

NO. 36682-7

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

R. SIDNEY SHAW, PERSONAL REPRESENTATIVE OF THE ESTATE OF GARY
DELGUZZI and DAVID L. MARTIN,

Appellants,

v.

THE ESTATE OF JACK DELGUZZI,

Respondents.

FILED
COURT OF APPEALS
DIVISION II
08 APR 30 PM 3:40
STATE OF WASHINGTON
BY DEPUTY

BRIEF OF RESPONDENT LORETTA WILBERT

G. Michael Zeno, Jr.
WSBA #14589
Zeno, Drake & Hively, P.S.
4020 Lake Washington Blvd NE, #100
Kirkland, WA 98033

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Note re Citations to Record in Respondent Loretta Wilbert's Brief: While the case appealed from is Clallam County cause no. 8087, other cases are also relevant to this appeal. Because documents from these other cases do not fall within the scope of the "Clerk's Papers" for case no. 8087, it appears that a Supplemental Designation of Clerk's Papers will not suffice to make them part of the record. Accordingly, Loretta Wilbert will submit a "Respondent's Appendix" with documents from other case files that are cited in her Brief. She will seasonably take appropriate action to supplement the record to include the documents in the "Respondent's Appendix."

Citations to the record in Respondent Loretta Wilbert's Brief will take the following form: customary citations to the Clerk's Papers ("CP"); citations to the appellant's Appendix ("Appendix"), and citations to the Respondent's Appendix ("Respondent's Appendix"). Wilbert has also attached 4 Exhibits to this Brief, designated Exhibits A through D.

Exhibit A is a list of attorneys sued by Cruikshank in connection with the Delguzzi case. Exhibit B is Ellis' Motion on the Merits, a copy of which is attached for ease of reference. Exhibit C is an item from the record—

the summary of Wilbert’s administrative fees and expenses filed on May 20, 1998—attached for ease of reference. Exhibit D is a list of known cases filed by Cruikshank against Wilbert and others relating to the Delguzzi Estate.

I. INTRODUCTION

This case has been a procedural nightmare—in part because of unnecessary complications introduced by Charles Cruikshank, the appellant’s attorney¹. It has also been a nightmare for most of the attorneys involved, almost all of whom have been sued by Cruikshank.² But when one looks through the procedural tangle and past the acrimony Mr. Cruikshank feels toward his fellow members of the bar, one finds—nothing. The case has no weight, other than its own mass of procedural confusion. Cruikshank imagines that William Wilbert, who died in 2004, committed nefarious deeds while serving as personal representative of the

¹ A list of cases filed by Cruikshank against Wilbert is attached as Exhibit A to this Brief. This list may not be complete. There were also at least three petitions for discretionary view that were denied.

² The attorneys sued by Cruikshank are listed on Exhibit B to Respondent Loretta Wilbert’s Brief. The Complaints naming these attorneys are included in the Appendix as Exhibits 1 and 2.

Jack Delguzzi Estate. Nonetheless, after 14 years of litigation and access to reams of documents, Cruikshank has not been able to substantiate his suspicions with convincing proof.³

II. STATEMENT OF THE CASE⁴

Until Kathryn Ellis closed it in 2007, the Estate of Jack Delguzzi had been open for 29 years. Gary Delguzzi was the personal representative from 1978-1982. William Wilbert succeeded him and did a tremendous amount of work administering this extraordinarily complex estate. Most of the work was finished by the mid-1990s. Since then, the Estate of Jack Delguzzi has been kept open primarily through the unstinting efforts of Charles Cruikshank.

³ Respondent Wilbert recognizes that it is customary to refer to the party, rather than the party's attorney, as the actor in the case. Nonetheless, she will often refer to Cruikshank as the appellant, since he has orchestrated the litigation against the Wilbert family by recruiting various persons to serve as his client. This will be described further below.

⁴ On March 6, 2008, respondent Kathryn Ellis filed a Motion on the Merits that contains a statement of facts at pages 2 through 5 and additional facts and legal argument at pages 5 through 12. Respondent Loretta Wilbert incorporates the facts recited in Ellis' Motion and her legal arguments as part of this Brief. A copy of Ellis' Motion is attached as Exhibit A to this Brief and incorporated by reference.

A. Charles Cruikshank is the de facto plaintiff-appellant.

Cruikshank has been waging legal war against William Wilbert and his family since 1994. This war has continued despite the death of William Wilbert in 2004 and of his antagonist, Gary Delguzzi, in the same year.

Cruikshank is clearly his own client in this matter. After Gary Delguzzi died in 2004, Cruikshank arranged to have Margaret Shaw appointed personal representative. When she died in August 2004, Cruikshank arranged for her husband, Sidney Shaw, to succeed her. In recruiting Sidney Shaw, Cruikshank ignored the provisions of Gary Delguzzi's Will, which designated Key Bank as the alternate fiduciary if Margaret Shaw was unable to serve. [Respondent's Appendix, Ex. 3.] Undoubtedly Cruikshank realized that Key Bank would not be compliant, whereas Shaw would likely follow his direction.

Shaw knows absolutely nothing about the case. He made this clear when he was deposed on May 25, 2007 in cause no. 06-2-27262-5 SEA.⁵

In 2007 Cruikshank arranged for David Martin to replace Shaw as

⁵ See page 47 from Deposition of Sidney Shaw [Respondent's Appendix, Ex. 4]

the nominal plaintiff. Martin, an accountant, has stepped in as Cruikshank's agent and alter ego from time to time in this matter.

B. A brief recap of prior litigation.

In 1992 Gary Delguzzi became suspicious of Wilbert's handling of the estate and hired counsel. Through his second attorney, Charles Cruikshank, Gary sued William Wilbert, his wife Loretta, his children, and various entities. The last amended pleading in that suit, filed on July 16, 1996, was entitled the "Petition for Orders Removing Administrator, Appointing Successor, Requiring Surrender of All Books and Records of the Estate, Setting Date and Time of Hearing, Directing Issuance of Citation and Approving Form of Notice"("the Petition"). [CP-----, Sub no. 451.]

The Wilbert children moved for judgment on the pleadings or, alternatively, summary judgment. The Clallam County Superior Court granted their motion on January 17, 1997 and awarded \$10,174.45 in sanctions against Cruikshank personally. Around the same time, the Court dismissed the claims against William Wilbert as a discovery sanction. Cruikshank appealed. The Court of Appeals affirmed the Wilbert

children's judgment but reversed the dismissal of the claims against William Wilbert, holding that dismissal was too severe a sanction for Cruikshank's discovery violations. *In re Delguzzi*, 93 Wash.App 1048, 1999 WL 10081 (Wash.App Div. 2) ("*Delguzzi I*")

Meanwhile, on December 17, 1996 Wilbert filed a "Final Report" in the Jack Delguzzi Estate. [CP1746, Sub no. 587.] The report was 61 pages long and supported by voluminous documentation. Cruikshank opposed approval of the Report. Wilbert's responses to Cruikshank's allegations are summarized at pages 39 to 57 of the Supplement to Final Report, dated January 17, 1997. [CP 1189, 1263, 1363, 1464, 1564; Sub 649a-e.]

Hearings were held on January 21-23, 1997 and March 24-25, 1997. Oral argument was presented on April 22, 1997. Cruikshank represented Gary Delguzzi at those hearings. He cross-examined Wilbert and the witnesses offered on his behalf. He put on various witnesses himself--Craig Kleinman, Jack Policar, Robert Lynch, William E. Wilbert, William D. Wilbert, Laure Ann Wilbert, Larry Johnson, Chris Zook, and Gary Delguzzi--and submitted 62 exhibits. He made oral argument and

filed various legal memoranda. [Respondent's Appendix, Ex. 5]

The Court entered its Memorandum Decision on Wilbert's Final Report ("Memorandum Decision") on October 17, 1997 (CP 1786, 1966; Sub no. 749) and an order approving certain legal and administrative fees on June 5, 1998 (CP 2559, 1959; Sub no. 810). In these decisions the Superior Court did not merely "rubber-stamp" Wilbert's requests. For example, the Court did not allow Wilbert any administrative fees for the considerable time spent dealing with Delguzzi's properties in Costa Rica. It also disallowed most of the interest on administrative fees requested by Wilbert.

The Court of Appeals issued its opinion in *Delguzzi I* on January 8, 1999 and remanded the case. Thereafter, recognizing that Wilbert's handling of the Jack Delguzzi Estate had been thoroughly scrutinized in the litigation over the Final Report, the Clallam County Superior Court dismissed the claims that Wilbert had mishandled the estate, on the basis of *res judicata* and collateral estoppel.

The Court of Appeals reversed on August 31, 2001. *In re Delguzzi*, 108 Wn.App 1003, 2001 WL 1001082 ("*Delguzzi III*"). The

Court clearly felt that the Clallam County Superior Court had failed to heed its decision in *Delguzzi I*, and it is not hard to see why. On remand the Superior Court had effectively granted Wilbert the same relief that had been disapproved in *Delguzzi I*. But in reviving Cruikshank's claim that Wilbert had mishandled the estate, the Court of Appeals may not have credited the Superior Court with having carefully considered the Final Report and Gary Delguzzi/Cruikshank's arguments against it.

As an example of the problems resulting from *Delguzzi III*, consider Wilbert's handling of Jack Delguzzi's Costa Rican venture. Cruikshank is still complaining about this: see the three-times amended Complaint now pending in King County Superior Court under cause no. 08-2-10290-4. [Respondent's Appendix, Ex. 6] The Costa Rican transactions were already considered in the litigation over the Final Report, and Judge Costello refused to award Wilbert fees for his work in this area:

Any expenses by the administrator or by persons or entities controlled by the administrator to receive compensation for time spent or expenses relating to Costa Rica activity should not be allowed.⁶

⁶ "Memorandum Decision" filed by Judge Costello 10/17/1997 (CP 1966, 2566;

By refusing to award Wilbert fees in the Costa Rica matters, Judge Costello effectively granted Gary Delguzzi/Cruikshank some or all of the relief they requested. Yet Cruikshank continues to pursue the claims relating to Costa Rica as if writing on a blank slate.

C. Martin and then Ellis succeed Wilbert as personal representative of the Jack Delguzzi Estate.

Gary Delguzzi died on February 10, 2004. William Wilbert died on March 24, 2004. Probates for each were opened in King County, Delguzzi's under cause no. 04-4-02163-1 SEA and Wilbert's under cause no. 04-4-01861-4 SEA. [Respondent's Appendix, Ex. 7 and 8.] Personal representatives were appointed in each probate: Margaret Shaw (Gary's cousin) for the Estate of Gary Delguzzi, and Loretta Wilbert (William's widow) for the Estate of William Wilbert. [Respondent's Appendix, Ex. 9.]

Wilbert's death created a vacancy in the position of personal representative of the Estate of Jack Delguzzi. Cruikshank proposed David Martin as successor personal representative, and Martin held the post

Sub no. 749).

briefly, from August 8, 2004 to October 2004. David Martin is also the successor plaintiff in the present case. [CP 1865, 1863; Sub no. 1160B, 1215.]

On January 2005 the Court replaced Martin with Kathryn Ellis, a member of the panel of Chapter 7 Bankruptcy Trustees for the Western District of Washington. [CP 1859; Sub no. 1231] Drawing upon her skills as a bankruptcy trustee, Ellis liquidated the remaining properties of the Estate of Jack Delguzzi and distributed the proceeds. She obtained an Order closing the Jack Delguzzi Estate on July 27, 2007. The present case is an appeal from that Order. Cruikshank has also sued Ellis personally under King County cause no. 07-2-21635-9 SEA. [Respondent's Appendix, Exhibit 2.]

D. Substitution of parties in Gary Delguzzi's pending case against Wilbert

When Gary Delguzzi and William Wilbert died, the litigation initiated by the "Petition" was still pending in Clallam County Superior Court under case number 8087, the Jack Delguzzi probate number. Cruikshank had not brought the case to trial during the 2 and 1/2 years since *Delguzzi III* was decided and remanded. Moreover, Wilbert's death

made much of the relief requested in the Petition moot. For example, there was no longer any need to have him removed as personal representative of the Estate of Jack Delguzzi. All that remained were claims for monetary relief based on allegations that Wilbert had done bad things during his tenure as personal representative of the Estate of Jack Delguzzi.

Cruikshank moved to substitute the two personal representatives as the parties in the Clallam County lawsuit—i.e., Margaret Shaw for the plaintiff Gary Delguzzi and Loretta Wilbert for the defendant William Wilbert. The Motion was granted on June 21, 2004. [Respondent’s Appendix, Ex. 9]

Thereafter Cruikshank continued to pursue the Petition in Clallam County Superior Court by bringing various Motions and propounding written discovery requests. However, at the time the Order closing the Estate, which is the subject of this appeal, was entered on July 27, 2007, Cruikshank had still not brought the Petition on for trial. At this point 6 years had passed since the remand in *Delguzzi III* and 11 years since “the Petition” was filed.

E. Creditor's claim filed by Cruikshank on behalf of the Gary Delguzzi Estate.

In August 2004 Cruikshank filed a Notice of Creditor's claim in the Wilbert probate on behalf of Margaret Shaw in her capacity as personal representative of the Gary Delguzzi probate estate. The Notice of Creditor's Claim did not describe the basis of the claim in any detail. Loretta Wilbert, acting as her dead husband's personal representative, rejected the claim on or around November 7, 2006. [Sub no. 38] Under RCW 11.40.100, this gave the holder of the claim—who at that point was Sidney Shaw, the successor to Margaret Shaw as personal representative of the Gary Delguzzi Estate--30 days to file suit. Shaw did so, filing suit in Clallam County on or around December 7, 2006 under cause no. 06-2-01085-2. [Respondent's Appendix, Ex. 10.] The allegations in the suit are similar to those in the July 1996 Petition.

On November 2, 2007 Loretta Wilbert moved for and obtained a change of venue to King County.⁷ [Respondent's Appendix, Ex. 11.] The case was assigned King County cause no. 08-2-10290-4 SEA.

⁷ Cruikshank has purported to appeal from that Order; see Assignment of Error no. 3 in the appellant's brief.

[Respondent's Appendix, Ex.12] On April 10, 2008 David Martin brought a Motion to Amend Complaint, in which he effectively asked to be substituted for Sidney Shaw as plaintiff, on the grounds that he had bought the claim from Sidney Shaw. [Respondent's Appendix, Ex.13.]
The Motion is pending.

III. ISSUES

Respondent reframes the issues as set forth below. Each issue described below corresponds to the Assignment of Error with the same number in the appellants' brief:

ISSUE NO. 1: Has the appellant failed to show that the trial court erred when it entered various orders relating to the reports, accountings, fees, and activities of William Wilbert, the second personal representative of the Estate of Jack Delguzzi?

ISSUE NO. 2: Has the appellant failed to show that the trial court erred when it entered various orders relating to the reports, accountings, fees, and activities of Kathryn Ellis, the fourth personal representative of the Estate of Jack Delguzzi?

ISSUE NO. 3A: Has the appellant failed to establish that the December 2007 Order in Clallam County case no. 06-01085-2 is reviewable as of right?

ISSUE NO. 3B: If the December 2007 Order were appealable, has the appellant failed to initiate the appeal properly?

ISSUE NO. 3C: If the December 2007 Order were reviewable now, did the trial court abuse its discretion in entering the Order?

IV. ARGUMENT

A. The appellant has failed to show that the trial court erred in its various rulings regarding William Wilbert's activities as personal representative of the Estate of Jack Delguzzi.

1. The Standard of Review should be Deferential. The trial court issued its Memorandum Decision on Wilbert's Final Report on October 10, 1997 [CP 1786, Sub no. 749] and approved certain legal and administrative fees and expenses in an Order dated June 5, 1998. [CP 1959, 2599; Sub no. 810] The orders entered later in Wilbert's tenure (i.e., between 1998 and 2004) are relatively unimportant to the present appeal. Respondent Loretta Wilbert will therefore focus her discussion of standard of review on the Memorandum Decision and the Order on fees and expenses.

These decisions were made after extensive testimony, taken on January 21-23, 1997 and March 24-25, 1997. Probate rulings based on testimony are reviewed to determine if they are supported by substantial evidence. *Matter of Estate of Larson*, 36 Wash.App. 196, 200-01, 674

P.2d 669 (1983), aff'd in part, rev'd in part, 103 Wn.2d 517, 694 P.2d 1051 (1985). While the *Larson* case concerned review of a probate commissioner's decision, review of a Superior Court judge's decision based on testimony in a probate matter should be no less deferential.

The other relevant standard is "abuse of discretion." The present appeal appears to challenge both the award of attorneys fees to Short and Cressman and the award of administrative fees to Wilbert. Each is reviewed for abuse of discretion. See *In re Estate of Black*, 116 Wash.App. 476, 66 P.3d 670 (2003) (attorneys fees); *In re Douglas Estate*, 65 Wn.2d 495, 504, 398 P.2d 7 (1965) (executrix's fees); *In re Merlino's Estate*, 48 Wn.2d 494, 498, 294 P.2d 941 (1956) (administrator's fees)

The "Petition" sought to remove Wilbert as administrator. If Cruikshank's Assignment of Error no. 1 is read to include the failure to remove Wilbert as administrator, the standard of review is abuse of discretion. *In re Estate of Jones*, 116 Wash.App. 353, 361, 67 P.3d 1113 (2003); *In re Estate of Ehlers*, 80 Wn.App 751, 761, 911 P.2d 1017 (1996).

2. The Superior Court did not abuse its discretion or err in any way in its October 10, 1997 Memorandum Decision or its June 5, 1998 Order

on fees and expenses.

In its October 10, 1997 Memorandum Decision the Superior Court disallowed Wilbert's fees related to Costa Rica, said commissions should not exceed the hourly value of the time spent on the real estate sales (computed at \$130 per hour), and found that other administrative fees were appropriate: "In all other respects, the Court finds that the expenses requested by the administrator are reasonable and should be paid as a cost of administration." (CP 1786, 1966, page 5.)

Wilbert submitted a Declaration substantiating his request for fees and expenses on May 20, 1998. A copy of the spreadsheet summarizing the calculation (CP 741) was Exhibit E to Wilbert's Declaration and is attached as Exhibit C to this Brief. In his calculation Wilbert made the adjustments required by the Court—that is, he eliminated the time for Costa Rica project and he recalculated the real estate commissions on an hourly basis rather than using the customary percentage of sales price method. In doing so he found that the hourly value of the commissions was actually higher than the commissions charged, so he used the lower figure (i.e., commissions actually charged). Based on Exhibit E, and

including interest at 12% per annum from the time the administrative fees and expenses were incurred, Wilbert calculated that he was owed \$1,644,542, including reimbursement for expenses he had advanced for the Estate. In its June 5, 1998 Order on fees and expenses the Court made a finding that the “administrator’s computation” of fees and expense reimbursement was “reasonable” and was “adopted and approved”, except that interest would run from October 10, 1997, rather from the time the administrative fees and expenses were incurred. This had the effect of reducing the amount owed to Wilbert as of June 5, 1998 to approximately \$950,000.

Cruikshank attempts to demonstrate the Court abused its discretion by referring to something called the Kleinman report. He does not explain the context of the report, or its methodology, or its relevance. He fails to disclose that the Kleinman report’s fee analysis (Appendix 2, Exhibit I) only covers fees through “1995,” whereas the Court’s June 5, 1998 Order on fees and expenses covered the period through May 2008. Given that the Kleinman report omits the last 2-3 years worth of fees and expenses, it is no wonder that its analysis shows fewer administrative fees and

expenses.

Cruikshank's method of argument on the administrative fee issue is typical of his arguments throughout the appellant's brief. He gives only the sketchiest of arguments, drawing on a few "facts" from the 29-year history of the Jack Delguzzi Estate. He presents the facts out of context and in a misleading manner. He does not even begin to show that the trial court abused its discretion.

It would take 100's of pages to debunk each of the speculative arguments in Cruikshank's brief, but, fortunately, it is not necessary to do so. After all, the appellant has the burden of persuading the Court of Appeals that the trial court abused its discretion or made findings not supported by substantial evidence. Cruikshank has not come close to meeting the legal standard necessary to prevail in this appeal.

B. The appellant has failed to show that the trial court erred in its various rulings regarding Kathryn Ellis' activities as personal representative of the Estate of Jack Delguzzi.

Respondent Ellis has filed a Motion on the Merits, reserving the right to file her responsive brief later if the Court denies her Motion.

Respondent Wilbert will not address the second Assignment of Error,

except as follows:

1. The same deferential standards of review described in the previous section apply.

2. Kathryn Ellis has done a marvelous job winding up and closing the Estate of Jack Delguzzi. Were it not for her skill and effort, it is hard to see how the estate would ever have been closed. She liquidated the remaining properties, which had not been liquidated earlier because they were undesirable. She did so despite constant harassment by Cruikshank, who in the end has sued her and therefore caused her personal expense, stress, and wasted time.

3. Cruikshank's grievance against Ellis is that she did not take up his personal crusade as her own. He would have liked her to take aggressive legal action against Wilbert on behalf of the Jack Delguzzi Estate. She elected not to, based on the reasonable and pragmatic judgment that it would have been a waste of limited estate resources and would have ultimately reduced the value of the estate. Her goal was to maximize the value of the estate for its creditors and beneficiaries. This was the proper goal. It is hard to see how she could have done a better job.

C. The appellant's purported appeal from the December 2007 Order in Clallam County no. 06-2-01085-2 has no merit.

Cruikshank has assigned error to the Order dated December 7, 2007 ("the December 2007 Order") denying his motion to consolidate Clallam County Superior Court cause no. 06-2-01085-2 with the current appeal, case no. 36682-7. The same order changed venue from Clallam County to King County Superior Court, where the matter has been given a new cause no., 08-2-10290-4. Cruikshank has not objected to the change of venue; indeed, at various times he has sought to change venue to King County. Therefore, respondent Loretta Wilbert will assume that Cruikshank is only seeking review of the part of the December 2007 Order denying consolidation.

1. The December 2007 Order is not reviewable.

The December 2007 Order is not properly before the Court of Appeals for review. As the Court is well aware, RAP 2.1 classifies review as either "a matter of right" or discretionary. Cruikshank has not asked for discretionary review. Instead, he seeks to initiate review of the December 2007 Order by appending it to a Notice of Appeal he filed four months

earlier, on August 21, 2007. But attaching the Order to a Notice of Appeal does not transform the Order into something reviewable as of right. It is clearly interlocutory and not appealable under RAP 2.2.

2. Even if it were reviewable now, the December 2007 Order in Clallam County case 06-2-01085-2 (now King County case no. 08-2-10290-4) is not reviewable in this appeal from Clallam County case no. 8087.

Furthermore, even if the December 2007 Order were reviewable now, it would not be reviewable in the present proceeding. Cruikshank commenced the present case no. 36682-7-II, on August 21, 2007 by appealing from the order closing the Estate of Jack Delguzzi in Clallam County cause no. 8087. The December 2007 Order was entered in a different case, Clallam County cause no. 06-2-01085-2--a case which, incidentally, Cruikshank himself filed. To put it simply: the December 2007 Order should not be reviewed in an appeal from Clallam County cause no. 8087, because the Order was not entered in Clallam County cause no. 8087.

3. Even if it were reviewable now, the December 2007 Order in Clallam County case 06-2-01085-2 (now King County case no. 08-2-10290-4) was correct.

The Clallam County Superior Court made the right decision when

it declined to consolidate a Superior Court case with an appeal. There is no legal basis for doing so. CR 24 applies only to the consolidation of cases at the Superior Court level. Consolidation is a matter of administrative expedience; a hybrid appellate-Superior Court case would be impossible to administer.

In support of his “appeal” from the December 2007 Order, Cruikshank refers to the “Petition” he filed against William Wilbert long ago under Clallam County case no. 8087 as an “orphan” case. But this is an orphan that Cruikshank himself fathered and then abandoned when a younger sibling came along. RCW 11.40 provides two distinct methods for pursuing a claim against a decedent. If a suit is pending, the plaintiff asks the court to substitute the decedent’s personal representative for the decedent as defendant in the case. RCW 11.40.110. *Alexander v. Highfill*, 18 Wn.2d 733, 140 P.2d 277 (1943); *Sutton v. Hirvonen*, 113 Wn.2d 1,7 n.1, 775 P.2d 448 (1989). Otherwise the claimant follows the procedure described at RCW 11.40.100, which begins with the filing of the claim in the probate proceeding. The personal representative then accepts or rejects the claim. If she rejects it, the claimant must file suit within 30 days.

As described above at pages 10 to 13, Cruikshank decided to do both, thereby creating redundant suits. If he had brought the “Petition” to trial in the 2 and ½ years between the remand in *Delguzzi III* and Wilbert’s death, the opportunity to create redundant suits would never have arisen. Another 2 and ½ years passed between Wilbert’s death on March 24, 2004 and Loretta Wilbert’s rejection of Shaw’s creditor’s claim on November 7, 2006. Again, if Cruikshank had brought the Petition on for trial, there would not even have been an opportunity for him to create redundant lawsuits.

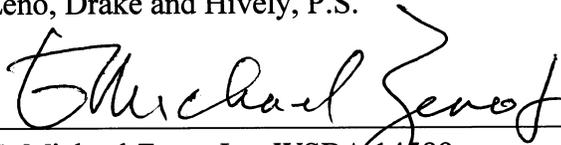
In any case, if the fact that Cruikshank has created duplicate suits is a significant problem (which is debatable) and if there is a remedy for the problem, consolidation of an appeal and a Superior Court case is not the right remedy. The December 2007 Order is correct.

V. CONCLUSION

This case should end now. The original parties have been dead for four years. The present appeal is nothing more than a mish-mash of suspicion and innuendo. Loretta Wilbert urges the Court to affirm the decisions of the lower court.

Respectfully submitted this 30 day of April, 2008.

Zeno, Drake and Hively, P.S.

A handwritten signature in black ink that reads "G. Michael Zeno, Jr." The signature is written in a cursive style with a large, stylized initial "G".

G. Michael Zeno, Jr. WSBA 14589
Attorneys for Respondent

RESPONDENT'S APPENDIX 1

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KING COUNTY WASHINGTON SUPERIOR COURT

<p>R. Sidney Shaw, Personal Representative of the Estate of Gary Delguzzi, Plaintiff, v. Short & Cressman, Short Cressman & Burgess & Short Cressman & Burgess, PLLC, Paul R. Cressman, Sr., Jane Doe Cressman, John O. Burgess, Jane Doe Burgess, Robert E. Heaton, Jane Doe Heaton, Robert J. Shaw, Jane Doe Shaw, Andrew W. Maron, Jane Doe Maron, Christopher J. Osborn, Jane Doe Osborn, James A. Oliver, Jane Doe Oliver, Chicoine & Hallett, Inc., P.S., Darrell D. Hallett, Jane Doe Hallett, Larry N. Johnson, Jane Doe Johnson, John Does and Jane Does I through X Defendants.</p>	<p>NO. 06-2-27262-5 COMPLAINT FOR DAMAGES (AMENDMENT NO. 1)</p>
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ORIGINAL

- Jack Delguzzi died on June 1, 1978 and his only son and sole heir, Gary J. Delguzzi was appointed as his personal representative and so served until he resigned in favor of William E. Wilbert on August 13, 1982.
- The Estate of Jack Delguzzi ("EJD") remains open in Clallam County under the administration of Kathryn A. Ellis.

- 1 3. Plaintiff R. Sidney Shaw is the personal representative of the Estate of Gary J.
2 Delguzzi, who died on February 10, 2004.
- 3 4. Shaw also is the assignee of any and all claims, causes of action and rights to
4 recover for damages which were suffered by the Estate of Jack Delguzzi ("EJD"
5 hereinafter) which were caused by the actions and failures to act of William E.
6 Wilbert.
- 7
- 8 5. The herein individually named defendants are, or were, attorneys licensed to
9 practice law in the State of Washington and their spouses, as all actions herein
10 were undertaken, or not, as it may herein appear, in furtherance of their marital
11 estates.
- 12
- 13 6. Short, Cressman & Burgess and Short & Cressman are believed to have been
14 general partnerships of lawyers engaged in the practice of law for profit. Short,
15 Cressman & Burgess PLLC is a Washington professional services limited liability
16 company, which is believed to be the successor of the above partnerships, or one
17 of them, and which is engaged in the practice of law for profit, through which
18 some or all of the above-named individual attorneys organized their
19 entrepreneurial activities. "SCB" is used herein for the entity through which the
20 following individual attorneys conducted their activities:
- 21
- 22 a. Paul R. Cressman, Sr.
 - 23 b. John O. Burgess
 - 24 c. Robert E. Heaton
 - 25 d. Robert J. Shaw
 - 26 e. Andrew W. Maron
- 27
- 28

- 1 f. Christopher J. Osborn
- 2 g. James A. Oliver
- 3 7. The wives of the above named attorneys are designated as Jane Doe Cressman,
- 4 Jane Doe Burgess, Jane Doe Heaton, Jane Doe Shaw, Jane Doe Maron, Jane Doe
- 5 Osborn, and Jane Doe Oliver.
- 6
- 7 8. Chicoine & Hallett, Inc., P.S. is believed to be a Washington professional services
- 8 corporation, which is engaged in the practice of law for profit, through which
- 9 some or all of the below named individual attorneys organized their
- 10 entrepreneurial activities at the times relevant hereto:
- 11 a. Darrell D. Hallett
- 12 b. Larry N. Johnson
- 13
- 14 9. The wives of the above named attorneys are designated as Jane Doe Hallett and
- 15 Jane Doe Johnson.
- 16 10. John Does and Jane Does I through X are persons and/or entities who have
- 17 participated in the herein complained of activities of the named defendants, whose
- 18 names are now unknown, but who will be named when identified herein.
- 19
- 20 11. On June 2, 2006, Mr. R. Sidney Shaw acquired, as the personal representative of
- 21 the Gary Delguzzi Estate by order entered by Kitsap County Superior Court Judge
- 22 Leonard A. Costello, all of the rights and claims that his father's estate, the Estate
- 23 of Jack Delguzzi, had asserted, or could assert against William E. Wilbert, the
- 24 Estate of William E. Wilbert and Loretta D. Wilbert, its personal representative.
- 25
- 26 12. On or about February 1982, Gary Delguzzi, acting for the Estate of Jack Delguzzi,
- 27 retained SCB for its legal representative. Mr. Wilbert was a client of that firm at
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or about the same time.

- 13. While representing both Wilbert as the Administrator of the Estate of Jack Delguzzi and Gary Delguzzi, attorneys from SCB prepared documents purporting to create an irrevocable trust with Wilbert as its trustee, and allegedly transferring separate non-probate assets of Gary Delguzzi to the legal ownership of Wilbert, as trustee.
- 14. On April 28, 1982, Gary J. Delguzzi, while still personal representative of EJD, began transferring properties and property rights that were owned by EJD and/or its entities in which it had an ownership interest, to SCB, Mr. Wilbert, and Benson & McLaughlin, which was an accounting firm hired for the benefit of EJD. These transfers were purportedly for payment of administrative fees.
- 15. The transfer of EJD properties to Wilbert, his attorneys and accountants for fees continued during the many later years of his administration, without independent appraisals or other substantiation of the properties' values.
- 16. As the administration of the EJD seemed to take on a life of its own, Wilbert became more and more delinquent in paying the statements for services and expenses of SCB and this issue generated more and more heated and acrimonious demands by SCB and excuses and refusals to pay by Wilbert, beginning in the mid-1980's, when SCB would no longer accept the transfers of EJD properties for its fees and costs.
- 17. On or about January 20, 1997 Paul R. Cressman, Sr., on behalf of himself and SCB, filed an affidavit with the Superior Court in order to collect their fees for their representation of EJD, as they claimed they had not been paid the amount of

- 1 their billings to EJD even though they had withdrawn from the representation of
2 Mr. Wilbert, its administrator, in October of 1991.
- 3 18. The fee affidavit also did not include all payments and credits to the billings made
4 by Mr. Wilbert and EJD.
- 5
6 19. This fee affidavit was incomplete, and was missing items of attorneys' time and
7 expenses so that some of the activities were missing which would have
8 constituted evidence of violations of SCB's duties to EJD, Gary J. Delguzzi, and
9 to the general creditors of EJD.
- 10 20. On December 31, 1990, and on January 4, 1991, John O. Burgess filed responses
11 in Clallam County Superior Court in the Jack Delguzzi Estate matter, objecting to
12 a petition of Mr. Wilbert for leave of court to purchase an asset owned by an EJD
13 entity and for him to engage, as administrator, in development activities with
14 EJD's assets. [Exhibit A]
- 15
16 21. The above objection, made by Mr. Wilbert's attorneys while they still represented
17 him as administrator, demonstrated that SCB was aware of Mr. Wilbert's breaches
18 of his fiduciary duties as EJD administrator and that they were aware of their
19 duties to the EJD and to its general creditors and to its heir, Gary Delguzzi.
- 20
21 22. After the above SCB objection, Mr. Wilbert abandoned his attempts to secure
22 court approval and proceeded with the acquisition of the subject property and with
23 the development activities of properties of EJD without benefit of the court's
24 approval.
- 25
26 23. In the purported final accounting of Mr. Wilbert for EJD, which prepared and
27 filed by him and attorneys Hallett and Johnson and set for hearing beginning
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January 21, 1997, substantial assets of EJD were not included or were undervalued or otherwise misrepresented as to their nature, worth and/or disposition.

- 24. This accounting, which purported to be final, included EJD assets which SCB and Hallett and Johnson knew, or should have known, were being improperly accounted to the court by Mr. Wilbert's accounting.
- 25. Despite the court order in 1998 which directed the prompt closing of EJD, Wilbert took no substantial steps to close the estate and he died in office as its administrator on March 24, 2004.
- 26. There are many substantive and substantial acts of Mr. Wilbert, as administrator of EJD, that were mentioned in his final accounting which showed self- dealings by Mr. Wilbert, his family members, and closely held corporations which he controlled.
- 27. John O. Burgess of SCB appeared and participated in the 1997 fee and final accounting hearing.
- 28. SCB, Mr. Wilbert and Hallett and Johnson were mutually supportive of each other's work and fee petitions related to EJD.
- 29. Darrell D. Hallett had identified activities of SCB, while he and Larry N. Johnson were the attorneys for Mr. Wilbert, which he alleged constituted legal malpractice that had caused damages to EJD.
- 30. These alleged incidents of legal malpractice were never disclosed to the court, instead agreement was reached between Mr. Wilbert, with the representation of Hallett and Johnson, and SCB, to abandon those professional negligence claims

1 which properly belonged to EJD in return for SCB's silence about the accounting
2 and other fiduciary duty shortcomings of Mr. Wilbert which had been identified
3 and learned by SCB in the course of their representation of Wilbert.
4
5 31. No mention was made to the court of the abandonment of the legal malpractice
6 claims of Wilbert, personally, and those of EJD against SCB.
7
8 32. SCB and its attorneys conspired with Mr. Wilbert, Darrell D. Hallett and Larry N.
9 Johnson to support the non-disclosure and concealment and misrepresentation of
10 the missing, undervalued, and converted EJD assets in exchange for an agreement
11 between SCB, Mr. Wilbert and Hallett and Johnson as to how the outstanding fees
12 allegedly owed by EJD to SCB were to be favorably addressed by Mr. Wilbert, as
13 administrator of EJD.
14
15 33. These conspiracies, actions and failures to act, and misrepresentations of the
16 administrator and the attorneys violated their ethical and fiduciary duties and
17 constituted conflicts of interest.
18
19 34. Included with the missing, undervalued and/or converted assets of EJD were
20 non-probate assets of Gary J. Delguzzi, including assets owned by Mr. Delguzzi
21 jointly with EJD and assets owned jointly between Gary J. Delguzzi, EJD and
22 Charles Nyhus, a business associate of Jack Delguzzi, as well as Gary J.
23 Delguzzi's separate non-probate assets.
24
25 35. With the assistance of Chicoine & Hallett and Mr. Johnson and Mr. Hallett, Mr.
26 Wilbert prepared and submitted an offer in compromise to the IRS for the estate
27 tax obligations of EJD which grossly undervalued EJD's assets and overstated the
28 debts.

- 1 36. Mr. Wilbert had first stated in 1984 that EJD was insolvent, and yet he continued
2 to accrue substantial fees for his activities purportedly on behalf of EJD and to
3 accrue substantial attorneys' fees and costs chargeable to EJD until December of
4 1996, when he made known to the court and to EJD's general creditors for the
5 first time that the claims against EJD's assets by taxing authorities and
6 administrative claimants far exceeded the value of its assets.
7
- 8 37. Mr. Wilbert and his attorneys conspired to keep EJD open for an extended period
9 of time while intentionally accruing fees and costs, until such time as the IRS and
10 the Washington Department of Revenue became convinced that huge
11 compromises in the estate and inheritance tax must be accepted by them or the
12 priority afforded by law to the administrative creditors would continue to erode
13 EJD's assets to the detriment of the taxing authorities.
14
- 15 38. By the time the above tax compromises were accepted, the administrative claims
16 against the estate exceeded the remaining assets.
17
- 18 39. The federal estate tax is computed, generally, based upon the net value of a
19 decedent's property and interests in property as of his or her date of death.
20
- 21 40. For Jack Delguzzi's estate at the time of his death, substantial estate taxes would
22 ordinarily have been payable.
23
- 24 41. Once the estate was denuded of its value past the point of insolvency by the
25 converted, undervalued and missing assets and by the inflated fees of the
26 administrator, his attorneys, accountants, and his development activities, no estate
27 taxes would properly have been due and payable to the IRS.
28
- 28 42. The State of Washington inheritance tax, which existed at the time of Jack's

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death, was computed on the value of the assets passing to the heirs or beneficiaries, and where there was no such passage, no tax would have been payable.

43. Gary J. Delguzzi received no distributions from EJD, so that the inheritance taxes paid by Mr. Wilbert to the State of Washington were improper.

44. The attorneys and Mr. Wilbert knew, or should have known of the above applications of the federal and state estate and inheritance tax laws and rules, but concealed this status from the court and EJD creditors in order to protect Mr. Wilbert and their own fees and thus to deprive Gary Delguzzi of his business interests and expectancies in his separate properties, his jointly owned properties and his inheritance rights. These conspiracies and concealments have been and are ongoing and continuous by the attorney defendants.

45. By the above described concealments and misrepresentations, well over a million dollars was paid by EJD for estate and inheritance taxes that were not legally due and owing.

46. In 1991, while still acting as EJD's administrator, Mr. Wilbert attempted to purchase virtually all of the assets of EJD directly from Gary Delguzzi for \$3,000,000.00.

47. In January of 1993 Mr. Wilbert attempted again to purchase virtually all the assets of EJD for approximately \$2.7 million, including cash and Wilbert's agreement to assume certain liabilities of the estate.

48. In 1984, Mr. Wilbert claimed the net value of EJD was \$3,027,326.00.

49. The plaintiff had expectations as to the profits and asset appreciation which were

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reasonably expected to be received from the assets which were converted and which conversion the defendants conspired to facilitate, to hide, and to falsely characterize to the Superior Court so as to prevent the court knowing the proper state of the financial affairs of EJD and of the non-probate and separate assets of Gary Deluzzi which were held by Wilbert.

50. Gary Delguzzi was damaged by the interference with his business expectations and by the conspiracy of the defendants above described.

51. The conversion of Gary's expectations, his assets, and his anticipated profits, income and other benefits, could have been earlier discovered and halted had the defendants not conspired with William E. Wilbert and with each other, to assist him in his unlawful conduct and had the defendants not used unlawful means in furtherance of that conspiracy.

52. The acts of the defendants constituted a concerted action by them to conceal and to deprive Gary of his assets and his expectations so that they could be converted, remain converted, and concealed by the defendants so that these conversions by William E. Wilbert remained undetected.

53. The actions of the defendants herein were consistent only with unlawful purposes and were inconsistent with any lawful purpose or purposes.

54. The actions of the defendants were unfair and deceptive, occurred in trade and commerce, impacted the public interest and damaged the plaintiff's property and business, causing Gary Delguzzi to be entitled to triple damages and to an award of attorney fees pursuant to the Washington Consumer Protection Act ("CPA").

55. The actions of the defendants acting in conspiracy to conceal the herein described

1 unlawful acts and those of their co-conspirators damaged the plaintiff, his
2 business expectancies and was harmful to the public interests of the citizens of the
3 state of Washington.

4 Now wherefore the plaintiff having fully pleaded his case herein, prays for
5 judgment, jointly and severally against all of the defendants and their marital estates and
6 against the above-named partnerships and the above limited liability company as follows:
7

- 8 I. For judgment for all damages suffered by Gary Delguzzi and his estate,
9 through the actions and inactions of William E. Wilbert, against the above-
10 named defendants, individually jointly and severally for all of the
11 damages, general, special and compensatory herein described and,
12
- 13 II. For a tripling of damages to the maximum amount allowed by law for
14 violations of the Washington Consumer Protection Act and,
15
- 16 III. For interest at the judgment rate on all damages found to be liquidated at
17 the time of their conversion, misappropriation for the times that the
18 plaintiff and his predecessors in interest are found to have been entitled to
19 the use, benefit and enjoyment of assets wrongfully withheld or taken by
20 the above entities, persons and activities.
- 21 III. For all attorneys fees and costs herein incurred, and,
22
- 23 IV. For such other relief as the court may deem just and meet.

24 Dated this 11th of September 2006.

25 
26 Charles M. Cruikshank III WSB 6682
27 Attorney for R. Sidney Shaw
28

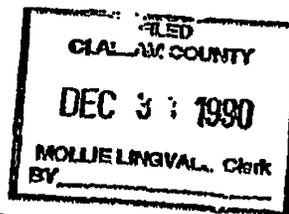
The undersigned, being first duly sworn, deposes and says that on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of plaintiff(s) and defendant(s), containing a copy of the document to which this affidavit is attached.

Sharon M. Nelson
Subscribed and Sworn to before me this 26th day of December, 1990
Sharon Nelson
Notary Public in and for the State of Washington
Residing in King County

ORIGINAL

PHOTOCOPY

BEST AVAILABLE IMAGE POSSIBLE



SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

In Re the Estate of:)
) NO. 8087
JACK DELGUZZI,)
) RESPONSE TO REPORT AND
Deceased.) PETITION FOR RATIFICATION

Short Cressman & Burgess respond and object to the Petition for Ratification as follow:

1. Short Cressman & Burgess has previously served as the attorney for The Estate. At the present time the firm of Davis Wright Tremaine is apparently acting as counsel to The Estate and for Del Hum, Inc.

2. Short Cressman & Burgess is a creditor of The Estate. There are very substantial attorneys' fees and costs owed as reflected by a Promissory Note which was due January 1, 1990, and additional attorneys' fees and costs which have not been paid.

3. The Administrator has petitioned the Court for approval of a transfer of assets to the Administrator and for the payment (with appropriate security provisions) of fees in the approximate amount of \$600,000 for future work. The result of such an approval would prefer the fees to be paid to the Administrator and fees to be paid to the Administrator's corporation for non-

RESPONSE TO REPORT AND PETITION FOR RATIFICATION - 1

LAW OFFICES
SHORT CRESSMAN & BURGESS
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98101-4008
(206) 652-3333

EXHIBIT A

1 administrator's work over fees owed Short Cressman & Burgess and
2 other like creditors.

3 4. Objection is made to the following: (1) The
4 Administrator's request to the Court to approve the transfer of
5 any property to the Administrator; (2) The Administrator's request
6 to approve a development contract between the Administrator or
7 related entities and the Estate for future services; and (3) The
8 Administrator's request to approve any accounting for sums paid by
9 the corporation owned by the Administrator for the purchase of
10 land from The Estate (Parcel 4, Lot 1), as described in the
11 Petition.

12 No approvals of the Administrator's requests should be made
13 until the Administrator accounts to the Court for time and
14 expenditures made, accounts for all debts of The Estate and its
15 corporate entities, and reports in detail on The Estate and
16 valuations, property sizes and zonings of the respective parcels
17 of land and the intended disposition of assets.

18 DATED this 24th day of December, 1990.

19 SHORT CRESSMAN & BURGESS

20 

21 JOHN O. BURGESS
22 WSBA NO. 418

23 29/wp/december/delguzzi.obj
24
25
26

RESPONSE TO REPORT AND
PETITION FOR RATIFICATION - 2

LAW OFFICES
SHORT CRESSMAN & BURGESS
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-1008
(206) 682-3333

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CLALLAM COUNTY
WASHINGTON

PHOTOCOPY

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

In re the Estate of)

JACK DELGUZZI,)

Deceased.)

NO. 8087

RESPONSE TO ADMINISTRATOR'S
REPORT AND PETITION FOR
RATIFICATION FOR SALE OF REAL
PROPERTY

The law firm of Short Cressman & Burgess ("SC&B") submits the following response to the administrator's Report and Petition for Ratification of Sale of Real Property. The Report and Petition is presently scheduled to be heard at 9:00 a.m. on Friday, January 4, 1991.

This response is limited to the issue of whether SC&B has standing to question the administrator's Report and Petition. The parties have agreed that if this court determines that SC&B has standing, a special hearing will be requested for the purpose of determining whether the transactions outlined in the Report and Petition are in the best interests of the estate. SC&B reserves the right to submit further pleadings on the substantive issues regarding the administration of the estate.

I. RELEVANT FACTS

SC&B was initially retained by Gary DelGuzzi, the primary beneficiary in this estate, together with William E. Wilbert who

1 on August 13, 1982, succeeded Gary DelGuzzi as the personal
2 representative of the Estate. Mr. Wilbert continued to retain the
3 services of SC&B to assist him in the numerous lawsuits
4 (approximately 40), the tax issues, and the general administration
5 of the Estate.

6 The major litigation affecting the estate was a lawsuit
7 entitled Seattle-First National Bank v. Estate of Jack DelGuzzi
8 and DelGuzzi Construction, Inc., Clallam County Cause No. 31267.
9 This litigation involved said bank seeking to foreclose its pledge
10 on the stock of DelHur, Inc. DelHur, Inc. was an operating
11 construction company whose stock was owned 80% by the DelGuzzi
12 Estate and 20% by Sam Hurworth, the person running said company.

13 "On the eve of the trial in June 1984, Paul R. Cressman and
14 William E. Wilbert made a settlement with Seafirst National Bank
15 in which it reduced its obligation to \$1,200,000 by Messrs.
16 Wilbert and Cressman equally signing a note or notes to said bank
17 for \$1,200,000. The bank was then eliminated from the issues in
18 the trial, but counsel for the bank (from the same firm that has
19 now filed a petition on behalf of Mr. Wilbert and the Estate,
20 Davis Wright & Tremaine), remained throughout the trial as to the
21 issues concerning the validity of an inadequate buy/sell agreement
22 between the deceased Jack DelGuzzi and Sam Hurworth. The Estate
23 took the position that the buy/sell agreement was faulty in
24 several particulars in that the parties would not have intended an
25 agreement permitting the minority stockholder to buy the stock
26 over an approximate forty to forty-five year period of time when

1 the minority holder would be at least age ninety. This matter was
2 tried before the Honorable Grant Meiner and a decision rendered in
3 favor of the Estate. A copy of the court's Oral Decision is
4 attached hereto as Exhibit "A."

5 Mr. Hurworth subsequently appealed the decision. Following
6 an exchange of appellate briefs, a settlement was accomplished
7 between the DelGuzzi Estate and the minority stockholder whereby
8 the Estate retained the corporation and, in essence, divided
9 corporate assets with Mr. Hurworth obtaining approximately 20% of
10 the assets.

11 On July 15, 1986, Mr. Wilbert executed a promissory note in
12 the amount of \$454,380.00 to SC&B for the legal services which
13 they had provided. The note was due on January 15, 1990. A copy
14 of the promissory note is attached hereto as Exhibit "B." Said
15 note is secured by deeds of trust on various estate properties.

16 Mr. Cressman's portion of the loan to Seafirst National Bank
17 for the benefit of the Estate was eventually reduced to \$300,000.
18 Initially, the Estate was in a position to pay the interest on the
19 debt, but in 1988 and 1989 it could not pay the interest on a
20 regular basis. The Bank made automatic interest deductions
21 directly from Mr. Cressman's bank account for the interest on the
22 \$300,000. During one period of time, the interest advanced by
23 Mr. Cressman approximated \$50,000. In December 1989, a sale was
24 accomplished on business properties in Port Angeles, and
25 Mr. Cressman received sufficient funds to pay off the \$300,000 due
26 the Bank with the exception of \$21,312.50 interest, which interest

1 is still owing to Mr. Cressman as of this date. The debt is
2 memorialized in a promissory note to Mr. Cressman executed by
3 Mr. Wilbert. A copy of the note is attached hereto as Exhibit "C."

4 Respondent is aware that Mr. Wilbert has on occasion likewise
5 advanced funds for the benefit of the Estate.

6 SC&B has not received notification from either Mr. Wilbert or
7 anyone acting on his behalf informing SC&B of a decision to retain
8 new counsel. Given this lack of notice, SC&B has continued its
9 representation of Mr. Wilbert in his capacity as personal
10 representative for the estate of Jack DelGuzzi.

11 II. ARGUMENT

12 Although Mr. Wilbert's new counsel has not raised the
13 standing issue in any formal pleadings, counsel has suggested that
14 SC&B lacks standing to challenge the Report and Petition.¹ The
15 facts do not support this argument. SC&B and Paul R. Cressman,
16 individually, have standing under three alternative arguments.
17 First, both SC&B and Paul R. Cressman are creditors of the
18 estate. They have a direct interest in assuring that the personal
19 representative discharges his duties in good faith. Second, SC&B,
20 as counsel for the personal representative and the estate has a
21 duty to protect the interests of the estate. Finally, SC&B's

22
23 ¹ Petitioner's own actions contradict his apparent position
24 that SC&B lacks standing. Petitioner's counsel served a copy
25 of the Report and Petition on SC&B and Paul R. Cressman, Sr.,
26 individually.

A copy of the delivery label is attached hereto as
Exhibit "D."

1 duties as an officer of the court require that it do whatever is
2 necessary to promote the fair administration of justice.

3 **A. Creditors Of An Estate Have Standing To Challenge The Actions**
4 **Of A Personal Representative.**

5 The statutory provisions governing the administration of
6 estates in Washington confer upon creditors of the estate the
7 ability to challenge the actions of a personal representative.

8 While SC&B and Paul Cressman are not at this time seeking to
9 invoke the court's jurisdiction for the purpose of removing
10 Mr. Wilbert, the statutory language is instructive. RCW 11.68.70
11 provides the following:

12 If any personal representative who has been
13 granted nonintervention powers fails to execute
14 his trust faithfully or is subject to removal
15 for any reason specified in RCW 11.28.250 as now
16 or hereafter amended, upon petition of any
17 unpaid creditor of the estate who has filed a
18 claim or any heir, devisee, legatee, or of any
19 person on behalf of any incompetent heir,
20 devisee or legatee, . . .

21 RCW 11.28.250, referenced in the above excerpt, provides:

22 Whenever the court has reason to believe that
23 any personal representative has . . .
24 mismanaged, or is about to waste, . . . the
25 property of the estate committed to his charge,
26 . . . or has . . . neglected the estate, . . .
it shall have power and authority, after notice
and hearing to revoke such letters.

21 The legislative directive codified in RCW 11.68.070 is
22 clear. Creditors, such as SC&B and Paul R. Cressman have standing
23 to challenge the actions of a personal representative. The reason
24 for this statutory grant is obvious. Creditors must have the
25 ability to present the court with facts and arguments which
26

1 substantiate claims that the personal representative is not
 2 discharging his duties in accordance with the laws of this state.
 3 Without this ability, creditor's claims could be compromised or
 4 lost through mismanagement of the estate's assets.

5 The fact that SC&B' creditor's status is based on its
 6 provision of legal services does not compromise its ability to
 7 question the Report and Petition filed on behalf of Mr. Wilbert.
 8 SC&B is not requesting that the court approve its fees and costs
 9 incurred on behalf of the personal representative. To the
 10 contrary, those fees and costs have previously been approved by
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 12 note given to SC&B by Mr. Wilbert in his capacity as personal
 13 representative.² Mr. Wilbert pledged assets of the estate as

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 15 ² Mr. Wilbert is administering this estate under nonintervention
 16 powers. Mr. Wilbert's execution of the note and pledge of
 17 security was in accordance with the statutory powers
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19 Any personal representative acting under nonintervention
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 21 and may mortgage, encumber, lease, sell, exchange, convey,
 22 and otherwise do anything a trustee may do under
 23 RCW 11.98.070 and Chapters 11.100 and 11.102 RCW with regard
 24 to the assets of the estate, . . .

25 RCW 11.98.070 grants to personal representatives the
 26 discretionary power to do the following:

27 . . .
 28 (18) Mortgage, pledge the assets or the credit of the trust
 29 estate . . .

30 (g) To engage, compensate, and discharge or to vote for the
 31 engaging, compensating, and discharging of managers,
 32 employees, agents, lawyers . . .

1 security for repayment of the obligation. SC&B is in the same
2 position as any other creditor who has provided services to the
3 estate.

4 **B. Short Cressman & Burgess Must Be Given An Opportunity To**
5 **Question The Actions Of The Personal Representative In Order**
6 **To Discharge Its Duties To The Estate.**

7 SC&B represents the personal representative for the estate.
8 Consequently, SC&B owes a duty to both Mr. Wilbert and the estate
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25 The court began its analysis by noting that:

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Cressman have standing to present relevant factual and legal

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(1) Fail to seek the lawful objectives of his client through
reasonably available means permitted by law and the
Disciplinary Rules, . . .

DR 7-102(A) In his representation of a client, a lawyer
shall not:

(3) Conceal or knowingly fail to disclose that which he is
required by law to reveal.

(5) Knowingly make a false statement of law or fact.

(7) Counsel or assist his client in conduct that the lawyer
knows to be illegal or fraudulent.

arguments. SC&B has a duty to the estate. A determination that SC&B lacks standing would prevent SC&B from discharging that duty.

C. SC&B's Duties to This Court Require That it Present All Legal and Factual Arguments Necessary for the Proper Administration of Justice.

The third alternative basis for permitting SC&B and Paul R. Cressman to respond to the Report and Petition arises from their position as officers of the court. As officers of the court, SC&B and Paul R. Cressman have a duty to the public to do and say whatever is necessary to promote the fair administration of justice. See, e.g., Fite v. Lee, 11 Wn. App. 21, 28-29, 521 P.2d 964 (1974); In re Lord, 97 N.W.2d 287 (1959) (attorney owes to courts the highest duty of fidelity); Mississippi Power Co. v. Stribling, 3 So.2d 807, 810 (1941) (lawyer's duties not confined alone to serving his clients).

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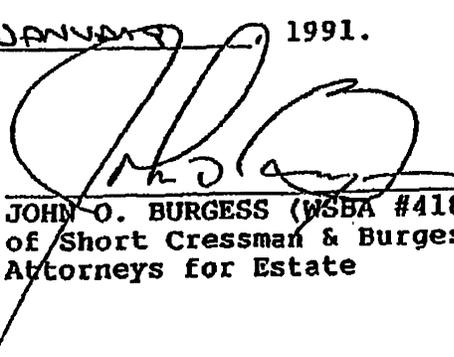
SC&B and Paul R. Cressman would be violating the public duty defined by the court in Fite if they failed to question the Report and Petition.

III. CONCLUSION

There are three alternative bases for finding that SC&B and Paul R. Cressman, individually, have standing to challenge the Report and Petition which this court has been asked to approve:

- (1) Both SC&B and Paul R. Cressman are creditors of the estate. The Washington Legislature has acknowledged that creditors have an interest in assuring that the personal representative executes his trust faithfully;
- (2) SC&B represents both the Estate of Jack DelGuzzi and the personal representative. A proper exercise of the duty to the estate requires SC&B to respond to the personal representative's request that this court approve and ratify the transactions enumerated in the Report and Petition; and
- (3) Finally, as officers of the court, SC&B and Paul R. Cressman must be heard in order to assure that justice is properly administered.

DATED this 3rd day of JANUARY, 1991.



JOHN O. BURGESS (WSBA #418)
of Short Cressman & Burgess
Attorneys for Estate

LAW OFFICES
SHORT CRESSMAN & BURGESS
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4008
(206) 682-3111

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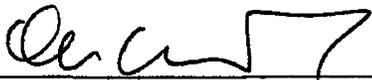
Judge Glenna S. Hall

KING COUNTY WASHINGTON SUPERIOR COURT

<p>R. Sidney Shaw, Personal Representative of the Estate of Gary Delguzzi, Plaintiff, v. Short & Cressman, Short Cressman & Burgess & Short Cressman & Burgess, PLLC, et al. Et ux. Defendants.</p>	<p>NO. 06-2-27262-5 COMPLAINT FOR DAMAGES (AMENDMENT NO. 3) [EXHIBIT A, ONLY]</p>
---	---

Comes now Charles Cruikshank, attorney for the plaintiff, who serves and files the attached Exhibit A to the 3rd Amended Complaint herein, as approved by order of Judge Glenna S. Hall, and which Exhibit A was not included with the proposed amended complaint when filed and served.

Dated this March 21, 2007.



Charles M. Cruikshank III WSB 6682
Attorney for R. Sidney Shaw

Certificate of Service

The undersigned certifies that the foregoing was served upon the following by

1 placing such in the U S Mail with 1st class postage affixed thereto and addressed as below
2 on this March 21, 2007.

3 

4 James A. Oliver
5 999 Third Avenue – No. 3000
6 Seattle, WA 98104

7 T. Jeffrey Keane
8 14205 SE 36th St. #325
9 Bellevue, WA 98006

10 Robert M. Sulkin
11 Gregory G. Schwartz
12 600 University Street #2700
13 Seattle, WA 98101-3143

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The undersigned, being first duly sworn, on oath states that on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of plaintiff(s) and defendant(s), containing a copy of the document to which this affidavit is attached.

ORIGINAL

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PHOTOCOPY

FILED
CLALLAM COUNTY
DEC 3 1990
MOLLIE LINGVAL, Clerk
BY

Notary Public:
Subscribed and Sworn to before me this 25th day of December, 1990
MARINA NELSON
Notary Public in and for the State of Washington
Residing in King County

SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

In Re the Estate of:)
JACK DELGUZZI,) NO. 8087
Deceased.) RESPONSE TO REPORT AND
PETITION FOR RATIFICATION

Short Cressman & Burgess respond and object to the Petition for Ratification as follow:

1. Short Cressman & Burgess has previously served as the attorney for The Estate. At the present time the firm of Davis Wright Tremaine is apparently acting as counsel to The Estate and for Del Hum, Inc.

2. Short Cressman & Burgess is a creditor of The Estate. There are very substantial attorneys' fees and costs owed as reflected by a Promissory Note which was due January 1, 1990, and additional attorneys' fees and costs which have not been paid.

3. The Administrator has petitioned the Court for approval of a transfer of assets to the Administrator and for the payment (with appropriate security provisions) of fees in the approximate amount of \$600,000 for future work. The result of such an approval would prefer the fees to be paid to the Administrator and fees to be paid to the Administrator's corporation for non-

RESPONSE TO REPORT AND
PETITION FOR RATIFICATION - 1

LAW OFFICES
SHORT CRESSMAN & BURGESS
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4008
(206) 662-3333

Exhibit A
To 3P AND Complaint

1 administrator's work over fees owed Short Cressman & Burgess and
2 other like creditors.

3 4. Objection is made to the following: (1) The
4 Administrator's request to the Court to approve the transfer of
5 any property to the Administrator; (2) The Administrator's request
6 to approve a development contract between the Administrator or
7 related entities and the Estate for future services; and (3) The
8 Administrator's request to approve any accounting for sums paid by
9 the corporation owned by the Administrator for the purchase of
10 land from The Estate (Parcel 4, Lot 1), as described in the
11 Petition.

12 No approvals of the Administrator's requests should be made
13 until the Administrator accounts to the Court for time and
14 expenditures made, accounts for all debts of The Estate and its
15 corporate entities, and reports in detail on The Estate and
16 valuations, property sizes and zonings of the respective parcels
17 of land and the intended disposition of assets.

18 DATED this 24th day of December, 1990.

19 SHORT CRESSMAN & BURGESS

20 

21 JOHN O. BURGESS
22 WSBA NO. 418

23 29/wp/december/celguzzi.ohj

24
25
26 RESPONSE TO REPORT AND
PETITION FOR RATIFICATION - 2

LAW OFFICES
SHORT CRESSMAN & BURGESS
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4008
(206) 682-3333

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CLALLAM COUNTY
WASHINGTON

PHOTOCOPY

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

In re the Estate of)	
)	
JACK DELGUZZI,)	NO. 8087
)	
Deceased.)	RESPONSE TO ADMINISTRATOR'S
)	REPORT AND PETITION FOR
)	RATIFICATION FOR SALE OF REAL
)	PROPERTY

The law firm of Short Cressman & Burgess ("SC&B") submits the following response to the administrator's Report and Petition for Ratification of Sale of Real Property. The Report and Petition is presently scheduled to be heard at 9:00 a.m. on Friday, January 4, 1991.

This response is limited to the issue of whether SC&B has standing to question the administrator's Report and Petition. The parties have agreed that if this court determines that SC&B has standing, a special hearing will be requested for the purpose of determining whether the transactions outlined in the Report and Petition are in the best interests of the estate. SC&B reserves the right to submit further pleadings on the substantive issues regarding the administration of the estate.

I. RELEVANT FACTS

SC&B was initially retained by Gary DelGuzzi, the primary beneficiary in this estate, together with William E. Wilbert who

1 on August 13, 1982, succeeded Gary DelGuzzi as the personal
2 representative of the Estate. Mr. Wilbert continued to retain the
3 services of SC&B to assist him in the numerous lawsuits
4 (approximately 40), the tax issues, and the general administration
5 of the Estate.

6 The major litigation affecting the estate was a lawsuit
7 entitled Seattle-First National Bank v. Estate of Jack DelGuzzi
8 and DelGuzzi Construction, Inc., Clallam County Cause No. 31267.
9 This litigation involved said bank seeking to foreclose its pledge
10 on the stock of DelHur, Inc. DelHur, Inc. was an operating
11 construction company whose stock was owned 80% by the DelGuzzi
12 Estate and 20% by Sam Hurworth, the person running said company.

13 "On the eve of the trial in June 1984, Paul R. Cressman and
14 William E. Wilbert made a settlement with Seafirst National Bank
15 in which it reduced its obligation to \$1,200,000 by Messrs.
16 Wilbert and Cressman equally signing a note or notes to said bank
17 for \$1,200,000. The bank was then eliminated from the issues in
18 the trial, but counsel for the bank (from the same firm that has
19 now filed a petition on behalf of Mr. Wilbert and the Estate,
20 Davis Wright & Tremaine), remained throughout the trial as to the
21 issues concerning the validity of an inadequate buy/sell agreement
22 between the deceased Jack DelGuzzi and Sam Hurworth. The Estate
23 took the position that the buy/sell agreement was faulty in
24 several particulars in that the parties would not have intended an
25 agreement permitting the minority stockholder to buy the stock
26 over an approximate forty to forty-five year period of time when

1 the minority holder would be at least age ninety. This matter was
2 tried before the Honorable Grant Meiner and a decision rendered in
3 favor of the Estate. A copy of the court's Oral Decision is
4 attached hereto as Exhibit "A."

5 Mr. Hurworth subsequently appealed the decision. Following
6 an exchange of appellate briefs, a settlement was accomplished
7 between the DelGuzzi Estate and the minority stockholder whereby
8 the Estate retained the corporation and, in essence, divided
9 corporate assets with Mr. Hurworth obtaining approximately 20% of
10 the assets.

11 On July 15, 1986, Mr. Wilbert executed a promissory note in
12 the amount of \$454,380.00 to SC&B for the legal services which
13 they had provided. The note was due on January 15, 1990. A copy
14 of the promissory note is attached hereto as Exhibit "B." Said
15 note is secured by deeds of trust on various estate properties.

16 Mr. Cressman's portion of the loan to Seafirst National Bank
17 for the benefit of the Estate was eventually reduced to \$300,000.
18 Initially, the Estate was in a position to pay the interest on the
19 debt, but in 1988 and 1989 it could not pay the interest on a
20 regular basis. The Bank made automatic interest deductions
21 directly from Mr. Cressman's bank account for the interest on the
22 \$300,000. During one period of time, the interest advanced by
23 Mr. Cressman approximated \$50,000. In December 1989, a sale was
24 accomplished on business properties in Port Angeles, and
25 Mr. Cressman received sufficient funds to pay off the \$300,000 due
26 the Bank with the exception of \$21,312.50 interest, which interest

1 is still owing to Mr. Cressman as of this date. The debt is
2 memorialized in a promissory note to Mr. Cressman executed by
3 Mr. Wilbert. A copy of the note is attached hereto as Exhibit "C."

4 Respondent is aware that Mr. Wilbert has on occasion likewise
5 advanced funds for the benefit of the Estate.

6 SC&B has not received notification from either Mr. Wilbert or
7 anyone acting on his behalf informing SC&B of a decision to retain
8 new counsel. Given this lack of notice, SC&B has continued its
9 representation of Mr. Wilbert in his capacity as personal
10 representative for the estate of Jack DelGuzzi.

11 II. ARGUMENT

12 Although Mr. Wilbert's new counsel has not raised the
13 standing issue in any formal pleadings, counsel has suggested that
14 SC&B lacks standing to challenge the Report and Petition.¹ The
15 facts do not support this argument. SC&B and Paul R. Cressman,
16 individually, have standing under three alternative arguments.
17 First, both SC&B and Paul R. Cressman are creditors of the
18 estate. They have a direct interest in assuring that the personal
19 representative discharges his duties in good faith. Second, SC&B,
20 as counsel for the personal representative and the estate has a
21 duty to protect the interests of the estate. Finally, SC&B's

22
23 ¹ Petitioner's own actions contradict his apparent position
24 that SC&B lacks standing. Petitioner's counsel served a copy
of the Report and Petition on SC&B and Paul R. Cressman, Sr.,
individually.

25 A copy of the delivery label is attached hereto as
26 Exhibit "D."

duties as an officer of the court require that it do whatever is necessary to promote the fair administration of justice.

A. Creditors Of An Estate Have Standing To Challenge The Actions Of A Personal Representative.

The statutory provisions governing the administration of estates in Washington confer upon creditors of the estate the ability to challenge the actions of a personal representative.

While SC&B and Paul Cressman are not at this time seeking to invoke the court's jurisdiction for the purpose of removing Mr. Wilbert, the statutory language is instructive. RCW 11.68.70 provides the following:

If any personal representative who has been granted nonintervention powers fails to execute his trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee or legatee, . . .

RCW 11.28.250, referenced in the above excerpt, provides:

Whenever the court has reason to believe that any personal representative has . . . mismanaged, or is about to waste, . . . the property of the estate committed to his charge, . . . or has . . . neglected the estate, . . . it shall have power and authority, after notice and hearing to revoke such letters.

The legislative directive codified in RCW 11.68.070 is clear. Creditors, such as SC&B and Paul R. Cressman have standing to challenge the actions of a personal representative. The reason for this statutory grant is obvious. Creditors must have the ability to present the court with facts and arguments which

1 substantiate claims that the personal representative is not
2 discharging his duties in accordance with the laws of this state.
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C. SC&B's Duties to This Court Require That it Present All Legal and Factual Arguments Necessary for the Proper Administration of Justice.

The third alternative basis for permitting SC&B and Paul R. Cressman to respond to the Report and Petition arises from their position as officers of the court. As officers of the court, SC&B and Paul R. Cressman have a duty to the public to do and say whatever is necessary to promote the fair administration of justice. See, e.g., Fite v. Lee, 11 Wn. App. 21, 28-29, 521 P.2d 964 (1974); In re Lord, 97 N.W.2d 287 (1959) (attorney owes to courts the highest duty of fidelity); Mississippi Power Co. v. Stribling, 3 So.2d 807, 810 (1941) (lawyer's duties not confined alone to serving his clients).

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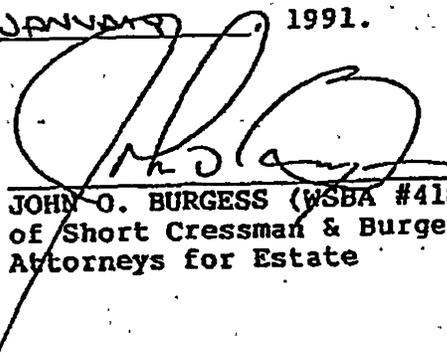
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4 **III. CONCLUSION**

5 There are three alternative bases for finding that SC&B and
6 Paul R. Cressman, individually, have standing to challenge the
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- 8 (1) Both SC&B and Paul R. Cressman are creditors of the
9 estate. The Washington Legislature has acknowledged
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11 personal representative executes his trust faithfully;
12 (2) SC&B represents both the Estate of Jack DelGuzzi and the
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14 to the estate requires SC&B to respond to the personal
15 representative's request that this court approve and
16 ratify the transactions enumerated in the Report and
17 Petition; and
18 (3) Finally, as officers of the court, SC&B and Paul R.
19 Cressman must be heard in order to assure that justice
20 is properly administered.

21 DATED this 3rd day of JANUARY, 1991.

22
23 
24 JOHN O. BURGESS (WSBA #418)
25 of Short Cressman & Burgess
26 Attorneys for Estate

RESPONDENT'S APPENDIX 2

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JUDGE JOAN DUBUQUE

JUDICIAL DISTRICT OF KING COUNTY
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KING COUNTY WASHINGTON SUPERIOR COURT

DAVID L. MARTIN, a married man as to
his separate estate,

Plaintiff,

v.

KATHRYN A. ELLIS and DOE
DEFENDANTS, 1 through 20, inclusive

Defendants

NO. 07-2-21635-9SEA

SECOND AMENDED COMPLAINT

PARTIES

1 Plaintiff, David L. Martin ("Martin"), is a married man, acting upon his separate
2 estate, residing in King County, Washington.

3 1.1 Defendant Kathryn A. Ellis ("Ellis"), was the supervised administrator of the
4 Estate of Jack Delguzzi probate proceedings between January 7, 2005 and July 27, 2007.

5 1.2 The Estate of Jack Delguzzi ("Estate") was pending in Clallam County,
6 Washington under cause number 8087 between June 17, 1978 and July 27, 2007.

7 1.3 Defendant Ellis is an attorney licensed to practice law in the state of Washington
8 who maintains her principal place of business in Seattle, King County, Washington.

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

1
2 1.4 Upon information and belief, Defendant Ellis has practiced law since 1984 and
3 prior to her appointment as administrator of the Estate of Jack Delguzzi, her practice was
4 almost exclusively limited to bankruptcy and in the federal courts.

5 1.5 Upon information and belief, Defendant Ellis was bonded in her capacity as
6 administrator and the identity of the bonding company is Liberty Mutual Insurance
7 Company.
8

9 1.6 Upon information and belief, Defendant Liberty Mutual Insurance Company,
10 holds the Administrator's Bond of the Estate of Jack Delguzzi for Defendant Ellis.

11 1.7 Upon information and belief, Defendant Liberty Mutual, entered into a contract to
12 provide Defendant Ellis with an administrator's bond in her capacity as Administrator of
13 the Estate of Jack Delguzzi in King County Washington. The bond number was
14 016033325 and was issued on February 2, 2005 and was filed on February 11, 2005.
15

16 1.8 Upon information and belief, Defendant Ellis did not retain counsel to represent
17 her as Administrator of the Estate of Jack Delguzzi at any time prior to the closure of the
18 Estate.
19

20 1.9 The true names of capacities Does 1 through 20, inclusive, whether individual,
21 corporate, partnership, associate, bonding company, or otherwise, are presently unknown
22 to Martin who therefore, sues said Defendants by such fictitious names. Plaintiff alleges
23 on information and belief that each Defendant is responsible in some manner for the
24 events described herein and is liable to Plaintiff for the damages he, she, or it has
25 incurred. Plaintiff will amend this Complaint to show the true names and capacities of the
26 Defendants when they have been ascertained.
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Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

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VENUE

Ellis resides in King County, Washington and conducts her business in Seattle, King County Washington. As such, venue is properly laid in the King County Superior Court, Seattle Washington.

FACTUAL ALLEGATIONS

2.1 William E. Wilbert was the administrator of the Estate of Jack Delguzzi from August 13, 1982 until his death in March 24, 2004. Within one month of Wilbert's appointment in 1983, the IRS assessed estate taxes against the Estate of Jack Delguzzi based on a total value of approximately \$9.4 millions.

2.2 When Mr. Wilbert filed a Petition for Decree of Distribution and Final Accounting for the estate in 1996, he alleged that the estate was then insolvent.

2.3 Wilbert was also the attorney-in-fact by means of a general power of attorney for Gary Delguzzi, trustee of the irrevocable trust of Gary Delguzzi, as well as his property manager and investment adviser.

2.4 Ellis was appointed the Personal Representative of the Estate of Jack Delguzzi on or about January 7, 2005.

2.5 Defendant Ellis was nominated for the position of administrator of the Estate of Jack Delguzzi by the attorneys for former administrator William E. Wilbert, whose administration began on August 13, 1982 and ended with his death on March 24, 2004.

2.6 Gary Delguzzi was the sole heir of the Estate of Jack Delguzzi and was a tenant in common with the Estate of Jack Delguzzi as to certain properties, was a creditor of the Estate as to certain properties, and was a partner with the estate as to certain properties.

1
2 2.7 Gary Delguzzi died on February 10, 2004, having then been in litigation with
3 Wilbert for over 10 years in order to obtain the closure of the Estate of Jack Delguzzi and
4 for distribution of his inheritance and his properties that were held by Wilbert.

5 2.8 R. Sidney Shaw was the Personal Representative of the Estate of Gary Delguzzi,
6 which had been assigned claims against William E. Wilbert held by the Estate of Jack
7 Delguzzi in the EJD probate proceedings during the time when Defendant Ellis was its
8 administrator.
9

10 2.9 David L. Martin was assigned the claims and interests of the Estate of Gary
11 Delguzzi by its personal representative R. Sidney Shaw, effective March 21, 2007.

12 2.10 As a result of the above referenced assignments, Martin is the real party in interest
13 to assert certain claims against Ellis and others.
14

15 2.11 Ellis made numerous mistakes, committed numerous oversights, and refused to
16 investigate, inventory and to marshal assets of the Estate of Jack Delguzzi.

17 2.12 Ellis failed to properly interpret and follow the court's orders and the Washington
18 probate statutes in the course of her administration of the Estate, specifically as related to
19 the marshaling of assets, accountings, disbursement of fees to the various attorneys,
20 previous administrator and accountants for the Estate as well as to other matters.
21

22 2.13 Short Cressman and Burgess, the lawyers for Administrator Wilbert from 1982 to
23 1991, submitted incomplete and conflicting fee applications to the court to establish
24 entitlement to payment, and despite these discrepancies, Defendant Ellis continued to
25 make payments to these attorneys.
26

27 2.14 The fee agreements that Short Cressman & Burgess submitted to justify its fee
28

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

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2 claims were entered into in violation of the applicable Rules of Professional Conduct for
3 attorneys in the state of Washington, were therefore against public policy and were thus
4 void and unenforceable, and despite these discrepancies, Defendant Ellis continued to
5 make payments to these attorneys during her administration.

6
7 2.15 Through Defendant Ellis' actions and inactions, both Short Cressman and Burgess
8 and Mr. Wilbert were overpaid, with some of the overpayments being made by Ellis.

9 2.16 Defendant Ellis, through rights of offset, could have prevented a substantial
10 amount of the overpayments and the attorneys and to previous Administrator Wilbert.

11 2.17 Despite making substantial payments to Short Cressman & Burgess and Wilbert
12 during her administration, Defendant Ellis never revealed the basis of her calculations of
13 the payments.
14

15 2.18 Between October, 1998 and Mr. Wilbert's death on March 24, 2004, Mr. Wilbert
16 made payments to himself, his attorneys, accountants and other creditors Defendant Ellis
17 knew of these transactions but failed to investigate and determine, or to ask the court to
18 determine, the propriety and the amounts of those payments, either when she moved to
19 close the Estate in June of 2007 or before.
20

21 2.19 Despite being advised, Defendant Ellis did not investigate and report to the
22 Clallam County Court and creditors of the Estate improprieties regarding property
23 commonly known as the Malcolm Island, British Columbia property ("Malcolm Island").
24

25 2.20 Malcolm Island was transferred to prior administrator Wilbert for a portion of his
26 fee claim at what he claimed was its assessed value of \$12,345, according to Wilbert's
27 report to the court in 1997.
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2 2.21 Ellis was advised that this value was a very substantial misrepresentation in that
3 the Administrator Wilbert later sold the Malcolm Island property for \$325,000.00 CDN.
4
5 2.22 Defendant Ellis, through rights of offset, could have prevented a substantial
6 overpayment of fees to Administrator Wilbert, some of which was directly related to his
7 improper reporting and consequent conversion of the Malcolm Island property.
8
9 2.23 Ellis also sold property of the Estate of Jack Delguzzi commonly referred to as
10 999 Three Sisters Road in Port Angeles, Washington where a title report showed that
11 there was a deed of trust encumbering the property in favor of Cedarwood Properties,
12 Inc., in the amount of \$45,000.00.
13
14 2.24 The closing statement for the aforementioned transaction does not show that
15 Cedarwood Properties, Inc. was paid for the release and satisfaction of the deed of trust
16 and Defendant Ellis failed and refused to account for the failure to pay over to
17 Cedarwood shareholders its interest in the deed of trust funds on closing.
18
19 2.25 Gary Delguzzi's Estate was the successor to Gary's personally owned one-third
20 shareholdings in Cedarwood Properties, Inc., and it was not paid when the corporation
21 was liquidated and then dissolved by Mr. Wilbert before the appointment of Ellis.
22
23 2.26 Nor was the Estate of Gary Delguzzi paid its one-third of the value of the
24 encumbrance from the sale proceeds of the subject property by Defendant Ellis.
25
26 2.27 A sale of property in an area commonly known as Elwha Bluffs located in Clallam
27 County, Washington, during the time Ellis was administrator of the Estate of Jack
28 Delguzzi was encumbered by a Deed of Trust in favor of Mr. Wilbert's law firm of
Chicoine & Hallett, although no payment is reflected on the closing statement of the

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property to satisfy that encumbrance.

2.28 At least two general partnerships of which Gary Delguzzi was a partner with his father Jack Delguzzi and/or Charles Nyhus were administered by Mr. Wilbert and then by Defendant Ellis.

2.29 Despite these partnerships being known to Defendant Ellis, she failed and refused to recognize and protect the nonprobate interests of Gary Delguzzi and of his estate in these partnerships and so his interests in these partnerships were used to satisfy claims against, and expenses of, the Estate instead being distributed to Gary Delguzzi.

2.30 The Estate of Jack Delguzzi properties that were received from the Surfside Estates Partnership shortly after Jack Delguzzi's death in 1978 did not appear in Wilbert's inventory and appraisal and Defendant Ellis failed and refused to investigate the missing assets.

2.31 One of the Estate of Jack Delguzzi's corporations, DelHur, Incorporated, in its 1999 final income tax return showed an unexplained "write off" of \$799,237 which reflected assets of that amount on its books of account, but with the actual assets missing and unable to be located, and which Defendant Ellis failed and refused to investigate.

2.32 Former administrator of the Estate of Jack Delguzzi, William E. Wilbert and his attorney, Paul R. Cressman, Sr., purported to loan the estate substantial sums of money beginning in 1984, and/or to guarantee loans to the estate, and to acquire an encumbrance against the estate by causing a judgment against the estate to be assigned to Mr. Wilbert and to Mr. Cressman

2.33 The estate had more than sufficient liquid assets to pay all or substantially all of

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2 the above judgment at the time of its entry without any apparent or demonstrated need for
3 the loans to the estate.

4 2.34 The above loans and other loans to the Estate which Wilbert borrowed, used estate
5 properties and Gary Delguzzi's non-probate assets as security.

6 2.35 Some of Gary Delguzzi's nonprobate assets were liquidated to pay off these loans
7 and neither Gary Delguzzi nor his estate benefitted from making these loan payoffs.
8

9 2.36 Although these loans violated the fiduciary duties of Wilbert and Cressman to the
10 estate, its creditors and Gary Delguzzi, Defendant Ellis failed and refused to so advise the
11 court or to take steps to recover profits of Mr. Wilbert and Mr. Cressman that they had
12 received from loans to the Estate that were repaid from assets of the Estate and the
13 nonprobate assets of Gary Delguzzi.
14

15 2.37 Attorney Paul R. Cressman, Sr. acted in violation of the applicable Rules of
16 Professional Conduct for attorneys by his participation in these loans and thus the loans
17 and the profits of Mr. Cressman were contrary to public policy, as well as to R.C.W.
18 11.48.080.

19 2.38 Defendant Ellis has failed to account for the aforementioned loans to the estate.
20

21 2.39 Numerous other properties and proceeds of property sales from the Estate of Jack
22 Delguzzi and from Gary Delguzzi's nonprobate assets were in the care, custody and
23 control of Defendant Ellis during the time of her administration.

24 2.40 Defendant Ellis failed and refused to provide a full and complete inventory and
25 accounting for the Estate either during or at the closing of her administration.

26 2.41 Defendant Ellis failed to follow proper probate statutory closing procedures when
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2 she moved to close the estate, including but not limited to failure to comply with RCW
3 11.76.020, .030, .040 and .050, inclusive, and with RCW 11.28.240. Compliance with
4 these statutory procedures is mandatory.

5 2.42 Failure of Defendant Ellis to comply with the above mandatory procedures left
6 approximately 7 years of estate administration (1997 to 2004) that was not properly
7 accounted for and during which time approximately \$250,000 in attorney fees that were
8 never approved by the court were made and "creditor distributions" of \$574,750 were
9 made that were not in compliance with the court's order of 1998, and which were
10 allegedly made pursuant to a "private agreement".

11 2.43 The private agreement between William E. Wilbert and Loretta Wilbert included
12 consideration between Mr. and Ms Wilbert and his former attorneys for release of claims
13 properly belonging to the Estate and to Gary Delguzzi for legal malpractice.
14

15 2.44 The trafficking in these legal malpractice claims was never revealed to the court
16 and was first documented to Gary Delguzzi's Estate through discovery proceedings in
17 February and March of 2007, with documents produced by Wilbert's attorneys, Chicoine
18 & Hallett.
19

20 2.45 Chicoine & Hallett nominated Defendant Ellis for the role of administrator of the
21 Estate of Jack Delguzzi.
22

23 2.46 The October 10, 1998 Memorandum Decision of the probate court acting in the
24 matter of the Estate of Jack Delguzzi ordered that Mr. Wilbert was to return the real
25 estate commissions that his controlled corporations and family members had received
26 from the sales of Estate properties. This amount was reported by Mr. Wilbert's
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28

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

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2 accountant to be \$372,160 in 1997.

3 2.47 At the time of Mr. Wilbert's death in 2004, these unlawful commissions has not
4 been credited or returned to the Estate.

5 2.48 Defendant Ellis failed to take steps to recover these real estate commissions from
6 Mr. Wilbert or from his controlled corporations and family members and instead made
7 payments to Mr. Wilbert's estate when her compliance with the court's order would have
8 required her to retain for the Estate of Jack Delguzzi the amounts of the identified real
9 estate commissions.
10

11 2.49 When Defendant Ellis moved to close the Estate on June 12, 2007 with a
12 document titled as "Final Supplemental", she had not sold or otherwise received value for
13 numerous parcels of real estate of the Estate and expressed her intent to abandon them.
14

15 2.50 Examination of the titles to many of these parcels showed that they were titled to
16 Ms Loretta Wilbert, the surviving spouse of William E. Wilbert or to Ms Christina
17 Nyhus, the surviving spouse of the late Charles Nyhus, a former general partner of Jack
18 and Gary Delguzzi.

19 2.51 The disposition or distribution of these parcels of land owned by the Estate has
20 never been reported to the court or to the Estate's creditors by Defendant Ellis.
21

22 3 CAUSES OF ACTION

23 3.1 The above actions constitute Defendant Ellis' Breach of Duty to Preserve Property
24 and Invest in a Prudent Manner.

25 3.2 The above actions constitute Defendant Ellis' Breach of Duty to Account and
26 Furnish Information to Beneficiaries and Creditors.
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3.3 The above actions constitute Defendant Ellis' Negligence.

3.4 The above actions constitute Defendant Ellis' Breach of the Duty of Loyalty .

3.5 The above actions constitute Defendant Ellis' Duty to Test Market or Obtain Appraisals.

3.6 The above actions constitute Defendant Ellis' Breach of Duty to Administer Nonprobate Assets and the other fiduciary duties of estate representatives.

Now where the plaintiff having now fully pleaded his above claims for relief, now asks the court to enter judgment in his favor for the following:

- A. For judgment in favor of the plaintiff against all defendants, jointly and severally, for all damages suffered by the plaintiff and by Gary Delguzzi and by his Estate;
- B. For all costs and attorney fees herein incurred;
- C. For amendment of the Complaint to comply with the discovery and evidence herein produced and admitted;
- D. For such other relief as the court deems just.

Dated this 15th of November 2007.



Charles Cruikshank
Attorney for the Plaintiff

RESPONDENT'S APPENDIX 3

FILED

04-4-02163-1 SEA

2004 APR 30 PM 1:45 LAST WILL AND TESTAMENT OF GARY DELGUZZI

ORIGINAL

KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA GARY J. DELGUZZI, a resident of King County, Washington, do hereby make, publish, and declare this my Last Will and Testament.

- 1 I hereby revoke any and all Wills and Codicils by me heretofore made.
- 2 I am a single man with no spouse or children.
- 3 I have no deceased children. Except as provided below, I make no provision in this Will for any child who survives me, whether named herein or hereafter born or adopted, nor for the descendants of any child who does not survive me.
- 4 The following general provisions apply to this Will:
 - 4.01 For all beneficiaries, a condition of survivorship shall mean beneficiary by at least TEN (10) days.
 - 4.02 Unless the context requires otherwise, masculine, feminine, and neuter gender may be used interchangeably, and plural or singular usage shall include the other.
 - 4.03 No provision of this Will is intended to exercise any power of appointment I may have unless the power of appointment is identified therein.
 - 4.04 Unless expressly provided otherwise, I intend the provisions of this Will to dispose only of such property as I may own, and I do not intend to require any beneficiary to make an election in order to receive such property. Further, this Will is freely revocable by me, and is not the result of a contract with any person.
- 5 At my death, I wish for my remains to be cremated and for my remains to be interred in the family mausoleum in Port Angeles, Washington.
- 6 I give, devise, and bequeath to my partner, JEREMY LONG DUC TRUONG, the sum of my estate, including specifically, by exercise of power of appointment in favor of JEREMY LONG DUC TRUONG, the sum and total of the Gary DelGuzzi Trust created on February 3, 1984, in trust, with JEREMY LONG DUC TRUONG as sole Beneficiary and my cousin, MARGARET MEYERS-SHAW, as Trustee with the power to invade the trust for the maintenance, support and health of the Beneficiary. In the event MARGARET MEYERS-SHAW is unable or unwilling to serve, I name KEY BANK OF WASHINGTON as my Trustee.
- 7 In the event that JEREMY LONG DUC TRUONG'S death precedes my own, I give,

GJD [Signature] Page 1

devise, and bequeath one-half of the sum of my residuary estate to my cousin, **MARGARET MEYERS-SHAW**, and the other one-half to her son, **JACOB SHAW**, pursuant to the Uniform Gifts to Minors Act of Washington.

- 7.01 I direct that such portion of the estate, inheritance, and other taxes imposed by reason of my death (exclusive of generation-skipping taxes), including interest and penalties on those taxes ("estate taxes"), and such portion of debts, expenses of last illness, funeral and burial, and expenses of administration (including attorneys' fees and personal representative's fees) owing at or by reason of my death, shall be paid out of the trust estate as Trustee determines advisable after consultation with my personal representative.
- 7.02 **United States Treasury Bonds.** Any United States Treasury Bonds which may be redeemed at par in payment of federal estate tax and which are part of the trust estate shall be used to pay that tax to the extent available.
- 7.03 **Interest or Penalties.** Any interest or penalties attributable to estate taxes and paid by the personal representative may be charged, in the personal representative's discretion, to either income or principal of the probate estate, or part to each.
- 8 **Distributions.**
- 8.01 **In Trustee's Discretion; Upon Disability of Beneficiary.** At any time Trustee thinks it is in the best interest of the Beneficiary, or in the event of the disability of the Beneficiary, Trustee may make to, or for the benefit of the Beneficiary, such distributions out of the trust estate, principal or interest, or both, as Trustee shall from time to time think are necessary to accomplish the trust purposes.
- 8.02 **Taxes and Expenses in Beneficiary's Estate.** After the death of the Beneficiary, Trustee may, in Trustee's discretion, pay or otherwise provide for, from the principal of the trust estate:
- 8.02.01 Such portion of the estate and inheritance taxes imposed by reason of that Beneficiary's death, and
- 8.02.02 Such portion of that Beneficiary's debts, expenses of last illness, funeral and burial, and expenses of administration (including attorneys' fees and personal representative's fees) as Trustee determines advisable after consultation with the personal representative, if any, of that Beneficiary's probate estate.
- 8.03 **United States Treasury Bonds.** Any United States Treasury Bonds which may be redeemed at par in payment of federal estate tax and which are part of the trust estate shall be used to pay that federal estate tax to the extent available.

- 8.04 **Interest or Penalties.** Any interest or penalties attributable to estate taxes and paid by Trustee may be charged, in Trustee's discretion, to either income or principal of the trust estate, or part to each.
- 8.05 **Termination.** Upon the death of the Beneficiary this trust shall terminate, and all property remaining after payment of the amounts herein described shall then be distributed to St. Martin's College in Tacoma, Washington.
- 9 **Duties of Trustee.**
- 9.01 **Annual Accountings.** After the end of each income tax year for each trust, Trustee shall prepare a statement showing how the property of the trust is invested and all transactions relating to the trust for the preceding tax year. Within sixty days after the end of the tax year, Trustee shall furnish a copy of the statement to Beneficiary.
- 9.02 **Investments.** In acquiring, investing, reinvesting, exchanging, selling, and managing the property of the trust, Trustee shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds. In determining the prudence of a particular investment, Trustee shall consider the proposed investment or investment course of action in relation to all property of the trust.
- 9.03 **Income.** If all of the income of the trust is not distributed during an income tax year, the undistributed portion shall be added to principal.
- 10 **Powers of Trustee.** Beneficiary grants to Trustee the continuing, absolute, discretionary power to deal with any property, real or personal, held in the trust estate or in any trust, as freely as Beneficiary might in the handling of Beneficiary's own affairs. In addition, Trustee shall have all of the power, authority, and discretion given a trustee under the laws of the State of Washington on this date. These include those given a trustee under the provisions of Chapter 11.98 of the Revised Code of Washington, known as the "Washington Trust Act." Such powers may be exercised independently and without the prior approval of any court or judicial authority, and no person dealing with Trustee shall be required to inquire into the propriety of any of Trustee's actions.
- 11 **Directions to Trustee.** In addition to written directions, Trustee is entitled to rely upon directions given to Trustee in person, by telephone, facsimile, or otherwise. A person giving any direction to Trustee shall give written confirmation of any such direction when requested by Trustee.
- 11.01 **Agents and Attorneys.** Trustee may employ agents and attorneys as Trustee thinks necessary or desirable for the proper administration of the trust, or for any litigation,

controversy, or uncertainty which may arise in connection with the trust. Trustee may pay reasonable compensation to agents and attorneys for their services and be fully protected in relying on advice of legal counsel.

- 11.02 **Purchase of Probate Property; Loans.** Trustee may purchase any property of Beneficiary's probate estate with trust funds at fair market value at time of purchase.
- 11.03 **Trustee may make loans or advancements, secured or unsecured, to the personal representative of Trustee's or Beneficiary's probate estate.**
- 11.04 **Loans of Trust Funds.** Trustee may lend trust funds on terms and conditions determined by Trustee.
- 11.05 **Trustees' Fees and Expenses.** Trustee shall be entitled to compensation for the acceptance and administration of the trust and for the payments and distributions made by Trustee. Trustee is entitled to extra compensation for unusual or extraordinary services. The amount of compensation shall be in accordance with Trustee's regular schedule of fees then in force, or as may be approved by the court. Trustee shall be reimbursed for all expenses reasonably incurred in the administration of the trust.
- 11.06 **Resignation of Trustee; Appointment of Successor Trustee.** Trustee shall have the right to resign as trustee without court proceedings by giving written notice to that effect to Beneficiary shall then have the right, without court proceedings, to appoint a successor Trustee.
- 11.07 **Trustee's Good Faith Actions Binding.** Every action taken in good faith by Trustee shall be conclusive and binding upon all persons interested in the property of the trust.
- 11.08 **Definition of Disability.** Disability shall include the inability to manage property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.
- 11.09 **Transfer of Beneficial Interests.** The interest of any beneficiary other than Beneficiary in income or principal (a) shall not be subject to claims of creditors or others, or to legal process; and (b) shall not be assigned, alienated or encumbered. This provision shall not prevent a beneficiary from exercising a power of appointment or disclaiming an interest.
- 11.10 **Merger of Similar Trusts.** If Trustee is trustee of two or more trusts, under this or any other instrument, which are to fulfill similar purposes for the same beneficiary

or beneficiaries, Trustee may merge any two or more of such trusts, provided that such merger does not cause the generation-skipping tax inclusion ratio, as found in Internal Revenue Code § 2642, of either merged trust to be increased from zero to any other inclusion ratio.

- 11.11 **Law Governing; Savings Clause.** This instrument shall be governed by the laws of the State of Washington. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of this instrument.
- 12 **Disposition of Trust Estate Upon Death of Jeremy Long Duc Truong.** Upon the death of **JEREMY LONG DUC TRUONG**, the trust shall terminate and the remaining assets shall pass to College of St. Martin's of Olympia, Washington.
- 13 I direct that all costs of administration and all taxes or duties, including interest thereon, imposed by any jurisdiction on or in relation to any property includable in my estate because of my death, whether or not such property passes under the provisions of this Will, be paid out of the residue of my estate or my testamentary trust. The personal representative shall have authority to prepay or defer any taxes attributable to remainder interests created under this Will. To the extent such taxes cannot be satisfied from my residuary estate, they shall be prorated among the beneficiaries of property passing under the provisions of this Will, or outside the provisions of this Will, as if there were no provisions for such taxes herein.
- 14 I hereby appoint my cousin, **MARGARET MEYERS-SHAW**, as the personal representative of my estate to act without bond; but if she is deceased, or unable or unwilling to serve, or resigns, dies, or becomes incapacitated after qualifying, I appoint as administrator **KEY BANK OF WASHINGTON** likewise to act without bond. The words "personal representative" refer to executor or executrix or administrator, as the case may be.
- 15 I desire that in the event that any litigation claim against William E. Wilbert or others related to the estate of my father or to the Gary DeIGuzzi Trust is still pending at the time of my death, that my personal representative maintain the legal representation of Charles M. Cruikshank III and his associates.
- 16 I direct that my estate be settled in the manner provided for herein. I give my personal representative full power to administer this Will and my estate without the intervention of the court, it being my intention to avail myself of the provisions of the non-intervention will statutes of the State of Washington. My personal representative shall have full power, after the entry of an order of solvency, to alienate, mortgage, pledge, lease, sell, exchange, manage, and convey the real and personal property disposed of by this Will, and to borrow money, with or without security, without an order of the court for that purpose and without notice, approval,

or confirmation, and whether or not the same is necessary for the administration of my estate. These non-intervention powers shall be unrestricted.

IN WITNESS WHEREOF, I have hereunto set my hand and published and declared this as my Last Will and Testament at Seattle, Washington, this 13 day of August, 1996.

Gary J. DelGuzzi
Gary J. DelGuzzi

The foregoing instrument, consisting of six (6) typewritten pages, including this page, was on the 13 day of August, 1996 signed by the said Testator, **GARY J. DELGUZZI**, and by him published and declared to be his Last Will and Testament in the presence of us and each of us who, at his request and in his presence and in the presence of each other, now sign our names as witnesses thereto.

Jayne S. McIntyre
Witness

Don A. WJ
Witness

Residing at:

Seattle, Washington

Residing at:

Seattle, Washington

AFFIDAVIT OF ATTESTING WITNESSES TO THE WILL OF GARY J. DELGUZZI

STATE OF WASHINGTON)
County of King) ss.

Each of the undersigned attesting witnesses, after being sworn, on oath states:

1. Request of Testator. Testator herein requested that all the attesting witnesses make this Affidavit.
2. Execution. The Will to which this Affidavit is attached was executed by the above-named Testator on the 13 day of August, 1996 at Seattle, Washington.
3. Declarations. Immediately prior to execution, the Testator declared the document to be his Last Will and Testament and requested the undersigned witnesses to subscribe their names.
4. Signatures. The Testator signed the document in the presence of all the witnesses, and the witnesses attested the execution by subscribing their names in the presence of the Testator and of each other.
5. Competency. At the time of execution of the Will: (a) the Testator appeared to be of sound mind, of legal age, and acted freely without any duress or undue influence; and (b) the witnesses were each competent and of legal age.

Jayne S. McIntyre
Witness

Alan Alan OZ
Witness

Residing at:

Seattle, Washington

Residing at:

Seattle, Washington

SUBSCRIBED AND SWORN to before me on this 13th day of August, 1996.



Caitlin A. Savory
NOTARY PUBLIC in and for the State of
Washington, residing at Port Angeles
My Commission Expires: 10-14-96
Printed Name: CAITLIN A. SAVORY

GJD GJD
Page 7

RESPONDENT'S APPENDIX 4

1 Property?

2 A. No.

3 Q. Any -- do you have any knowledge about Little
4 property proceeds?

5 A. No.

6 Q. Do you have any knowledge about the Elwha
7 property sale proceeds?

8 A. No.

9 Q. Do you have any knowledge about Malcolm Island
10 in British Columbia?

11 A. No.

12 Q. Do you know who does know about these assets?

13 A. No, I do not.

14 Q. So would it be accurate, a fair and accurate
15 statement, sir, to say you have no personal knowledge
16 of anything that Chicoine & Hallett did wrong in
17 relation to the Estate of Jack Delguzzi or Gary
18 Delguzzi?

19 A. I have no personal knowledge.

20 Q. Would it be fair and accurate to say that you
21 have no personal knowledge of anything anyone did wrong
22 in relation to Jack Delguzzi's Estate or Gary
23 Delguzzi's interests?

24 A. That's correct, I have no personal knowledge.

25 Q. I see your Cal hat. Did you go to UC Berkeley

RESPONDENT'S APPENDIX 5

RESPONDENT'S APPENDIX 6

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>David L. Martin a married man acting on his own behalf,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>William E. Wilbert, Loretta D. Wilbert, and their marital estate, Estate of William E. Wilbert, deceased, and Loretta D. Wilbert, its Personal Representative, ABC Corporations I Through XXV, and XYZ Partnerships I Through XXV, John and Jane Does 1 Through L, and Western Bonding Co. a/k/a Western Surety Company</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">NO. 06 2 01085 2</p> <p style="text-align: center;">COMPLAINT FOR DAMAGES (AMENDMENT No. 2)</p>
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1. Jack Delguzzi died on June 1, 1978. His only son and sole heir, Gary J. Delguzzi was appointed as his personal representative and so served until he resigned on August 13, 1982.
2. William E. Wilbert was appointed as successor administrator of the Estate of Jack Delguzzi on August 13, 1982.
3. Western Bonding Company also known as Western Surety Company, is the

1 bonding company that supplied the fiduciary bond for William E. Wilbert and is
2 thus liable for the amount of that bond, believed to be \$100,000. That bond has
3 never been exonerated.

4 4. Hemisphere Properties, Ltd. hereby is identified as "ABC Corporation" and its
5 registered agent is Laure A. Wilbert. Laure A. Wilbert and William D. Wilbert are
6 the last known officers, directors and shareholders of this corporation and are thus
7 successors in interest to its assets and liabilities.

8
9 5. The probate of the Estate of Jack Delguzzi was putatively closed in Clallam
10 County by its supervised administrator, Kathryn A. Ellis in June of 2007 and by
11 Order of July 27, 2007.

12
13 6. On March 31, 2008, Ms Ellis filed an unsworn document titled "Annual Report
14 Re: Sale of Assets" which revealed that she had sold property of the Estate as
15 directed by the July 27, 2007 order, but that she had not made the distributions of
16 sales proceeds and the single remaining parcel of real property as she was directed
17 by that order so as to close the estate because she because claimed that "... there
18 would be no funds to pay the annual bond fee nor the Personal Administrator's
19 [sic] counsel to defend the order on appeal if these final funds are dissipated."

20
21 7. She has not sought modification of the order of July 27, 2007 nor has she retained
22 "counsel to defend the order on appeal", having appeared pro se in that matter.

23 8. Gary Delguzzi died on February 10, 2004, never having received any distribution
24 of his inheritance from the estate of his father, Jack Delguzzi.

25
26 9. R. Sidney Shaw is the duly appointed personal representative of the Estate of Gary
27 J. Delguzzi, who died on February 10, 2004.

1 10. R. Sidney Shaw, as personal representative of the Estate of Gary J. Delguzzi, was
2 assigned by order of this court on June 2, 2006 of any and all claims, causes of
3 action and rights to recover for damages which were suffered by the Estate of Jack
4 Delguzzi which were caused by the actions and failures to act of William E.
5 Wilbert, as its administrator between August 13, 1982 and the date of his death on
6 March 24, 2004, as well as of claims against others herein named or to be named,
7 including ABC Corporations I through XXV, John & Jane Does I through L and
8 XYZ Partnerships I through XXV, and any others who are the alter ego entities
9 and/or agents of William E. Wilbert that were used by him to shield and assist
10 him with his wrongdoing.
11

12
13 11. R. Sidney Shaw, as Personal Representative of the Estate of Gary Delguzzi,
14 completed the terms of an assignment to the Plaintiff herein, David L. Martin, of
15 the above described claims of the Gary Delguzzi Estate on March 21, 2007.

16 12. Loretta D. Wilbert is the surviving spouse of William E. Wilbert, and as all
17 actions of Mr. Wilbert were in furtherance of their marital estate, Loretta D.
18 Wilbert is also liable for the damages herein sought.

19
20 13. Loretta D. Wilbert is the personal representative of the Estate of William E.
21 Wilbert, and thus is a proper party defendant and liable in that capacity for the
22 damages herein sought.

23 14. Prior to his appointment as administrator, Mr. Wilbert enjoyed the trust and
24 confidence of Gary Delguzzi, with the resulting influence and control over Gary
25 Delguzzi, which resulted in a fiduciary relationship.
26

27 15. At the time of the death of Jack Delguzzi, Mr. Delguzzi was a general partner
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1 with Gary Delguzzi in various business enterprises, and they jointly owned
2 business properties used in these enterprises.

3 16. At the time of the death of Jack Delguzzi, Jack Delguzzi was a business partner
4 with Charles Nyhus, and some of the business enterprises and properties of Jack
5 Delguzzi, Charles Nyhus, and Gary Delguzzi were commingled together as
6 general partnerships and or tenancies in common.
7

8 17. Gary Delguzzi signed management agreements, general powers of attorney and
9 security agreements in favor of Mr. Wilbert prior to and during the period of Mr.
10 Wilbert's administration of the Jack Delguzzi Estate.
11

12 18. Gary Delguzzi signed multiple trust agreements purporting to appoint William E.
13 Wilbert as his trustee and to transfer to Wilbert, as trustee, all the property jointly
14 owned by Gary Delguzzi with Jack Delguzzi and with Charles Nyhus, as well as
15 Gary Delguzzi's separately owned property.

16 19. During the approximately 22 years of the administration of the Estate of Jack
17 Delguzzi by William E. Wilbert, he engaged in constant self-dealing, failures to
18 account, conversion and misstatements of assets and liabilities of the properties of
19 Estate of Jack Delguzzi, including actions that he took as officer and director of
20 corporations of which the Estate of Jack Delguzzi and/or Gary Delguzzi were sole
21 or partial owners and as partner with Gary Delguzzi and Charles Nyhus.
22

23 20. The assets, funds, entitlements and uses of the above properties of the Estate of
24 Jack Delguzzi, as well as Gary Delguzzi's assets were used by Mr. Wilbert in ill
25 conceived, risky, speculative, self-dealing business ventures which were not
26 approved or authorized by the probate court and that only benefitted Mr. Wilbert
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1 and his family members and his many alter ego business entities, which he owned
2 and controlled.

3 21. Mr. Wilbert used Estate of Jack Delguzzi and Gary Delguzzi's assets to fund
4 business ventures in Costa Rica and Panama and shielded information and
5 accounting related to these ventures from the general creditors of the Estate of
6 Jack Delguzzi, Gary Delguzzi, the probate court and other administrative
7 creditors.
8

9 22. The Central American business ventures were tainted by Mr. Wilbert's self-
10 dealing, misrepresentations and conversions and were the only activities in which
11 he engaged in as administrator of the Estate of Jack Delguzzi that produced
12 profitable enterprises while he was the administrator of Jack Delguzzi's estate.
13

14 23. Mr. Wilbert misstated the extent and involvement of Jack Delguzzi's Estate and
15 of Gary Delguzzi's interests in the business ventures in Central America and
16 ultimately sold, traded and disposed of those interests without payment of the full
17 amount of the proceeds received for these business ventures to their lawful
18 owners.
19

20 24. In order to conceal his unlawful activities from the court, Gary Delguzzi, creditors
21 of Jack Delguzzi's estate, and from the taxing agencies of the United States and
22 the State of Washington,

- 23 a. Mr. Wilbert paid federal estate taxes from the Estate of Jack Delguzzi
24 b. even though he claimed it to be insolvent at the time,
25 c. in which case no such estate taxes would have been due and payable.
26

27 25. In order to conceal his unlawful activities from the court, Gary Delguzzi and
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1 creditors of Jack's estate, and the taxing agencies of the United States and the
2 State of Washington,

- 3 a. Mr. Wilbert paid inheritance taxes to the State of Washington
4
5 b. even though there was no inheritance received by any heir of the Estate of
6 Jack Delguzzi
7 c. and thus no inheritance taxes have lawfully been due and payable.

8 26. Despite having dominion and control of the assets and operations of Jack's estate,
9 for over 22 years:

- 10 a. Mr. Wilbert failed and refused to prepare and file a complete inventory
11 and appraisal and
12
13 b. never filed an amended federal estate tax return
14
15 c. or a proper amended inheritance tax return.

16 27. Mr. Wilbert never sought any refund of the federal estate taxes paid.

17 28. Mr. Wilbert never sought refunds of the inheritance taxes paid to the state of
18 Washington.

19 29. Mr. Wilbert unnecessarily prolonged the administration of Jack Delguzzi's estate
20 in order to convert and deplete its assets and to multiply artificially its liabilities
21 and expenses, so that he could embezzle and convert the assets of the estate for
22 his own use and those of his family members and alter ego business entities.

23 30. Mr. Wilbert used funds of Gary Delguzzi to allegedly fund Estate of Jack
24 Delguzzi obligations and operations, which served only to benefit Mr. Wilbert at
25 the expense of Gary Delguzzi, Charles Nyhus, and Jack Delguzzi's estate and to
26 their loss and detriment and to the detriment of the general and administrative
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1 creditors of Jack Delguzzi's estate.

2 31. Mr. Wilbert wrongfully disposed of Estate of Jack Delguzzi properties by
3 transfers of the properties to himself, to his family members, to alter ego entities,
4 and others without any independent and disinterested appraisals and many, if not
5 all, of these transfers were at less than fair market value.

6
7 32. Mr. Wilbert proceeded to use estate assets to operate ongoing and continuing
8 business operations, to fund new business operations, and to continue business
9 operations of the estate of Jack Delguzzi that were not authorized by the court or
10 by law.

11 33. Mr. Wilbert concealed assets of Jack Delguzzi's estate from the court, its
12 creditors, and the sole heir of Jack Delguzzi's estate and he assigned notes and
13 accounts receivable of Estate of Jack Delguzzi to himself and others without full
14 and adequate consideration for those receivables for the Estate of Jack Delguzzi.

15
16 34. Even though ordered by the Court to return or credit real estate commissions for
17 sales of estate properties by Mr. Wilbert, which he, his alter ego entities, and his
18 family members had received from the sales of Estate of Jack Delguzzi properties,
19 Mr. Wilbert failed and refused to so credit and repay these commissions to the
20 estate and continued to misrepresent to the Court, the creditors, and to the heir
21 that he was entitled to those commissions even after the Court's order to the
22 contrary.

23
24 35. Rather than using the liquid assets of Jack Delguzzi's estate to pay creditors, Mr.
25 Wilbert borrowed funds from third parties and arranged loans between third
26 parties, including Gary Delguzzi and Mr. Wilbert as Trustee of the Trust of Gary
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1 Delguzzi to the estate, which were secured by estate of Jack Delguzzi properties.

2 36. The loans initiated by Mr. Wilbert from Gary Delguzzi and the Trust of Gary
3 Delguzzi were entered into by Mr. Wilbert as attorney-in-fact for Gary Delguzzi
4 and as Trustee of the Trustee of the Gary Delguzzi Irrevocable Trust.

5 37. Mr. Wilbert represented to the creditors, to the court, and to the heir that he was
6 making the loans to the estate and that therefore he (Wilbert) was at risk for non-
7 repayment of these loans, when he was exposed to no risk, as estate assets secured
8 the loans.

9 38. During this time, Mr. Wilbert controlled all the affairs of the estate, was the only
10 person with full knowledge of the estate's assets, liabilities, cash flow, and
11 capacity to repay the loans, and the estate had no need of the borrowings, having
12 sufficient liquidity to finance its proper administration without borrowing.

13 39. By using the estate's assets as security for collateral for outside borrowings, Mr.
14 Wilbert managed to draw additional funds into the estate which he converted and
15 took for his own purposes and benefits without any benefit to the estate and
16 without proper accounting to the court, thus depleting its assets and defeating the
17 lawful creditors of the estate and the rights and converting assets of Gary Delguzzi.

18 40. During the period when Mr. Wilbert was arranging these loans, he arranged to have
19 Estate of Jack Delguzzi pay him interest on loans made by third parties to the
20 estate although the loans were secured by assets of the estate that were pledged to
21 the lenders and which were not secured by assets of William E. Wilbert or other
22 lenders who advanced funds to the estate.

23 41. Mr. Wilbert was thus at no risk related to the loans because Estate of Jack Delguzzi
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1 assets were securing the loans, and not the assets of William E. Wilbert and
2 because he controlled the affairs of the estate and he determined who got paid and
3 when from estate funds.

4 42. Now, having fully pleaded herein, the plaintiff prays for the following:

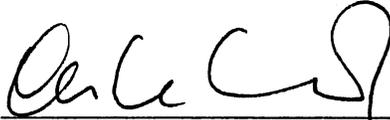
- 5 a. For all costs and attorney's fees herein incurred.
- 6 b. For all damages suffered by the estate of Jack Delguzzi and Gary Delguzzi,
7 whether caused by self-dealing, conversion, embezzlement, wrongful
8 practices not permitted by probate law and procedure, by self-dealing
9 transactions with his family members and by self-dealing transactions in
10 loans and failures to account to the Court, to the creditors, and to the heir
11 for the proper transactions of the estate and for any and all other tortious
12 and unlawful activities of the defendants that injured the Estate of Jack
13 Delguzzi, Gary Delguzzi, and the Estate of Gary Delguzzi.
- 14 c. The Estate of Jack Delguzzi and Gary Delguzzi and assignee David L.
15 Martin are entitled to damages for all real estate transactions for Estate of
16 Jack Delguzzi properties made by Mr. Wilbert at less than fair market value
17 wherein the full fair market value of the properties was not properly
18 credited to the rightful owner or owners.
- 19 d. For judgment against William E. Wilbert and any conspirators for all real
20 estate commissions paid to William E. Wilbert and any of his family
21 members and/or any alter ego entities in which he had an interest or of
22 which he had control, as well as his family members.
- 23 e. For interest on the judgment interest rate for all damages found to be due to
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1 the plaintiff as provided by law for liquidated damages.

2 f. For leave of court to amend the Complaint to conform to the evidence
3 obtained from discovery and to that admitted at trial.

4 g. For such other relief as the Court deems just and meet.

5 Dated this 11th of October 2007.

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8 _____
9 Charles M. Cruikshank III WSB 6682
Attorney for David L. Martin

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Superior Court Case Summary

Court: King Co Superior Ct
Case Number: 04-4-02163-1

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	04-30-2004	PTPOSD	Pet Prob Will For Ord Solv&nonintvn	
2	04-30-2004	CICS LOCS	Case Information Cover Sheet Original Location - Seattle	
3	04-30-2004	ORWPRSA EXP0001	Or Adm Will,appt Pr,adj Solv,dir Ad Ex-parte, Dept	06-30-2007
4	04-30-2004	OA	Oath /margaret Myers Shaw	
5	04-30-2004	LTRTS	Letters Testamentary	
6	04-30-2004	LWAT	Last Will & Testament	
7	04-30-2004	APRSAG	Appointment Of Resident Agent	
8	04-30-2004	NTAPTP	Notice, Appt & Pendency Of Probate	
9	04-30-2004	MTHRG EXP0001	Motion Hearing Ex-parte, Dept	
-	04-30-2004	AUDIO	Audio Log Dr 325-2/3:57:26	
10	04-30-2004	CRCDC	Certified Copy Of Death Certificate	
11	05-20-2004	NTSBC	Notice Of Substitution Of Counsel	
12	01-19-2005	ORAP EXP0001	Order Appoint Successor Prsnl Rep Ex-parte, Dept	
13	01-19-2005	OA	Oath /r Sidney Shaw	
14	01-19-2005	LTRTS	Letters Testamentary	
15	02-02-2005	PT	Petition Appoint Succ Prsn Rep	

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If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Contact Information

King Co Superior Ct
 516 3rd Ave, Rm C-203
 Seattle, WA 98104-2361
Map & Directions
 206-296-9100[Phone]
 206-296-0986[Fax]
Visit Website
 206-205-5048[TDD]

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Superior Court Case Summary

Court: King Co Superior Ct
Case Number: 04-4-01861-4

Sub	Docket Date	Docket Code	Docket Description	Misc Info
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1	04-09-2004	PTPOSD	Pet Prob Will For Ord Solv&nonintvn	
2	04-09-2004	CICS LOCS	Case Information Cover Sheet Original Location - Seattle	
3	04-09-2004	LWAT	Last Will & Testament	
4	04-09-2004	OA	Oath /loretta D Wilbert	
5	04-09-2004	ORWPRSA EXP0001	Or Adm Will,appt Pr,adj Solv,dir Ad Ex-parte, Dept	
6	04-09-2004	LRTS	Letters Testamentary	
7	04-09-2004	NTAPTP	Notice, Appt & Pendency Of Probate	
8	04-09-2004	NTCRD	Notice To Creditors	
9	04-09-2004	MTHRG EXP0001	Motion Hearing Ex-parte, Dept	
-	04-09-2004	AUDIO	Audio Log Dr 325-3/9:27:39	
10	04-27-2004	AFSR	Affidavit/declaration Of Service	
11	04-27-2004	CRDCLM	Creditor's Claim	
12	04-27-2004	RQ	Request For Special Notice Of Proceedings	
13	04-29-2004	CRML	Certificate Of Mailing	
14	04-30-2004	AFPUB	Affidavit Of Publication	
15	04-30-2004	AFSR	Affidavit/declaration Of Service	

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Visit Website
206-205-5048[TDD]

16	04-30-2004	CRDCLM	Creditor's Claim Amend	
17	04-30-2004	RQ	Request For Special Notice Of Proceeding/amended/c Chuikshank	
18	05-10-2004	RQ	Request /spec. Notice	
19	05-10-2004	CRDCLM	Creditor's Claim	
20	05-18-2004	NT	Notice Of Intent To Pay	
21	06-24-2004	NT	Notice Of Intent To Pay Atty Fees	
23	08-10-2004	CRDCLM	Creditor's Claim	
24	09-07-2004	NT	Notice /intent To Pay Fees	
25	09-09-2004	NT	Notice /intent To Pay Atty Fees	
26	09-21-2004	NT	Notice Of Intent To Pay Atty Fees	
27	11-01-2004	NT	Notice Of Intent To Pay Atty Fees	
28	01-25-2005	NTWSUB	Notice Withdraw & Substitut Counsel	
29	02-04-2005	NT	Notice /intent To Pay Atty Fees	
30	02-10-2005	NTAPR	Notice Of Appearance	
31	02-24-2005	NT	Notice Of Intent To Pay Atty Fees	
32	07-12-2005	NT	Notice Intent Pay Atty Fees	
33	01-26-2006	NTWSUB WTY0005	Notice Withdraw & Substitut Counsel Betz, Colonel Francis	
34	05-11-2006	NTPRH	Notice Of Probate Review Hearing	07-13-2006PR
35	07-11-2006	RPT	Report Re Ongoing Litigation	
36	07-14-2006	ORCNT ACTION	Order Of Continuance 1x Ct/close Or Report Status	07-12-2007PR
36	07-14-2006	ORCNT EXP0001	Order Of Continuance Ex-parte, Dept	07-12-2007PR
37	11-07-2006	AFML	Affidavit Of Mailing	
38	11-07-2006	NT	Notice Of Rejection Of Claim	
39	07-16-2007	ORCNT EXP0001	Order Of Cont/2xct/close Or Rpt Ex-parte, Dept	08-30-2007PR
40	07-25-2007	RPT	Report Of Probate Activity	
41	08-31-2007	ORCNT ACTION	Order Of Continuance 3x Ct/close Or Report Status	08-28-2008PR
41	08-31-2007	ORCNT	Order Of Continuance	08-28-2008PR

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42	02-29-2008	EXP0001 MT	Ex-parte, Dept Mtn Fr Order Require Inventory	
43	02-29-2008	NTMTDK ACTION	Note For Motion Docket Mtn Fr Inventory & Appraisement	03-18-2008P
44	03-13-2008	RSP	Response To Mtn For Inv/appraismnt Judgment & Fees	
45	03-13-2008	DCLR	Declaration Of G Michael Zeno Jr	
46	03-17-2008	RPY	Reply Re Inventory & Appraisemt/zen	
47	03-18-2008	ORDYMT	Order Denying Motion/petition	
48	03-18-2008	DCLR	Declaration /g Michael Zeno Jr	
49	03-18-2008	DCLR	Declaration /kelly Banker	
50	03-18-2008	MTHRG EXP0001	Motion Hearing Ex-parte, Dept	
-	03-18-2008	AUDIO	Audio Log Dr 325-3/10:34	

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

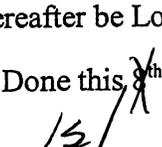
<p>Gary J. Delguzzi Plaintiff</p> <p>vs.</p> <p>William E. Wilbert, et al, et ux. Defendants</p>	<p>No. 8087</p> <p>ORDER SUBSTITUTING PERSONAL REPRESENTATIVES FOR DECEASED PARTIES</p>
--	---

Margaret M. Shaw, Personal Representative of the Estate of Gary Delguzzi,
having moved for Order Substituting Personal Representatives for two of the deceased
parties herein and, for good cause shown,

IT IS ORDERED that Plaintiff and Petitioner shall hereafter be Margaret Shaw, as
Personal Representative of Gary Delguzzi, and

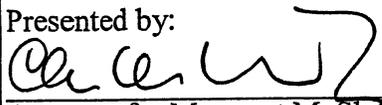
IT IS FURTHER ORDERED that Defendant and Respondent William E. Wilbert
shall hereafter be Loretta D. Wilbert, as Personal Representative of William E. Wilbert.

Done this 21st of June 2004.



Judge Craddock D. Verser

Presented by:



Attorney for Margaret M. Shaw, Personal Representative of Gary Delguzzi

Approved as to form; Notice of
Presentation Waived.

Attorney for Loretta D. Wilbert, Personal Representative of William E. Wilbert

RESPONDENT'S APPENDIX 10

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FEB 28 2007

FILED
CLALLAM COUNTY
DEC - 7 2006
BARBARA CHRISTENSEN, Clerk

ZENO, DRAKE AND HVELY, P.S.

CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>R. Sidney Shaw, Personal Representative of the Estate of Gary Delguzzi, Plaintiff, vs. William E. Wilbert, Loretta D. Wilbert, and their marital estate, Estate of William E. Wilbert, deceased, and Loretta D. Wilbert, its Personal Representative, ABC Corporations I Through XXV, and XYZ Partnerships I Through XXV and Western Bonding Company Defendants.</p>	<p>06 2 01085 2 COMPLAINT FOR DAMAGES</p>
---	--

1. Jack Delguzzi died on June 1, 1978. His only son and sole heir, Gary J. Delguzzi was appointed as his personal representative and so served until he resigned on August 13, 1982.
2. William E. Wilbert was appointed as successor administrator of the Estate of Jack Delguzzi on August 13, 1982.
3. Western Bonding Company is the bonding company that supplied the fiduciary

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

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bond for William E. Wilbert and is thus liable for the amount of that bond, believed to be \$100,000. That bond has never been exonerated.

4. The probate of the Estate of Jack Delguzzi is still open in Clallam County under supervised administration with Kathryn A. Ellis acting as its administrator.

5. Gary Delguzzi died on February 10, 2004, never having received any distribution of his inheritance from the estate of his father, Jack Delguzzi.

6. Plaintiff R. Sidney Shaw is the duly appointed personal representative of the Estate of Gary J. Delguzzi, who died on February 10, 2004.

7. R. Sidney Shaw, as personal representative of the Estate of Gary J. Delguzzi, is the assignee of any and all claims, causes of action and rights to recover for damages which were suffered by the Estate of Jack Delguzzi which were caused by the actions and failures to act of William E. Wilbert, as its administrator between August 13, 1982 and the date of his death on March 24, 2004, as well as of claims against others herein named or to be named, particularly ABC Corporations I through XXV, and XYZ Partnerships I through XXV, which are the alter ego entities of William E. Wilbert that were used by him to shield and assist him with his wrongdoing.

8. Loretta D. Wilbert is the surviving spouse of William E. Wilbert, and as all actions of Mr. Wilbert were in furtherance of their marital estate, Loretta D. Wilbert is also liable for the damages herein sought.

9. Loretta D. Wilbert is the personal representative of the Estate of William E. Wilbert, and thus is a proper party defendant and liable in that capacity for the damages herein sought.

- 1 10. Prior to his appointment as administrator, Wilbert enjoyed the trust and
2 confidence of Gary Delguzzi, with the resulting influence and control over Gary
3 Delguzzi, which resulted in a fiduciary relationship.
4
- 5 11. At the time of the death of Jack Delguzzi, he was a general partner with Gary
6 Delguzzi in various business enterprises, and they jointly owned business
7 properties used in these enterprises.
- 8 12. At the time of the death of Jack Delguzzi, he was a business partner with Charles
9 Nyhus, and some of the business enterprises and properties of Jack Delguzzi,
10 Charles Nyhus, and Gary Delguzzi, were commingled together as general
11 partnerships.
12
- 13 13. Gary Delguzzi signed management agreements, general powers of attorney and
14 security agreements in favor of Wilbert prior to and during the period of Wilbert's
15 administration of the Jack Delguzzi Estate.
- 16 14. Gary Delguzzi signed multiple trust agreements purporting to appoint William E.
17 Wilbert as his trustee and to transfer to Wilbert, as trustee, all the property jointly
18 owned by Gary Delguzzi with Jack Delguzzi and with Charles Nyhus, as well as
19 Gary Delguzzi's separately owned property.
20
- 21 15. During the approximately 22 years of the administration of the Estate of Jack
22 Delguzzi by William E. Wilbert, he engaged in constant self-dealing, failures to
23 account, conversion and misstatements of assets and liabilities of the properties of
24 Estate of Jack Delguzzi.
25
- 26 16. On December 16, 2005, Mr. Shaw, as the personal representative of the Gary
27 Delguzzi Estate, acquired by order signed by Kitsap County Superior Court Judge
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Leonard A. Costello, the rights to acquire all of the rights and claims that Estate of Jack Delguzzi had asserted, or could assert against the estate of William E. Wilbert and Loretta D. Wilbert, its personal representative, including their marital estate.

17. On January 16, 2006, Shaw exercised the right to acquire those rights by the tender of the court approved payment to, and acceptance by, Kathryn A. Ellis, the current administrator of the Estate of Jack Delguzzi.

18. The assets, funds, entitlements and uses of the above properties of the Estate of Jack Delguzzi, as well as Gary Delguzzi's assets were used by Wilbert in ill conceived, risky, speculative, self-dealing business ventures which were not approved or authorized by the probate court and that only benefitted Mr. Wilbert and his family members and his many alter ego business entities, which he owned and controlled.

19. Mr. Wilbert used Estate of Jack Delguzzi and Gary Delguzzi's assets to fund business ventures in Costa Rica and Panama and shielded information and accounting related to these ventures from the general creditors of the Estate of Jack Delguzzi, Gary Delguzzi, the probate court and other administrative creditors.

20. The Central American business ventures were tainted by Wilbert's self-dealing, misrepresentations and conversions and were the only activities in which he engaged in as administrator of the Estate of Jack Delguzzi that produced profitable enterprises while he was the administrator of Jack Delguzzi's estate.

21. Wilbert misstated the extent and involvement of Jack Delguzzi's estate in the

1 business ventures in Central America and ultimately sold, traded and disposed of
2 Jack's interests without payment of the full amount of the proceeds received for
3 these business ventures to their lawful owners.

4 22. In order to conceal his unlawful activities from the court, Gary Delguzzi, creditors
5 of Jack Delguzzi's estate, and from the taxing agencies of the United States and
6 the State of Washington,

- 8 a. Wilbert paid federal estate taxes from the Estate of Jack Delguzzi
- 9 b. even though he claimed it to be insolvent at the time,
- 10 c. in which case no such estate taxes would have been due and payable.

11 23. In order to conceal his unlawful activities from the court, Gary Delguzzi and
12 creditors of Jack's estate, and the taxing agencies of the United States and the
13 State of Washington,

- 15 a. Wilbert paid inheritance taxes to the State of Washington
- 16 b. even though there was no inheritance received by any heir of the Estate of
17 Jack Delguzzi
- 18 c. and thus no inheritance taxes have lawfully been due and payable.

19 24. Despite having dominion and control of the assets and operations of Jack's estate,
20 for over 22 years:

- 22 a. Wilbert failed and refused to prepare and file a complete inventory and
23 appraisal and
- 24 b. never filed an amended federal estate tax return
- 25 c. or a proper amended inheritance tax return.

26 25. Wilbert never sought any refund of the federal estate taxes paid.
27
28

- 1 26. Wilbert never sought refunds of the inheritance taxes paid to the state of
2 Washington.
- 3 27. Wilbert unnecessarily prolonged the administration of Jack Delguzzi's estate in
4 order to convert and deplete its assets and to multiply artificially its liabilities and
5 expenses, so that he could embezzle and convert the assets of the estate for his
6 own use and those of his family members and alter ego business entities.
- 7
8 28. Wilbert used funds of Gary Delguzzi to allegedly fund Estate of Jack Delguzzi
9 obligations and operations, which served only to benefit Wilbert at the expense of
10 Gary Delguzzi, Charles Nyhus, and Jack Delguzzi's estate and to their loss and
11 detriment and to the detriment of the general and administrative creditors of Jack
12 Delguzzi's estate.
- 13
14 29. Wilbert wrongfully disposed of Estate of Jack Delguzzi properties by transfers of
15 the properties to himself, to his family members, to alter ego entities, and others
16 without any independent and disinterested appraisals and many, if not all, of these
17 transfers were at less than fair market value.
- 18
19 30. Wilbert proceeded to use estate assets to operate ongoing and continuing business
20 operations, to fund new business operations, and to continue business operations
21 of the estate of Jack Delguzzi that were not authorized by the court or by law.
- 22 31. Wilbert concealed assets of Jack Delguzzi's estate from the court, its creditors,
23 and the sole heir of Jack Delguzzi's estate and he assigned notes and accounts
24 receivable of Estate of Jack Delguzzi to himself and others without full and
25 adequate consideration for those receivables for the Estate of Jack Delguzzi.
- 26
27 32. Even though ordered by the Court to return or credit real estate commissions for
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sales of estate properties by Wilbert, which he, his alter ego entities, and his family members had received from the sales of Estate of Jack Delguzzi properties, Wilbert failed and refused to so credit and repay these commissions to the estate and continued to misrepresent to the Court, the creditors, and to the heir that he was entitled to those commissions even after the Court's order to the contrary.

33. Rather than using the liquid assets of Jack Delguzzi's estate to pay creditors, Wilbert borrowed funds from third parties and arranged loans between third parties and the estate, which were secured by estate of Jack Delguzzi properties, while he represented to the creditors, to the court, and to the heir that he was making the loans to the estate and that therefore he was at risk for non-repayment of these loans, when he was exposed to negligible or no risk at all, as estate assets secured the loans.

34. During this time, Wilbert controlled all the affairs of the estate, was the only person with full knowledge of the estate's assets, liabilities, cash flow, and capacity to repay the loans, and the estate had no need of the borrowings, having sufficient liquidity to finance its proper administration without borrowing.

35. By using the estate's assets as security for collateral for outside borrowings, Wilbert managed to draw additional funds into the estate which he converted and took for his own purposes and benefits without any benefit to the estate and without proper accounting to the court, thus depleting its assets and defeating the lawful creditors of the estate and the rights and converting assets of Gary Delguzzi.

36. During the period when Wilbert was arranging these loans, he arranged to have Estate of Jack Delguzzi pay him interest on loans made by third parties to the

1 estate although the loans were secured by assets of the estate that were pledged to
2 the lenders and which were not secured by assets of William E. Wilbert or other
3 lenders who advanced funds to the estate.

4 37. Wilbert was thus at no risk related to the loans because Estate of Jack Delguzzi
5 assets were securing the loans, and not the assets of William E. Wilbert and
6 because he controlled the affairs of the estate and he determined who got paid and
7 when from estate funds.
8

9 38. Now, having fully pleaded herein, the plaintiff prays for the following:

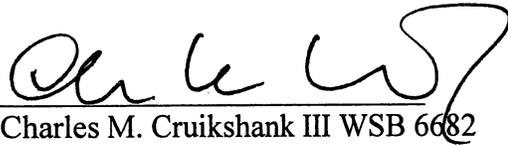
- 10 a. For all costs and attorney's fees herein incurred.
- 11 b. For all damages suffered by the estate of Jack Delguzzi, whether caused by
12 self-dealing, conversion, embezzlement, wrongful practices not permitted
13 by probate law and procedure, by self-dealing transactions with his family
14 members and by self-dealing transactions in loans and failures to account to
15 the Court, to the creditors, and to the heir for the proper transactions of the
16 estate.
17
- 18 c. The Estate of Jack Delguzzi is entitled to damages for all real estate
19 transactions for Estate of Jack Delguzzi properties made by Mr. Wilbert at
20 less than fair market value wherein the full fair market value of the
21 properties was not properly credited to the Estate.
22
- 23 d. For judgment against William E. Wilbert for all real estate commissions
24 paid to William E. Wilbert and any of his family members and / or any alter
25 ego entities in which he had an interest or of which he had any control.
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- 27 e. For interest on the judgment interest rate for all damages found to be due to
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the plaintiff as provided by law for liquidated damages.

f. For such other relief as the Court deems just and meet.

Dated this 7th of December 2006.



Charles M. Cruikshank III WSB 6682
Attorney for R. Sidney Shaw

RESPONDENT'S APPENDIX 11

FILED
CLALLAM COUNTY
NOV 02 2007
BARBARA CHRISTENSEN, Clerk

Visiting Judge
Department 1
Hearing Date: December 14, 2007
Time: 1:30 p.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

DAVID L. MARTIN,)
)
Plaintiff,)
)
vs.)
)
WILLIAM E. WILBERT, LORETTA D.)
WILBERT, and their marital estate,)
ESTATE OF WILILAM E. WILBERT,)
deceased, and LORETTA D. WILBERT, its)
Personal Representative, ABC)
CORPORATIONS I through XXV, and)
XYZ Partnerships I through XXV, and)
WESTERN BONDING COMPANY,)
)
Defendants.)

No. 06-2-01085-2

WILBERT'S MOTION
TO CHANGE VENUE
TO KING COUNTY

[Clerk's Action Required]

A. The origin of the present lawsuit.

For a long time William Wilbert was the personal representative of the Jack Delguzzi Estate, a probate that has been pending for the last twenty-nine years. Wilbert died in 2004. His widow, Loretta Wilbert, is the personal representative of his estate. Wilbert's probate is pending under King County cause no. 04-4-01861-4 SEA

Wilbert's Motion to Change Venue - 1

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

1 Wilbert's death created a vacancy in the position of personal representative of
2 the Jack Delguzzi Estate. From approximately August to October 2004, David Martin
3 held that post. Martin also happens to be the successor plaintiff in the present case.
4 Martin is one of several persons who have served as the nominal party in interest so that
5 attorney Charles M. Cruikshank III can pursue his personal *jihad* against the Wilberts.

6 During his stint as the Jack Delguzzi Estate's personal representative, Martin
7 filed a creditor's claim against the William Wilbert Estate. [Exhibit 1 to the Declaration
8 of G. Michael Zeno, Jr.] Loretta Wilbert, acting as her dead husband's personal
9 representative, rejected this creditor's claim on or around November 7, 2006. Under
10 RCW 11.40.100, this gave the holder of the claim 30 days to file suit. Sidney Shaw
11 (another of Cruikshank's nominal plaintiffs) did so, filing the present action in Clallam
12 County on or around December 7, 2006.

14 Since Cruikshank filed this action, the Estate of Jack Delguzzi has been closed.
15 Cruikshank has appealed the order closing the estate. A copy of the Notice of Appeal is
16 attached as Exhibit 5 to the Declaration of Zeno.

17 **B. King County is the proper venue for this action.**

18 Clallam County is the wrong venue for this case. Cruikshank should have filed it
19 in King County. Litigation over creditor claims in probate is governed by the general
20 venue rules of RCW 4.12, rather than by the special probate venue rules. *Schluneger v.*
21 *Seattle-First National Bank*, 48 Wn.2d 188 (1956); *Bailey v. Schramm*, 38 Wash.2d 719,
22

1 722, 231 P.2d 333 (1951); *City of Spokane v. Costello*, 57 Wash. 183, 106 P. 764 (1910).

2 Under the general venue rules, an action usually must be brought in the county where
3 the defendant resides. RCW 4.12.025(1). There are some exceptions to this rule, but
4 none apply here. Loretta Wilbert, the defendant in this case, resides in King County.

5 Under RCW 4.12.030(1), when “the county designated in the complaint is not
6 the proper county,” venue should be changed. See *Cole v. Sands*, 12 Wn.App 199
7 (1974), where the trial court was reversed for failing to change venue to the county
8 where the defendant resided. Wilbert has the right to change venue to King County.

9
10 **C. Cruikshank has refused to cooperate in changing venue.**

11 After this action was filed in the wrong county, Wilbert drafted a stipulation for
12 change of venue and sent it to Cruikshank. She believed that Cruikshank (or whomever
13 his client was at the moment) preferred a King County venue, for his convenience if
14 nothing else, and would welcome the stipulation. Cruikshank did not respond. Wilbert
15 sent the stipulation again. Again no response. See Exhibits 2, 3, and 4 to Declaration of
16 Zeno.

17 More recently, Cruikshank himself brought a motion for change of venue and for
18 certain other relief, scheduled to be heard on October 26, 2007. Wilbert filed a
19 Response, agreeing to the change of venue and opposing the other relief requested. For
20 whatever reason, Cruikshank withdrew his motion entirely.

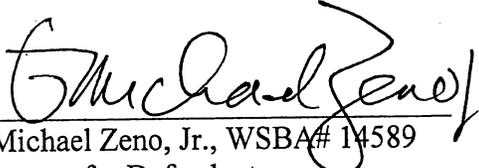
21
22 **D. Under RCW 4.12.090(1), the plaintiff (presently David Martin) is liable
for the cost of changing venue and for Wilbert’s attorneys fees.**

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RCW 4.12.090(1) provides that the plaintiff who filed suit in the wrong county must “pay costs of transfer” and, “if the court finds that the plaintiff could have determined the county of proper venue with reasonable diligence, it shall order the plaintiff to pay the reasonable attorney’s fee of the defendant for the changing of venue to the proper county.” In the present case, Cruikshank and Shaw (his client at the time) knew the county of proper venue. They knew Loretta Wilbert lived in King County. They knew, or should be presumed to have known, that the law required Loretta Wilbert to be sued in her county of residence. Loretta Wilbert requests attorneys’ fees of \$2000, as explained further in paragraph 7 of the Declaration of G. Michael Zeno, Jr.

DATED this 31th day of October, 2007.

ZENO, DRAKE & HIVELY, P.S.


G. Michael Zeno, Jr., WSBA# 14589
Attorneys for Defendants

SCANNED 3

CERTIFIED COPY

FILED
CLALLAM CO CLERK
2007 DEC -7 P 4:29
BARBARA CHRISTENSEN

Visiting Judge
Department 1
Hearing Date: December 14, 2007
Time: 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

DAVID L. MARTIN,)
)
Plaintiff,)
)
vs.)
)
WILLIAM E. WILBERT, LORETTA D.)
WILBERT, and their marital estate,)
ESTATE OF WILILAM E. WILBERT,)
deceased, and LORETTA D. WILBERT, its)
Personal Representative, ABC)
CORPORATIONS I through XXV, and)
XYZ Partnerships I through XXV, and)
WESTERN BONDING COMPANY,)
)
Defendants.)

No. 06-2-01085-2

12/7/07

~~FILED~~ *Frison*
ORDER CHANGING VENUE
TO KING COUNTY AND

~~AWARDING FEES AND COSTS~~

FILED
CLALLAM CO CLERK
2007 DEC -7 P 3:42
BARBARA CHRISTENSEN

I. HEARING

1.1. This matter came on for hearing before the undersigned Judge/Commissioner on Monday, November 12, 2007 on Loretta Wilbert's Motion for Change of Venue.

Order Changing Venue and
Awarding Fees and Costs - 1

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

ORIGINAL

57 *pc*

CERTIFIED
COPY

1 1.2. The moving party appeared telephonically through her attorney, G. Michael
2 Zeno, Jr. and the respondent appeared telephonically through his attorney, Charles M.
3 Cruikshank III.

4 1.3. The Court considered the pleadings filed by the parties, matters on file, and
5 the argument of counsel, and, based on the foregoing, enters the following order:
6

7 II. ORDER

8 2.1. Venue in Clallam County Superior Court cause no. 06-2-01085-2 is changed
9 to King County Superior Court.

10 2.2. The Court finds that Sidney Shaw, the original plaintiff in Clallam County
11 Superior Court cause no. 06-2-01085-2, and his attorney, Charles M. Cruikshank III,
12 could have determined the county of proper venue with reasonable diligence, and
13 therefore orders that a judgment for \$2000 shall be entered against them jointly and
14 severally for attorneys fees Loretta Wilbert incurred in changing venue.

15 2.3. The successor plaintiff David Martin shall pay the costs of transferring venue
16 of Clallam County Superior Court cause no. 06-2-01085-2 to King County Superior
17 Court.

18 2.4. The Court further orders that no further motions or pleadings seeking
19 affirmative relief may be filed by the plaintiffs in this matter until the attorneys fees and
20 costs of transferring venue have been paid.
21

22 ~~HEAR~~
*The Trial Judge will determine if fees
should be ordered for the change of venue. CDV
12/7/07*

Order Changing Venue and
Awarding Fees and Costs - 2

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

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DATED this 7 day of ^{December}~~November~~, 2007.

**CERTIFIED
COPY**


Judge/Commissioner

Presented by:
ZENO, DRAKE and HIVELY, P.S.

By 
G. Michael Zeno, Jr. WSBA No. 14589
Attorneys for Loretta Wilbert

Order Changing Venue and
Awarding Fees and Costs - 3

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

RESPONDENT'S APPENDIX 12

RECEIVED

APR 02 2008

ZENO, DRAKE AND HVELY, P.S.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

E. Sidney Shaw, as PR for estate of Gary Delguzzi

NO. 08-2-10290-4 SEA

Order Setting Civil Case Schedule (*ORSCS)

vs

Plaintiff(s)

Lorret D. Wilbert, et al

ASSIGNED JUDGE Benton 49

FILE DATE: 03/26/2008

Defendant(s)

TRIAL DATE: 09/14/2009

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

Print Name

Sign Name

I. NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] – especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$200 must be paid when any answer that includes additional claims is filed in an existing case.

SHOW CAUSE HEARINGS FOR CIVIL CASES [King County Local Rule 4(g)]

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. A review of the case will be undertaken to confirm service of the original complaint. A *Show Cause Hearing* will be set before the Chief Civil or RJC judge if needed. The Order to Show Cause will be mailed to the plaintiff(s) or counsel to attend.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this **Schedule** are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to **mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

King County Local Rules are available for viewing at www.metrokc.gov/kcsc.

II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Wed 03/26/2008	*
Confirmation of Service [See KCLR 4.1].	Wed 04/23/2008	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	Wed 09/03/2008	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLR 4.2(a) and Notices on Page 2]. Show Cause hearing will be set if Confirmation is not filed or Box 2 is checked.	Wed 09/03/2008	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLR 82(e)]	Wed 09/17/2008	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLR 26(b)].	Mon 04/13/2009	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLR 26(b)].	Tue 05/26/2009	
DEADLINE for Jury Demand [See KCLR 38(b)(2)].	Mon 06/08/2009	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLR 40(e)(2)].	Mon 06/08/2009	*
DEADLINE for Discovery Cutoff [See KCLR 37(g)].	Mon 07/27/2009	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLR 16(c)].	Mon 08/17/2009	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLR 16(a)(4)].	Mon 08/24/2009	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLR 16(a)(2)].	Mon 08/24/2009	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLR 56; CR 56].	Mon 08/31/2009	
Joint Statement of Evidence [See KCLR 16(a)(5)].	Tue 09/08/2009	*
Trial Date [See KCLR 40].	Mon 09/14/2009	

III. ORDER

Pursuant to King County Local Rule 4 [KCLR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 03/26/2008



PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this Schedule. The assigned Superior Court Judge will preside over and manage this case for all pre-trial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

The following procedures hereafter apply to the processing of this case:

APPLICABLE RULES:

a. Except as specifically modified below, all the provisions of King County Local Rules 4 through-26 shall apply to the processing of civil cases before Superior Court Judges.

CASE SCHEDULE AND REQUIREMENTS:

A. Show Cause Hearing: A Show Cause Hearing will be held before the Chief Civil/Chief RJC judge if the case does not have confirmation of service on all parties, answers to all claims, crossclaims, or counterclaims as well as the confirmation of joinder or statement of arbitrability filed before the deadline in the attached case schedule. All parties will receive an *Order to Show Cause* that will set a specific date and time for the hearing. Parties and/or counsel who are required to attend will be named in the order.

B. Pretrial Order: An order directing completion of a Joint Confirmation of Trial Readiness Report will be mailed to all parties approximately six (6) weeks before trial. **This order will contain deadline dates for the pretrial events listed in King County Local Rule 16:**

- 1) Settlement/Mediation/ADR Requirement;
- 2) Exchange of Exhibit Lists;
- 3) Date for Exhibits to be available for review;
- 4) Deadline for disclosure of witnesses;
- 5) Deadline for filing Joint Statement of Evidence;
- 6) Trial submissions, such as briefs, Joint Statement of Evidence, jury instructions;
- 7) voir dire questions, etc;
- 8) Use of depositions at trial;
- 9) Deadlines for nondispositive motions;
- 10) Deadline to submit exhibits and procedures to be followed with respect to exhibits;
- 11) Witnesses -- identity, number, testimony;

C. Joint Confirmation regarding Trial Readiness Report: No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment), etc. If parties wish to request a CR 16 conference, they must contact the assigned court.

Plaintiff/petitioner's counsel is responsible for contacting the other parties regarding said report.

D. Settlement/Mediation/ADR:

1) Forty five (45) days before the Trial Date, counsel for plaintiff shall submit a written settlement demand. Ten (10) days after receiving plaintiff's written demand, counsel for defendant shall respond (with a counteroffer, if appropriate).

2) Twenty eight (28) days before the Trial Date, a settlement/mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

E. Trial: Trial is scheduled for 9:00 a.m. on the date on the *Schedule* or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website at www.metrokc.gov/kcsc to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

MOTIONS PROCEDURES:

A. Noting of Motions

Dispositive Motions: All Summary Judgment or other motions that dispose of the case in whole or in part will be heard with oral argument before the assigned judge. The moving party must arrange with the courts a date and time for the hearing, consistent with the court rules.

King County Local Rule 7 and King County Local Rule 56 govern procedures for all summary judgment or other motions that dispose of the case in whole or in part. The local rules can be found at www.metrokc.gov/kcsc.

Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the *Note for Motion* should state "Without Oral Argument." King County Local Rule 7 governs these motions, which include discovery motions. The local rules can be found at www.metrokc.gov/kcsc.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions Calendar. King County Local Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.metrokc.gov/kcsc.

Emergency Motions: Emergency motions will be allowed only upon entry of an *Order Shortening Time*. However, emergency discovery disputes may be addressed by telephone call, and without written motion, if the judge approves.

Filing of Documents All original documents must be filed with the Clerk's Office. *The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge.* The assigned judge's working copy must be delivered to his/her courtroom or to the judges' mailroom. Do not file working copies with the Motions Coordinator, except those motions to be heard on the Family Law Motions Calendar, in which case the working copies should be filed with the Family Law Motions Coordinator.

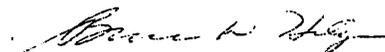
Original Proposed Order: Each of the parties must include in the working copy materials submitted on any motion an original proposed order sustaining his/her side of the argument. Should any party desire a copy of the order as signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order.

Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final orders and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

C. Form: Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

RESPONDENT'S APPENDIX 13

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JUDGE MONICA J. BENTON

RE-NOTED FOR APRIL 22

KING COUNTY WASHINGTON SUPERIOR COURT

<p>R. Sidney Shaw, Personal Representative of the Estate of Gary Delguzzi, Plaintiff, v. Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et. al., Defendants.</p>	<p>NO. 08-2-10290-4 SEA AMENDED MOTION & DECLARATION FOR ORDER GRANTING LEAVE TO AMEND COMPLAINT</p>
--	--

RELIEF SOUGHT: Comes now the Plaintiff, who moves for leave to amend the complaint here, as further set out in the Subjoined Declaration of Counsel, following.

FACTS RELEVANT THE MOTION: The Defendants has been served with the Complaint and Summons herein, and not having filed an answer, Plaintiff has moved for Default.

Prior to the Complaint of March 5, 2007, the original plaintiff herein, R. Sidney Shaw, as Personal Representative of the Estate of Gary Delguzzi, assigned his claims and rights to recovery to David L. Martin, who is now the real party at interest pursuant to CR 20.

ISSUES RELEVANT TO THE MOTION: Whether the court should grant leave to

AMD. MOTION & DECLARATION
FOR ORDER GRANTING LEAVE
TO AMEND COMPLAINT

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624 6761 WSB #6682

1 amend the Complaint to comply with CR 20.

2 **EVIDENCE RELIED UPON:** Subjoined Declaration of David L. Martin, CPA,

3 following:

4 I am over the age of majority and otherwise fully competent as to all matters herein
5 testified to and I make this declaration of my personal knowledge under penalty of perjury
6 under laws of the state of Washington, except where stated to be made upon information
7 and belief and those allegations I believe to be true.

9 1. The Plaintiff, R. Sidney Shaw is the personal representative of the Estate of Gary
10 Delguzzi. He succeeded into that role after the personal representative named in
11 Mr. Delguzzi's Last Will and Testament, his wife Margaret Shaw, unexpectedly
12 died while serving as Personal Representative.

14 2. On March 21, 2007, I finalized an agreement with the Plaintiff, R. Sidney Shaw,
15 as Personal Representative of the Estate of Gary Delguzzi, with Shaw assigning
16 the rights to seek recovery for all claims that Gary's Estate had or could assert
17 against the Estate of William E. Wilbert, his alter egos and Loretta Wilbert, his
18 wife and their marital estate as well as against all others who had caused damages
19 to Gary Delguzzi or his estate. Copies of the Assignment of Claim Proceeds,
20 Option for Assignment and the related Promissory Note are attached hereto as
21 Exhibit 1. I served briefly as interim administrator of the Estate of Jack Delguzzi
22 during parts of August, September and October of 2004, after Mr. Wilbert's death
23 in that office.

26 3. Judge Leonard A. Costello approved the assignment with limitations on June 2,
27 2006 and a copy of his order is attached hereto as Exhibit 2.

28
AMD. MOTION & DECLARATION
FOR ORDER GRANTING LEAVE
TO AMEND COMPLAINT

Page 2

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624 6761 WSB #6682

- 1 4. Sidney Shaw lost his wife of many years, Margaret Shaw, to cancer in 2004, while
- 2 she was his predecessor as the Personal Representative of her cousin Gary
- 3 Delguzzi's Estate.
- 4
- 5 5. While William E. Wilbert was the administrator of the Jack Delguzzi Estate, he
- 6 entered into a contractual agreement in or about 1985 to pay to Ms Shaw and to
- 7 her sister, Catherine Myers, the sum of \$167,500 from the Jack Delguzzi Estate,
- 8 while that estate was apparently fully solvent. This settlement was to resolve
- 9 claims that the late father of Ms Shaw and Ms Myers had against the Estate of
- 10 Jack Delguzzi. Mr. Wilbert never made any payments on this agreement from the
- 11 Delguzzi Estate to either of these sisters.
- 12
- 13 6. Mr. Wilbert first announced to the court and the general creditors that the Jack
- 14 Delguzzi estate was insolvent in 1997, so that none of the general creditors has
- 15 ever received any distributions or payments from the Estate of Jack Delguzzi.
- 16
- 17 7. Division II of the Washington Court of Appeals found in its August 31, 2001
- 18 unpublished opinion, *Delguzzi v. Wilbert, et al.*, Case No. 24860-3-II, which
- 19 reversed the dismissal of the Gary Delguzzi's claims, and which included the
- 20 same claims as stated in this case, as follows:

21 FACTS

22 I. THE FIRST APPEAL

23 A. PRECIPITATING EVENTS

24 Jack DelGuzzi died in 1978, leaving his son and sole heir, Gary DelGuzzi
 25 (DelGuzzi) as personal representative of his estate. DelGuzzi served as
 26 representative until August 13, 1982, when he resigned in favor of the
 27 current Administrator, William Wilbert. Under Wilbert's administration,
 28 DelGuzzi has received no distributions from the multi-million dollar
 estate. Wilbert, however, has billed the estate for 125% of its net value; of

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this billed amount, he has been paid fees and costs totaling about 90% of the net estate. Moreover, the estate's net assets have diminished from \$ 7.36 million in 1989 to less than the \$ 1.6 million Wilbert billed in 1997. Although the estate was ready to be closed at least by 1997, it still remains open.

8. Mr. Shaw, the nominal plaintiff herein, now stands only as an unsecured creditor of the Estate of Jack Delguzzi and now has no rights to seek recovery for claims of Gary Delguzzi or Gary's estate against the above parties except as defined by the assignment, which transferred those rights to me, and reserves to Sidney Shaw only an interest in any proceeds of my success in collection of the claims.

9. Mr. Shaw was a single parent and the parent of 2 teenage sons when this matter was commenced in his name. He resides in Pentwater, Michigan, after he lost his job as a middle manager for an office furniture manufacturer during 2007. His only "first hand" knowledge of the case comes from when his wife and he were students at the University of California at Berkeley in the mid-80's and were gleaned largely from what she told him about the settlement. Neither he, nor she, while she was alive, had any direct information about the basis of the 1980's settlement

10. According to Mr. Shaw, all that he knows about the case and the claims are what he recalls from recently reading the correspondence between his wife and her lawyers while the above described settlement was being negotiated. The settlement provides that it bears no interest.

11. Mr. Shaw is thus no longer the nominal "real party" at interest, as I have the rights to pursue the claims and to be named as plaintiff herein pursuant to CR 20.

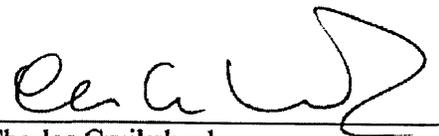
12. Included herewith is the Complaint (Amendment #2) as Exhibit 3, which

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incorporates the changes above described.

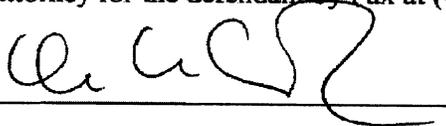
Dated and signed at Seattle, Washington on this 2nd of April 2008.

David L. Martin



Charles Cruikshank
Attorney for the Plaintiffs

The undersigned certifies that the foregoing was served upon the below identified attorney for the defendant by Fax at (425)822-1411 on this April 16nd, 2008 at ~~10:20 AM~~



1:10 pm
and 1st class
MARC -

Michael Zeno
4020 Lake Washington Blvd. #100
Kirkland, WA 98033

RESPONDENT'S EXHIBIT A

Attorney	Whom Attorney Represented	Case Name, Court, Cause No.
Cressman, Paul R.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Burgess, John O.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Heaton, Robert E.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Shaw, Robert J.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Maron, Andrew W.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Osborn, Christopher J.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Oliver, James A.	William E. Wilbert, as PR of Jack Delguzzi Estate Gary Delguzzi, Individually	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Hallett, Darrell D.	William E. Wilbert, personally	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Johnson, Larry N.	William E. Wilbert, personally	<i>Shaw v. Short Cressman & Burgess, et al</i> King County 06-2-27262-5 SEA
Ellis, Kathryn	Personal Representative of Estate of Gary Delguzzi	<i>Martin v. Ellis, et al.</i> King County 07-2-21635-9 SEA

RESPONDENT'S EXHIBIT B

RECEIVED

MAR 06 2008

ZENO, DRAKE AND HWEELY, P.S.
Appeal No. 36682-7-II

COURT OF APPEALS, DIVISION II OF THE STATE OF
WASHINGTON

In the matter of the estate of JACK DELGUZZI, Deceased.	No. 8087 MOTION ON THE MERITS
DAVID L. MARTIN, Personal Representative of Gary Delguzzi estate, Appellant,	
KATHRYN A. ELLIS, Personal Administrator of Jack DelGuzzi estate, Respondent.	

1. **Identity of Moving Party**

Respondent, Kathryn A. Ellis, Personal Administrator of Jack DelGuzzi estate.

2. **Statement of Relief Sought**

Respondent seeks that the Court summarily affirm the Order of July 27, 2007 appealed from, and award attorney fees and costs for the frivolity of this appeal pursuant to RAP 18.9

MOTION ON THE MERITS - 1

COPY

3. **Facts Relevant to motion**

A. Background facts.

Jack Delguzzi passed away in 1978. Initially, his son, Gary Delguzzi, was the Personal Administrator of his estate. William Wilbert became the Personal Administrator in 1982, and so served until his death on March 24, 2004. David Martin, Appellant herein, was subsequently appointed temporary Personal Administrator on August 8, 2004.

Respondent Kathryn A. Ellis was appointed as the successor Personal Administrator on the 3rd day of January, 2005.

B. Procedural Facts.

On December 12, 1996, William Wilbert filed a Final Report and Petition for Decree of Distribution. **(CP 1746)** On or about January 20, 1997 William Wilbert filed a Supplement to Final Report and Petition for Decree of Distribution, all pursuant to RCW 11.76.030. **(CP 1189, 1263, 1363, 1464, 1564)** After testimony and evidence were taken, on October 7, 1997 the trial court issued a Memorandum Decision which provided:

The Administrator, William E. Wilbert, filed a Final Report and Petition for Distribution pursuant to RCW 11.76.030. The Report and Petition included a comprehensive accounting for the Estate during the period of his administration. The Court heard testimony and evidence from the Administrator and other interested persons regarding the approval of the Final Report and the Accounting during the periods of January 21 through 23, 1997, and March 24

and 25, 1997. It appears to this Court, having heard the testimony and reviewed the documents made part of the record at the hearings in January and March, that this Estate is ready to be settled and closed or at least as ready to be settled and closed as it will ever be. In light of the length of time this Estate has been open and in light of the complexity of the Estate, it appears to this Court that the most orderly way to proceed is for the Court to address the issues contested in January and March regarding administrative expenses and other claims and then allow the parties to attempt to reach an agreement regarding distribution in light of the Court's decision.

(CP__; Sub # 749) An agreement regarding the 'plan' for distribution was not reached and the Court entered a subsequent Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution on June 5, 1998. (CP__; Sub # 910) That Order provided:

3. Plan for Distribution and Closing the Estate.

e. The administrator is authorized to accept on behalf of the Estate an offer to purchase any parcel of Estate real property at a price equal to or greater than the property's current assessed value.

h. Following notice of the same to all interested parties, the administrator is authorized to pay from assets of the Estate all necessary and reasonable fees of the administrator, attorneys, and accountants for time spent on matters relating to carrying out the plan for distribution and closing the Estate, and all other necessary and reasonable expenses incurred in continuing the administration to the Estate or in carrying out the plan for distribution and

closing the Estate.

- i. The administrator is authorized and allowed with prior notice to all parties to make pro rata interim distributions to the three administrative claimants in partial satisfaction of their approved administrative claims.

(CP__; Sub # 910) Most notably, the order expressly stated “This order is entered as a final order on this day”. (CP__; Sub 910, page 6) No appeal was filed by any party.

On July 1, 2004, after Mr. Wilbert’s passing, consolidated balance sheets showing Mr. Wilbert’s 1998-2004 administration of the case were filed by the representative of Mr. Wilbert’s estate, Loretta Wilbert.

(CP__; Sub # 1142) The documentation shows, *inter alia*, the receipt and disposition of funds since the Final Report was approved. That report also identified nineteen remaining pieces of undeveloped real estate for liquidation.

When Ms. Ellis was appointed, the estate was administratively insolvent; there were approved and unpaid professional fees in the aggregate sum of \$2,025,038.00 owed to William Wilbert, Short & Cressman and Benson & McLaughlin, and assets remained with an assessed value of only \$244,000. (CP__; Sub # 1142)

After Ms. Ellis' appointment, and pursuant to the Final Report, she sold the remaining properties, with notice to Appellant, and obtained Court approval for disbursement pursuant to the Court's 1998 Order approving the plan of distribution. Specifically, an Order on Motion for Partial Distribution was entered on December 22, 2005 (CP ___; Sub # 1334) and a second distribution Order on July 7, 2006. (CP ___; Sub # 1391) No appeal was taken from those prior distribution orders.

On the 6th day of July, 2007, Ms. Ellis filed a Final Supplemental to Final Report, showing the proposed final distribution of the remaining funds of \$15,643.45, and transfer of the remaining real estate. (CP 261 & 267, ___; Sub # 1423) An Order was entered approving the final proposed distribution, closing the case and discharging the bond of the Personal Administrator. (CP ___; Sub # 1433) Mr. Martin appealed this order.

4. Grounds for Relief and Argument

A. The 1998 Order Approving the Final Report is final.

RCW 11.76.030 provides:

When the estate shall be ready to be closed, such personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report

and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his previous report, and debts paid, and generally the condition of the estate at that time. **...and shall give a particular description of all the property of the estate remaining undisposed of**, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. (Emphasis supplied)

The majority of this estate was liquidated prior to the Order approving the Final Report, but some assets remained for liquidation. The Order approving the Final Report was entered 10 years ago, and no appeal was filed. The June 5, 1998 Order provided, *inter alia*, that fees and costs were allowed to William Wilbert in the amount of \$806,661.00, Short Cressman & Burgess in the amount of \$1,077,204.00 and Benson & McLaughlin in the amount of \$141,173.00. The Order also provides:

The administrator is authorized and allowed with prior notice to all parties to make pro rata interim distributions to the three administrative claimants in partial satisfaction of their approved administrative claims; provided, however, that the administrator retains in the Estate sufficient liquid assets to meet all necessary and reasonable expenses of the continuing administration of the Estate until it is closed or to carry out the plan for distribution and closing the Estate. Any pro rata Interim distribution shall be based on the ratio of the amount of each administrative claim to the total amount of all three administrative claims.

RAP 5.2 (a) requires that an appeal be filed within 30 days of the entry of the decision of the trial court sought to be reviewed, subject to certain post-trial motions. No appeal was filed of the Order approving Final Report in 1998, and accordingly it is final.

The two prior distributions made by Ms. Ellis were in accordance with that Order, with prior notice to the parties. Neither Order was appealed.

The 1998 Order approving the Final Report cannot now, 10 years later, be collaterally attacked by the appeal of the Order closing this estate.

[A]n appeal from a subsequent order that has been shown to have affected prejudicially a substantial right will not bring up for review a prior final judgment in the same cause, especially after expiration of the 30-day appeal time mandated by CAROA 33.

Seattle-First National Bank v. Marshall, 16 Wash. App. 503, 508, 557 P.2d 352 (1976). The final order of June 5, 1988 specified the liquidation of remaining property, and permitted the pro rata payment of allowed claims, which is exactly what was accomplished.

A final decree of distribution in probate may direct the payment of particular claims or legacies, and may direct that receipts be filed in order to show compliance with the decree, yet the necessity of taking these subsidiary steps, even if they must be confirmed by order subsequent to the decree, does not make the final decree of distribution any less final for purposes of appeal. In *6 Moore's Federal Practice* para. 54.43[2] (2d ed. 1965), the definition of a final decree is quoted from *Beebe v. Russell*, 60 U.S. (19 How.)

283, 285, 15 L. Ed. 668 (1857):

A "decree may be final, although it directs a reference to a master, if all the consequential directions depending upon the result of the master's report are contained in the decree, so that no further decree of the court will be necessary, upon the confirmation of the report, to give the parties the entire and full benefit of the previous decision of the court." . . . Also a decree may be final although leave is given to apply for further relief, or the court reserves the right to make further orders.

Nestgard v. Investment Exchange Corp., 5 Wash. App. 618, 624, 489 P.2d 1142 (1971). As there was no appeal to the final order of June 5, 1998, there can be no collateral attack by the appellant by the present appeal.

B. There was no abuse of discretion.

RCW 11.96A.020 confers plenary power on the probate court. The court has "full power and authority" to proceed "in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court." *In re Estate of Ginsberg*, 136 Wn. App. 1029 (2006). A trial court's decision to remove a personal representative receives considerable deference is reviewed only for an abuse of discretion. *In re Estate of Ehlers*, 80 Wn. App. 751, 761, 911 P.2d 1017 (1996). Certainly review of the decision of a trial court determining that it is time to close a thirty year old probate case, the Final

Report for which was approved ten years ago, must be limited to whether the entry of the closure order was an abuse of discretion.

Appellant vociferously complains about the actions of all parties and all counsel ever involved in this proceeding, but such allegations are not the subject of this appeal¹. All of Appellant's rambling about orders entered between 1997 and 2006 are irrelevant to the sole order that is the subject of this appeal. The only order that is the subject of this appeal is the one order attached to the Appellants Notice of Appeal².

The July 2007 order was entered pursuant to a motion of the Personal Administrator showing an inventory of the proceeds received since her appointment, together with a re-capitulation of the previous sales and distribution of funds that the Court previously approved, and the

¹ The Appellant has sought relief independently against Short, Cressman & Burgess and Chicoine & Hallett. King County Superior Case Number 06-2-27262-5SEA. That action has been dismissed with prejudice, and violation of Rule 11 has been found against the plaintiff and counsel, with the amount of sanctions under advisement by the Honorable Glenna Hall. Appellant and counsel have also filed independent actions against Kathryn A. Ellis, King County Case Number 07-2-21635-9SEA, and the estate of William Wilbert, King County Case Number 06-2-0185-2SEA.

² Although the Appellant filed an "Amended Notice of Appeal" in December of 2007, this Amended Notice attached an unrelated order not involving the Respondent or affecting the Order originally appealed from. This is ineffective to change the Order that is the subject of this appeal. RAP 2.4.

proposed final distribution of remaining funds and property. The distribution proposed by the July 2007 order concerned the final distribution of the sum of \$15,643.45 and the real estate known as 9999 Bumpy Rd, Port Angeles, WA³. The July 2007 application merely asked the Court to formally approve the proposed final distribution, calculated in accordance with the prior order of the Court, discharge the Personal Administrator and discharge the bond as all property had been liquidated.

Where the trial court enters an order in compliance with a prior, final order, there can be no showing that it was an “abuse of discretion”.

- C. This appeal is frivolous, advanced without reasonable cause, and attorney fees and costs should be awarded to the Respondent pursuant to RAP 18.9.

RAP 18.9 provides that the Court may award terms or compensatory damages to a party who has been harmed by a frivolous appeal and/or the failure to comply with the rules. As this is an administratively insolvent estate, plainly the Personal Administrator, and

³ The remaining pieces of real estate were believed to be unsaleable. However, when an ‘offer’ of \$1,200 was received, the Personal Administrator was authorized “in her sole discretion, to sell the parcels” providing that the parcels could be sold on the terms represented: no formal closing, no fees or costs to be paid by the estate, and the transfers to be by quit claim deed and without warranty. When that was accomplished, the amount to be distributed was increased by \$1,200. This provision was inserted by hand to the July 27, 2007 order.

the professionals with outstanding, unpaid awards of fees and costs of over \$2 million have been harmed by the delays and costs of this frivolous appeal. The Appellant has shown no basis in law or fact for the appeal of the July 27, 2007 order closing this estate. The allegations that are made by the Appellant simply regurgitate complaints that pertain to the Court's approval of the Final Report and the award of fees, orders that were final ten years ago and which the appellant failed to appeal.

5. Summary

Ironically, the Appellant previously complained that the estate was not closed, and sought to compel the Personal Administrator to close the estate even though all assets were not liquidated:

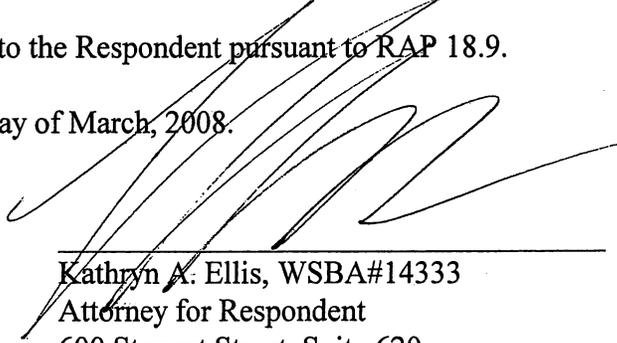
The Plaintiff is merely asking the Court to instruct the administrator, as it did on June 5, 1997 [sic], that the estate is ready to be closed and to close it. The prior administrator, Mr. Wilbert, ignored the Court's mandate and the estate limped along for another nine plus years, and continues to be open today wasting others' time and its money.

Plaintiff's Reply Re: Order Directing Closure of Estate dated May 11, 2006. (CP___; Sub # 1376) Now, the Appellant objects to the closure of the case, and appeals the entry of an order approving the same⁴.

⁴ Appellant also complains that no 'receipts' or proof of disbursement have been filed. See Brief, page 10. That cannot be completed until the July 2007 Order becomes final, which this appeal has delayed.

There should be finality to this thirty year old probate case. The appeal from the July 2007 order closing this case is frivolous, and fees and costs should be awarded to the Respondent pursuant to RAP 18.9.

DATED this 6th day of March, 2008.



Kathryn A. Ellis, WSBA#14333
Attorney for Respondent
600 Stewart Street, Suite 620
Seattle, WA 98101
(206) 682-5002

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RESPONDENT'S EXHIBIT C

TOTAL ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COSTA RICA TIME AND COMMISSIONS

Year	Admin. (@ \$135/hr)	Staff (@ \$75/hr)	Total \$ Admin & Staff	Costa Rica Adjustment (Admin. Hrs.)	Costa Rica Adjustment (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.)	Costa Rica Adjustment (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE	Commissions Paid Broker	Commissions Adjustment	Amount Due For Year	Amount Paid By Estate During Year
1982	565.2	0	\$ 76,302	4	\$ (540)	0	\$ -	\$ -	\$ (540)	\$ 75,762	\$ -	\$ -	\$ 75,762	\$ -
1983	1531.15	1	\$ 206,780	396.2	\$ (53,487)	0	\$ -	\$ (2,174)	\$ (55,661)	\$ 151,119	\$ -	\$ -	\$ 151,119	\$ (89,000)
1984	1884.58	18.62	\$ 255,815	119	\$ (16,065)	0	\$ -	\$ (2,171)	\$ (18,236)	\$ 237,579	\$ -	\$ -	\$ 237,579	\$ -
1985	1093.52	7.14	\$ 148,161	68	\$ (9,180)	0	\$ -	\$ (1,070)	\$ (10,250)	\$ 137,911	\$ (5,300)	\$ -	\$ 137,911	\$ (6,000)
1986	580.45	68.4	\$ 83,491	0	\$ -	0	\$ -	\$ (1,303)	\$ (1,303)	\$ 82,188	\$ (5,000)	\$ -	\$ 82,188	\$ (390,367)
1987	242.92	2.55	\$ 32,985	0	\$ -	0	\$ -	\$ (6,964)	\$ (6,964)	\$ 26,021	\$ (150)	\$ -	\$ 26,021	\$ (53,000)
1988	404.81	6.76	\$ 55,156	0	\$ -	0	\$ -	\$ (1,550)	\$ (1,550)	\$ 53,606	\$ (10,152)	\$ -	\$ 53,606	\$ (10,140)
1989	542.22	141.9	\$ 83,842	13.5	\$ (1,823)	0	\$ -	\$ -	\$ (1,823)	\$ 82,020	\$ (33,720)	\$ -	\$ 82,020	\$ (2,200)
1990	251.79	28.45	\$ 36,125	0	\$ -	0	\$ -	\$ (1,640)	\$ (1,640)	\$ 34,485	\$ (75,513)	\$ -	\$ 34,485	\$ (127,400)
1991	435.65	509.93	\$ 97,058	80	\$ (10,800)	0	\$ -	\$ (1,233)	\$ (12,033)	\$ 85,025	\$ (17,332)	\$ -	\$ 85,025	\$ -
1992	115.97	267.7	\$ 35,733	0	\$ -	0	\$ -	\$ (1,835)	\$ (1,835)	\$ 33,898	\$ (22,438)	\$ -	\$ 33,898	\$ (1,723)
1993	344.7	199.58	\$ 61,503	7.3	\$ (966)	6	\$ (450)	\$ (1,912)	\$ (3,348)	\$ 58,156	\$ (80)	\$ -	\$ 58,156	\$ (40,084)
1994	290.74	189.53	\$ 53,465	0	\$ -	0	\$ -	\$ -	\$ -	\$ 53,465	\$ -	\$ -	\$ 53,465	\$ (1,971)
1995	155.4	100.51	\$ 28,517	0	\$ -	0	\$ -	\$ -	\$ -	\$ 28,517	\$ -	\$ -	\$ 28,517	\$ (190,000)
Total	8439.1	1542.07	\$ 1,254,934	688	\$ (92,890)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,139,752	\$ (169,685)	\$ -	\$ 1,139,752	\$ (901,885)
1996	104.66	94.25	\$ 21,198	0	\$ -	0	\$ -	\$ -	\$ -	\$ 21,198	\$ -	\$ -	\$ 21,198	\$ -
1997	122.7	223.0	\$ 33,285	0	\$ -	0	\$ -	\$ -	\$ -	\$ 33,285	\$ -	\$ -	\$ 33,285	\$ -
1998	89.08	0	\$ 12,026	0	\$ -	0	\$ -	\$ -	\$ -	\$ 12,026	\$ -	\$ -	\$ 12,026	\$ -
Total	8755.51	1859.32	\$ 1,321,443	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,206,261	\$ (169,685)	\$ -	\$ 1,206,261	\$ (901,885)

EXPENSE REIMBURSEMENTS:

Activity Fees

CPA & Attorneys Fees to 2/28/97

CPA Fees 3/1/97 to 5/1/98

Attorneys fees 3/1/97 to 5/1/98

Total Administrator's Fees and Expense Reimbursement

Interest is computed on the prior year balance due, including interest accruals, but excluding any amounts due accruing in the current year, with payments being applied first to interest then principal. Interest is computed to 5/1/98.

EXH. F
PART 1
36 of 66

ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COSTA RICA TIME AND COMMISSIONS

Year	Costa Rica Adjustment (Admin. Hrs.)	Costa Rica Adjustment (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.)	Costa Rica Adjustment (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE	Commissions Paid Broker	Commissions Adjustment	Amount Due For Year	Amount Paid By Estate During Year	Interest (@ 12% compound)	Cumulative Amount Due
12	4	\$ (540)	0	\$ -	\$ -	\$ (540)	\$ 75,762	\$ -	\$ -	\$ 75,762	\$ -	\$ -	\$ 75,762
10	396.2	\$ (53,487)	0	\$ -	\$ (2,174)	\$ (55,661)	\$ 151,119	\$ -	\$ -	\$ 151,119	\$ (89,000)	\$ -	\$ 137,881
5	119	\$ (16,065)	0	\$ -	\$ (2,171)	\$ (18,236)	\$ 237,579	\$ -	\$ -	\$ 237,579	\$ -	\$ 16,546	\$ 392,006
11	68	\$ (9,180)	0	\$ -	\$ (1,070)	\$ (10,250)	\$ 137,911	\$ (5,300)	\$ -	\$ 137,911	\$ (6,000)	\$ 46,321	\$ 570,237
11	0	\$ -	0	\$ -	\$ (1,303)	\$ (1,303)	\$ 82,188	\$ (5,000)	\$ -	\$ 82,188	\$ (380,367)	\$ 22,784	\$ 294,843
15	0	\$ -	0	\$ -	\$ (6,964)	\$ (6,964)	\$ 26,021	\$ (150)	\$ -	\$ 26,021	\$ (53,000)	\$ 29,021	\$ 296,885
16	0	\$ -	0	\$ -	\$ (1,550)	\$ (1,550)	\$ 53,606	\$ (10,152)	\$ -	\$ 53,606	\$ (10,140)	\$ 34,409	\$ 374,760
12	13.5	\$ (1,823)	0	\$ -	\$ -	\$ (1,823)	\$ 82,020	\$ (33,720)	\$ -	\$ 82,020	\$ (2,200)	\$ 44,707	\$ 499,288
15	0	\$ -	0	\$ -	\$ (1,640)	\$ (1,640)	\$ 34,485	\$ (75,513)	\$ -	\$ 34,485	\$ (127,400)	\$ 44,627	\$ 450,999
18	80	\$ (10,800)	0	\$ -	\$ (1,233)	\$ (12,033)	\$ 85,025	\$ (17,332)	\$ -	\$ 85,025	\$ -	\$ 54,120	\$ 590,144
13	0	\$ -	0	\$ -	\$ (1,835)	\$ (1,835)	\$ 33,898	\$ (22,438)	\$ -	\$ 33,898	\$ (1,723)	\$ 70,611	\$ 692,930
13	7.3	\$ (986)	6	\$ (450)	\$ (1,912)	\$ (3,348)	\$ 58,156	\$ (80)	\$ -	\$ 58,156	\$ (40,094)	\$ 78,341	\$ 789,343
15	0	\$ -	0	\$ -	\$ -	\$ -	\$ 53,465	\$ -	\$ -	\$ 53,465	\$ (1,971)	\$ 94,485	\$ 935,321
17	0	\$ -	0	\$ -	\$ -	\$ -	\$ 28,517	\$ -	\$ -	\$ 28,517	\$ (190,000)	\$ 89,439	\$ 863,277
14	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,139,752	\$ (169,685)	\$ -	\$ 1,139,752	\$ (901,885)	\$ 625,410	\$ 863,277
18	0	\$ -	0	\$ -	\$ -	\$ -	\$ 21,198	\$ -	\$ -	\$ 21,198	\$ -	\$ 103,593	\$ 988,068
15	0	\$ -	0	\$ -	\$ -	\$ -	\$ 33,285	\$ -	\$ -	\$ 33,285	\$ -	\$ 116,568	\$ 1,139,922
16	0	\$ -	0	\$ -	\$ -	\$ -	\$ 12,026	\$ -	\$ -	\$ 12,026	\$ -	\$ 45,597	\$ 1,197,544
13	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,206,261	\$ (169,685)	\$ -	\$ 1,206,261	\$ (901,885)	\$ 893,168	\$ 1,197,544

EXPENSE REIMBURSEMENTS:

Activity Fees

CPA & Attorneys Fees to 2/28/97

CPA Fees 3/1/97 to 5/1/98

Attorneys fees 3/1/97 to 5/1/98

Total Administrator's Fees and Expense Reimbursement

Wilbert claimed real estate commissions

Costa Rica expenses

Interest due, including interest accruing in the current year, when principal.

Wilbert interest on fees & expenses

Payments Wilbert admits receiving.

EXA. E. 2
PART 2
EXHIBIT of Fee
Wilbert Declaration
5/15/1998

\$	2,239
\$	306,157
\$	6,573
\$	132,029
\$	1,644,542

TOTAL ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COS

Year	Admin. (@ \$135/hr)	Staff (@ \$75/hr)	Total \$ Admin&Staff	Costa Rica Adjustment (Admin. Hrs.)	Costa Rica Adjustment (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.)	Costa Rica Adjustment (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE
1992	565.2	0	\$ 76,302	4	\$ (540)	0	\$ -	\$ -	\$ (540)	\$ 75,71
1993	1531.15	1	\$ 206,780	396.2	\$ (53,487)	0	\$ -	\$ (2,174)	\$ (55,661)	\$ 151,11
1994	1884.58	18.62	\$ 255,815	119	\$ (16,065)	0	\$ -	\$ (2,171)	\$ (18,236)	\$ 237,57
1995	1093.52	7.14	\$ 148,161	68	\$ (9,180)	0	\$ -	\$ (1,070)	\$ (10,250)	\$ 137,91
1996	580.45	68.4	\$ 83,491	0	\$ -	0	\$ -	\$ (1,303)	\$ (1,303)	\$ 82,11
1997	242.82	2.55	\$ 32,985	0	\$ -	0	\$ -	\$ (6,964)	\$ (6,964)	\$ 26,02
1998	404.81	6.76	\$ 55,156	0	\$ -	0	\$ -	\$ (1,550)	\$ (1,550)	\$ 53,60
1999	542.22	141.9	\$ 83,842	13.5	\$ (1,823)	0	\$ -	\$ -	\$ (1,823)	\$ 82,02
1990	251.79	28.45	\$ 36,125	0	\$ -	0	\$ -	\$ (1,640)	\$ (1,640)	\$ 34,48
1991	435.65	509.93	\$ 97,058	80	\$ (10,800)	0	\$ -	\$ (1,233)	\$ (12,033)	\$ 85,02
1992	115.97	267.7	\$ 35,733	0	\$ -	0	\$ -	\$ (1,835)	\$ (1,835)	\$ 33,89
1993	344.7	199.58	\$ 61,503	7.3	\$ (986)	6	\$ (450)	\$ (1,912)	\$ (3,348)	\$ 58,15
1994	290.74	189.53	\$ 53,465	0	\$ -	0	\$ -	\$ -	\$ -	\$ 53,46
1995	155.4	100.51	\$ 28,517	0	\$ -	0	\$ -	\$ -	\$ -	\$ 28,51
Total	8439.1	1542.07	\$ 1,254,934	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,139,75
1996	104.66	94.25	\$ 21,198	0	\$ -	0	\$ -	\$ -	\$ -	\$ 21,19
1997	122.7	223.0	\$ 33,285	0	\$ -	0	\$ -	\$ -	\$ -	\$ 33,28
1998	89.06	0	\$ 12,026	0	\$ -	0	\$ -	\$ -	\$ -	\$ 12,02
Total	8755.51	1859.32	\$ 1,321,443	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,206,26

Interest is computed on the prior year balance due, including interest accruals, but excluding any amounts due accruing in the current year, with payments being applied first to interest then principal. Interest is computed to 5/1/98.

RESPONDENT'S EXHIBIT D

LIST OF DELGUZZI CASES pursued by CHARLES CRUIKSHANK

<i>Year filed</i>	<i>Court</i>	<i>Cause no.</i>	<i>Case name</i>	<i>Resolution</i>
1996	Clallam County	8087 (filed under Jack Delguzzi probate no.)	Gary Delguzzi v. William Wilbert et. al. ("the "Petition")	Estate, open since 1978, closed on July 27, 2007.
1997	Division II, Ct. of Appeals	21752-0-II	Delguzzi I	1/8/1999: Dismissal affirmed with respect to children, reversed with respect to William Wilbert
1999	Division II, Ct. of Appeals	24860-3-II	Delguzzi III	Aug. 2001: Dismissal of claims v. William Wilbert on res judicata ground is reversed
2007	Division II, Ct. of Appeals	36682-7-II	(Delguzzi IV)	Current case
1999	King County	99-4-00044-1	Gary Delguzzi v. William Wilbert	Gary Delguzzi Trust case, dismissed on statute of limitations grounds
1999	Division I, Ct. of App.	45022-1-I	Delguzzi II	2/26/2001: Dismissal affirmed
2004	King County	04-4-02163-1	Estate of Gary Delguzzi	Pending; PR is Margaret Shaw, then Sidney Shaw
2004	King County	04-4-01861-4	Estate of William Wilbert	Pending
2006	Clallam County	06-2-01085-2	Shaw v. Loretta Wilbert	Suit on creditors claim filed in Wilbert probate by Shaw; similar to the 1996 Petition
2008	King County	08-2-10290-4	Shaw v. Loretta Wilbert	Same as preceding case; venue changed to King County
2006	King County	06-2-27262-5	Shaw v. Short Cressman et. al.	Dismissed on SJ
2008	Division I, Ct. of App.	60995-5-i	Shaw v. Short Cressman et. al.	Appeal from dismissal; pending
2007	King County	07-2-21635-9	Shaw v. Ellis	Pending

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DIVISION II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

R. SIDNEY SHAW, PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF GARY DELGUZZI and DAVID L.)
MARTIN,)
Appellants,)
vs.)
THE ESTATE OF JACK DELGUZZI,)
Respondent.)
_____)

No. 36682-7-II

CERTIFICATE OF
SERVICE

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on April 30, 2008, I served a copy of the Brief of Respondent Loretta Wilbert on all counsel of record in the manner shown at the addresses listed as follows:

Charles M. Cruikshank, III
ATTORNEY AT LAW
108 S. Washington St., Suite 306
Seattle, WA 98104

[] By United States Mail
[x] By Legal Messenger
[] By Federal Express
[] By Facsimile

Kathryn A. Ellis
CERTIFICATE OF SERVICE - 1

[x] By United States Mail
ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

ORIGINAL

