

63539-5

63539-5

No. 63539-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

KEVIN RANDALL PERRIN and CINDY PERRIN,
husband and wife, and the marital community thereof,

Appellants,

vs.

JEFF STENSLAND and JANE DOE STENSLAND,
husband and wife, and the marital community thereof,

Defendants,

HATTIE VAN WEERDUIZEN, wife, and DALE VAN WEERDUIZEN,
Personal Representative of the Estate of Gordon Van Weerduizen,

Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR WHATCOM COUNTY
THE HONORABLE CHARLES SNYDER

REPLY BRIEF OF APPELLANTS

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355

1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974

CARTER & FULTON PS

By: Donald W. Carter
WSBA No. 5569

3731 Colby Ave.
Everett, WA 98201-4910
(425) 258-3538

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 JAN -5 AM 10:51

Attorneys for Appellants

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLY ARGUMENT	1
	A. As The Original Complaint Was Timely Served And Filed, CR 15(c) Applies To Determine Whether The Amendment Substituting The Estate Relates Back To The Date of Original Filing.	1
	B. The Perrins' Amended Complaint Substituting The Estate For Decedent Gordon Van Weerduizen Related Back To The Date Of The Original Complaint Under CR 15(c).	3
	1. The Van Weerduizen Estate, Through Its Attorneys And Its Liability Insurer, Had Notice Of The Claim Within The Limitations Period, And Could Not Establish Prejudice In Having To Defend The Perrins' Claim On The Merits.	4
	2. The Trial Court Misapplied CR 15(c) In Refusing To Allow Substitution Of The Estate On The Basis Of Inexcusable Neglect.	10
	3. The Trial Court Abused Its Discretion In Finding Inexcusable Neglect.	14
III.	CONCLUSION	16

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Malmrose v. Aljoe's Estate</i> , 92 F.R.D. 490 (W.D.Pa. 1981)	7
----------------------------------------------------------------------------------	---

STATE CASES

<i>Banzeruk v. Estate of Howitz</i> , 132 Wn. App. 942, 135 P.3d 512 (2006), <i>rev. denied</i> , 159 Wn.2d 1016 (2007)	2
<i>Caruso v. Local Union No. 690</i> , 100 Wn.2d 343,,670 P.2d 240 (1983)	11
<i>Craig v. Ludy</i> , 95 Wn. App. 715, 976 P.2d 1248 (1999), <i>rev. denied</i> , 139 Wn.2d 1016 (2000)	5, 6, 8, 12
<i>DeSantis v. Angelo Merlino & Sons, Inc.</i> , 71 Wn.2d 222, 427 P.2d 728 (1967)	12
<i>Foothills Development Co. v. Clark County Bd. of County Com'rs</i> , 46 Wn. App. 369, 730 P.2d 1369 (1986), <i>rev. denied</i> , 108 Wn.2d 1004 (1987)	8
<i>Hurlbert v. Gordon</i> , 64 Wn. App. 386, 824 P.2d 1238, <i>rev. denied</i> , 119 Wn.2d 1015 (1992).....	5
<i>Indiana Farmers Mut. Ins. Co. v. Richie</i> , 707 N.E.2d 992, 714 N.E.2d 169 (Ind.1999).....	7
<i>Kiehn v. Nelsen's Tire Co.</i> , 45 Wn. App. 291, 724 P.2d 434 (1986), <i>rev. denied</i> , 107 Wn.2d 1021 (1987)	8
<i>LaRue v. Harris</i> , 128 Wn. App. 460, 115 P.2d 1077 (2005)	5, 6
<i>Lind v. Frick</i> , 15 Wn. App. 614, 550 P.2d 709 (1976), <i>rev. denied</i> , 88 Wn.2d 1001 (1977)	12

Macias v. Jaramillo , 129 N.M. 578, 11 P.3d 153 (N.M. App. 2000).....	7
Nepstad v. Beasley , 77 Wn. App. 459, 892 P.2d 110 (1995)	13, 15-16
Schwartz v. Douglas , 98 Wn. App. 836, 991 P.2d 665, <i>rev. denied</i> , 141 Wn.2d 1003 (2000).....	6, 12
Sidis v. Brodie/Dohrmann, Inc. , 117 Wn.2d 325, 815 P.2d 781 (1991)	2
South Hollywood Hills Citizens Ass'n v. King County , 101 Wn.2d 68, 677 P.2d 114 (1984).....	14, 16
Stansfield v. Douglas County , 146 Wn.2d 116, 43 P.3d 498 (2002)	10
State v. Schmitt , 124 Wn. App. 662, 102 P.3d 856 (2004)	6
Teller v. APM Terminals Pacific, Ltd. , 134 Wn. App. 696, 142 P.3d 179 (2006).....	10, 12, 16
Tellinghuisen v. King County Council , 103 Wn.2d 221, 691 P.2d 575 (1984).....	10, 12
Young v. Estate of Snell , 134 Wn.2d 267, 948 P.2d 1291 (1997)	2

STATE STATUTES

RCW 2.06.010.....	6
-------------------	---

STATE RULES

CR 15.....	<i>passim</i>
------------	---------------

OTHER AUTHORITIES

Tegland, 15A <i>Wash. Pract.</i> § 28.7 (2009).....	9, 13
Wright & Miller, 6A <i>Fed. Practice and Procedure</i> (2nd Ed.)	6-8, 14

I. INTRODUCTION

The Estate of Gordon Van Weerduizen, through its insurer and its lawyer, had timely notice that but for the Perrins' ignorance of the death of Gordon Van Weerduizen, the Estate would have originally been a named defendant. The trial court misapplied CR 15(c) in holding that the failure to originally name the Estate three weeks before the statute of limitations expired bars the Perrins' action on the ground of "inexcusable neglect."

II. REPLY ARGUMENT

A. **As The Original Complaint Was Timely Served And Filed, CR 15(c) Applies To Determine Whether The Amendment Substituting The Estate Relates Back To The Date of Original Filing.**

This action was timely commenced. The only issue before this court is whether the trial court misapplied CR 15 in refusing to allow an amendment that substituted Gordon Van Weerduizen's estate on the ground that Mr. Van Weerduizen had died before the action was timely commenced.

Respondent Dale Van Weerduizen, the personal representative of Gordon Van Weerduizen's estate ("the Estate"), makes no attempt to support the trial court's holding that this action was untimely because the Perrins failed to serve *all* defendants

within the applicable three year limitations. Compare **Banzeruk v. Estate of Howitz**, 132 Wn. App. 942, 135 P.3d 512 (2006) (affirming dismissal where complaint timely filed but not timely served), *rev. denied*, 159 Wn.2d 1016 (2007) (Resp. Br. at 16) This was respondent's argument below,¹ and one of the basis relied upon by the trial court in granting summary judgment. (RP 25, citing **Young v. Estate of Snell**, 134 Wn.2d 267, 948 P.2d 1291 (1997))

As discussed in Appellant's Opening Brief, and as the Estate apparently now concedes, this aspect of the trial court's holding contravenes established law because the complaint was filed against the correct tortfeasor and served against a co-defendant within the applicable three-year statute of limitations. Accordingly, this court should hold that timely service of process on Mrs. Van Weerduizen and the Stensland co-defendants was effective to commence the action within the statute of limitations and tolled the statute as to any remaining unserved defendants. See **Sidis v. Brodie/Dohrmann, Inc.**, 117 Wn.2d 325, 329, 815 P.2d 781 (1991)

¹ CP 63: "[N]either the amended complaint nor service occurred within the three year statute of limitations nor within 90 days of the filing of the original complaint."

(App. Br. at 11-12). The only relevant issue is whether the trial court erred as a matter of law in refusing to substitute Gordon Van Weerduizen's Estate for the decedent after his wife was timely served.

B. The Perrins' Amended Complaint Substituting The Estate For Decedent Gordon Van Weerduizen Related Back To The Date Of The Original Complaint Under CR 15(c).

The Perrins' amended complaint changed only the status of a named defendant by substituting the Estate for the deceased Gordon Van Weerduizen, whose insurer had timely notice of the lawsuit and was defending the action on behalf of Mrs. Van Weerduizen before the statute of limitations had run. The trial court erred in refusing to allow the amendment because (1) the amendment did not allege any different facts and arose out of the same accident that injured Mr. Perrin,² (2) the Estate, through its agents, indisputably had notice of the lawsuit within the three-year statute of limitations, and (3) the Estate suffered no prejudice whatsoever.

² The Estate concedes that the Perrins' amended complaint substituting the Estate met the first requirement of CR 15(c) as it is undisputed that both the original and amended complaint sought damages for Mr. Perrin's injuries in an auto accident caused by Mr. Van Weerduizen's negligence. Accordingly, that element is not argued here.

The Estate concedes that this was all the Perrins were required to prove under the plain language of the second sentence of CR 15(c). (Resp. Br. at 8) This court should reject the Estate's attempt to support the trial court's holding that the Perrins' action was time barred based on "inexcusable neglect," after the Perrins established that the Estate's lawyers and insurer had notice of the action within the applicable limitations period, and the lack of prejudice.

1. The Van Weerduizen Estate, Through Its Attorneys And Its Liability Insurer, Had Notice Of The Claim Within The Limitations Period, And Could Not Establish Prejudice In Having To Defend The Perrins' Claim On The Merits.

It is undisputed that Mrs. Van Weerduizen, the Van Weerduizen's insurer, as well as the lawyer hired by her insurer to defend her and her husband's Estate following his death, all had notice of the Perrins' lawsuit within three years of the August 15, 2003 auto accident. The lawsuit was filed on July 3, 2006. (CP 80) Mrs. Van Weerduizen was personally served on July 24, 2006, and the law firm of Davis Rothwell, who later defended the Estate under the Van Weerduizen's insurance policy, appeared on August 11, 2006. (CP 29-30, 48)

The Estate argues that personal representative Dale Van Weerduizen did not receive “notice of the lawsuit before August 15, 2006.” (Resp. Br. at 9) The Estate’s statement is misleading because Dale Van Weerduizen was not the appointed personal representative of the Estate of Gordon Van Weerduizen until August 15, 2006, three years to the day after the accident occurred. (CP 39) Further, the Estate’s statement rests on the legal fiction that notice to the Estate’s agents does not constitute notice to the Estate itself. The Perrins’ argument does not concoct a “fictitious imputed ‘community of interest’ knowledge theory,” as the Estate contends (Resp Br. at 10), but relies on a bedrock principle of the law of agency that “notice given to and knowledge acquired by an agent is imputed to the principal as a matter of law.” **Hurlbert v. Gordon**, 64 Wn. App. 386, 396, 824 P.2d 1238, *rev. denied*, 119 Wn.2d 1015 (1992).

While Divisions Two and Three used the term “community of interest” in holding that notice to the decedent’s insurer and the lawyer hired to represent the Estate against the plaintiff’s lawsuit satisfied CR 15(c) in **Craig v. Ludy**, 95 Wn. App. 715, 719-20, 976 P.2d 1248 (1999), *rev. denied*, 139 Wn.2d 1016 (2000); **LaRue v.**

Harris, 128 Wn. App. 460, 115 P.2d 1077 (2005); and **Schwartz v. Douglas**, 98 Wn. App. 836, 991 P.2d 665, *rev. denied*, 141 Wn.2d 1003 (2000), the courts' reasoning is based on the agency concept that the parties are so closely affiliated that notice to one "serves to provide notice to the other:"

Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other. As is true of other aspects of Rule 15(c), the objective is to avoid the application of the statute of limitations when no prejudice would result to the party sought to be added by the amendment.

Wright & Miller, 6A *Fed Practice and Procedure*, § 1499 (2nd Ed.).

See **LaRue**, 128 Wn. App. at 465 ¶ 12 (where decedent's insurer had notice and knowledge of lawsuit, "its notice and knowledge were imputable to the Estate.").

The Estate argues that this court is not obligated to follow Divisions Two and Three's reasoning in **LaRue**, **Schwartz** and **Craig**. It is true that this court is "bound" to follow only cases from the Supreme Court. **State v. Schmitt**, 124 Wn. App. 662, 669 n.11, 102 P.3d 856 (2004). However, as there is only one Court of Appeals, cases from other divisions of the Court of Appeals are no less authoritative than those from this Division. See RCW

2.06.010. Moreover, it is not just Divisions Two and Three, but courts nationwide that uniformly interpret Rule 15(c) to allow relation back where a personal representative is substituted for a named, but deceased, defendant after expiration of the statute of limitations.³ The Estate provides no sound reason for rejecting this uniform authority in favor of a rule that would discourage the prompt resolution of disputes and provide an incentive for insurers and the lawyers they hire to delay notifying a plaintiff of the death of a tortfeasor until the statute of limitations has run.

As Wright and Miller note, the purpose of requiring that the correct defendant has timely “notice” of the action as a condition to relation back under Rule 15(c) is to ensure that an amendment substituting a defendant does not unfairly prejudice the ability to defend the case. Thus, “an amendment by which plaintiff seeks to change the capacity in which the defendant is being sued also does

³See *Macias v. Jaramillo*, 129 N.M. 578, 11 P.3d 153 (N.M. App. 2000) (“State Farm knew that the complaint was filed. State Farm retained counsel to defend the Jaramillos and used the same lawyers to defend itself against the amended complaint” substituting Estate for decedent); *Indiana Farmers Mut. Ins. Co. v. Richie*, 707 N.E.2d 992, 997-998, 714 N.E.2d 169 (Ind.1999) (“we agree with the decisions that have permitted a plaintiff to amend to substitute the estate for the decedent.”); *Malmrose v. Aljoe’s Estate*, 92 F.R.D. 490, 491 (W.D.Pa. 1981) (“absent a mistake by the plaintiff . . . Executrix would have been named as a defendant.”).

not change the parties before the court and will relate back.” Wright & Miller, 6A *Fed. Pract. and Proc.*, § 1448 & n.40 (2nd Ed.) (citing **Craig v. Ludy**, 95 Wn. App. 715).

That is the case here, where the Perrins did not in any practical sense add or “change” a defendant under CR 15(c) by seeking to replace the deceased Gordon Van Weerduizen with his Estate. As a result, cases rejecting relation back where a plaintiff seeks to add an entirely new defendant after expiration of the statute of limitations, such as those relied upon by the Estate, are inapposite. See, e.g, **Foothills Development Co. v. Clark County Bd. of County Com’rs**, 46 Wn. App. 369, 730 P.2d 1369 (1986), *rev. denied*, 108 Wn.2d 1004 (1987) (refusing to allow addition of county in action against individual county commissioners four years after conclusion of writ of review proceedings); **Kiehn v. Nelsen’s Tire Co.**, 45 Wn. App. 291, 296-97, 724 P.2d 434 (1986), *rev. denied*, 107 Wn.2d 1021 (1987) (rejecting relation back in wrongful death action originally naming only John Doe defendant and newly named tire maintenance company lacked notice of the original complaint within three-year statute of limitations during which time “pertinent business records had been destroyed.”) (Resp. Br. at 8).

Adding a new defendant “who had no connection with or knowledge of, the original action” raises different concerns than the substitution of a defendant based on a change in capacity because it is unfair to deprive an entirely new party of “the benefit of the statute of limitations.” Tegland, 15A *Wash. Pract.* § 28.7 (2009).

The Estate alternatively argues that even if its agents had knowledge of the existence of the Perrins’ lawsuit, that notice does not satisfy CR 15(c). It argues that the Perrins had the additional burden of providing “evidence as to what the insurance carrier knew as of August 15, 2006,” and characterizes the notice acquired by the attorney hired by their insurer as “unproven knowledge.” (Resp. Br. at 10-13)

This argument is without merit. The lawyer and insurer defending Mrs. Van Weerduizen in August 2006 were the same lawyer and insurer defending the Estate on February 1, 2007. (CP 30-31, 48) Under the plain language of CR 15(c), all that is required is “notice of the institution of the action.” It is enough that those to whom the duty of defending the Estate against the claims of Perrin knew of the Perrins’ lawsuit against the Van Weerduizens before the statute of limitations expired to establish that the Estate

“received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits” within the meaning of CR 15(c).

The Estate had such notice here, and makes no attempt to establish any prejudice whatsoever. This court should reverse and reinstate the Perrins’ lawsuit.

2. The Trial Court Misapplied CR 15(c) In Refusing To Allow Substitution Of The Estate On The Basis Of Inexcusable Neglect.

The plain language of CR 15(c) does not require a showing of excusable neglect in order for an amendment substituting a defendant to relate back to the date of the original complaint. As the Estate notes, our courts have nonetheless held that an amendment joining a new party will not be allowed if the plaintiff is guilty of inexcusable neglect or has made a “conscious decision, strategy or tactic” to delay joining that new defendant. ***Stansfield v. Douglas County***, 146 Wn.2d 116, 122, 43 P.3d 498 (2002). *See also, Tellinghuisen v. King County Council*, 103 Wn.2d 221, 224, 691 P.2d 575 (1984); ***Teller v. APM Terminals Pacific, Ltd.***, 134 Wn. App. 696, 708-10, 142 P.3d 179 (2006) (Resp. Br. at 15).

However, the Estate cites to no cases refusing to authorize an amendment that does nothing more than change the capacity in which a previously named defendant is sued on the basis of inexcusable neglect. A trial court always has discretion to reject an amendment that is inexcusably untimely, but that discretion must be exercised under CR 15(a)'s liberal standard, directing that leave of court "shall be freely given when justice so requires." Thus, "undue delay on the part of the movant in proposing the amendment constitutes grounds to deny a motion to amend only where such delay works undue hardship or prejudice upon the opposing party." *Caruso v. Local Union No. 690*, 100 Wn.2d 343, 249,670 P.2d 240 (1983) (internal quotation and citation omitted) (Resp. Br. at 7). In *Caruso*, the Court held that an amendment adding a defamation claim over five years after the original complaint was filed related back under the first sentence of CR 15(c) because it arose out of the same transaction as the original complaint and caused no prejudice to the defendant who was already defending. 100 Wn.2d at 351.

The same liberal standard under CR 15(a) should apply to amendments changing the capacity in which a defendant is being

sued under CR 15(c). CR 15(c) “is to be liberally construed on the side of allowance of amendments, particularly where the opposing party is put to no disadvantage.” **DeSantis v. Angelo Merlino & Sons, Inc.**, 71 Wn.2d 222, 224-25, 427 P.2d 728 (1967) (authorizing amendment substituting corporation for improperly named sole proprietorship). *Accord*, **Schwartz v. Douglas**, 98 Wn. App. at 840 (liberally applying CR 15(c) where plaintiff’s delay in substituting PR is not in bad faith and “opposing party will be put to no disadvantage.”); **Craig v. Ludy**, 95 Wn. App. 715, 718-19, 976 P.2d 1248 (1999); **Lind v. Frick**, 15 Wn. App. 614, 616-17, 550 P.2d 709 (1976), *rev. denied*, 88 Wn.2d 1001 (1977)).

The cases cited by the Estate demonstrate that the finding of inexcusable neglect is closely related to considerations regarding the fairness of hauling a previously unnamed party into court after expiration of the statute of limitations as a result of the plaintiff’s delay. *See, e.g.*, **Teller**, 134 Wn. App. at 707 (failure to name maritime terminal lessee and operator as defendant in premises liability case until months after expiration of statute); **Tellinghuisen**, 103 Wn.2d at 222 (plaintiff challenging land use decision did not name property owner or occupant) (Resp. Br. at 15). By contrast,

where the substitution involves nothing more than a technical change in the capacity in which a party is before the court, the most important consideration is whether there is prejudice to the defendant. See 15A Wash. Pract. § 28.7 at 302. The Estate's argument that a plaintiff who complies with the express requirements of CR 15(c) in changing the capacity in which a defendant is sued is subject to a more stringent standard than that established by CR 15(a) should be rejected.

Division Two correctly questioned whether CR 15(c) adds a more stringent requirement of excusable neglect in a case involving only a change in capacity rather than the joinder of a new party, holding that "inexcusable neglect . . . is only one factor, not an absolute bar to amendment," in *Nepstad v. Beasley*, 77 Wn. App. 459, 468, 892 P.2d 110 (1995). As Wright and Miller explain, the notion of whether a plaintiff is guilty of "inexcusable neglect" should have no place in the analysis of whether an amendment to change an incorrectly named defendant relates back to the date of the original complaint:

A few cases tend to suggest that if plaintiff's own inexcusable neglect was responsible for the failure to name the correct party, an amendment substituting the proper party will not be allowed, notwithstanding

adequate notice to the new party. Although this factor is germane to the question of permitting an amendment, it is more closely related to the trial court's exercise of discretion under Rule 15(a) whether to allow the change than it is to the satisfaction of the notice requirements of Rule 15(c).

Wright and Miller, *6A Fed. Pract. and Proc.*, § 1498 (2nd Ed.).

This court should hold that an amendment changing only the capacity in which a defendant is sued is subject to the standards set out in CR 15(c), and should be liberally allowed under CR 15(a). The trial court's holding that the Perrins are guilty of inexcusable neglect misapplies the liberal standard of CR 15(a).

3. The Trial Court Abused Its Discretion In Finding Inexcusable Neglect.

Even if this court holds the Perrins to the same standard of excusable neglect that applies where an entirely new party is added to a lawsuit, the trial court's finding of inexcusable neglect was an abuse of discretion here. "Generally, inexcusable neglect exists when no reason for the initial failure to name the party appears in the record." ***South Hollywood Hills Citizens Ass'n v. King County***, 101 Wn.2d 68, 78, 677 P.2d 114 (1984). The Estate makes no argument that the Perrins were guilty of such inexcusable neglect in failing to learn that Gordon Van Weerduizen had died prior to commencing their lawsuit in July 2006.

Instead, the Estate argues that the Perrins were guilty of inexcusable neglect because after serving Gordon Van Weerduizen's widow, their attorney "had more than three weeks to determine if a personal representative had been appointed" before the statute of limitations had run. (Resp. Br. at 15-16) But they can cite to no case, in any jurisdiction, in which a delay of three weeks in substituting the Estate for a deceased defendant constitutes "inexcusable neglect."

Contrary to the Estate's contention, no evidence shows "that the plaintiff's attorney knew right after the lawsuit was filed that . . . Gordon Van Weerduizen was dead" (Resp. Br. at 15). To the contrary, the Perrins' lawyer did not become aware of the driver's death until December 20, 2006. (CP 30) Moreover, there can be no argument here that the failure to immediately name the Estate was tactical or strategic.

The Estate's argument for "inexcusable neglect" here boils down to the fact that the Perrins' attorney failed to closely examine the return of service for the Van Weerduizens' summons in sufficient detail to discern that Hattie Van Weerduizen was listed as "spouse/widow," and not just "spouse." (CP 29-30) In *Nepstad*, 77

Wn. App. at 466-67, the Court of Appeals held that the trial court abused its discretion in finding inexcusable neglect where the plaintiff incorrectly named the mother of the actual driver because she misread the defendant's insurance card.

The Perrins' oversight is similar to the "excusable neglect" in ***Nepstad***, and a far cry from the failure to determine the record owner of real property in ***South Hollywood Hills***, 101 Wn.2d at 78, or neglecting to notice a 12 foot by 6 foot sign identifying the operator of the marine terminal in ***Teller***, 134 Wn. App at 707. The trial court abused its discretion in dismissing the Perrins' complaint in the absence of any prejudice to the Estate and where its agents had knowledge of the lawsuit before the statute of limitations expired.

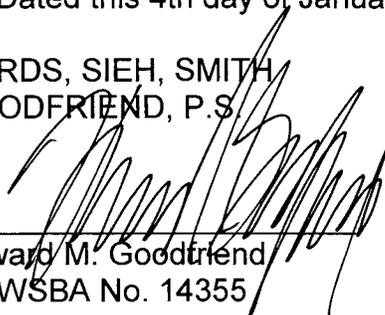
III. CONCLUSION

This court should reverse the dismissal of the Perrins' lawsuit against the Estate of Gordon Van Weerduizen and remand for trial.

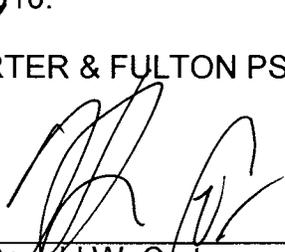
Dated this 4th day of January, 2010.

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

CARTER & FULTON PS

By: 

Howard M. Goodfriend
WSBA No. 14355

By: 

Donald W. Carter
WSBA No. 5569

Attorneys for Appellants

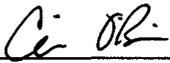
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 4, 2010, I arranged for service of the Reply Brief of Appellants, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Donald W. Carter Carter & Fulton PS 3731 Colby Ave. Everett, WA 98201-4910	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Marilee Erickson Reed McClure 601 Union St., Suite 1500 Seattle WA 98101-1363	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Patrick N. Rothwell Davis Rothwell Earle & Xochihua PC 701 Fifth Avenue, Suite 5500 Seattle, WA 98104-7096	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

DATED at Seattle, Washington this 4th day of January, 2010.



Carrie O'Brien