NO. 312038

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION NO. III

Rose Townsend Trust for Donald Townsend, et al.

Plaintiffs/Appellant

vs.

Scott R. Smith,

Defendant/Respondent.

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

This legal malpractice case arises from Respondent Scott Smith's ("Mr. Smith") representation of Appellant Townsend Trust ("the Trust') in connection with the Trust's efforts to collect on a state court judgment against Daryl Johnston ("Johnston"). The collection efforts took place in the context of multiple bankruptcies filed by Johnston and adverse priority claims asserted by Johnston's other secured creditors. [1]

On January 22, 1998, the Trust obtained a Spokane County Judgment in the amount of $76,147.31 from a promissory note concerning a home owned by Johnston and Sally Arney ("Arney"). *CP 425-432*. The judgment was recorded with the Spokane County Auditor on October 27, 1998. *Id.* The Johnston-Arney residence was originally financed through North American Mortgage in 1994. The Deed of Trust in favor of North American Mortgage stated the note secured "the repayment of the debt evidenced by the note with interest and all renewals, extensions and modifications of the note." *Id.* However, the Deed of Trust was reconveyed and released when the home was refinanced approximately ten years later. *Id.*

---

[1] The opinion issued by Judge Suko on November 14, 2007 contains a clear and concise recitation of the underlying facts. Thus, much of the following statement of facts is taken almost verbatim from Judge Suko's opinion, with only minor changes.

Also on January 28, 1998, a state court judgment was entered in the amount of $500 in favor of the Trust for attorney's fees. That judgment was not recorded with the Spokane County Auditor. *Id.*

Johnston filed for bankruptcy on July 16, 1999. At the time, both Johnston and Arney lived in the home. *Id.*

A default judgment was entered on January 19, 2001 in the amount of $132,044.73 against Johnston, by request of the Trustee in Johnston's 1999 bankruptcy. *Id.* On January 19, 2001, the Chapter 7 Trustee in Johnston's 1999 bankruptcy also obtained a default judgment against Arney for $80,000. *Id.* Neither of these default judgments were recorded in the Spokane Auditor's office. *Id.*

The residence was refinanced twice after the four judgments referenced above were entered. *Id.* Ameriquest refinanced the residence on October 6, 2004, for which Johnston and Arney received $81,270.89. *Id.* Johnston and Arney again refinanced the house on April 6, 2005. *Id.* This time, New Century provided the loan in the amount of $16,808.73. *Id.* In order to secure the loan, Arney and Johnston gave New Century a Deed of Trust, which was recorded in the Spokane County Auditor's office on April 14, 2005. *Id.* While the title commitment did not reflect any liens on the property, a chain of title report dated November 28, 2005, listed all four of Townsend Trust's liens, and specifically reported that "any

transactions involving real estate must be made pursuant to court order." *Id.*

On July 21, 2005 the Trustee in Johnston's chapter 7 bankruptcy assigned the bankruptcy trustee's judgment against Arney and Johnston to the Trust. The assignment document was drafted by attorney Joseph Delay. *CP 369, 370.*

Johnston objected to Trust's creditors claim in her bankruptcy. In response, the Trust initiated an adverse proceeding in the Bankruptcy Court to determine the priority of liens on the Johnston-Arney residence. *CP 373-79.* In the action, Trust asserted that its assigned judgments had priority and asked the Bankruptcy Court to find, among other things, that Johnston and Arney, and in effect New Century, were not entitled to the Homestead Exemption. *Id.*

On September 22, 2006 bankruptcy judge Patricia Williams, in a 27-page ruling, found in favor of the Trust, accepting the Trust's essential argument that, when a debtor has property upon which a judgment lien has attached, and the debtor later places a consensual lien on the property, which, under state law, is inferior to the judgment lien, the homestead exemption is only applicable after the payment of both obligations. *CP 381-407, 409.*

New Century appealed Judge Williams' ruling. On November 14, 2007, Judge Lonnie Suko denied the appeal, rejecting New Century's arguments regarding the construction of Washington's recording statutes, operation of Washington's Homestead Act, estoppel, and waiver. *CP 425-432.*

New Century again appealed. On May 20, 2009, the Ninth Circuit Court of Appeals issued an unpublished opinion wherein it reversed Judge Williams and Judge Suko. In short, the Court of Appeals disagreed with Judge Williams and Judge Suko's construction of Washington State's recording statutes as well as their conclusions with respect to the effect of the assignment to the Trust of the two bankruptcy court judgments. *CP 434-438.*

On June 2, 2010, the Trust filed its First Amended Complaint for Damages [for legal malpractice] against Mr. Smith. *CP 1-50.* In its First Amended Complaint, the Trust identified/articulated its malpractice claim against Mr. Smith as follows:

> 3.3. Mr. Smith breached the duty to exercise the skill, care, and knowledge ordinarily exercised by attorneys similarly situated by failing to advice the Townsend Trust that by waiving the creditor's claim against Darrel Johnston, the Johnston state court judgment would be rendered unenforceable, and by failing to advice the Townsend Trust that the unrecorded Johnston bankruptcy judgment would be junior to any other recorded liens or recorded judgments against the Johnston homestead property.

> 3.4 Mr. Smith should have known that the unrecorded Johnston bankruptcy judgment was not a lien that was first, seen or fully perfected with respect to any other liens.
>
> 3.5 Mr. Smith should have known that a waiver of the creditor's claim in the Johnston bankruptcy proceeding would render the Johnston state court judgment unenforceable.
>
> 3.6 Mr. Smith's error constituted both a negligent act and a breach of a contractual obligation owed to the Townsend Trust.
>
> 3.7 Mr. Smith's errors caused harm in an amount to be proved at trial.

Id.

In a Second Amended Complaint, filed on November 10, 2010, the Trust added as a defendant Joseph Delay's law firm, Delay, Curran, Thompson, Pontarolo & Walker, P.S. ("Delay, Curran"). *CP 51-101*. The Trust alleged that Delay, Curran "breached the duty to exercise the skill, care, and knowledge ordinarily exercised by attorneys similarly situated by creating a document, namely the 'Assignment of Judgment'...which caused the Townsend Trust to forfeit its right to collect on the Johnston state court judgment." *Id.*

The allegations of negligence against Mr. Smith as stated in the Second Amended Complaint were identical to the allegations contained in the First Amended Complaint, although the Trust did add the contention

that "Mr. Smith should have taken steps to modify the creditor's claim from an unsecured non-priority claim to a secured priority claim in the bankruptcy of Daryl Johnston." *Second Amended Complaint, paragraph 3.6. Id.*

On March 16, 2011 the trial court issued an Amended Civil Case Schedule Order, setting the matter for trial commencing April 2, 2012. *CP 107-108.*

On January 13, 2011, pursuant to the initial Case Schedule Order, the Trust filed its Disclosure of Lay and Expert Witnesses. No experts were identified. *CP 102-104.*

On March 25, 2011, Delay, Curran filed a Motion for Summary Judgment, arguing that the Trust's legal malpractice claim against it was barred by the statute of limitations. *CP 109-116.* On April 29, 2011, the Court granted the Motion. *CP 279-281.* The Trust did not and has not appealed that order.

On March 15, 2012, Mr. Smith filed a Motion in Limine in which he argued, among other things, that the Trust should not be permitted to put on any expert testimony that Mr. Smith violated the standard of care because the Trust never identified any expert witness(es) and that, due to the Trust's lack of supporting expert testimony, its legal malpractice claim against Mr. Smith should be dismissed. *CP 318-323.*

On May 15, 2012 the trial court issued its order granting Mr. Smith's Motions in Limine. *CP 812-815*. That same day, the trial court issued an order dismissing the Trust's claims against Mr. Smith because the Trust lacked qualified expert testimony on the legal standard of care and its breach, as required under Washington law. *CP 820-822*.

The Trust never filed a formal motion for leave to amend its complaint against Mr. Smith to add additional allegations of legal malpractice. Rather, in the Trust's Reply to Defendant's Response to Plaintiff's Motions in Limine, the Trust stated:

> If necessary, Plaintiff should be allowed to amend the Complaint. Defendant cannot demonstrate prejudice. Moreover, the trial in this matter has been continued again due to the Court's scheduling conflict, so Defendant has additional time to prepare for this aspect of the negligence claim against Mr. Smith.

CP 681-688.

The Trust then, in its Memorandum in Support of a Motion for Reconsideration, stated:

> Plaintiff alleges that the remedy here is to allow Plaintiff to amend the Complaint, similar to allowing the plaintiff to amend the Complaint at trial to conform to the proof presented at trial.

CP 825-843.

II. ARGUMENT AND AUTHORITIES

A. The Trust's claims against Mr. Smith, as pled on May 15, 2012 required supporting expert testimony, which the Trust did not have. Accordingly, the trial court properly granted judgment of dismissal in favor of Mr. Smith.

To establish a claim for legal malpractice, a client must prove:

(1) the existence of an attorney/client relationship that gives rise to a duty of care;

(2) breach of duty;

(3) proximate causation and damages.

Davis v. Davis Wright Tremaine, 103 Wn.App. 638, 655, 14 P.2d 146 (2000); *Hizey v. Carpenter*, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992).

To comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in the State of Washington. *Hizey*, *supra*, at 252, citing *Hanson v. Wightman*, 14 Wn.App. 78, 90, 538 P.2d 1238 (1975).

Expert testimony is necessary to establish the standard of care and its violation in a legal malpractice case, unless the matters at issue are within the common knowledge of lay persons. *See Walker v. Bangs*, 92 Wn.2d 854, 601 P.2d 1279 (1979); *Geer v. Tonnon*, 137 Wn.App. 838, 851, 155 P.3d 163 (2007).

In the instant case, the underlying legal issues regarding the matters for which Mr. Smith provided representation to the Trust included complicated and highly technical questions of bankruptcy and debtor creditor law, including the priority of liens, judgments recorded and unrecorded on real property, the effect of an assignment of a bankruptcy court judgment super-imposed on a state court judgment and a purported waiver of an unsecured creditor's claim. The highly technical and controversial nature of the underlying legal issues is underscored by the fact that an experienced Bankruptcy Court judge, Patricia Williams, on two occasions, determined the Trust was entitled to prevail on its lien priority claim against the objections and contravening arguments of New Century. Judge Williams further ruled that it was unlikely that New Century would prevail on appeal of her ruling when she denied a stay of proceedings. And, Judge Williams' decisions and legal analysis were affirmed and approved by United States District Court Judge Lonny Suko. It certainly cannot be said that a lay person has sufficient knowledge and expertise to be able to determine a lawyer's standard of care and alleged deviations therefrom when five federal judges, in full possession of all of the facts, law, and argument of the parties, could not agree on the proper resolution of the Trust's claims.

The Trust contends expert testimony is not required when a legal malpractice claim will be decided in a bench trial, as opposed to a jury trial. The Trust's argument in this respect is incorrect.

In support of its bench trial theory, the Trust cites from CJS, Attorney and Client, §330. A review of that entire section, however, puts the two sentences quoted in context:

> With limited exceptions, only expert testimony can establish the standard of care in a legal malpractice case. Accordingly, expert testimony is generally required to prove the standard of care against which the professional actions of the attorney are measured. Expert testimony may also be used to show the parameters of acceptable professional conduct, and negligence and the causation of damages. Whether expert testimony is necessary to establish that an attorney's conduct fell below the standard of care is a legal question that the court must determine by examining the particular malpractice issues that the case presents. A failure to produce such testimony can be fatal to a plaintiff's case. In an action for legal malpractice, expert testimony means testimony of lawyers. The reasons for requiring expert evidence of negligence and causation of damages in attorney malpractices cases is that the factor involved ordinarily are not within the knowledge or experience of the lay person's composing the jury.
>
> Expert testimony is not required in all cases. Thus, the trial court, which is of necessity familiar with the standards of practice in its community, is competent to make the determination as to the standard of care an attorney must meet, without the assistance of expert witnesses. Also, expert testimony is unnecessary as to the negligence element of an attorney malpractice case where common knowledge or the experience of lay persons is sufficient to allow the fact finder to establish the standard of care or infer negligence from the facts. Further, expert testimony

> regarding the standard of care and breach thereof, as elements of legal malpractice, may not be required when the evidence of negligence is so patent and conclusive that reasonable persons can reach only one conclusion. (Emphasis added).

CJS §330, when read in it's entirely, is completely consistent with Washington law: expert testimony is required in legal malpractice cases where the issues are complex and esoteric, regardless of whether the case is tried to a jury or to the bench.

Significantly, the CJS passage quoted by the Trust is footnoted to a single case from Louisiana, *Muse v. St. Paul Fire and Marine Insurance Company*, 328 So.2d 698 (La.App. 1976). There, the alleged malpractice was the defendant's erroneous payment to a hospital of funds he had received from his client's disability insurer. In a demand letter, the hospital's attorney cited a number of Louisiana statutes as the basis for the hospital's claim it had a lien on the disability policy proceeds. The defendant did not review the cited statutes. Instead, he simply paid his client's money to the hospital. If the defendant had reviewed the cited statutes, he would have learned that they did not support the hospital's claim. One of the cited statutes clearly stated that disability policy proceeds are exempt from lien claims like the one asserted by the hospital. The trial court – apparently after a bench trial – found the defendant had committed malpractice by paying the disability policy proceeds to the

hospital. The trial court reached this conclusion even though the plaintiff did not support his malpractice claim with expert testimony.

On review, the Court of Appeals did not hold expert testimony was unnecessary because the case was presented to the bench, rather than a jury. Instead, the court recognized the general rule that "there may even be instances wherein a practitioner's conduct is such as to constitute failure to use due care under any reasonable standard, thereby making the use of expert testimony unnecessary to establish a criteria of care." 328 So.2d at 701. The court then concluded no expert testimony was required because the attorney's conduct amounted to negligence or actionable lack of expertise "under any reasonable standard of care."

In short, *Muse* simply stands for the proposition that where conduct required by the standard of care is obvious or clear, no expert testimony is required. That is the law in Washington.

Here, what the standard of care required with respect to Mr. Smith's conduct vis-à-vis the Trust was far from obvious or clear. The complexity of the bankruptcy issues and the disagreement of the various judges who passed on how the law should apply to the set of facts confronting Mr. Smith is ample evidence of that fact.

The Trust cites *Brust v. Newton*, 70 Wn.App. 286, 862 P.2d 1092 (1993) [erroneously cited by the Trust as 70 Wn.2d 286], again in support

of the general proposition that, in a legal negligence case, the judge provides the necessary legal expertise, obviating the need for expert testimony. The Trust's reliance on *Brust* is misplaced. There, the issue was whether the trial court erred by deciding the issues of proximate cause and damages. The alleged malpractice was the in drafting of a prenuptial agreement. The trial court, relying on *Daugert v. Pappas*, 104 Wn.2d 254 (1985) determined it should decide the issues of proximate cause and damages because the trial court, rather than a jury, decides those issues in a dissolution case. The Court of Appeals disagreed, reasoning that a legal malpractice case is a tort matter, not a dissolution proceeding, and that, consequently, proximate cause and damages are issues of fact for the jury.

Because of the Trust's reliance on *Daugert v. Pappas*, 104 Wn.2d 254 (1985), a brief discussion of that case is warranted. The alleged malpractice there involved the defendant's failure to perfect an appeal. Since success on appeal depends on the appellate court judges making a determination as a matter of law, the court held that, in this narrow circumstance, the issue of proximate cause can and should be decided by the trial court as a matter of law. Neither *Brust* nor *Daugert* support the proposition that expert testimony is unnecessary in a bench trial involving complex issues of bankruptcy and debtor/creditor law.

The Trust also cites Evidence Rule 702 which, states, generally, that expert testimony is admissible to "assist the trier of fact to understand the evidence or to determine a fact in issue." ER 702 is simply inapplicable here. Professional negligence cases, particularly medical and legal malpractice actions, are unique, requiring expert testimony concerning the applicable standard of care and its violation.

The Trust, also cites *Watkins v. Shepherd*, 278 S.2d 890 (1973) in support of the general proposition that, in certain cases, the trial court is competent to make a determination on the standard of care without the assistance of expert witnesses. Mr. Smith has no quibble with this basic proposition. If the alleged violation of the standard of care were something as legally straightforward as a lawyer's failure to object to clearly inadmissible – and damaging – evidence at trial, or the lawyer's failure to serve a summons and complaint in the manner required by statute, no expert testimony would be required. But here, the alleged legal malpractice involved complex issues of bankruptcy and debtor/creditor law, clearly requiring expert testimony on the standard of care and its breach.

The logical extension of Trust's argument is that expert testimony is never required in a legal malpractice action tried to the bench because, even in the most complex of cases, the parties can educate the judge on the

law as the trial progresses. Following the Trust's reasoning, a plaintiff could convert any trial court judge into an expert witness in legal fields as esoteric as federal income taxation or SEC requirements concerning mergers and acquisitions. Not only is this not the law, but such a practice would place a trial court judge in an untenable position.

B. The Trust's Second Amended Complaint cannot reasonably be read to include a malpractice claim against Smith for negligently drafting the Assignment Agreement and/or for failing to advise the Trust of a potential malpractice claim against Joe Delay.

In the wake of the trial court's dismissal of its malpractice claim against Mr. Smith for lack of supporting expert testimony, the Trust argues that: (1) the Second Amended Complaint actually asserted additional and different malpractice claims against Mr. Smith and that; (2) these additional claims of malpractice did not require supporting expert testimony. This creative argument should be rejected.

CR 8(a) requires a pleading to contain "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled." "[P]leadings are primarily intended to give notice to the Court and the opponent of the general nature of the case asserted." *Northwest Line Constructors v. Snohomish County Public Utility District No. 1*, 104 Wn.App. 842, 848, 17 P.3d 1251 (2001), *quoting Lewis v. Bell*, 45

Wn.App. 192, 197, 724 P.2d 425 (1986). Although inexpert pleading is permitted, insufficient pleading is not. *Id.* A pleading is insufficient when it "does not give the opposing party fair notice of what the claim is and the ground upon which it rests." *Id. See also Kirby v. City of Tacoma*, 124 Wn.App. 454, 98 P.3d 827 (2004); *Camp Finance, LLC v. Brazington*, 133 Wn.App. 156, 135 P.3d 946 (2006).

In the instant case, the Trust's Second Amended Complaint did not, in any way shape or form, allege that Mr. Smith violated the standard of care by failing to inform the Trust it had a potential legal malpractice claim against Joseph Delay and his law firm. The Trust, in its brief, references emails sent by the Trust's counsel to counsel for Mr. Smith containing counsel's self serving explanation for why the Trust did not seek to amend its complaint against Mr. Smith after the trial court granted summary judgment in favor of Delay, Curran. But these emails do not satisfy the legal requirement that a complaint put the defendant on notice of the nature of the claim.

C. The trial court properly denied the Trust's "Motion" for leave to amend its Complaint to assert an additional cause of action against Mr. Smith.

Whether to allow a party to amend its complaint is a matter of trial court discretion. *Hook v. Lincoln County Noxious Weed Control Board*, 166 Wn.App. 145, 160, 269 P.3d 1056 (2012).

The Trust claims the trial court improperly denied its "motion" for leave to amend its complaint to assert an additional cause of action against Mr. Smith. However, the Trust never filed a formal motion for leave to amend. Instead, it asked the court for leave to amend in both its response to Mr. Smith's motions in limine and in its motion for reconsideration. Pursuant to the Civil Case Schedule Order, the deadline for amending the complaint expired on August 1, 2011. The summary judgment ruling in favor of Delay, Curran, (which, the Trust claims, was based on the trial court's conclusion that Mr. Smith was aware of a potential legal malpractice claim against Mr. Delay), was issued on April 29, 2011. The trust had ample time to seek leave to amend its complaint, but, inexplicably, failed to do so. Under these circumstances, it was within Judge Eitzen's discretion to deny the Trust's belated effort to amend.

D. Notwithstanding the above, amendment of the Trust's Complaint to assert that Mr. Smith committed malpractice by not advising the Trust, in December of 2005 or January of 2006, that the Trust had a potential legal malpractice claim against Joseph Delay and his law firm would have been futile because, as a matter of law, Mr. Smith had no such duty.

The Trust claims that, because Judge Eitzen granted Delay, Curran's motion for summary judgment, by definition Mr. Smith was aware of a potential legal malpractice claim against Mr. Delay and his firm in December of 2005 or January of 2006. The Trust further asserts

that it had, or should have been allowed to assert, a legal malpractice claim against Mr. Smith for this alleged failure to so advise, and that this malpractice claim required no supporting expert testimony. This argument is misplaced for several reasons.

First, the argument assumes that Judge Eitzen's summary judgment ruling in favor of Delay, Curran was legally correct. It was not.

Where a plaintiff in a legal malpractice action could not have known of his or her injury or its cause, courts apply the discovery rule, which provides that the statute of limitations begins to run when the plaintiff knows, or in the exercise of due diligence should have known, all of the essential elements for a cause of action. *In re Estate of Hibbard*, 118 Wn.2d 737, 744, 826 P.2d 690 (1992). The discovery rule was applied in *Richardson v. Denend*, 59 Wn.App. 92, 795 P.2d 1192 (1990), a case involving allegations of legal malpractice in the representation of a criminal defendant. The client was convicted in a criminal trial and then four years later filed a damage action against his lawyer, claiming legal malpractice. In *Richardson*, the court concluded the cause of action for malpractice accrued on February 17, 1978, the date judgment was entered in the criminal trial or, at the very latest, no later than the date of sentencing on March 30, 1978:

> Consequently, the discovery rule had consistently been applied by our courts in such action to toll the statute of limitations until the plaintiff discovers or should have discovered, his or her damage or injury resulting from the professional malpractice...unlike the situation with the provision of other professional services, however, the damages, if any, resulting from the errors or omissions of an attorney allegedly occurring the course of litigation are embodied in the judgment of a court. The parties to such an action, in turn, are formally advised of the judgment of the court and, hence, receive notification of any damage which results from their attorney's representation. We conclude, therefore, that upon entry of the judgment, a client, as a matter of law, possesses knowledge of all the facts which may give rise to his or her cause of action for negligent representation....We adopt the reasoning of the above courts and hold, as a matter of law, that upon entry of an adverse judgment at trial, a client is charged with knowledge, or at least he's put on notice, that his or her attorney may have committed malpractice in connection with the representation.

59 Wn.App. at 96-98.

Here, the legal malpractice claim against Delay, Curran based upon Joseph Delay's role in the drafting of the assignment document did not accrue until May 20, 2009 when the Ninth Circuit Court of Appeals issued its decision. It is not legal malpractice to fail to advise a client of a potential legal malpractice claim before the client actually has a viable claim. *See e.g. Frederick v. Meighan*, 75 A.3d 528, 905 N.Y.Supp.2d 635, (2010).

Second, the Trust's argument assumes that Mr. Smith's concerns about the manner in which the assignment document was drafted meant

Mr. Smith knew that Joseph Delay and his firm had potentially committed malpractice. A mere concern about how a document is drafted does not mean the document was drafted in violation of an attorney standard of care.

Finally, the drafting of an assignment document in the context of a bankruptcy is, in and of itself, complex, and any claim that Mr. Delay, his law firm, and/or Mr. Smith, committed malpractice in the drafting of the assignment document itself required supporting expert testimony. Since the Trust did not have any expert testimony to support any of its legal malpractice claims, Judge Eitzen properly dismissed all of the Trust's claims against Mr. Smith.

III. CONCLUSION

For the reasons set forth above, Respondent Scott R. Smith respectfully requests that the trial court's ruling on Mr. Smith's motions in limine, its dismissal of the Trust's claims against him, and its denial of the Trust's motion for reconsideration be affirmed.

RESPECTFULLY SUBMITTED this 3rd day of April, 2013.

EVANS, CRAVEN & LACKIE, P.S.

By _____ 3979
JAMES B. KING, #8723
CHRISTOPHER J. KERLEY, #16489
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Attorneys for Respondents/Defendants

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 3rd day of April, 2013, the foregoing was delivered to the following persons in the manner indicated:

Amos R. Hunter Amos R. Hunter, P.S. 1318 W. College Avenue Suite 100 Spokane, WA 99201	VIA REGULAR MAIL [ ] VIA CERTIFIED MAIL [ ] VIA FACSIMILE [ ] HAND DELIVERED [X]

Dated at Spokane, Washington this 3rd day of April, 2013.

MARKUS W. LOUVIER