

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/24/2022 2:27 PM  
BY ERIN L. LENNON  
CLERK

CASE NO. 101353-1

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SUPREME COURT OF THE STATE OF WASHINGTON

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CHRIS HAMILTON and JANE DOE HAMILTON, husband and wife,  
HG ENTERPRISES, LLC, a Washington limited liability Company,

Petitioners

v.

BEN GERVAIS,

Respondent

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**MOTION FOR EXTENSION OF TIME TO FILE PETITION**

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James B. Meade, WSBA #22852  
FAIN ANDERSON VANDERHOEF  
ROSENDAHL O'HALLORAN SPILLANE, PLLC  
Attorneys for Petitioner Hamilton

1301 A Street, Suite 900  
Tacoma, WA 98402  
(253) 328-7800  
jb@favros.com

### **A. MOTION TO EXTEND TIME TO FILE**

Petitioner Christopher Hamilton and Jane Doe Hamilton move the Court under RAP 18.8 to extend the time to file their Petition for Review by the Supreme Court by 26 minutes.

Counsel for the Hamiltons registered with the Washington Secure Access Court at 3:34 p.m. on October 7, 2022 to file the Hamilton's Petition and immediately began multiple attempts to electronically file the Petition with the Court of Appeals. Meade Decl., ¶ 1, Exh. 1. Even though the Petition would upload into the system, the Washington State Courts' Secure Access system would not accept the Petition for filing. Id.

Counsel served the Petition on counsel in the case at 4:15 p.m. while he continued attempts to file the Petition electronically using his log in and password. Meade Decl., Exh. 2. Calls to the Court's help desk could not resolve the filing problem. Meade Decl., ¶ 1.

Counsel for Hamilton was able to obtain credentials possessed by his firm for filing generally with the Court and using that log in and pass code was able to get the Petition filed at 5:26 p.m. Meade Decl., ¶ 3. In the successful filing, Counsel for Hamilton used the same procedure laid out in the Court's instructions and the only difference appeared to be the different log in and password. Id.

Counsel for Hamilton respectfully submits that the extraordinary

circumstances prong of RAP 18.8(b) is met where multiple attempts to use the Court's approved filing system failed to allow the Petition to be filed on time using those credentials and that alternative credentials had to be used to get the filing system to accept the Petition. Additionally, the Petitioners were not seeking some advantage or delay and served the Petition on opposing counsel at 4:15 p.m. ahead of the filing deadline.

A gross miscarriage of justice would occur here where an apparent defect in the log in and/or password assigned to counsel, or in the system itself, prevented multiple attempts to file the brief ahead of the 5 p.m. filing deadline. The Hamiltons have brought a meritorious Petition to the Supreme Court for consideration regarding how Washington jurisprudence involving the award of attorneys' fees and costs under RCW 4.84.330 is inconsistently applied in the Courts of Appeal and which leads to confusion and error in how Superior Court Judges apply that law in the State.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of October, 2022.

FAIN ANDERSON VANDERHOEF ROSENDAHL  
O'HALLORAN SPILLANE, PLLC

By: s/ James B. Meade

James B. Meade, WSBA #22852  
Attorneys for Petitioner Hamilton  
1301 A Street, Suite 900  
Tacoma, WA 98402  
Ph: (253) 328-7800  
Email: [jb@favros.com](mailto:jb@favros.com)

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury of the laws of the State of Washington that on the date below a copy of the foregoing document was filed with Washington Supreme Court and forwarded for service upon counsel of record as follows:

***Counsel for Appellant***

Paul E. Brain  
Brain Law Firm, PLLC  
950 Pacific Avenue, Suite 700  
Tacoma, WA 98402  
pbrain@paulbrainlaw.com

- Regular U.S. Mail
- Facsimile
- ABC Legal Messenger
- E-service / E-mail

***Counsel for Respondents Shott and Heritage Bank***

R. Alan Swanson  
Swanson Law Firm, PLLC  
914 7th Avenue SE  
Olympia, WA 98501  
alan@swansonlawfirm.com

- Regular U.S. Mail
- Facsimile
- ABC Legal Messenger
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***Co-Counsel for Respondents Shott and Heritage Bank***

David J. Corbett  
David Corbett PLLC  
2106 N. Steele Street  
Tacoma, WA 98406  
david@davidcorbettlaw.com

- Regular U.S. Mail
- Facsimile
- ABC Legal Messenger
- E-service / E-mail

Signed at Tacoma, Washington this 24<sup>th</sup> day of October, 2022.

*s/ John Drashil*

\_\_\_\_\_  
John Drashil  
Legal Assistant

# FAVROS LAW

October 24, 2022 - 2:27 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,353-1  
**Appellate Court Case Title:** Ben Gervais v. Christopher Hamilton, et al.  
**Superior Court Case Number:** 18-2-12870-1

### The following documents have been uploaded:

- 1013531\_Affidavit\_Declaration\_20221024142406SC727490\_3195.pdf  
This File Contains:  
Affidavit/Declaration - Other  
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Motion 1 - Extend Time to File  
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- kelsey@swansonlawfirm.com
- myia@favros.com
- pbrain@paulbrainlaw.com
- vrainherzog@ms.com

### Comments:

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Sender Name: Cindy Kusick - Email: cindy@favros.com

**Filing on Behalf of:** James Benjamin MeadeII - Email: jb@favros.com (Alternate Email: lani@favros.com)

Address:  
701 Fifth Ave  
Suite 4750  
SEATTLE, WA, 98104  
Phone: (206) 749-0094

**Note: The Filing Id is 20221024142406SC727490**

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HG ENTERPRISES, LLC, a Washington limited liability Company,

Petitioners

v.

BEN GERVAIS,

Respondent

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**DECLARATION OF JAMES B. MEADE IN SUPPORT OF  
MOTION FOR EXTENSION OF TIME**

---

James B. Meade, WSBA #22852  
FAIN ANDERSON VANDERHOEF  
ROSENDAHL O'HALLORAN SPILLANE, PLLC  
Attorneys for Petitioner Hamilton

1301 A Street, Suite 900  
Tacoma, WA 98402  
(253) 328-7800  
jlb@favros.com

## **DECLARATION OF JAMES B. MEADE**

I, JAMES B. MEADE, declare under penalty of perjury of the laws of the State of Washington that I am counsel for Petitioners Hamilton in this matter and that I make this Declaration based on personal knowledge.

1. I registered with the Washington State Courts' Secure Access system on October 7, 2022 and authenticated my email with that system at 3:34 p.m. Attached hereto as **Exhibit 1** is true and correct copy of the email I received showing that I was approved to file with the Court. I immediately attempted to file the Hamilton's Petition electronically using this system. Even though the Petition would upload into the system, the Washington State Courts' Secure Access system would not accept it for filing. I made multiple attempts (at least five) to use this log in and password, but each time the system would not accept it. A call to the Court's help desk could not resolve the filing problem.

2. While I continued attempts to file the Petition electronically, I served the Petition on counsel in the case at 4:15 p.m. Attached hereto as **Exhibit 2** is a true and correct copy of my email to opposing counsel attaching a copy of the Petition being served on them.

3. I was able to obtain credentials possessed by my firm for filing generally with the Court and using that log in and pass code was able

to get the Petition filed at 5:26 p.m. In this successful filing, I followed the same instructions and filing pathway and the only difference appeared to be the different log in and password.

Signed this 24<sup>th</sup> day of October, 2022 at Tacoma, Washington.

A handwritten signature in blue ink, appearing to read "J B Meade". The signature is fluid and cursive, with a large loop for the letter 'J' and a distinct 'B'.

---

James B. Meade, WSBA #22852



# **EXHIBIT 1**

Date : 10/7/2022 10:34:04 PM

From : doNotRespond@courts.wa.gov

From : doNotRespond@courts.wa.gov

To : "James B. Meade" jb@favros.com

Subject : Washington State Courts' Secure Access

\*\*\*\*\*

\* This is a system generated message, please DO NOT reply to this email.

\*\*\*\*\*

Your Washington State Courts' Secure Access Account has been activated.

You may now begin using the Appellate Courts' eFiling Portal to file documents with the Court of Appeals and the Supreme Court.

Washington State Appellate Courts home page

<https://ac.courts.wa.gov>

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If you have questions about using the Washington State Appellate Courts' Portal, or you need to contact Customer Support, please visit <https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=needAssistance>.

# **EXHIBIT 2**

Date : 10/7/2022 11:14:36 PM

From : "James B. Meade"

From : "James B. Meade"

To : "Paul Brain" pbrain@paulbrainlaw.com, "david@dauidcorbettlaw.com" david@dauidcorbettlaw.com, "kelsey@swansonlawfirm.com" kelsey@swansonlawfirm.com, "Alan Swanson" alan@swansonlawfirm.com

Cc : "John M. Drashil" johnd@favros.com

Subject : RE: D2 55456-9-II UNPUBLISHED OPINION SERVICE

Attachment : Petition w COA attached.pdf; Court of Appeals Cover Letter.pdf;

Please find enclosed Mr. Hamilton's Petition for Supreme Court Review and Cover Letter to Clerk of Court.

James B. Meade Principal/Owner

1301 A Street, Suite 900, Tacoma, WA 98402

Direct 253-328-7835 Cell 253-678-2664

[www.favros.com](http://www.favros.com)

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FAIN ANDERSON VANDERHOEF ROSENDAHL O'HALLORAN SPILLANE PLLC

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From: James B. Meade

Sent: Thursday, September 8, 2022 12:36 PM

To: Paul Brain <pbrain@paulbrainlaw.com>; Amanda K. Thorsvig <amanda@favros.com>; 'david@dauidcorbettlaw.com' <david@dauidcorbettlaw.com>; 'kelsey@swansonlawfirm.com' <kelsey@swansonlawfirm.com>; 'davis@daviswatsonlaw.com' <davis@daviswatsonlaw.com>; Alan Swanson <alan@swansonlawfirm.com>

Cc: John M. Drashil <johnd@favros.com>

Subject: RE: D2 55456-9-II UNPUBLISHED OPINION SERVICE

Mr. Brain: Always good to hear from you and obtain your legal analysis of issues. I will discuss your request with my client as we evaluate our options and will be in touch as soon as I have an answer.

James B. Meade Principal/Owner

1301 A Street, Suite 900, Tacoma, WA 98402

Direct 253-328-7835 Cell 253-678-2664

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From: Paul Brain <pbrain@paulbrainlaw.com>

Sent: Thursday, September 8, 2022 8:48 AM

To: Amanda K. Thorsvig <amanda@favros.com>; James B. Meade <jb@favros.com>; 'david@dauidcorbettlaw.com' <david@dauidcorbettlaw.com>; 'kelsey@swansonlawfirm.com' <kelsey@swansonlawfirm.com>; 'davis@daviswatsonlaw.com' <davis@daviswatsonlaw.com>; Alan Swanson <alan@swansonlawfirm.com>

Cc: Ben Gervais <ben4911@comcast.net>

Subject: RE: D2 55456-9-II UNPUBLISHED OPINION SERVICE

It continues to be an amazement to me, as well as a source of great amusement, that Hamilton spent including fees on the appeal, over half a million dollars on a case he could have settled for \$75,000 that never involved more than \$150k in damages. If he was acting on the understanding that he would be able to recover those fees, I always thought it was a fool's errand. Equally true, to a lesser degree, for Heritage. This would be amply borne out by the opinion. So, at the end of the day, my client put, net of fees, \$120k in his pocket. So, who won her is an interesting question.

What is beyond discussion is that, on this issue, you both lost. Will you stipulate to the release of the supersedeas funds?

From: Boardman, Catherine <Catherine.Boardman@courts.wa.gov>

Sent: Wednesday, September 7, 2022 11:28 AM

To: 'amanda@favros.com' <amanda@favros.com>; 'jb@favros.com' <jb@favros.com>; 'david@dauidcorbettlaw.com' <david@dauidcorbettlaw.com>; 'kelsey@swansonlawfirm.com' <kelsey@swansonlawfirm.com>; Paul Brain <pbrain@paulbrainlaw.com>; 'davis@daviswatsonlaw.com' <davis@daviswatsonlaw.com>

Cc: Boardman, Catherine <Catherine.Boardman@courts.wa.gov>

**Subject:** D2 55456-9-II UNPUBLISHED OPINION SERVICE

**Importance:** High

**To Counsel and Interested Parties:**

**Attached is an Unpublished Opinion filed today, 9/7/2022.**

**This will be the only notice you will receive from the court.**

**Please contact the court at (253) 593-2970 if you have any questions or comments.**

**Thank you.**

**Catherine Boardman  
Judicial Administrative Assistant**

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury of the laws of the State of Washington that on the date below a copy of the foregoing document was filed with Washington Supreme Court and forwarded for service upon counsel of record as follows:

***Counsel for Appellant***

Paul E. Brain  
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- ABC Legal Messenger
- E-service / E-mail

***Counsel for Respondents Shott and Heritage Bank***

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alan@swansonlawfirm.com

- Regular U.S. Mail
- Facsimile
- ABC Legal Messenger
- E-service / E-mail

***Co-Counsel for Respondents Shott and Heritage Bank***

David J. Corbett  
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Tacoma, WA 98406  
david@davidcorbettlaw.com

- Regular U.S. Mail
- Facsimile
- ABC Legal Messenger
- E-service / E-mail

Signed at Tacoma, Washington this 24<sup>th</sup> day of October, 2022.

*s/ John Drashil*

\_\_\_\_\_  
John Drashil  
Legal Assistant

# FAVROS LAW

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- kelsey@swansonlawfirm.com
- myia@favros.com
- pbrain@paulbrainlaw.com
- vrainherzog@ms.com

### Comments:

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Sender Name: Cindy Kusick - Email: cindy@favros.com

**Filing on Behalf of:** James Benjamin MeadeII - Email: jb@favros.com (Alternate Email: lani@favros.com)

Address:  
701 Fifth Ave  
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SEATTLE, WA, 98104  
Phone: (206) 749-0094

**Note: The Filing Id is 20221024142406SC727490**