*v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 600, 675 P.2d 193 (1983)]

177 Wn. App. 663-64. Unlike the defendant in *Berryman,* HSC had no problem identifying hours worked, what work was performed and that work's relevancy in every entry of VMSI's records. For example, HSC claims some of the work was unproductive, such as the October 26, 2012,

hearing.[3] CP2 310. HSC's attorneys billed more time to the motion, CP 269, and the court entered an order granting VMSI's motion for summary judgment against one of HSC's claims. CP 277-78. All of these objections to each entry were patent for the trial court to rule and this court to review. If there were errors in approving this time, it would be that Judge Mitchell should have granted travel time because both parties requested it. In approving necessary travel time, the Ninth Circuit noted, "The touchstone in determining whether hours have been properly claimed is reasonableness." *Davis v. City & Cnty. of San Francisco,* 976 F.2d 1536, 1543 (9th Cir. 1992). Again, even if Judge Mitchell abused his discretion by cutting out the travel time, HSC was not prejudiced and is squabbling over an hour's worth of time, CP2 48, 124, 210, 310, for which its attorneys billed 1.3 hours. CP 269.

Parties are often entitled to attorneys' fees that they never paid and were not obligated to pay. What was paid or the parties' agreed rate is not determinative of the "reasonable fee."

> *Bowers* states that the trial court should consider the total hours necessarily expended in the litigation by each attorney, as documented by counsel, and that the total hours expended should then be multiplied by each lawyer's reasonable hourly rate of compensation considering *inter alia* the difficulty of the problem, each lawyer's skill and experience and the amount involved. The court may also

[3] "Block-billing; Lack specificity; Prevent effective segregation; Unsuccessful motion; Wasted time and effort; Unnecessarily expended; Unproductive time" to be precise.

> consider the quality of the work performed, but only if the level of skill has varied substantially from the norm of other attorneys possessing the same experience, qualifications and abilities.

Singleton v. Frost, 108 Wn.2d 723, 733, 742 P.2d 1224 (1987). Here, Judge Mitchell could rely on two sources in determining a reasonable fee. The first is Richard Martens' declaration indicating $250 per hour was a reasonable fee, CP2 372, "in this high profile and high risk case." CP 324. He also claimed $225 per hours was an appropriate rate to charge an insurance company. CP2 370. The second William Cameron's declaration, which claims $225 to $300 per hour is appropriate. CP2 23. Judge Mitchell picked the $225 rate:

> VMSI has not presented evidence to establish that this was a particularly difficult or complicated case to defend by VMSI. Therefore this court finds that a fee at the low end of VMSI's fee schedule of $225 per hour is reasonable.

CP2 424, 438. Judge Mitchell saw HSC's case as more picayune than did Mr. Martens. One can argue that as both sides agreed on $250 as a reasonable fee, Judge Mitchell abused his discretion in using some other fee, but HSC "was not prejudiced by the failure to apply the rule, and hence cannot complain of it on this appeal, as error to warrant reversal must be prejudicial." *Gile v. Baseel*, 38 Wash. 212, 217, 80 Pac. 437 (1905).

HSC spends a good deal of time complaining that VMSI did not do a lodestar analysis to justify its fees. App. Br. at 18-21. There are two components to this argument. The first component is that VMSI should have started with the flat fee of $14,688 or perhaps the $185 rate used on the dummy bills that HSC insisted VMSI produce, because this "is indisputably an insurance defense case." Brief 19. This is not true; this is not an insurance defense case. As Fireman's Fund's attorney Melissa White stated, "FFIC has been providing defenses without reservation to each of its insureds – VMSI, LLC and HSC Real Estate, Inc. against allegations asserted by Plaintiff Dana Widrig." CP2 331. VMSI's counsel stated, "Our Firm was hired by Fireman's Fund Insurance Company to defend against the allegations of Dana Widrig brought against VMSI, LLC. This was a flat-fee case to be paid at the sum of $14,688.00." CP2 22-23. Fireman's Fund did not undertake to defend anything except the claims of Widrig, and never undertook to defend against HSC's cross-claims. This part of this case is anything but an insurance defense case. This is one of the reasons VMSI specifically excluded the $14,688 flat fee from its first fee application. CP 22-24.

The second component of HSC's objection is VMSI or Judge Mitchell failure to "use a lodestar analysis to support the fee request." App. Br. At 20. HSC did, however, and "[a]ll evidence is to be

considered, regardless of the party who introduced it." WPI 1.02; *Provins v. Bevis,* 70 Wn.2d 131, 136-37, 422 P.2d 505 (1967); *Hector v. Martin,* 51 Wn.2d 707, 710, 321 P.2d 555 (1958); *Whitchurch v. McBride*, 63 Wn. App. 272, 275, 818 P.2d 622 (1991). Unless HSC is saying that its own lodestar analysis is flawed, CP2 372, there is no reason to look further. There is no significant distinction between the skill and experience of the attorneys other than the success of VMSI's in this matter.

C. This is not a subrogation claim.

Following settlement of Widrig's claims, HSC brought a motion for summary judgment, claiming:

> HSC tendered the matter to Fireman's Fund and sued VMSI on the parties' contract. After months and months of delay and total silence, Fireman's Fund belatedly "accepted" the tender of defense albeit under a strict reservation of rights. The reservation of rights was later withdrawn. ... Yet, HSC still has not been held harmless from plaintiff's claims because its fees and costs in this case remain unpaid by VMSI or its insurer, which belatedly admitted to owing HSC a defense.

CP 44 (citations to record omitted). It is impossible to read this claim as other than HSC's insistence that VMSI is liable for Fireman's lackadaisical acceptance of the tender of defense – October 19, 2011, to June 26, 2012. CP 299-300, CP2 335-36. No part of the Agreement, no rule of contract law, no provision of the Fireman's Fund policy is cited as authority for this claim. Other than the contract provision that because

there was "available insurance" VMSI was liable for Fireman's dilatory conduct. CP 44-46.

HSC claims its "contractual claims at issue are based upon a written agreement." App. Br. at 5. HSC's subrogation claim cannot be based on contract law, because "subrogation enables an insurer that has paid an insured's loss pursuant to a policy ... to recoup the payment from the party responsible for the loss." *Mahler v. Szucs*, 135 Wn.2d 398, 413, 957 P.2d 632, 640 (1998). This claim is not "subrogation." The real party causing the loss was Cody Kloepper, and he has no part in this action. Were Fireman's Fund suing HSC for negligently hiring Kloepper, then this argument would have some validity, but HSC's subrogation arguments are misplace in this context, because the recovery is not against an insured. Fireman's Fund did not insure VMSI or HSC's performance under the Agreement. This action is not by an insurer but by a party under a contract – the Management Agreement. The recovery sought in not for "an insured's loss pursuant to a policy" – Widrig's claims against HSC – but for defending HSC's breach of contract allegations. Not a single element of subrogation exists in this case.

D. HSC failed to present its subrogation argument to the trial court to preserve its argument for appeal.

HSC first presented its subrogation argument in its motion for reconsideration. CP2 255-57. This is too late to make a new argument. "Likewise, Civil Rule 59 does not permit a plaintiff, finding a judgment unsatisfactory, to suddenly propose a new theory of the case. *Int'l Raceway, Inc. v. JDFJ Corp.*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999) (citing *Vaughn v. Vaughn,* 23 Wn. App. 527, 531, 597 P.2d 932 (1979))." *Eugster v. City of Spokane*, 121 Wn. App. 799, 811, 91 P.3d 117 (2004). While the subrogation argument lacks merit, and even though Judge Mitchell addressed it, CP2 431, it is improperly raised at the 11th hour when it cannot be properly addressed by the opposing party. This court should not address matters not properly raised in the trial court.

When the trial court determined that HSC was not entitled to reimbursement from VMSI, VMSI was eligible for reasonable attorneys' fees under the Agreement for successfully defending that position. In reply to VMSI's request for fees, HSC did not raise the issue of subrogation being a bar to VMSI's recovering attorneys' fees under the Agreement. HSC was obliged to raise this issue in reply to VMSI's request for fees, or at the latest in a motion for reconsideration, not at some later date. Once the trial court awarded VMSI its right to fees under

the Agreement, that issue was final; HSC appealed to this court; the trial court lost the ability to alter its decision. *Tinsley v. Monson & Sons Cattle Co.*, 2 Wn. App. 675, 472 P.2d 546 (1970). The only question for review here is the amount of the fees and those are at the trial courts discretion. *Mapes v. Mapes,* 24 Wn.2d 743, 167 P.2d 405 (1946). The amount awarded is the only matter the trial court could resolve after its March 19, 2013, order. RAP 7.2.

E. HSC's Statement of the Case is improper.

HSC's Statement of the Case – its description of the Management Agreement, the resolution of HSC's claims, the sequence of events that brought us here and other relevant facts and procedures – is inaccurate, argumentative, defamatory and incomplete. It does not comply with RAP 10.3.[4] HSC's Statement of the Case should be disregarded.

The Statement of the Case is so fraught with inaccuracy and error, an analysis of each such statement would greatly extend this brief and is unnecessary for resolution of this appeal. One of these mischaracterizations bears mention.

2. HSC obtains discovery demonstrating that Fireman's Fund fully funded and controlled the litigation on behalf of VMSI.

[4] "(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement."

> In response to the denial of its initial motion for prevailing party fees and costs, VMSI eventually produced redacted copies of its billing statements for the case. *See* CP 156-232. It is in these records that the hand of Fireman's Fund is first apparent when VMSI's counsel billed telephone calls with Fireman's Fund's coverage counsel Jodi McDougall after moving for summary judgment dismissal of plaintiff's claims and HSC's cross-claims. See CP 192.[5] Later, there are discussions (redacted) with Ms. McDougall and her partner at Cozen O'Connor, Melissa White, which become more frequent after the settlement and dismissal of plaintiff's claims. See CP 197, 200, 204-05, 209, 212-13, 215, 219-26, and 229-30.

App. Br. At 8-9. This section is objectionable because, but for the fact that it is in a pleading, it would be libelous, and it is false.

Our Supreme Court has declared in numerous cases since *Van Dyke v. White*, 55 Wn.2d 601, 349 P.2d 430 (1960) to *Stewart Title v. Sterling Savings Bank*, 178 Wn.2d 561, 311 P.3d 1 (2013), that an attorney's duty is to his client and not to the insurer who employed him. Without substantial evidence, it is irresponsible to suggest that either the attorneys for Fireman's Fund or for VMSI breached that duty of "undivided loyalty" to Fireman's or VMSI, respectively. *Hamilton v. State Farm Ins. Co.,* 9 Wn. App. 180, 186, 511 P.2d 1020 (1973); *Parks v. Fink*, 173 Wn. App. 366, 293 P.3d 1275 (2013) *review denied,* 177 Wn.2d 1025, 309 P.3d 504 (2013); *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013); RPC 1.8. The clear implication of this

[5] These are billed under L240, which is the ABA billing code for dispositive motions

statement is that these attorneys violated their ethical obligations to their clients. The evidence for this conclusion is that, because there were discussions between Cameron, McDougall and White, Fireman's Fund controlled this litigation. That is not fact or even evidence of fact; it is conjecture. To accuse an attorney of being "disloyal to the best interests of his client [is] libelous per se." *Levy v. Gelber*, 175 Misc. 746, 747, 25 N.Y.S.2d 148, 149 (N.Y. Sup. Ct. 1941); *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989).

The second objection is the falsity of the statement. HSC's claims, VMSI eventually produced redacted copies of its billing statements "demonstrating that Fireman's Fund fully funded and controlled the litigation on behalf of VMSI." HSC points to CP2 192, on which there is an entry of a 15 minute call between William Cameron and Jodi McDougall. This same entry appeared on the original spreadsheet identifying McDougall as coverage counsel, CP2 41, but a week before that entry, HSC's attorneys had received a copy of a letter from McDougall clearly stating her position with respect to this litigation. CP2 335-36.[6] This entire paragraph is a fabrication. It has no place in a Statement of the Case.

[6] It is not completely accurate to call McDougall and White "coverage counsel," CP2 294, but HSC had repeatedly referred to them as such. *E.g.* CP 47, 56, 94, 198.

F. VMSI is entitled to reasonable attorneys' fees.

"Whether a party is entitled to attorney fees is an issue of law which is reviewed de novo." *Ethridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001). Section 20 of the Management Agreement provides that the prevailing party is entitled to reasonable attorneys' fees. CP 64. VMSI has prevailed on its claims against HSC. "[A] prevailing party or substantially prevailing party is the one that receives judgment in its favor at the conclusion of the entire case." *Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.*, 160 Wn. App. 728, 739-40, 253 P.3d 101 (2011). VMSI is entitled to recover its reasonable attorneys' fees on appeal.

VI. CONCLUSION

This court should affirm the decision of the Benton County Superior Court in its entirety. VMSI is entitled to its reasonable attorneys' fees on this appeal.

Respectfully submitted this 20th day of May 2014.

LEE SMART, P.S., INC.

By: _____
Joel E. Wright, WSBA No. 8625
William L. Cameron, WSBA No. 5108
Of Attorneys for VMSI, LLC

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on May 20, 2014, I caused service of the foregoing pleading on each and every attorney of record herein:

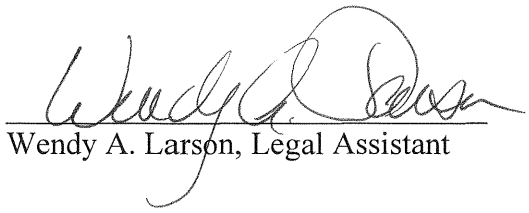
VIA LEGAL MESSENGER

Richard L. Martens
Steven A. Stolle
Rose K. McGillis
Martens + Associates, P.S.
705 Fifth Avenue South, Ste. 150
Seattle, WA 98104

VIA FEDERAL EXPRESS

Kristina J.C. McKennon
William J. Flynn, Jr.
Mariah A. Wagar
Flynn Merriman McKennon, P.S.
8203 W. Quinault Avenue, Suite 600
Kennewick, WA 99336

DATED this 20th day of May 2014 at Seattle, Washington.



Wendy A. Larson, Legal Assistant