

64544-7

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No. 645447

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COURT OF APPEALS  
 DIVISION 1  
 OF THE STATE OF WASHINGTON

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CAROL MAVIS  
Appellant

v.

KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2,  
d/b/a EVERGREEN HEALTHCARE  
Respondent

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BRIEF OF RESPONDENT

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## I. ISSUES PRESENTED ON APPEAL

1. Was the trial court correct in granting summary judgment when Mavis failed to follow the procedural requirement of RCW 4.96.020(2) that a notice of claim be presented to its designated agent during “normal business hours”?
2. Was the trial court correct in granting Evergreen’s motion for summary judgment when Mavis, having presented her claim, failed to wait the statutorily required 60 days before filing her lawsuit?
3. Was the trial court correct in denying Mavis’ request for attorney fees incurred in opposing Evergreen’s motion for summary judgment?
4. Should this court deny Mavis’ request for attorney fees on appeal?

## II. STATEMENT OF THE CASE

### A. Nature of the Case.

This is a personal injury case and appeal from an Order by the Honorable Mary Yu granting summary judgment in favor of Evergreen Healthcare (“Evergreen”). Carol Mavis (“Mavis”) claims that while walking in a parking lot at Evergreen, she fell over a metal stand for a

stop sign which was based in a steel plate bolted to the pavement of the garage floor. This alleged incident occurred on February 7, 2006. CP 3-5.

Evergreen is a public hospital district legally known as King County Public Hospital District No. 2. CP 143. Evergreen, as a public hospital district, is a local governmental entity.

Evergreen moved for summary judgment to dismiss Mavis' case based on a failure to comply with the Notice of Claim statute, RCW 4.96.020 and expiration of the statute of limitations. CP 106-12. The Honorable Mary Yu heard oral argument on October 16, 2009. CP 207. Judge Yu further instructed the parties to submit additional briefing on specific issues including what constituted presentation of a notice of claim and if a claim could be properly presented to a third party who was not the agent of the designated agent. CP 207. Both parties timely submitted the additional briefing. On November 12, 2009 Judge Yu granted Evergreen's Motion for Summary Judgment in its entirety. CP 97-99. Judge Yu also denied Mavis' requests for sanctions in connection with Evergreen's denial of her Requests for Admissions. CP 97-99, CP 207.

B. Procedural History of Case.

On January 30, 2009, Mavis' counsel sent a written notice of claim to Evergreen via U.S. Certified Mail. CP 121-24. The notice of claim

was addressed to Steven Brown, the Chief Executive Officer of Evergreen.

CP 121-24. Mr. Brown, as the Chief Executive Officer, was the designated agent to receive claims on behalf of Evergreen and this designation was publically recorded and on file with the King County Auditor's Office. CP 195-96.

The notice of claim was received by Evergreen administration and its Chief Executive Officer Steve Brown on Monday, February 2, 2009.

CP 121-24. January 31, 2009 was a Saturday and February 1, 2009 a Sunday. Evergreen's administrative offices were closed on Saturday and Sunday. CEO Brown's normal business hours in Evergreen's administrative offices were Monday through Friday 8:00 a.m. - 5:00 p.m.

CP 154-56. CEO Brown was the designated agent to receive claims against Evergreen during his normal business hours. CP 154-56, CP 195-96.

Mavis commenced the underlying civil lawsuit by filing a summons and complaint on April 3, 2009. CP 1-5. This was sixty days from January 31, 2009. Evergreen timely filed its answer and affirmative defenses on May 12, 2009. CP 142-47. Evergreen asserted affirmative defenses, including the defense that Mavis had not complied with RCW 4.96.020 and that her claim was barred by the applicable

statute of limitations. CP 145. After a hearing and additional briefing by both parties, Evergreen's Motion for Summary Judgment was granted on November 12, 2009. CP 97-99.

C. Basis of Evergreen's Motion for Summary Judgment.

Evergreen's position was straightforward. Because Evergreen was a public hospital district and local governmental entity, Mavis had to comply with RCW 4.96.020, Notice of Claim Statute. Mavis created her own problem when she failed to follow the procedural requirement of RCW 4.96.020(2) that a notice of claim be presented to the designated agent during "normal business hours" and then failed to wait for the required sixty days to elapse before filing her lawsuit.

Strict compliance is required by the Notice of Claim statute in effect at the time of this incident. Mavis failed to comply with the statute. Her notice of claim was presented to CEO Steve Brown, designated agent for Evergreen, on Monday, February 2, 2009 during his normal business hours. CP 121-24.

Mavis sent her notice of claim addressed to Mr. Brown at Evergreen by certified mail on January 30, 2009. CP 121-24. Mavis had the option of restricting the delivery of her claim to CEO Brown or to his authorized agent. CP 38. The envelope containing the claim would then

be marked "restricted delivery," and postal employees would only deliver the envelope to Mr. Brown or his designated agent. Mavis chose not to use the restricted delivery option. CP 38.

The envelope containing the notice of claim was taken to Evergreen on Saturday, January 31, 2009 by postal employees. The envelope contained no outer markings or description of its contents. Delivery was not restricted. CP 38. The mail room at Evergreen was closed and locked because it was a Saturday. CP 149, CP 158. The envelope containing the notice of claim and addressed to Mr. Brown was left with a switchboard operator, Emma Bauch, who signed a receipt for the envelope. CP 38, CP 109, CP 158.

Next to Ms. Bauch's signature were two boxes which could be checked: addressee or agent. Ms. Bauch checked neither of them. CP 38.

The return receipt card signed by Ms. Bauch was returned to counsel for Mavis by the post office. The envelope containing the notice of claim was delivered and presented to CEO Brown on the next business day, Monday, February 2, 2009. CP 121-24. Mr. Brown received the notice of claim during his normal business hours at his administrative offices at Evergreen. CP 121-24. Review of the return receipt shows that

Ms. Bauch signed for the envelope on January 31, 2009, not CEO Brown, and that Ms. Bauch was not his authorized agent. CP 38.

On April 3, 2009, Mavis commenced her civil lawsuit against Evergreen. CP 1-5. Mavis improperly commenced the suit on day sixty and did not allow 60 total calendar days to **elapse** prior to filing. This violated the Notice of Claim statute which requires a claimant to wait for sixty full days to elapse before commencing a lawsuit. RCW 4.96.020; *Troxell v. Rainier Public Schools*, 154 Wn.2d 345, 111 P.3d 1173 (2005). Strict compliance with the Notice of Claim statute is required. Mavis' claim was barred because of her failure to comply with the Notice of Claim statute and because the statute of limitations governing her claim had expired.

Evergreen denied Mavis' requests for admissions served while Evergreen was waiting for a hearing on its Motion for Summary Judgment. Evergreen moved to strike Mavis' request for fees for denying the admissions because a discovery motion was not properly before the court. CP 148-53. Mavis had not conducted an LR 37 conference nor was a discovery motion in response to Summary Judgment. CP 152. Judge Yu denied Mavis' request for fees associated with denial of her requests for admission. CP 103-05, CP 207.

D. Mavis' Response to Summary Judgment.

Mavis contended that she filed a timely notice of claim which was constructively received by the Evergreen switchboard operator, Ms. Bauch, as the agent for CEO Brown on Saturday, January 31, 2009. CP 78-9. Mavis then counted the sixty day waiting period from January 31, 2009 and commenced her civil lawsuit on April 3, 2009. CP 1-5.

Mavis claimed that 2009 amendments to the Notice of Claim statute should be retroactively applied to her case. CP 18. She asserted that the amendments were curative and were evidence of the legislature's intent in drafting the original statute. CP 18, CP 76-7.

Mavis further claimed that fees should be awarded for Evergreen's denial of two requests for admissions. Mavis asked Evergreen to admit that it received her notice of claim on Saturday, January 31, 2009 and that she had complied with the Notice of Claim statute. CP 23-4.

E. Judge Yu's Rulings on Summary Judgment.

On November 12, 2009 Judge Yu granted Evergreen's Motion for Summary Judgment dismissing Mavis's claims with prejudice and made these rulings:

1. There is no evidence in the record for the Court to find that the switchboard operator was the authorized agent to receive a claim or that she had authority to accept the claim.

The first business day after receipt by the operator was Monday, February 2, 2009 which was the day of presentation for purposes of complying with the statute.

2. The Court denies the request for fees and admissions but does not strike the request.
3. The Court denies the request to apply the amendments to RCW 4.96 retroactively.

CP 97-99.

Mavis then filed this appeal.

### III. ARGUMENT

- A. Evergreen Followed the Procedures of RCW 4.96.020(2) in Designating an Agent for Presentation of a Notice of Claim and Summary Judgment was Correctly Granted.

RCW 4.96.020 requires a public hospital district to record the identity of its designated agent for receipt of claims along with the address where the agent can be reached during normal business hours.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and address where he or she may be reached during normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located....

Evergreen fully complied with RCW 4.96.020.

1. Steven Brown was the Chief Executive Officer of Evergreen in 2009 and its Designated Agent for Presentation of Claims.

In 2001 Evergreen duly recorded an official designation of its agent for presentation of notices of claims with the King County Auditor's Office. The designated agent was the Chief Executive Officer for King County Public Hospital District No. 2 ("KCPHD #2"). The address where the agent could be found during normal business hours was also listed as: 12040 NE 128<sup>th</sup> Street, Kirkland, Washington 98109. CP 195-96.

Steve Brown was the Chief Executive Officer for Evergreen in 2001 and in January 2009 and was its designated agent at all times. CP 154-56. Mavis addressed her notice of claim to Steve Brown, as the CEO, at the address listed on the designation of agent filed with the auditor's office. CP 38.

Mavis' argument that CEO Steve Brown was not the designated agent in January, 2009 is not meritorious. Mavis relies on an internal hospital resolution which designated Beverly Barksdale, Mr. Brown's executive assistant, as the designated agent for receipt of claims.<sup>1</sup> This

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<sup>1</sup> Evergreen initially referenced the internal resolution in its motion but acknowledged and clarified in its reply that the resolution was not operative or enforceable. CP 109, CP 183. The resolution was an internal document still undergoing further review and changes and had never been published or recorded. Evergreen's public recording with the Auditor's office designating its CEO as its agent for presentation of claims was the operative document. CP 195-96, CP 148.

internal resolution was not published anywhere nor had it been filed with the auditor's office because Evergreen had decided to make changes to it. CP 183. As of November 6, 2009, the Internal Resolution still had not been implemented or recorded because Evergreen had decided to make changes to it. CP 183.

To change the designated agent to Ms. Barksdale, Evergreen would have had to file a new designation of agent with the King County Auditor's Office publically changing its designated agent to the Executive Assistant to the CEO, Ms. Barksdale. *See* RCW 4.96.020(2). Evergreen never did this and in January 2009 Steve Brown as the CEO was Evergreen's designated agent. CP 195-96, CP 148, CP 199-201.

Mavis incorrectly tells this Court that Ms. Barskdale testified that she was the designated agent for receipt of claims in 2009. Mavis includes no cite to the record for this assertion for a very good reason. Ms. Barksdale never made this statement.

Ms. Barksdale was the Executive Assistant for CEO Brown. Ms. Barksdale testified by way of declaration that she was the Executive Assistant for Steve Brown, the Chief Executive Officer and Designated Agent for Evergreen. CP 154-56. Ms. Barksdale had been the Executive Assistant for nine years and she testified regarding the location of CEO

Brown's offices at Evergreen and the normal business hours for the administrative offices where CEO Brown was located. CP 154-56.

2. Mavis Cannot Claim for the First Time on Appeal that CEO Brown was not Evergreen's Designated Agent; the Doctrine of Judicial Estoppel Precludes Mavis' Inconsistent Arguments.

Mavis never claimed or argued to the trial court that Beverley Barksdale, Executive Assistant to CEO Brown, was the designated agent for receipt of claims in January, 2009. In general, issues not raised in the trial court may not be raised for the first time on appeal. RAP 2.5(a); *State v. Eggleston*, 129 Wn. App. 418, 437, 118 P. 3d 959 (2005). This traditional rule benefits the parties and the courts alike. It allows the opposing party an opportunity for response at the trial court level and it avoids unnecessary appeals by encouraging resolution at the trial court level.

Mavis' claim and argument to this Court based on the internal resolution is inconsistent with the argument she made previously to the trial court. In the trial court, Mavis argued that the internal resolution was not enforceable because it had not been published or publically recorded and that CEO Brown was Evergreen's designated agent. In her Response Brief to Evergreen's Motion for Summary Judgment, Mavis argued:

First, plaintiff contests the enforceability of Evergreen Hospital Resolution No. 818-08 because it does not appear to have been recorded at the King County Auditor's Office. Second Evergreen Healthcare's agents cannot avoid presentment of the claim by designating another person to receive their mail.

CP 21-22.

Mavis' "about face" change in position here is not only disingenuous, she should be judicially estopped from making this inconsistent argument. An attorney has full power to represent a party in all matters of legal practice before a court. *Clay v. Portick*, 84 Wn. App. 553, 561, 929 P.2d 1132 (1997). An attorney appearing on behalf of her client is presumed to speak and act on the client's behalf. *Id.*

The rule of preclusion of inconsistent positions, commonly referred to as the doctrine of judicial estoppel, prevents a party from making factual assertions that are inconsistent with assertions the person previously made in litigation. *Holst v. Fireside Realty, Inc.*, 89 Wn. App. 245, 259, 948 P.2d 858 (1997). The heart of the doctrine is the prevention of inconsistent factual positions. *King v. Clodfelter*, 10 Wn. App. 514, 519, 518 P.2d 206 (1974).

The doctrine of judicial estoppel prevents a party from taking inconsistent positions at successive stages in the case. *Smith v. Boston Elevated Ry. Co.*, 184 Fed. 387, 389 (1<sup>st</sup> Cir. 1911). Judicial estoppel is

invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. *Russell v. Rolf*, 893 F.2d 1033, 1037 (9<sup>th</sup> Cir. 1990). The courts have broad discretion to hold a party to pretrial representations made in their trial brief. *Ashland Oil, Inc. v. Arnett*, 875 F.2d 1271 (7<sup>th</sup> Cir. 1989). A litigant cannot, in the course of litigation, occupy inconsistent and contradictory positions. *Montero v. Compugraphic Corp.*, 531 So. 2d 1034, 1036 (Fla. 1988).

Judicial estoppel has been applied in several similar situations. *Arnco v. Glenfed Financial Corp.*, 746 F. Supp. 1249, 1257 (D.N.J. 1990); *Matek v. Murat*, 638 F. Supp. 775, 783 (C.D.Cal. 1986); *Continental Illinois Nat. Bank v. Windham*, 668 F. Supp. 578, 581 (E.D. Tex. 1987).

Judicial estoppel seeks “to prevent the use of intentional self-contradiction as a means of obtaining an unfair advantage in a forum provided for suitors seeking justice.” *Continental*, 668 F. Supp. at 581, quoting *Allen v. Zurich Insurance*, 667 F.2d 1162, 1167 (4<sup>th</sup> Cir. 1982). Judicial estoppel does not require reliance and injury. *Continental* at 581. In *Continental*, Plaintiff contended that his sole claim was that defendants breached their contract to him. *Id.* Accordingly, the court of appeals, which affirmed and remanded for trial, held that the plaintiff was estopped

from asserting a negligence claim and was limited to his contractual theory of liability at trial. *Continental* at 581.

In *Colleton Regional Hosp. v. MRS Med Review Systems*, 866 F. Supp. 896 (D.S.C. 1994), an ERISA case, the plaintiff (Colleton Hospital) initially claimed that defendant MRS (a medical benefits utilization review company) was not a fiduciary and was not amenable to a suit for breach of fiduciary duty under ERISA. *Id.* at 901. Colleton made this contention to bolster its position that the state common law causes of action against MRS could not be preempted by ERISA. When the court rejected Colleton's position, holding that there was ERISA preemption, Colleton changed its position and contended that MRS was a fiduciary and could be sued for breach of fiduciary duty. *Id.*

The court in *Colleton* held that the doctrine of judicial estoppel prevented Colleton from asserting that MRS was a fiduciary. *Id.* Judicial estoppel prevents a party from switching positions during litigation and from "blowing hot and cold" with the judicial process. *Id.* at 900.

B. Judge Yu Correctly Ruled that Amendments to the Notice of Claim Statute Should not be Retroactively Applied.

Mavis' alleged injuries occurred on February 7, 2006. She mailed her notice of claim on January 30, 2009. RCW 4.96.020 (Notice of Claim

Statute) was amended in 2009 with changes to become effective on July 26, 2009. The statutory amendments were not in effect at the time of Mavis' alleged injuries or when she mailed her notice of claim. Even if they had been in effect, they would not have helped her in this case.

1. Mavis Incorrectly Asserts that there is no Statutory or Case Law Governing Presentation of a Claim.

At the outset, Mavis argues that a thorough search of Washington case law revealed no cases dealing with the issue of presentation of a notice of claim. That is not correct.

RCW 4.96.020, itself, deals with presentation of claims by requiring them to be made to a designated agent at his address during normal business hours. As discussed in Evergreen's additional briefing for Judge Yu, Washington has long held that a notice of claim to a governmental entity must be presented to the agent for the entity during normal business hours. *Ehrhardt v. City of Seattle*, 40 Wash. 221, 82 P. 296 (1905).

In *Ehrhardt*, the plaintiff said that he attempted to serve his notice of claim on the city between 5-6 p.m. but was unable to do so because city offices were closed. Dismissal of the claim was affirmed because:

...presentation of the claim after office hours would not be notice to the city. The respondent, not having presented a claim within the

time prescribed by the charter, was legally barred from prosecuting the claim.

*Ehrhardt* at 224; accord *Seattle National Bank v. Dickinson*, 72 Wash. 403, 407, 130 P. 372 (1913). While *Ehrhardt* was decided over one hundred years ago, its principles remain sound and instructive regarding this case. Presentation as defined by RCW 4.96.020 and Washington case law requires receipt of a claim by the designated agent during his/her normal business hours.

The burden of providing a proper notice of claim in strict compliance with the procedural statutory requirements is on the claimant. *Rivera v. City of Meriden*, 806 A.2d 585 (Conn. 2002). Providing notice requires the claimant to both deliver the notice during usual business hours and to ensure that it has been received within the notice period. *Id.* at 589-90.

2. Statutory Amendments are Presumed to Operate Prospectively Only.

Statutory amendments are presumed to apply prospectively. *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 47, 785 P.2d 815 (1990). That presumption can be overcome only if (1) the legislature specifically provides for retroactivity, (2) the amendment is curative, or (3) an amendment is remedial. *State v. T.K.*, 139 Wn.2d 320,

332, 987 P.2d 63 (1999). A curative statutory amendment is one that clarifies or technically corrects an ambiguous statute. *State v. Smith*, 144 Wn.2d 665, 674, 30 P.3d 1245 (2001).

A remedial change in a statute is one that relates to practice, procedures or remedies and does not affect a substantive or vested right. *Woods v. Bailet*, 116 Wn. App. 658, 669, 67 P.3d 511 (2003). Even if remedial, an amendment should not be retroactively applied unless doing so would further the remedial purpose. *Id.* at 670.

In construing revised statutes and connected amendments, great caution must be observed to avoid giving effect to those acts never contemplated by the legislature. *State of Washington v. The City Council of the City of Seattle, et al.*, 71 Wn.2d 462, 465, 429 P.2d 235 (1967).

3. The Specific Language of the Amendments Establishes the Legislature's Intent that the Amendments not be Applied until their Effective Date of July 26, 2009.

Newly amended RCW 4.96.020 contains language indicating an express intent that the statute not be retroactively applied. The amended statute states its application is: "(f)or claims of damages presented after July 26, 2009..." The legislative history for the amendments confirms prospective application. Engrossed Substitute House Bill 1553 states:

“(f)or claims for damages presented after the effective date of this section....”

4. The Statutory Amendments are not Curative Because RCW 4.96.020 is Not Ambiguous.

The amendment to RCW 4.96.020 is not curative because the original statute was not ambiguous. The amendment simply adds ways that a notice of claim can be delivered to the designated agent and provides that this agent can designate another agent in his/her office to receive claims for damages if he/she so chooses.

In *Woods v. Bailet*, 116 Wn. App. 658, Woods argued that 2001 amendments to the Notice of Claim statute requiring designation of a agent to receive claims and publication of the identity of the agent and address during normal business hours, was curative and should be retroactively applied. In rejecting this argument, the Court noted that the prior statute was not ambiguous and that the amendment simply added some procedures. *Woods* at 669.

5. Mavis Does Not Claim the Amendments Are Remedial and Retroactive Application would not Further a Remedial Purpose.

Mavis does not contend that the amendments are remedial nor did she make this argument to the trial court. CP 10-26, CP 73-96. While not

raised earlier, a characterization of the amendments as remedial does not support retroactive application because doing so does not serve an underlying remedial purpose. *Woods v. Bailet*, 116 Wn. App. at 670.

This was not a case where Mavis did not know if a claim could be delivered by registered mail, regular mail or in person. This was not a case where Mavis did not know who to serve with the notice of claim.

The problem in this case was that Mavis ignored the statutory language, requiring presentation to the designated agent during his normal business hours. Mavis then failed to properly count the sixty day waiting period from the date of presentation to the designated agent, CEO Brown, during normal business hours. Both requirements remain unchanged by the 2009 statutory amendments.

The amendment allowing the designated agent to appoint another person in his/her office to receive the notice of claim does not help Mavis either. First, there is no requirement that the designated agent select an additional person in his/her office to receive claims. Second, Mr. Brown's office was closed on Saturday and Sunday, and not open until Monday, February 2, 2009. CP 154-56. Third, the switchboard operator who signed for the envelope containing the claim had no knowledge of its

contents, did not work in CEO Brown's office and was never designated by him to receive a notice of claim. CP 38, CP 158.

Mavis was on notice of this. Ms. Bauch signed the return receipt card which contained blocks for her to check that she was the addressee or the agent for the addressee. CP 38. Ms. Bauch selected neither. This put Mavis on notice that Ms. Bauch was not the designated agent, CEO Brown, nor had she been designated by him as his agent to receive a notice of claim. As in *Woods v. Bailet*, even if the amendment Mavis relies upon had been in effect, it would not have helped her. Retroactive application of the amendment does not serve any underlying remedial purpose in this case. *Woods v. Bailet*, 116 Wn. App. at 670.

In addition, Mavis had control over the presentation of her notice of claim. Mavis had the right to select how the claim was presented and when. Since she chose registered mail, Mavis had the option to restrict delivery to the designated agent or to his designee. CP 38. Having had the means of restricting delivery at her disposal and being on notice that her claim had not been presented to the designated agent on January 31, it was incumbent upon Mavis to use the next normal business day to begin the count for the sixty day waiting period.

6. The Amendments and the Original Act Must be Construed Together.

It is a well-settled rule of statutory construction that an original act and an amendment to it should be read and construed as one law passed at the same time. *Bradley v. Dept. L & I*, 52Wn.2d 780, 785, 329 P.2d 196 (1958).

Statutes are construed as a whole, giving effect to all of the language used. Each part of a statute must be construed with every other part or section. *City of Tacoma v. Cavanaugh*, 45 Wn.2d 500, 503, 275 P.2d 933 (1954). Two statutes dealing with the same subject must be construed together so that the integrity of both will be maintained. *Id.* All portions of an act must be construed together. *Commercial Waterway District No. 1 of King County v. Permanente Cement Company*, 61 Wn.2d 509, 524, 379 P.2d 178 (1963).

Here Mavis selects only one section of the amendments which she argues is curative while ignoring the remaining amendments to the Notice of Claim statute. Not only do these amendments contain a stated effective date of July 26, 2009, they also contain provisions which affect substantive rights and which would over rule established judicial precedent if retroactively applied.

The statutory amendments contain a lengthy list of new information which must be contained in a notice of claim presented after July 26, 2009. RCW 4.96.020. The amendments significantly change existing law regarding construction of the statute and the procedural requirements for compliance with the Notice of Claim statute.

Prior to the amendments effective after July 26, 2009, claimants had to strictly comply with the notice of claims statute. *Troxell v. Rainier Public School Dist.*, 154 Wn.2d 345, 360, 111 P.3d 1173 (2005) (strict compliance with statute's sixty day waiting period required). If amendments to RCW 4.96.020 were retroactively applied they would essentially overrule *Troxell* and other Washington cases. *American Discount Corp. et al v. Shepherd*, 129 Wn. App. 345, 353-56, 120 P.3d 96 (2005). Section four of the amendments now requires liberal construction of the Notice of Claim Statute so that substantial compliance will be deemed sufficient.

C. There was no Constructive Receipt of the Notice of Claim by the Switchboard Operator who had no idea of the Content of the Envelope and who was not authorized to Receive a Notice of Claim for CEO Brown.

Mavis argues that equity requires application of the doctrine of constructive receipt to relieve her of the "technicality" of failing to deliver

her Claim to CEO Brown during normal business hours. Strict compliance with procedural compliance with Notice of Claim filing requirements is mandatory even if the requirements “seem harsh and technical.” *Burnett v. Tacoma City Light*, 124 Wn. App. 550, 558, 104 P.3d 677 (2004). A court must give full effect to the plain language of the statute, ‘even when its results may seem unduly harsh.’ *Kleyer v. Harborview Medical Center*, 76 Wn. App. 542, 547-48, 887 P.2d 468 (1995), citing *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993).

Washington has required strict compliance with the procedural requirements of the Notice of Claim statute for many years until the 2009 amendments. In *Cole v. City of Seattle*, 64 Wn. 1, 116 P. 257 (1911) a personal injury claim was dismissed because the plaintiff failed to file it with the City Clerk’s Office even though the plaintiff had presented the claim to the city council and verbally discussed it with a council member. In approving the procedural system requiring presentation of a claim to the City Council and filing with its clerk the court reasoned:

In view of the multitude of city officers and employees, and the endless details of the business of a large city, it is obviously reasonable to require service of claims of injury upon some certain officer or body. No other method would insure its reaching the proper channels for investigation.

*Id.* at 6.

*Stevens v. City of Centralia*, 86 Wn. App. 145, 149, 936 P.2d 1141 (1997), does not relieve Mavis of complying with the Notice of Claim statute's procedural requirements. Mr. Stevens presented his notice of claim to the City Clerk, the appropriate entity. His claim was refused because the clerk said it was not on a pre-printed form used by the city. The court found that the claim was constructively accepted because Mr. Stevens timely presented it to the designated agent for the city and because it contained a proper claim for damages. *Id.* at 152.

Here, Mavis made the errors. She failed to present her claim to the designated agent during his normal business hours. She failed to correctly count the sixty day waiting period from the day of presentation.

Mavis made the decision about how and when to present her claim. Mavis knew that the Notice of Claims statute required presentation of her claim to CEO Brown. CP 121-24. She knew that a Saturday was not "normal business hours." Mavis mailed her claim on January 30, knowing that the next normal business day was Monday, February 2, 2009, and that her claim would not be presented to CEO Brown until then.

Mavis knew or should have known that the sixty day waiting period began the day after presentation during normal business hours. All Mavis had to do was count sixty days from February 2, 2009.

Mavis had multiple other ways of correctly complying with the Notice of Claim statute. She did not need to wait until the statute was about to run to file her notice of claim. She could have personally delivered or messengered her claim to CEO Brown. She could have sent the notice of claim by registered mail with restricted delivery. CP 38. This would have limited delivery to only CEO Brown, as the addressee, or his designated agent. CP 38. Indeed, the availability of this mechanism defeats Mavis' argument that an entity can always defeat the Notice of Claim statute by employing individuals in a mail room to open all the mail.

Mavis received the return receipt signed by Ms. Bauch, the switchboard operator, which expressly indicated that she had signed for the envelope on Saturday, January 31, and that she was not an agent of CEO Brown. CP 38. Mavis had the option of calling CEO Brown's office on Monday, February 2, to ensure he had received the claim that day. Mavis had the option of concluding presentation had occurred on February 2, during CEO Brown's normal business hours, or Mavis had the option of delivering the claim to CEO Brown on February 2, 2009. In contrast to *Stevens*, Mavis was in control of the delivery of her claim and counting the waiting period.

Washington Courts have refused to find “constructive receipt” and to follow *Stevens v. City of Centralia*, when a messenger for the claimant served the wrong entity or when the claimant bore some responsibility for inadequate presentation. In *Burnett v. Tacoma City of Light*, 124 Wn. App. 550, 104 P.3d 677 (2004) a messenger correctly delivered Claim No. One to the City Clerk’s Office. A different messenger was used to deliver Claim No. Two who instead delivered it to the City Public Utility Department and to the Tacoma City Attorney’s Office.

An attorney in the City Attorney’s office signed for the second claim as did a management analyst for the Department of Public Utilities. The analyst handled claims made against the Department and when claims came to him directly, he would forward them to the City Clerk’s office although that was not his responsibility.

Claim Number two was dismissed by summary judgment. The court refused to find “constructive receipt” even though the management analyst who was served with the claim usually filed these claims with the City Clerk’s office as a courtesy to claimants. The court also refused to find that this employee or the City Attorney had “interfered” with delivery of the claim by accepting and signing for it rather than refusing it from the messenger.

Division One of the Court of Appeals refused to follow the constructive receipt argument in *Stevens v. City of Centralia* in *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 963 P.2d 907 (1998). The plaintiff served his summons and complaint by messenger who put the documents in a rapid filing box because no check was attached to the pleadings. The rapid filing box stated that it was for documents which did not require a filing fee. Thereafter the defendant moved for summary judgment asserting the complaint had not been properly filed and that the statute of limitations had run.

The Court held that the summons and complaint had not been properly filed because the filing fee was not attached. Clerical personnel working for the court did not constructively accept or receive the documents when they removed them from the rapid filing box. Like in the present case, the mistake was made by the plaintiff (failing to attach the check). The Court did not follow the “constructive receipt” rationale of the *Stevens* case (where the mistake was that of the defendant’s clerk who wrongly insisted the notice be a particular form).

In Washington a notice of claim must be presented to the designated agent or to his designated agent. In *Faucher v. Burlington Northern, Inc.*, 24 Wn. App. 711, 603 P.2d 844 (1979), the plaintiff served

a telegrapher who worked for the railroad with his summons and complaint. The lawsuit was dismissed for failure to serve a proper agent of the railroad. On appeal, the plaintiff argued that service was proper because the telegrapher was in sole charge of the depot, was working in an area accessible to the public and was in a responsible position. These factors allegedly made him an agent for purposes of accepting service of process for Burlington Northern.

In affirming the dismissal, the appellate court noted that the question turned on the character of the agent and in absence of an express grant of authority, review of the surrounding facts and inferences which can be drawn therefrom. *Id.* at 713-14. The telegrapher had never, during the course of his twenty years of employment, been given the responsibility of accepting legal claims. His primary duties were that of a telegrapher, opening and closing railroad switches by remote control. While a skilled employee, the telegrapher had no representative or managerial authority.

A claim against an estate had to be presented to the executor rather than to his employee. *Seattle National Bank v. Dickinson*, 72 Wash. 403, 130 P. 372 (1913). *In Seattle Natl. Bank*, the plaintiffs' attorney took his creditor's claim to the designated offices on several different occasions.

The attorney ultimately left the claim with an employee in the office.

Judgment for the plaintiff was reversed because there was no presentation of the claim within the required one year.

The mere physical act of going to the place of business of the executors named in the notice, with an intention to present a claim, is not a presentation. Nor does the temporary absence of the executor from the place named in the notice relieve a claimant of the duty to present his claim as a condition precedent to the maintenance of a suit to enforce liability upon it.

*Seattle Natl. Bank* at 407.

Similarly, *Harberd v. Kettle Falls*, 120 Wn. App. 498, 512-13, 84 P.3d 1241 (2004), involved service of a notice of claim on a secretary for the City Mayor. The process server left the notice of claim with the secretary when he was told that neither the Mayor nor the City Clerk/Treasurer were available to receive it. Plaintiff Harberd then filed a civil claim for damages and injunctive relief. Dismissal of the case was affirmed on appeal. The plaintiff failed to comply with the Notice of Claim statute. There was no evidence that the secretary was authorized to accept service of the notice of claim or that she was, in fact, the Deputy City Clerk. *Harberd* at 512-13.

*Troxell v. Rainier Public Schools*, 154 Wn.2d 345, required dismissal of Mavis' case. *Troxell* also involved injuries from an alleged

fall in a parking lot. *Troxell* also ignored the “plain language” of the Notice of Claim Statute. Plaintiff Troxell, like Mavis, had to wait for a full sixty days to elapse before commencing a lawsuit. Again like Mavis, Plaintiff Troxell commenced her lawsuit one day too early. *Id.* at 360.

The Washington Supreme Court affirmed dismissal of Troxell’s claim based on the plainly stated sixty day waiting period contained in RCW 4.96.020. That same statutory language applied to Mavis’ case, requiring its dismissal.

D. Judge Yu Properly Denied Mavis’ Requests for Attorneys Fees When the Request Was Based on Evergreen’s Denial of Two Requests for Admission; That Issue Was Not Properly Before Judge Yu and the Requests in Question Called for Legal Conclusions.

Because Judge Yu granted summary judgment for Evergreen, disposing of the case, the Court did not even need to reach Mavis’ discovery issues. *Versuslaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, 331, 111 P.3d 866 (2005). Moreover, Mavis improperly tried to insert discovery issues into its response to the summary judgment motion.<sup>2</sup> The purpose of a motion for summary judgment is to do away with a useless trial on a formal issue which cannot be factually supported or on an issue

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<sup>2</sup> Mavis did not file a motion for discovery sanctions as required by CR and LR 37 and 7. Mavis asserted her right to this relief in her response in opposition to Evergreen’s motion for summary judgment.

which is legally insignificant to the outcome of the controversy, even if factually supportable. *Tran v. State Farm Fire & Cas. Co.*, 136 Wn.2d 214, 961 P.2d 358 (1998). The purpose of a summary judgment motion is entirely different from that of a discovery motion. Mavis' request for sanctions related to discovery was not made in strict response to the summary judgment motion and should have been denied.

A Court may not consider a CR 37 discovery motion unless it contains counsel's certification that the meet and confer requirements of CR 26(i) have been met. *Rudolph v. Empirical Research Systems, Inc.*, 107 Wn. App. 861, 866-67, 28 P.3d 813 (2001). Mavis did not submit the required Certification; her request for discovery sanctions was not properly before the Court and should have been stricken or denied. CP 152.

Mavis' Requests for Admissions sought improper legal conclusions and were appropriately objected to or denied. The central issues in the case were when had Evergreen "received" the notice of claim for purposes of compliance with the Notice of Claim Statute, RCW 4.96.020. Mavis asked Evergreen to admit that "receipt" occurred on January 31, 2009 and that her Notice of Claim complied with RCW 4.96.020. A party is not required to admit matters involving legal conclusions or ultimate issues. *Thompson v. King Feed & Nutrition*

*Service, Inc.*, 153 Wn.2d 447, 472, 105 P.3d 378 (2005); *Brust v. Newton*, 70 Wn. App. 286, 852 P.2d 1092 (1993).

Mavis debates the meaning of presentation and compliance with the statute. The meaning of a statute's terms presents a question of law. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 814, 828 P.2d 549 (1992).

The outcome of the summary judgment motion, together with the authority and evidence produced by Evergreen supports Evergreen's denials. In granting Evergreen's Motion for Summary Judgment, the trial court found that Mavis' notice of claim had not been "received" on Saturday, January 31 for purposes of the Notice of Claim statute. Judge Yu also found that Mavis had not complied with the Notice of Claim statute, RCW 4.96.020.

CR 37(c) makes an award of fees and costs mandatory unless the Court finds good reason for denial of the request for admissions. Here Judge Yu found multiple good reasons for Evergreen's denials and denied Mavis' request for relief. The trial court is in the best position to decide on the imposition of sanctions for any discovery violation. A trial court's decision regarding discovery sanctions is reviewed only for an abuse of discretion. *Idahosa v. King County*, 113 Wn. App. 930, 939, 55 P.3d 657

(2002). The trial court did consider Mavis' request for sanctions and denied them. There is no basis for finding that Judge Yu abused her considerable discretion in doing so.

E. Mavis is Not Entitled to Attorneys Fees on Appeal or in Opposing Evergreen's Motion for Summary Judgment.

Mavis argues that if she prevails on this appeal she should receive an award of fees and costs for opposing Evergreen's summary judgment in the trial court and for pursuing her appeal. Mavis offers no legal authority for this proposition and her request should be denied. RAP 10.3(a)(4) (appellate brief must contain argument in support of review together with citations to legal authority); *Grant County v. Bohne*, 89 Wn.2d 953, 958, 577 P.2d 138 (1978) (where no authority cited, court may presume that counsel after diligent search has found none).

Indeed, in order for this Court to grant the relief Mavis seeks, it would have to find on this record and on appeal, that Mavis was entitled to summary judgment as a matter of law. This is a motion that Mavis never filed in the Trial Court. This argument further illustrates why her requests for admissions called for improper legal conclusions.

Mavis fails to understand or to acknowledge that the very issues underlying her opposition to summary judgment and this appeal are legal

questions which must be resolved by the courts. Legal conclusions and questions of law are not proper requests for admissions. *Thompson v. King Feed & Nutrition Service, Inc.*, 153 Wn.2d 447, 472, 105 P.3d 378 (2005). Nor do they provide a basis for Mavis to “leap frog” her request for discovery sanctions in the trial court to an award of fees and costs for pursuing this appeal.

#### IV. CONCLUSION

Mavis did not comply with the procedural requirements of RCW 4.96.020. She did not present her claim to the designated agent during normal business hours and did not wait the required 60 days following the presentation to commence her lawsuit. Retroactive application of the 2009 amendments to Mavis’ claim would be improper. The legislature specifically stated the amendments apply to claims presented after July 26, 2009. The amendments impact substantive rights and overturn established judicial precedent. The amendments were not curative because the statute is not ambiguous. Mavis never contended that the amendments were remedial nor would retroactive application further a remedial purpose here. Judge Yu correctly granted summary judgment and should be affirmed. Evergreen should be granted its fees and costs on appeal as the prevailing party.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of May 2010.

McINTYRE & BARNES, PLLC

By   
Mary K. McIntyre, WSBA #13829  
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By   
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## **APPENDIX A**

**A-1**

mental entity shall be presented to the agent within the applicable period of limitations within which an action must be commenced."

"(4) No action shall be commenced against any local governmental entity for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period."

#### 2009 Legislation

Laws 2009, ch. 433, § 1, rewrote the section, which formerly read:

"(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity.

"(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

"(3) All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

"(4) No action shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period."

#### LIBRARY REFERENCES

## **APPENDIX B**

A-3



West's Revised Code of Washington Annotated Currentness

Title 4, Civil Procedure (Refs & Annos)

Chapter 4.96, Actions Against Political Subdivisions, Municipal and Quasi-Municipal Corporations  
(Refs & Annos)

→ **4. 96. 020. Tortious conduct of local governmental entities and their agents--Claims--Presentment and filing--Contents**

(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity, except that claims involving injuries from health care are governed solely by the procedures set forth in chapter 7.70 RCW and are exempt from this chapter.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. A claim is deemed presented when the claim form is delivered in person or is received by the agent by regular mail, registered mail, or certified mail, with return receipt requested, to the agent or other person designated to accept delivery at the agent's office. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the risk management division of the office of financial management, except as allowed under (c) of this subsection. The standard tort claim form must be posted on the office of financial management's web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad item on behalf of the claimant.

(c) Local governmental entities shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:

(i) May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;

(ii) Must not require the claimant's social security number; and

(iii) Must include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.

(d) If any claim form provided by the local governmental entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local governmental entity is deemed to have waived any defense related to the failure to provide that specific information or to present the claim to the proper designated agent.

(e) Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.

(f) The amount of damages stated on the claim form is not admissible at trial.

(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

(5) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

#### CREDIT(S)

[2009 c 433 § 1, eff. July 26, 2009; 2006 c 82 § 3, eff. June 7, 2006; 2001 c 119 § 2; 1993 c 449 § 3; 1967 c 164 § 4.]

#### HISTORICAL AND STATUTORY NOTES

**Purpose--Severability--1993 c 449:** See notes following RCW 4.96.010.

Laws 1993, ch. 449, § 3, rewrote the section.

Laws 2001, ch. 119, § 2 rewrote subsec. (2), which formerly read:

“(2) All claims for damages against any such entity for damages shall be presented to and filed with the governing body thereof within the applicable period of limitations within which an action must be commenced.”

#### 2006 Legislation

Laws 2006, ch. 82, § 3 rewrote subsecs. (1), (2), and (4), which formerly read:

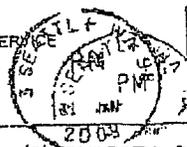
“(1) The provisions of this section apply to claims for damages against all local governmental entities.

“(2) The governing body of each local government [governmental] entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local govern-

## **APPENDIX C**

**A-7**

UNITED STATES POSTAL SERVICE



• Sender: Please print your name, address, and ZIP+4 in this box •

RETURN DOCUMENT TO: *Change*

LASHER HOLZAPFEL  
SPERRY & EBBERSON, P.L.L.C.  
2900 Two Union Square  
601 Union Street  
Seattle WA 98101-4000

**Certified Mail Provides:**

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

**Important Reminders:**

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery."
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**  
PS Form 3800, August 2006 (Reverse) PSN 7530-02-000-9047

OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent to <i>Steven Brown, Evergreen Healthcare</i> Street, Apt. No. or PO Box No. <i>12040 NE 125th St</i> City, State, ZIP+4 <i>Kirkland WA 98109</i>	

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>• Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>• Print your name and address on the reverse so that we can return the card to you.</li> <li>• Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Emma T. Bach</i></p> <p>B. Received by (Printed Name) <i>EMMA T-BACH</i> C. Date of Delivery <i>01-31-09</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><i>Mr. Steven E. Brown Chief Executive Officer Evergreen Healthcare 12040 NE 125th St. Kirkland, WA 98109</i></p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-14-1540

## **APPENDIX D**



20011214000188

EVERETT  
PAGE 001 OF 001  
12/14/2001 08:50  
KING COUNTY, WA

After recording, return to

ADMINISTRATOR | EVERGREEN HEALTHCARE

12040 NE 128<sup>TH</sup> STREET

KIRKLAND WA 98109

Designating an Agent (DSAG)  
(Claims for Damages)

2001 121 4000155

Please note that

(Grantor) CHIEF EXECUTIVE OFFICER | SUPERINTENDENT  
has been appointed as the agent to:

(Grantee) BOARD OF COMMISSIONERS | KCPHD #2  
to receive any claim for damages made under chapter 492 010-020 RCW

The address for said agent is:

(address) 12040 NE 128<sup>TH</sup> STREET  
(city, state, zip) KIRKLAND WA 98109

Additional notations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF WASHINGTON)  
County of King)

The Director of Records & Elections, King County, State of Washington, and as aforesaid, the order of Deeds and other Instruments, do hereby certify the foregoing copy has been compared with the original instrument by the same officers on this day of record in the office, and that the same is true and perfect transcript of said original and of the whole thereof.

Witness my hand and official seal this \_\_\_\_\_ day  
of JAN 07 2004

Director of Records & Elections

By [Signature]

Date

