

*Elmer Wagner*

93738-9

NO. 73629-9-1  
COURT OF APPEALS DIVISION I  
THE STATE OF WASHINGTON

RECEIVED  
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WASHINGTON STATE  
SUPREME COURT

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In re the Estate of:  
ELIZABETH K. WAGNER  
Deceased.

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ELMER R. WAGNER  
as beneficiary, Appellant-Cross Respondent,

v.

JILL WRIGHT a/k/a "JILL ARCHER," as Personal Representative  
and as beneficiary to the Estate of Elizabeth K. Wagner,  
JILL WRIGHT a/k/a "JILL ARCHER,"  
and JOHN DOE ARCHER  
and the marital community composed thereof,  
Respondent-Cross Appellant.

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Motion for a full accounting of the Estate of Elizabeth K. Wagner  
and the Tvedt/Murphy Mineral Trust,  
and upon satisfaction of all outstanding debts  
and monies owed to Elmer.

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**Elmer R. Wagner**  
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Phone: (253) 851-5604  
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FILED AS  
ATTACHMENT TO EMAIL

 ORIGINAL

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## TABLE OF AUTHORITIES

### RULE 9.11 ADDITIONAL EVIDENCE ON REVIEW

Pac. Nw. Life Ins. Co. v. Turnbull, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988).

*State v. Taylor*, 58 Wn.2d 252, 258, 362 P.2d 247

*Tucker v. Brown*, 20 Wn.2d 740, 150 P.2d 604 (1944)

*Tucker v. Brown*, 20 Wn.2d 740, 150 P.2d 604 (1944)

65 C.J. 890, Trusts, § 786.

Pac. Nw. Life Ins. Co. v. Turnbull, 51 Wn. App. 692, 699, 754 P.2d 1262

Number. 73629-9-1/15"

Statements of Fact

- 1) **The Court of Appeals did not review a full accounting of the Estate of Elizabeth K. Wagner.**
- 2) **Without a full up-to-date accounting of the Estate of Elizabeth K. Wagner and the Tvedt/Murphy Mineral Trust, all of outstanding debts and monies owed to Elmer cannot be determined.**
- 3) Mr. Wagner has always believed that the Estate of Elizabeth K. Wagner is to be treated as an entity contrary to the decision of the court. And he believes that the Estate of Elizabeth K. Wagner was **entrusted** to **Ms. Archer** for **proper and honest** management.
- 4) An **overpayment** to the other heirs **totaling \$77,473.78** was identified in **Mr. Deaton's audit** which ended **December 31, 2013.**
- 5) **Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still owes \$6,168.93 and Mr. Todd Kulesz. a still "owes" \$10,235.25.** (See Appendices Item # 2)

**4) RULE 9.11 States: ADDITIONAL EVIDENCE ON REVIEW**

**(a) Remedy Limited. The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.**

**(b) Where Taken. The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence.**

4) On September 6, 2016 the Court rendered the following decision:

"Jill's response to this argument is simple: the trial court merely followed the advice of the accountant, and the accountant was right. The trial court adopted the accountant's advice. The CPA, Deaton, testified at the earlier evidentiary hearing to explain his accounting. He stated that if Elmer were compensated his 25 percent of the deficit capital payments owed by the other beneficiaries, he would be due an additional \$19,000. Deaton opined that this would make Elmer whole 14 No. 73629-9-1/15 again, and going forward, the royalty payments from the Tvedt/Murphy trust would be divided equally amongst the four beneficiaries. Before the trial began, the court granted Elmer's motion to have the oil and mineral deed proceeds deposited into the court registry. After trial, the court stated in its conclusions of law that the monies held in the court registry would be released to the Tvedt/Murphy estate trust upon **a full accounting of the estate and the Tvedt/Murphy trust, and upon satisfaction of all outstanding debts and monies owed to Elmer.** Generally, a court that has custody over funds has the authority and duty to distribute funds to the party or parties who are entitled to the funds. Pac. Nw. Life Ins. Co. v. Turnbull, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988). The court has broad discretion to avoid an unlawful or unjust result in distributing funds. Id. Here, the other beneficiaries were required to pay back their overpayments to the estate.

The estate then owed Elmer \$19,789 to make him whole. This was not a personal obligation of Jill, Todd, and Kurt. It was the estate's responsibility to distribute the funds that were owed to Elmer.

Deaton's accounting method treats the estate itself as an entity. Elmer has made no colorable argument explaining why the trial court abused its discretion by treating the estate as an entity. The distribution from the court registry effectuated the division of funds determined in the estate accounting.

Therefore, we affirm the trial court's disbursement of funds."

(Note: Emphasis added)

## ARGUMENT

*NOTE: Why should the court approve a motion for a full accounting of the estate and the Tvedt/Murphy trust and upon satisfaction of all outstanding debts and monies owed to Elmer?*

1) The court was in error in that "a full accounting of the estate and the Tvedt/Murphy trust" was never presented to verify an audit including all deposits and payments to the Court Registry.

1.1 Note: How does the failure Ms. Archer to provide a full accounting affect Mr. Wagner?

1.2 Mr. Wagner cannot reply in full to the Request for Review without an audit including deposits and withdrawals of the Court Registry based on the following:

1.2.1) On March 4, 2015 Mr. Mills knew the heirs had not yet returned the overpayments to the estate. (See email March 4, 2015 from Mr. Mills to Mr. Arceneaux Page 1001 V3 Clerk Paper Appendices #1)

1.2.2 The Court Registry stopped receiving payments and making payments in May or June of 2015.

1.2.3 The records show that the estate/trust transferred previous royalty payments from the estate /trust accounts totaling \$91,990 on 7/31/13. (Note Mr. Deaton's audit ended 12/31/13, and Mr. Deaton' audit was not submitted until 12/12/14. Therefore the overpayments were officially unknown until the court hearing on 12/12/14.

1.3 Therefore the above shows the overpayments to the heirs, Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93) are still outstanding as of March 4, 2015.

1.3.1 The above shows the money into the Court registry of registry \$169,463.78

1.3.2 A REALISTIC estimate of royalty payments from January 2014 to May of 2015 would be \$85,782.81

1.4 The leaves an estimated total of \$255,246.59 of unaccounted for funds of the Estate Of Elizabeth K. Wagner.

Since Mr. Deaton's Audit ended December 31, 2013 and afterwards money continued to flow in and out of the Court Registry, how much money went into the Court Registry, how much went out. Who received payments and why? A certified audit by a certified public account would answer the foregoing questions.

**Fact:1) The court was in error regarding the distribution of funds from the registry-without establishing that the overpayment of the heirs, Ms. Archer (\$61,069.60), Todd Kulesza (\$10,235.25), and Kurt Kulesza( \$6,168.93), was returned to the Court Registry**

**The Ruling of the Court of Appeals is in Direct Conflict with Prior Rulings of this Court and Other Divisions of the Court of Appeals.**

The opinion of the Court of Appeals conflicts with prior case law requiring a trustee to make an accurate and equitable accounting of, and where necessary recover, misappropriated trust assets.

The finding of the Court of Appeals held in essence that it was permissible for the Trustee to distribute the assets held in the Court Registry without a fair, complete accounting which would have show the proper final distribution from the Court Registry. The court used an accounting which ended before the assets of the Court Registry were formerly taken into account in making its decision. The court knew that the heirs Ms. Archer, Kurt Kulesza and Todd Kulesza had been overpaid a total of \$77,473.78 in Trust assets. The court **assumed** that the \$77,473.78 had been returned to the Court Registry. This decision conflicts with prior case law that requires a trustee to make an accurate and equitable accounting of trust assets which have been stolen or otherwise misappropriated through fraudulent or invalid means.

The *Tucker* Court stated that the duty of the trustee is to, "render an account not only mathematically correct, but equitably fair..." *Id.* at 772

"The converse of the duty of the trustee to render an accounting and to furnish information is the right of the beneficiary or his representative to demand such an accounting or information." *State v. Taylor*, 58 Wn.2d 252, 258, 362 P.2d 247 (1961). It was the duty of the court to obtain a complete accurate accounting of the misappropriated of trust assets.

*Tucker v. Brown*, 20 Wn.2d 740, 150 P.2d 604 (1944) The *Tucker* Court stated that the duty of the trustee is to, "render an account not only mathematically correct, but equitably fair..." *Id.* at 772 (emphasis added).

It was the duty of trustee to make a full and correct accounting of all known assets of the Elizabeth K. Wagner Estate - Tvedt-Murphy Trust. There are two reasons for the imposition of this duty: Ms. Archer (Mr. Mills) was aware of the conflict between her method of distribution from the Court Registry and Mr. Wagner' method. This difference in essence is a command to make an accounting to this court in *Tucker v. Brown*, supra

It is the general rule that all trustees must make an accounting of the trust.

Ms, Archer. Personal Representative/Trustee must account for the assets in the Court Registry for period that during which she herself has held it' 65 C.J. 890, Trusts, § 786.

**Supporting Evidence:**

The court of appeals correctly states "Generally, a court that has custody over funds has the authority and **duty to distribute funds to the party or parties who are entitled to the funds.** *Pac. Nw. Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988). The court has broad discretion to avoid an unlawful or unjust result in distributing funds. *Id.*

**Here, the other beneficiaries were required to pay back their overpayments to the estate.**

The estate then owed Elmer \$19,789 to make him whole. This was not a personal obligation of Jill, Todd, and Kurt. It was the estate's responsibility to distribute the funds that were owed to Elmer. Deaton's accounting method treats the estate itself as an entity. Elmer has made no colorable argument explaining



why the trial court abused its discretion by treating the estate as an entity. The distribution from the Court Registry effectuated the division of funds determined in the estate accounting. Number. 73629-9-1/15" The audit summary by Mr. Deaton shows Ms. Archer owed the estate \$61,069.60, Mr. Todd Kulesza owed \$10,235.25 and Mr. Kurt Kulesza \$6,168.93 for a total of \$77,473.78. (Page 951 10-4-0504 Clerk paper **Appendices #2**))

The above argument is based on the answer to one question.

Did the Personal Representative, Ms. Archer, act in the best interest of Mr. Wagner and return the overpayments to the estate?

All evidence indicates that the overpayments **were not returned** to the estate account in the Court Registry.

On or after December 14, 2014, did Ms. Archer return the \$61,069.60 she owed the estate? On or after December 14, 2014 did Mr. Todd Kulesza return the \$10,235.25 he owed the estate? On or after December 14, 2014 did Mr. Kurt Kulesza return the \$6,168.93 he owed the estate?

2.1.4 Was The total owed to the estate of \$77,473.78 returned?

On April 7, 2015 Ms. Giovannini in her email to Mr. Mills states,

"Keep in mind Mr. Wagner still has a 25% interest in the amounts the other three were overpaid.

The payment has no impact on the collections or disbursement of funds from the other three heirs. Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still owes \$6,168.93 and Mr. Todd Kulesza still "owes" \$10,235.25." (See Email dated April 7, 2015. Page 1064 Clerks papers, See **Appendices #3**)

Obviously by Ms. Giovannini's email on 4/7/2015 shows the other heirs still owe the estate a total of \$77,473.78. (Email dated April 7, 2015 Page 1051 Clerk papers vol 3 **Appendices #4**) )

However, Ms. Giovannini is an assistant to Mr. Deaton. Mr. Deaton is the Public Certified Accountant. Also Ms. Giovannini several times has been lacking in her analysis and had to be corrected.

My calculation is that Mr. Wagner is owed: \$29,435.59 (bottom line for him on the accounting summary attached).

He is also owed,  $\frac{1}{4}$  of the amounts "overpaid" to the three kids, being  $\frac{1}{4}$  of \$61,059.60, plus  $\frac{1}{4}$  of \$6,168.93, plus  $\frac{1}{4}$  of \$10,235.25 -- or  $\frac{1}{4}$  of \$77,473.78, meaning he's owed an additional \$19,368.45.

The \$29,000 shown above is a correction to the audit that Mr. Mills brought to the attention of the court after the court had made a final decision in court. Earlier Mr. Wagner had to bring to the attention of Mr. Deaton an oversight of about \$60,000 that Ms. Giovannini had failed to include in her first analysis. Her first oversight was concerning the improper payment that Ms. Archer paid herself outside the estate in regard to the sale of the house in Federal Way, WA.

Possibly the three heirs agreed to split the \$77,473.78 equally as might have been suggested when the court said (See The transcript of the Court Hearing on December 12,,2014,on page 21 lines: **Appendices #5**)

**Well, and I would say at this point perhaps, since the  
8 siblings are -- still have some issues to deal with in terms  
9 of their negative, you know, accounts, I suppose they could  
10 work that in if they decided to do that. But they've got  
11 some settling up to do amongst themselves, obviously --**

but there is nothing in the record to show that the executrix, made any effort to accomplish a

**" deal with in terms of their negative, ~~you know,~~ accounts ..... "**

Also the Court states (on page 26 lines 22-23 Verbatim Record of Proceedings (From Audio Recording of December 12, 2014 **Appendices #6**))

**"22 I have no problem with Mr. Wagner getting the money  
23 he's due out of the registry of the court"**

The distribution then becomes very simple Says the Court.

**"Give Mr. Wagner what he is owed  
and split the remainder  
with the three remaining heirs."**

Here the Judge is correct if the other heirs did not return the over payment to the estate and Mr. Wagner is **first** paid 1/4 of the total money in the registry and then the \$19,789 from the balance after his one fourth is out of the registry. And of course the rest belongs to the other three heirs.

The courts final ruling was in error in that it **first** paid Mr. Wagner the \$19,789 from the total amount in the Court Registry and then divided the balance among the four heirs.

The money (\$19,368.44) in error was paid from the **entire** amount in the registry. Therefore Mr. Wagner was not paid what he was owed because Mr. Wagner was owed 1/4 of the entire amount in the registry.

Therefore the court had Mr. Wagner pay himself for the debt owed to him by the other heirs and Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still owes \$6,168.93 and Mr. Todd Kulesz.a still "owes" \$10,235.25.

Note: Mr. Mills states in the Transcript of the hearing Verbatim Record of Proceedings (From Audio Recording) June 4, 2015 -page 16 **Appendices #7)** "

**And I think that the math, by way, could sort of be --  
3 if we had a mathematician here, I think a mathematician  
4 would show us that there's ways to make it all come out the  
5 same as long as we're comparing apples to apples and oranges  
6 to oranges.**

Note: The appendices Item **Appendices #8** is provided by Mr. Wagner in mathematical terms and Mr. Mills is invited to make corrections.

The method used in the Final Judgment Order (Pages 1151-1156 of the Clerks papers **Appendices #9**) and Order Amending Final Judgment Order (Pages 1158-1159 of the Clerks papers t **Appendices #10**) that were used to distribute the remaining funds in the registry.

Mr. Wagner believes the method used to the distribute the remaining funds in the registry provides for an **unjust enrichment** to the heirs, Ms Archer, Mr. Todd Kulesza and Mr. Kurt Kulesza, **at the expense of Mr. Wagner**

Instead of giving Mr. Wagner his rightful inheritance, ***Mr. Wagner was penalized.*** The court only gave Mr. Wagner  $\$19368.44 + (x - \$19368.44) / 4$  when he was due  $1/4 (x + \$77473.78) + \$19368.44$ . (Note: appendix vol III 1171 & 1082 Clerks notes **Appendices #11**)

Also, without a closer look at the details, someone (possibly Mr. Mills) may say that Ms. Giovannini made a mistake in saying Ms. Archer had not returned the money to the registry.

Note: Someone might make this error about Ms. Giovannini if they made a hasty, quick glance at the King County Superior Court Case Financial Case Number: 10-4-05043-1 report dated 1/22/14 (See **Appendices #12**). The report shows are two deposits of \$25,990 and \$56,000 dated 7/31/13.

However, these deposits were made (7 months) before the December 12, 2014 hearing at which time the overpayments were first identified by Mr. Deaton's audit. It is ***intuitively obvious*** that the deposits were the result of Mr. Wagner's non-cashed checks from the estate (of over \$40,000) and royalty deposits which can be verified using the accounting sheets (see VII-943 to 947 Clerk Papers **Appendices # 13**). The money was in the Elizabeth K. Wagner Estate account and the Tvedt-Murphy Mineral Trust account. The COURT ORDER GRANTING PETITIONER'S MOTION FOR ORDER REQUIRING OIL AND MIINERAL DEED PROCEEDS TO BE DEPOSITED INTO COURT REGISTRY filed July 11, 2013 dictated the funds held in the Estate and Trust accounts be deposited in the Court Registry. (Reference to **Appendices #14**)

Therefore Mr. Wagner believes that Mrs. Archer still "owes" the estate \$61,69.60, Mr. Kurt Kulesza still owes \$6,68.93 and Mr. Todd Kulesza still "owes" \$10,35.25."

## Conclusion

Additional proof of facts is needed to fairly resolve the issues on review and the additional evidence would probably change the decisions being reviewed.

It is equitable to excuse a party's failure to present the evidence to the trial court.

## Motion:

Therefore, based on the above information, Mr. Wagner respectfully moves

that the court to:

1) Order that the Personal Representative, Ms Archer, of the Estate of Elizabeth K Wagner to provide to the heirs an up-to-date, official, independent and certified audit of the Estate of Elizabeth K. Wagner which includes all the registry deposits and payments.

2) If the up-to-date, official, independent and certified audit of the Estate of Elizabeth K. Wagner which includes all the Court Registry deposits and payments is not furnished and delivered within 30 calendar days from the date of the Court order, Mr. Wagner may obtain and provide an up-to-date, official, independent and certified audit of the Estate to include the Registry Funds of case # 10-4-05043-1 the total cost of which is to be paid solely by Ms. Archer.

3) A 30 day extension is hereby granted to Mr. Wagner to submit a reply to the Request for Review re. NO. 73629-9-1, COURT OF APPEALS DIVISION I THE STATE OF WASHINGTON. The extension shall begin from the date the up-to-date, official, independent and certified audit of the Estate of Elizabeth K. Wagner, which includes all deposits and payment to and by the Court Registry, are received by Mr. Wagner and the other heirs.

Elmer R. Wagner Appellant/Cross-Respondent



**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein. On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

|  |   |
|--|---|
| E. Wagners<br>607 126th St Ct NW<br>Gig Harbor, WA 98332 | D U.S. First Class Mail, postage<br>D Via Legal Messenger<br>D Overnight Courier<br><input checked="" type="checkbox"/> Electronically via email<br>D Facsimile |
|--|---|

DATED this 22 day of November 2016 at Gig Harbor ,Washington.

  
\_\_\_\_\_

## **Appendices**

## J. Mills

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**From:** J. Mills <jmills@jmills.pro>  
**Sent:** Tuesday, March 24, 2015 4:21 PM  
**To:** carceneaux@eisenhowerlaw.com  
**Subject:** Wagner Estate  
**Attachments:** Summary from Accounting.pdf; \$29K to Elmer.pdf; \$52K to Elmer.pdf; Debt owed Elmer.xlsx

Chad –

Attached is an Excel accounting.

I started with Deaton's work. His summary is attached, and I believe we stipulated that it was a good accounting.

Deaton has everything before December 31, 2013. In other words, he has all the money owed back and forth prior to the lawsuit.

However, Deaton's worksheet actually accounts for the ruling on "Community Interest" in the home and he's aware of \$52,143 paid by the court to satisfy 100% of the community interest that occurred May 30, 2014.

He says that Elmer was underpaid a total of \$29,435.59, right? It's the bottom of Deaton's second column.

OK, now also, Deaton says that the other three heirs "owe" money to the estate, and the numbers are: Jill - \$61,069.60, Kurt \$6,168.93, and Todd - \$10,235.

So, I totaled that up, it's \$77,473.78.

If the three children paid that back into the estate, then that money would all be distributed  $\frac{1}{4}$  to each, right? Meaning that Elmer is entitled to a quarter of the roughly \$77K owed by the kids; meaning Elmer is owed an additional \$19,368.45, right?

So, the total owed to Elmer is \$48,804.04.

However, Elmer received a distribution from the court on August 1, 2014 in the amount of \$29,015.00. I have attached both orders paying money to Elmer.

By this accounting then Elmer is owed \$19,789.04 out of the registry, right? The balance of funds should be split four ways ... assuming that we ignore tax liabilities.

Seem right?

J. Mills, return mail: [jmills@jmills.pro](mailto:jmills@jmills.pro). Address: 201 Atrium Court, 705 South 9<sup>th</sup> Tacoma, WA 98405; phone: (253) 226-6362

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Appendices Item # 1



**Reallocation of Funds Per Courts Findings of Fact and Conclusions  
Estate of Elizabeth Wagner  
Worksheet #4**

|   |                      |
|---|----------------------|
| Funds Distributed Through December 31, 2013 (cash) <sup>1</sup> | \$ 88,678.11         |
| Proceeds from Escrow - Sale of Home                             | \$ 58,057.00         |
| <b>Total Funds Distributed Through December 31, 2013 (cash)</b> | <b>\$ 146,735.11</b> |

|   | <i>Jill Archer</i>   | <i>Elmer Wagner</i> | <i>Kurt Kulesza</i> | <i>Todd Kulesza</i> |
|---|----------------------|---------------------|---------------------|---------------------|
| Funds Distributed Through December 31, 2013 (cash) <sup>1</sup> | \$ 88,678.11         | \$ 54,229.92        | \$ 89,834.44        | \$ 93,900.76        |
| Proceeds from Escrow - Sale of Home                             | \$ 58,057.00         | \$ -                | \$ -                | \$ -                |
| <b>Total Funds Distributed Through December 31, 2013 (cash)</b> | <b>\$ 146,735.11</b> | <b>\$ 54,229.92</b> | <b>\$ 89,834.44</b> | <b>\$ 93,900.76</b> |

**Deposits Related to Estate**

|  |                             |                      |                      |                      |                      |
|--|-----------------------------|----------------------|----------------------|----------------------|----------------------|
| Proceeds From Sale of Home <sup>2</sup> :              | \$ 168,158.00               |                      |                      |                      |                      |
| Mr. Wagner Court Ordered Community Interest            | \$ (52,143.00) <sup>3</sup> |                      |                      |                      |                      |
| Remaining Proceeds Divided Equally (25%):              | \$ 116,015.00               | \$ 29,003.75         | \$ 29,003.75         | \$ 29,003.75         | \$ 29,003.75         |
| <b>Total Allocation of Proceeds From Sale of Home:</b> |                             | <b>\$ 29,003.75</b>  | <b>\$ 29,003.75</b>  | <b>\$ 29,003.75</b>  | <b>\$ 29,003.75</b>  |
| Proceeds From Mineral/Royalty Income:                  |                             |                      |                      |                      |                      |
| Continental  | \$ 308,062.06               |                      |                      |                      |                      |
| Hess   | \$ 20,630.58                |                      |                      |                      |                      |
| Proceeds From Mineral/Royalty Income <sup>4</sup> :    | \$ 328,692.64               | \$ 82,173.16         | \$ 82,173.16         | \$ 82,173.16         | \$ 82,173.16         |
| Other Income/Deposits Not Titled:                      |                             |                      |                      |                      |                      |
| Bank Interest  | \$ 85.94                    |                      |                      |                      |                      |
| "Other Deposits" (Less \$5,000 Ring)                   | \$ 4,225.35                 |                      |                      |                      |                      |
| Other Income/Deposits Not Titled                       | \$ 4,311.29                 | \$ 1,078.07          | \$ 1,078.07          | \$ 1,078.07          | \$ 1,078.07          |
| <b>Total Revenue Due to Heirs Before Expenses</b>      | <b>\$ 112,254.98</b>        | <b>\$ 112,254.98</b> | <b>\$ 112,254.98</b> | <b>\$ 112,254.98</b> | <b>\$ 112,254.98</b> |
| Less: Current Disbursements of Funds (up to 12/31/13)  | \$ (144,735.11)             | \$ (54,229.92)       | \$ (89,834.44)       | \$ (93,900.76)       | \$ (93,900.76)       |
| <b>Total Funds Due To (From) Heirs Before Expenses</b> | <b>\$ (32,480.13)</b>       | <b>\$ 58,025.06</b>  | <b>\$ 22,420.54</b>  | <b>\$ 18,354.22</b>  | <b>\$ 18,354.22</b>  |

**Expenses Related to Estate:**

|  |                      |                     |                     |                     |                     |
|--|----------------------|---------------------|---------------------|---------------------|---------------------|
| Expenses Paid by the Estate:             |                      |                     |                     |                     |                     |
| Attorney Fees                            | \$ 30,814.58         | \$ 7,703.65         | \$ 7,703.65         | \$ 7,703.65         | \$ 7,703.65         |
| Taxes                                    | \$ 1,276.86          | \$ 319.22           | \$ 319.22           | \$ 319.22           | \$ 319.22           |
| Checking Fees                            | \$ 266.45            | \$ 66.81            | \$ 66.81            | \$ 66.81            | \$ 66.81            |
| Court Order Transfer into Court Registry | \$ 82,000.00         | \$ 20,500.00        | \$ 20,500.00        | \$ 20,500.00        | \$ 20,500.00        |
| <b>Total Expenses Allocated to Heirs</b> | <b>\$ 114,357.89</b> | <b>\$ 28,589.47</b> | <b>\$ 28,589.47</b> | <b>\$ 28,589.47</b> | <b>\$ 28,589.47</b> |

**Summary and Conclusion:**

|  |                       |                     |                      |                       |                       |
|--|-----------------------|---------------------|----------------------|-----------------------|-----------------------|
| <b>Total Revenue to Disburse Before Expenses</b> | <b>\$ (32,480.13)</b> | <b>\$ 58,025.06</b> | <b>\$ 22,420.54</b>  | <b>\$ 18,354.22</b>   | <b>\$ 18,354.22</b>   |
| <b>Total Funds Due To (From) Heirs</b>           | <b>\$ (61,068.60)</b> | <b>\$ 29,438.58</b> | <b>\$ (6,168.93)</b> | <b>\$ (10,235.25)</b> | <b>\$ (10,235.25)</b> |

<sup>1</sup> Proceeds from the sale of the Federal Way residence does not tie to the bank transaction detail as the total proceeds from the sale were not directly deposited into the account. The court ruled that Mrs. Archer was not entitled to 1/3 of the sale proceeds and subsequently our calculations were re-calculated using the Chicago Title Settlement Statement.

<sup>2</sup> In our analysis of the Estate bank accounts, we saw no indication that any income was received from other mineral lease companies such as Tractor Resource Development II, LLC, Encore Operating, L.P., WPX Energy Williston, LLC or Diamond Resources.

<sup>3</sup> \$52,143.00 was paid out of the court registry account to Elmer Wagner (see worksheet #5).

<sup>4</sup> See transaction activity detail.

|                 |               |                                |
|-----------------|---------------|--------------------------------|
| Funds(12/31/13) | (\$54,229.92) | Less: Current Disbursements of |
| Estate          | (\$28,589.47) | Less: Expenses Paid by the     |
| Wagner          | \$431.84      | Total Funds Due to Mr.         |

Keep in mind, Mr. Wagner still has a 25% interest in the amounts due from the other three heirs. The \$29,015 payment has no impact on the collections or disbursement of funds from the other three heirs. Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still "owes" \$6,168.93 and Mr. Todd Kulesza still "owes" \$10,235.25.

To address the additional questions sent subsequent to the original two:

1. The \$52,134 distributed according to the attached May 30, 2014 order is in fact what's referenced in note 3 of your summary, and
2. Whether your accounting numbers as shown on the summary take into account the later, August 2014, distribution to Mr. Wagner of \$29,015?
  - a. Yes we accounted for the \$52,134. We were unaware of the motion to release funds from the registry of \$29,015. That should be deducted from Mr. Wagner's total amount. However, the \$52,134 has already been deducted. You do not need to deduct that again.
3. Was there any accounting update that was done after 7/25/2014?
  - a. There was no accounting update done after 7/25/2014

I hope this helps clarify. Let me know if you have any questions.

**BRI GIOVANNINI** | CPA | Senior Accountant | DP&C | Tacoma, WA  
 Phone 253-572-9922 ext. 116  
[bjgiovannini@dpcpa.com](mailto:bjgiovannini@dpcpa.com)



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J. Mills, return mail: [jmills@jmills.pro](mailto:jmills@jmills.pro). Address: 201 Atrium Court, 705 South 9<sup>th</sup> Tacoma, WA 98405; phone: (253) 226-6362

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**From:** Brianne Giovannini [mailto:bgiovannini@dcpepa.com]  
**Sent:** Tuesday, April 07, 2015 3:56 PM  
**To:** [carcenaux@eisenhowerlaw.com](mailto:carcenaux@eisenhowerlaw.com); Cary Deaton; [jmills@jmills.pro](mailto:jmills@jmills.pro); [jilly.archer@gmail.com](mailto:jilly.archer@gmail.com); [bjohnson@eisenhowerlaw.com](mailto:bjohnson@eisenhowerlaw.com); [namonsa@yahoo.com](mailto:namonsa@yahoo.com)  
**Subject:** Estate of Wagner

Chad,

I've attached worksheets titled "Supporting Docs" to help guide the explanation below:

- 1) We did not receive the order granting petitioner's motions for release of funds from the court registry for the \$29,015, only the \$52,143 that was granted for Mr. Wagner's community interest in the Federal Way Property. You will see on Worksheet 4 (Page 2 of the pdf document) where we subtracted the \$52,143 from the proceeds of the home sale. The \$29,003.75 in Mr. Wagner's column represents the \$29,015 he received in the August 1, 2014 motion. Therefore, to answer question #2, the parties should deduct the \$29,015 from the amount due to Mr. Wagner.

If you want to follow the calculation, I've circled in red the amount we calculated as Mr. Wagner's 25% interest in the Federal Way property, after deducing the community interest.

|                 | On worksheet #4                           | Funds distributed through December 31, 2013 | \$54,229.92 |
|-----------------|---|---|-------------|
|                 |   | Proceeds From Sale (originally              |             |
| \$29,003.75)    | \$0.00 (received from the court registry) | Proceeds from Mineral/Royalty               |             |
| Income          | \$82,173.16                               | Other                                       |             |
| Income          |   | <u>\$1,078.07</u>                           |             |
| Revenue         |   | Total                                       |             |
| Funds(12/31/13) | (\$54,229.92)                             | \$83,251.23                                 |             |
| Estate          | <u>(\$28,589.47)</u>                      | Less: Current Disbursements of              |             |
|                 |   | Less: Expenses Paid by the                  |             |
|                 |   | Total Funds Due to Mr.                      |             |
| Wagner          | \$431.84                                  |   |             |

Keep in mind, Mr. Wagner still has a 25% interest in the amounts due from the other three heirs. The \$29,015 payment has no impact on the collections or disbursement of funds from the other three heirs. Mrs. Archer still "owes" the estate \$61,069.60, Mr. Kurt Kulesza still "owes" \$6,168.93 and Mr. Todd Kulesza still "owes" \$10,235.25.

To address the additional questions sent subsequent to the original two:

1 don't believe we ever got complete information on those  
2 costs.

3 Q (By Mr. Mills) I take it that those little -- the last  
4 little bit of adjustments that you're talking about that  
5 might arise from one of the boys getting money as a  
6 reimbursement, it's probably small, right?

7 A Well, and I would say at this point perhaps, since the  
8 siblings are -- still have some issues to deal with in terms  
9 of their negative, you know, accounts, I suppose they could  
10 work that in if they decided to do that. But they've got  
11 some settling up to do amongst themselves, obviously --

12 Q Okay.

13 A -- as well.

14 THE COURT: And we're talking, I think,  
15 less than \$5,000 here?

16 THE WITNESS: Right.

17 THE COURT: Yeah.

18 THE WITNESS: Right.

19 THE COURT: All right. So I think what  
20 Mr. Mills is getting at is, he'd like to be able to let the  
21 siblings work out their own issues and not have the Court  
22 interfere.

23 MR. MILLS: You have enough on your  
24 plate, it -- it seems to me.

25 THE COURT: Do the siblings all agree

order recognized that, whereas the other heirs to this

1 estate -- to the estate have had the use and enjoyment of  
2 considerable sums of money, Mr. Wagner -- for years,  
3 Mr. Wagner has not.

4 And -- and to the extent that there are monies that are  
5 being held in the -- in the court registry, those monies  
6 rightfully belong to Mr. Wagner. So I would just ask that  
7 the Court be consistent with its prior rulings. And if the  
8 Court wishes to address payment of taxes or payment of, for  
9 example, (inaudible) --

10 THE COURT: Well, the payment of taxes  
11 should -- should be in percentage to the amount that each  
12 person has inherited. And Ms. Archer has done a good job of  
13 trying to waive or get them to waive interest and penalties.

14 And I would suggest that the two of you sit down and  
15 figure that out so that each person knows what their tax  
16 bill is quickly rather than with any significant passage of  
17 time. Because I doubt that they're going to continue to  
18 waive that once there's a final distribution made. I think  
19 there's good reason not to -- not to impose that now, but  
20 after today there may not be that same good reason.

21 I have no problem with Mr. Wagner getting the money  
22 he's due out of the registry of the court.

23 MR. ARCENEUX: Thank you, Your Honor.

24 Well, and of course there's also the issue of money that's

----- A C C O U N T I N G S U M M A R Y -----

Total Current Bail: Tot Payments Received: 196636.71  
Total Bail Payable:  
Total Current Bond:  
Total Bond Payable:  
Total Undisbursed Funds:  
Total Disbursed to Payees: 196636.71

**RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
CLERK'S OFFICE**

Nov 22, 2016, 8:47 am

Disp Code:  
Last Receipt Date: 07/09/2015  
Case Fund Investments: N

**RECEIVED ELECTRONICALLY**

----- R E C E I P T S -----

| RCPT<br>DATE | RECEIPT<br>NUMBER | PYMT<br>TYPE | PMYT<br>MODE | PAYER<br>NAME              | RCPT<br>AMOUNT |
|--------------|-------------------|--------------|--------------|----------------------------|----------------|
| 11/04/2013   | 13080645002       | TE           | CK           | CONTINENTAL RESOURCES, IN  | 5177.79        |
| 09/05/2013   | 13090456701       | TE           | CK           | CONTINENTAL, RESOURCES     | 4781.45        |
| 10/02/2013   | 13090480201       | TE           | CK           | CONTINENTAL, RESOURCES     | 4733.73        |
| 07/31/2013   | 13200369401       | TE           | CK           | TRUST OF, TVEDT MURPHY MIN | 25990.00       |
| 07/31/2013   | 13200369501       | TE           | CK           | ESTATE OF, ELIZABETH K. WA | 56000.00       |
| 08/05/2013   | 13200383001       | TE           | CK           | CONTINENTAL RESOURCE, INC  | 4816.09        |
| 12/09/2013   | 13200574301       | TE           | CK           | CONTINENTAL RESOURCES, INC | 5316.61        |
| 03/05/2014   | 14080089802       | TE           | CK           | CONTINENTAL, RESOURCES     | 5414.38        |
| 03/05/2014   | 14080089802       | TE           | CK           | CONTINENTAL, RESOURCES     | -5414.38       |
| 03/05/2014   | 14080092602       | TE           | CK           | CONTINENTAL, RESOURCES     | 6414.38        |
| 06/04/2014   | 14080256202       | TE           | CK           | CONTINENTAL, RESOURCES     | 6498.05        |
| 07/08/2014   | 14080302102       | TE           | CK           | CONTINENTAL, RESOURCES     | 6752.80        |
| 08/06/2014   | 14080352702       | TE           | CK           | CONTINENTAL, RESOURCES     | 6050.41        |
| 09/05/2014   | 14080395701       | TE           | CK           | CONTINENTAL RESOURCES, INC | 5863.39        |
| 10/08/2014   | 14080446302       | TE           | CK           | CONTINENTAL, RESOURCES     | 5790.17        |
| 12/29/2014   | 14080579902       | TE           | CK           | CONTINENTAL, RESOURCES     | 4123.93        |
| 02/05/2014   | 14090050601       | TE           | CK           | CONTINENTAL, RESOURCES     | 6539.56        |
| 05/07/2014   | 14090198901       | TE           | CK           | CONTINENTAL, RESOURCES     | 7029.32        |
| 12/03/2014   | 14090493801       | TE           | CK           | CONTINENTAL, RESOURCES     | 4368.52        |
| 08/29/2014   | 14160554502       | SUO          | CK           | EISENHOWER & CARLSON, PLLC | 50.00          |
| 01/07/2014   | 14200005501       | TE           | CK           | CONTINENTAL RESOURCES, INC | 4078.18        |
| 04/08/2014   | 14200181101       | TE           | CK           | CONTINENTAL RESOURCES, INC | 6487.38        |
| 11/05/2014   | 14200490801       | TE           | CK           | CONTINENTAL RESOURCES, INC | 5459.72        |
| 03/04/2015   | 15080105502       | TE           | CK           | CONTINENTAL, RESOURCES     | 2148.04        |
| 05/06/2015   | 15080231102       | TE           | CK           | CONTINENTAL, RESOURCES     | 2101.76        |
| 06/10/2015   | 15080291302       | TE           | CK           | CONTINENTAL, RESOURCES     | 2268.51        |
| 07/09/2015   | 15080365802       | TE           | CK           | CONTINENTAL, RESOURCES     | 2660.03        |
| 04/08/2015   | 15090136801       | TE           | CK           | CONTINENTAL, RESOURCES     | 2123.67        |
| 02/05/2015   | 15200043201       | TE           | CK           | CONTINENTAL RESOURCES, INC | 3013.22        |

Total Received: 196636.71  
Total Bail Forfeiture:  
Total Bail/Bond Applied:

- - - - - D I S B U R S E M E N T S - - - - -

| DISBURSE<br>DATE | PAYEE<br>NAME             | CHK NU | REF NU | PAYMENT<br>AMOUNT | CHECK<br>STS | A/P<br>TYPE |
|------------------|---------------------------|--------|--------|-------------------|--------------|-------------|
| 11/07/2013       | DWYER PEMBERTON & COULSON | 115789 | 91575  | 5000.00           | C            | Tender      |
| 02/20/2014       | DWYER PEMBERTON & COULSON | 122067 | 97922  | 8839.00           | C            | Tender      |
| 06/05/2014       | EISENHOWER CARLSON PLLC   | 129223 | 105159 | 52143.00          | C            | Tender      |
| 08/07/2014       | EISENHOWER CARLSON PLLC   | 133207 | 109184 | 10000.00          | C            | Tender      |
| 08/07/2014       | ELMER R WAGNER            | 133208 | 109185 | 29015.00          | C            | Tender      |
| 08/07/2014       | J MILLS, LAWYER           | 133209 | 109186 | 10000.00          | C            | Tender      |
| 09/18/2014       | EISENHOWER CARLSON PLLC   | 135998 | 112003 | 50.00             | C            | Miscellan   |
| 10/23/2014       | DWYER PEMBERTON & COULSON | 138149 | 114184 | 23959.93          | C            | Tender      |
| 06/11/2015       | DWYER PEMBERTON & COULSON | 152908 | 129192 | 2692.00           | V            | Tender      |
| 06/11/2015       | ELMER R WAGNER            | 152909 | 129193 | 19789.12          | C            | Tender      |
| 06/18/2015       | DWYER PEMBERTON & COULSON | 153258 | 129546 | 2692.00           | C            | Tender      |
| 07/01/2015       | ELMER R WAGNER            | 154191 | 130488 | 8122.16           | C            | Tender      |
| 07/01/2015       | J MILLS, LAWYER IOLTA TRU | 154192 | 130489 | 24366.47          | C            | Tender      |
| 07/16/2015       | ELMER R WAGNER            | 155058 | 131365 | 665.01            | C            | Tender      |
| 07/16/2015       | J MILLS, LAWYER IOLTA TRU | 155059 | 131366 | 1995.02           | C            | Tender      |

Total Disbursed: 196636.71

Note: Void and stop payment detail is not included in the disbursed total

END OF REPORT

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---

**To:** Elmer Wagner  
**Subject:** RE: Estate of Elizabeth K. Wagner Motion for an up-to-date audit

Received 11-22-16

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**From:** Elmer Wagner [mailto:[namonsa@yahoo.com](mailto:namonsa@yahoo.com)]  
**Sent:** Tuesday, November 22, 2016 7:25 AM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** J. Mills <[jmills@jmills.pro](mailto:jmills@jmills.pro)>  
**Subject:** Estate of Elizabeth K. Wagner Motion for an up-to-date audit

Attn: Erin L. Lennon  
Supreme Court Deputy Clerk  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Subject: The Estate of Elizabeth K. Wagner Motion for an up-to-date audit  
RE: Supreme Court No. 93738-9- In re Elizabeth Kathleen Wagner Court of Appeals  
No.73629-9-I

Ms. Lennon,

The extension to respond which was granted by the court is appreciated. Most of my time has been spent in researching not only the Rap 13.4(d) but also other rules, laws and history and documents of the case. This has been a costly undertaking for me in that I have not been able to address other important and pressing matters.

The result of my efforts to date is in the attached motion for an up-to-date audit of the estate. The audit by Mr. Deaton, which was accepted at the court hearing December 12, 2014 and later was corrected by Mr. Mills, identifies the need to return the money owed by the other heirs to the estate. An up dated audit is necessary for me to complete a response to the Request for Review submitted by Mr. Mills.



I have searched the case files available to me and cannot ascertain that the overpayment to the other heirs was **ever** paid back into the estate. (Ms. Archer owed the estate \$61,069.60, Mr. Todd Kulesza owed \$10,235.25 and Mr. Kurt Kulesza \$6,168.93 for a total of \$77473.78. (Page 951 10-4-0504 Clerk paper)

I feel that once the updated audit is completed it will reveal that the overpayments to the other heirs were **not returned** to the Court Registry account of the Estate of Elizabeth K Wagner for proper distribution. With this additional information I believe the Court of Appeals will amend its previous decision. The unreturned overpayments would be the evidence needed to amend the possibly flawed decisions of the Court of Appeals. It is necessary for me to have a complete, certified and verifiable up-to-date audit of the Estate of Elizabeth K. Wagner.

Also my attempt to use the historical case files was unsuccessful. Apparently these files are available only to attorneys. It was a road block in my efforts to follow what I perceived to be needed by the rules. Therefore the attached motion is my best effort and the indulgence of the court is requested and appreciated.

Attached please find a motion for a verifiable and certified up-to-date audit of the Estate of Elizabeth K. Wagner. Additional proof of facts is needed to fairly resolve the issues on review and the additional evidence would no doubt change the decisions being reviewed.

Also attached is a copy of the Court Registry account which was ordered 11/15/16 and that I just received. The registry does not identify the return of the overpayments made to the other heirs.

Thank you again.

Elmer Wagner  
607 126th St. Ct. NW  
Gig Harbor, WA. 98332

CC: John Stratford Mills ([jmills@jmills.pro](mailto:jmills@jmills.pro))  
Hon. Richard D. Johnson, Court Administrator/Clerk (via this email)

## OFFICE RECEPTIONIST, CLERK

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**To:** Elmer Wagner  
**Subject:** RE: Motion for an up-to-date audit

Received 11-22-16

Supreme Court Clerk's Office

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**Sent:** Tuesday, November 22, 2016 7:57 AM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** J Mills <[jmills@jmills.pro](mailto:jmills@jmills.pro)>  
**Subject:** Motion for an up-to-date audit

Attn: Erin L. Lennon  
Supreme Court Deputy Clerk  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Subject: The Estate of Elizabeth K. Wagner Motion for an up-to-date audit  
RE: Supreme Court No. 93738-9- In re Elizabeth Kathleen Wagner Court of Appeals  
No.73629-9-I

Ms. Lennon,

Please correct the above motion to show it was sent electronically to Mr. Mills (J. Mills [jmills@jmills.pro](mailto:jmills@jmills.pro)).

Thank You.

Elmer Wagner