

Case # 40416-8-II

10/11/18
STATE OF WASHINGTON
BY
DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION II

Audit & Adjustment Company, Inc. (Respondent/Plaintiff)

v.

Donald R. Earl (Petitioner/Defendant)

BRIEF OF PETITIONER

Donald R. Earl (pro se)
3090 Discovery Road
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(360) 379-6604

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I. INTRODUCTION

This is a case of first impression. Although the Charity Care statutes were enacted over 20 years ago, to date, our courts of review have not previously provided guidance on the application, interpretation, or subject matter jurisdiction of those statutes. Under the plain, unambiguous language of the law, the instant case, from its inception, is so wholly without merit it never should have been filed. Never the less, due to confusion related to subject matter jurisdiction, interpretation of the law, and an absence of authority to provide guidance to the courts below, this case has been the subject of substantial litigation for the better part of three years.

It is an unfortunate circumstance that self represented litigants are not always afforded the same credence and consideration as professionally represented parties. However, by the very nature of the circumstances when charity care is at issue, self representation is an unavoidable necessity when relief under the law is wrongfully denied. Justice and equal protection under the law should be within reach of all citizens, regardless of the means of representation. Mr. Earl will endeavor to present the issues and arguments below, in a manner and form consistent with the high standards and traditions of this honorable Court. In the course of reviewing

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the instant case, Mr. Earl would respectfully pray this honorable Court consider the issues from a perspective of potentially providing published opinion in order to better guide our courts in future cases of a similar nature.

II. ASSIGNMENTS OF ERROR

a) Assignments of Error

ASSIGNMENT OF ERROR 1: The courts below erred as a matter of law in allowing hospital committee testimony and exhibits, which are inadmissible under Washington law.

ASSIGNMENT OF ERROR 2: The courts below erred in allowing into evidence privileged and confidential documents, which were wrongfully obtained and introduced by opposing counsel.

ASSIGNMENT OF ERROR 3: In taking judicial notice of the record, the Superior Court erred in denying Mr. Earl's request for an opportunity to be heard.

ASSIGNMENT OF ERROR 4: The courts below erred in conclusions of fact regarding Mr. Earl's income for 2005, which are not supported by the record and, are controverted by the evidence.

ASSIGNMENT OF ERROR 5: The courts below erred in entering judgment in conflict with facts supported by the record.

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ASSIGNMENT OF ERROR 6: The courts below erred in interpretations of applicable Washington statutes.

ASSIGNMENT OF ERROR 7: The Superior Court erred in fact and law in ruling Jefferson Healthcare, a nonparty, was represented by the plaintiff collection agency and not subject to normal discovery procedures.

ASSIGNMENT OF ERROR 8: The courts below did not have jurisdiction or subject matter jurisdiction in this case.

b) Issues Pertaining to Assignments of Error

ISSUE 1: Mr. Earl applied for charity care at Jefferson Healthcare. Charity care, which was denied, was subsequently the subject of hospital committee administrative review within the meaning of RCW 4.24.250(2). Over Mr. Earl's objections, documents provided to the committee were introduced as evidence and participants taking part in the committee proceedings acted as witnesses. RCW 4.24.250 and RCW 70.41.200 bar discovery of documents and testimony of participants in civil actions when the documents are obtained in connection with hospital committee reviews. Did the District Court commit legal error in admitting these documents and witnesses as evidence, and did the Superior Court err in sanctioning the proceedings in District Court? (ASSIGNMENT OF

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ERROR 1)

ISSUE 2. Do the provisions of RCW 4.24.250 and RCW 70.41.200, which prohibit discovery of information obtained as part of a hospital committee's internal review process, apply to hospital committee review of charity care denials? (ASSIGNMENT OF ERROR 1)

ISSUE 3: Jefferson Healthcare's sliding fee scale agreement states that all information obtained subject to charity care applications will be held in strict confidence. Subject to this guarantee of strict confidence, Mr. Earl provided numerous confidential, private and financially sensitive documents to Jefferson Healthcare. Jefferson Healthcare is not a party to this lawsuit. In its Complaint, Audit states it is the assignee of debts originally owed to Jefferson Healthcare and is a collection agency. Audit did not file proof of assignment of Jefferson Healthcare claims. In ruling Audit effectively assumes the position of Jefferson Healthcare, thus entitling Audit to obtain confidential records held by Jefferson Healthcare, without engaging in normal discovery procedures, did the Superior Court err in both fact and law? (ASSIGNMENT OF ERROR 2)

ISSUE 4: On RALJ appeal, Mr. Earl timely filed the Appellant's Brief. Audit did not file a response, nor did Audit appear at the appeal hearing. Mr. Earl had no notice of adjudicative facts the Superior Court

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would take judicial notice of at the hearing and had no opportunity to file a responsive pleading to the propriety and tenor of adjudicative facts subsequently noted. At the hearing, the Superior Court ruled substantial evidence supported the District Court judgment. Mr. Earl requested he be allowed to be heard on the matter, which the Superior Court denied.

ER 201(e) requires that when judicial notice of adjudicative facts are made without prior notice, a party is entitled to an opportunity to be heard. Did the Superior Court abuse its discretion in refusing to allow Mr. Earl an opportunity to be heard on matters of judicial notice of adjudicative facts, and did such refusal violate Mr. Earl's Article I, Section 3 right under the Washington State Constitution to due process? (ASSIGNMENT OF ERROR 3)

ISSUE 5: The District Court and the Superior Court ruled that the portion from the sale of Mr. Earl's home, which Mr. Earl did not owe on his mortgage, constitutes investment income for the purpose of determining eligibility for charity care. WAC 246-453-101(17) in relevant part defines "income" as "net earnings from investment activities". There is no evidence in the record that any part of the sale of Mr. Earl's home constituted "net earnings" . Mr. Earl's "net earnings" for 2005 are reported on line 13 of his Federal income tax return, which is a matter or record.

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Did the Superior Court abuse its discretion in making conclusions of fact not supported by the record and sanctioning the District Court doing the same, and did the interpretation of WAC 246-453-101(17) constitute legal error? (ASSIGNMENT OF ERROR 4)

ISSUE 6: WAC 246-453-030 provides that a Federal income tax return alone is sufficient evidence to establish eligibility for charity care. Did the District Court and the Superior Court commit obvious legal error in ruling Mr. Earl's Federal income tax return is insufficient evidence to establish eligibility for charity care? (ASSIGNMENT OF ERROR 5)

ISSUE 7: Under the provisions of WAC 246-453 and RCW 70.170, when a hospital patient has income below 100% of the Federal poverty level, does the hospital have discretion to deny eligibility based on assets, such as equity in a home, or on any other basis not related to income? (ASSIGNMENT OF ERROR 6)

ISSUE 8: Did the Superior Court, contrary to RCW 70.02.060, err in ruling Audit & Adjustment Company, Inc., a collection agency, as assignee of debts alleged owed to Jefferson Healthcare, has a right to obtain all records held by the hospital ex parte? (ASSIGNMENT OF ERROR 7)

ISSUE 9: Mr. Earl's defense in this matter is that no debt is owed

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Earl was billed over \$14,000. As Mr. Earl had no income, he qualified for, and applied for, charity care under the provisions of WAC 246-453 and RCW 70.170, and Jefferson Healthcare's "Sliding Fee Scale" agreement. (CP 53-57, also, Volume II, pages 1-4 of exhibit 1) (Appendix 2-5)

Mr. Earl provided the hospital with numerous, sensitive financial documents, subject to the hospitals written guarantee of strict confidence. (Appendix 3)

Mr. Earl also provided the hospital with a copy of his 2005 tax return, showing he had no income during 2005 and net losses from investment activities. A tax return is evidence of income pursuant to WAC 246-453-030(2)(c). (CP 51, also, Volume II, exhibit 6) (Appendix 6)

Jefferson Healthcare subsequently denied Mr. Earl's application for charity care, convened its policy review committee to consider the denial, then turned the accounts over to Audit & Adjustment Company, Inc., (hereinafter referred to as "Audit") a collection agency. Jefferson Healthcare denied Mr. Earl's Charity Care application based on the liquidated equity assets he had at the time of sale of his primary residence. (Volume II, exhibit 4) (Appendix 7)

Audit filed suit in Jefferson County District Court for collection of debt. In Audit's Complaint (Volume II, pages 2a-2e), Audit claims it is

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"assignee in writing of the claims of the assignor". Audit did not file a written assignment as required to establish a presumption of assignment pursuant to RCW 19.16.270. Audit has not alleged it is bonded, as is required to bring and maintain an action pursuant RCW 19.16.260. There is no proof on the record that Audit is either licensed or bonded, as is required pursuant to RCW 19.16.260 to bring and maintain an action in any Washington court.

The District Court ruled it did not have authority to consider Mr. Earl's affirmative defense that charity care coverage was wrongfully denied (CP 13-14), ruled Jefferson Healthcare's sliding fee scale agreement was not legally binding (CP 11-13), and entered judgment in favor of Audit.

On RALJ appeal in Jefferson County Superior Court, Mr. Earl argued the District Court could not simultaneously disclaim subject matter jurisdiction over affirmative defenses in this matter and, enter judgment against Mr. Earl. The Superior Court found the District Court was in error on the issue of subject matter jurisdiction, and remanded the case to the District Court for additional trial on the merits of Mr. Earl's affirmative defense that pursuant to the charity care statutes, no debt was owed. (CP 17-18) (Appendix 8-9)

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Without notice to Mr. Earl, and without engaging in any normal discovery procedures, Audit obtained confidential financial documents from Jefferson Healthcare, which the District Court allowed into evidence over Mr. Earl's objections. (CP 74-75) (Appendix 10-11)

Mr. Earl produced his Federal income tax return for 2005, which shows his only income was slightly over \$100 in interest, and a capital loss of \$3000. Under Federal tax regulations, \$3000 is the maximum amount of capital losses that may be claimed in any one year. (Appendix 6)

At the first hearing in District Court, Kimberly Bachelor testified the Department of Health made no ruling on the legitimacy of Jefferson Healthcare's denial of Charity Care (CP 7) (Appendix 12). Ms. Bachelor also testified Jefferson Healthcare did not provide the Department of Health with a copy of Mr. Earl's tax return (CP 8-9) (Appendix 13-14). Ms. Bachelor was a member of Jefferson Healthcare's Review Committee within the meaning of RCW 4.24.250 and RCW 70.41.200. (Appendix 7)

At the second hearing in District Court, Jennifer Sharko-Taylor testified Jefferson Healthcare convened its Review Committee, within the meaning of RCW 4.24.250 and RCW 70.41.200. (CP 77-78) (Appendix 15-16)

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Ms. Sharko-Taylor testified documents were obtained and provided to Jefferson Healthcare's Review Committee "for their assessment". (CP 78) (Appendix 16)

Over Mr. Earl's objections, the District Court ruled it would allow testimony and documents related to Jefferson Healthcare's Review Committee decisions. (CP 82-83) (Appendix 17-18)

Ms. Sharko-Taylor testified the Department of Health made no ruling on the legitimacy of Jefferson Healthcare's denial of Charity Care. (CP 87)

Ms. Sharko-Taylor testified the Department of Health was provided a copy of Mr. Earl's tax return (CP 88) (Appendix 20). On further examination, Ms. Sharko-Taylor admitted she had no knowledge whatsoever as to what documents and information was disclosed to the Department of Health. (CP 89-90) (Appendix 21-22)

Ms. Sharko-Taylor testified Mr. Earl had no wages or salary, no income from welfare, no income from Social Security, no strike benefits, no unemployment or disability benefits and, no income from alimony or child support. (CP 91-92) (Appendix 23-24)

Ms. Sharko-Taylor testified net income from investment activities is capital gains (Appendix 24) and that Jefferson Healthcare did not

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consider Mr. Earl's tax return - which shows capital losses for 2005 - as evidence of net income from investment activities. The District Court noted Jefferson Healthcare did not consider Mr. Earl's tax return as evidence of capital losses. (CP 95) (Appendix 25)

In the Memorandum Opinion After Trial (CP 24-26) the District Court based its judgment in favor of Audit exclusively on the propriety of actions taken by Jefferson Healthcare's Review Committee.

In the District Court's Order Denying Defendant's Motion for Reconsideration (CP 22-23) the Court ruled Mr. Earl's tax return is not evidence of income and, that treating a tax return as evidence of income/earnings is contrary to the intent of state law.

After his Motion for Reconsideration was denied, Mr. Earl filed a second RALJ appeal, perfected the appeal, and timely filed his Appellant's Brief. Audit neither filed a Response Brief, nor appeared at the hearing.

The Superior Court affirmed the District Court decision at the hearing held on February 5, 2010 (CP 142). The Court ruled financial information and documents provided to Jefferson Healthcare were not subject to confidentiality and were admissible as a matter of law (RP 7) (Appendix 26) and, that as Jefferson Healthcare's representative, Audit was not required to engage in usual discovery procedures or give notice to

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Mr. Earl of documents it sought to obtain from Jefferson Healthcare. The Court cites as authority Judge Russell Hartman's rulings against pro se litigants in Kitsap County (RP 8) (Appendix 27). The Court ruled that the record supports the District Court's decision. On oral argument, Mr. Earl requested an opportunity to be heard on the propriety of the Court's taking of judicial notice of the District Court record, which the Court denied. (RP 9) (Appendix 28)

IV. SUMMARY OF ARGUMENT

The manner in which proceedings were conducted, the evidence and testimony allowed, and interpretation of law is of grave concern in this matter. The courts below relied heavily on the actions of Jefferson Healthcare's Review Committee, proceedings which pursuant to RCW 4.24.250 and RCW 70.41.200 are not allowed to be entertained by our courts in civil actions. Hospital Review Committees are not quasi judicial bodies, have unrestricted access to privileged documents and information and, are not subject to any rules of procedure which would constitute due process.

The record in this case does not support the decisions of the courts below. The plain, unambiguous language of applicable law controverts interpretations of law made by the District and Superior courts.

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Additionally, as original jurisdiction to determine wrongful denial of Charity Care benefits is vested in the Department of Health, the courts below had no authority to enter judgment in this matter, under any circumstance, even in the absence of errors in fact and law. Furthermore, Audit did not meet the statutory requirements for a collection agency to bring and maintain an action against Mr. Earl. Three proofs Audit is required by law to file, in to order establish the necessary standing of a right to judgment, were not filed. In addition to legal and factual errors sufficient to reverse the judgments of the courts below, the judgments are void on their face.

V. ARGUMENT

1. FACTUAL ERRORS

a) Findings of fact on Mr. Earl's income for 2005 are not supported by the record. (Assignment of Error 4)

At page 3 of the District Court's "Memorandum Opinion After Trial" (CP 139) the trial court states: *"Based on the ordinary meaning of the word "investment," this court concludes that Defendant's properties were acquired, at least in part, for future income or benefit and that the sale of one of those properties yielded "investment income".*

This conclusion of fact by the District Court is directly controverted by the Court's finding of fact (CP 137-138) that, *"Defendant's*

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tax return reflected negative adjusted gross income of \$2,896." Mr. Earl's tax return (Appendix 6), on line 13, shows "investment income" was a loss of \$3000.

At question is not what constitutes an "investment" (even under the most loose of definitions). The issue is what constitutes "net earnings" from investment activities. The unspoken assumption in the District Court's analysis is apparently that the generation of profit is a universally constant consequence of investment activities. Unfortunately, in the real world, prices are not fixed. There are no 'sure things'. There is nothing one may purchase that is free of risk, including the currencies used to make the purchase in the first place. It simply is not possible to generate profit when markets or circumstances result in selling property at a loss. As the record shows, 2005 was not a good year for Mr. Earl.

Black's Law defines "net income" or "net earnings", the operative language under WAC 246-453-010(17) in regard to investment activity, as: "*Total income from all sources minus deductions, exemptions, and other tax reductions.*".

In *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677 (2006), the court ruled: "*A discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if the trial court relies on unsupported facts or*

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applies the wrong legal standard"

In the instant case, the discretionary decisions of the courts below rest exclusively on errors in fact and law.

b) The record does not support the conclusion Audit is assignee of Jefferson Healthcare claims. (Assignment of Error 7)

At RP 9, (Appendix 28) the Superior Court finds that, "*Audit took an assignment of the hospital's position. Audit has the same right to the information that the hospital did.*"

Audit has produced no documentation, testimony or evidence of any kind to support a presumption Audit is the assignee of Jefferson Healthcare claims. Pursuant to RCW 19.16.270, in order to create a presumption of assignment, Audit was required to file a copy of the written assignment with its Complaint. In relevant part, the statute provides that, "*In any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint*" (emphasis added). The Superior Court erred in making a conclusion of assignment in the absence of any evidentiary basis to support such a conclusion.

This is substantially more than a minor technical error. Without

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evidence that a collection agency has standing to maintain an action, the court has no authority to enter judgment in the collection agency's favor. The judgment is necessarily void on its face. If it were otherwise, an unscrupulous person, privy to confidential information, would be well positioned to conspire with any third party alleged to be a collection agency. It would then be possible to obtain judgments favoring persons who have no legal claim against a defendant. While there is no reason to assume this is the situation in the instant case, the problem is there is no evidence on the record to support an assumption that it is not.

c) Mr. Earl's form 1040 tax return is the only evidence of income on the record. (Assignment of Error 5)

As described in part a) above the District Court erroneously concluded "proceeds" Mr. Earl received on liquidating the equity interest in his primary residence constitutes "profits". At RP 9 (Appendix 28), the Superior Court takes judicial notice of the record to find that, "*Judge Bierbaum has made findings from the record, from the evidence that was presented to her that are sustained by substantial evidence that you had enough income so you did not qualify for the claimed charitable benefit under the definition in the statute and the administrative code. and the primary disqualifier were the- the sale proceeds from the residence.*"

Profits or losses from the sale of capital assets, or what the trial

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court sought to interpret from language related to “investment activity”, is known as “capital gains” or “capital losses“. Capital gains or losses have absolutely no relationship to equity in a home. Equity in a home is an “asset”, not a “capital gain”. As Mr. Earl testified at trial, “capital gains” from “investment activity” is reflected in Mr. Earl’s Federal tax return on line 13 (Appendix 6). Line 13 of Form 1040 captures all capital gains or losses from investment activity that is cognizable as net income under existing law, including the sale of a principal residence.

This lawsuit has been plagued by arguments by Audit, Jefferson Healthcare, and the courts below, to interpret the word "proceeds", as "profit". This argument is based exclusively on Mr. Earl's own use of the word "proceeds" in a business letter written to Jefferson Healthcare - a letter that is both privileged, as well as irrelevant to any legal aspect of the instant case. In *Union Oil Co. v. State*, 2 Wn.2d 436 (1940) our Supreme Court ruled as follows:

"The members of the legislature have access to the authorities - legal and lexicographic - and are presumed to know the meaning of the words they write into their enactments. We can not hold that the members of our legislature were ignorant of the meaning of a word"

This is such well settled law that it should be unnecessary to do more than state it. If it is presumed legislators are reasonably literate and

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of normal intelligence - to the extent of knowing the meaning of words used in their official capacity - it is unreasonable to argue a reasonably literate, private citizen, of normal intelligence, does not know the meaning of words that citizen uses in business letters. Mr. Earl does, in fact, know the definitions of both 'profit' and 'proceeds', knows their proper usage, and is well aware the two words are not synonymous, as illustrated below.

Funk & Wagnall's Standard College Dictionary defines "proceeds" as, "*The amount derived from the disposal of goods*".

Black's Law defines "net income", aka "net earnings", aka "profits" -- the operative language under WAC 246-453-010(17) -- as "*Total income from all sources minus deductions, exemptions, and other tax reductions.*".

To illustrate by example: A person purchases property for \$1000 and borrows \$700 using the property as collateral. The person subsequently disposes of the property at a sale price of \$900. The "*proceeds*" from the sale is \$200 (\$900 less the loan balance of \$700). The "*net earnings*" from the sale is a loss of \$100 (\$900 less the purchase price of \$1000).

Simply stated, "proceeds" from the sale of Mr. Earl's home, a nonrecurring event which took place nearly a year prior to the medical

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emergency, has no factual or legal relevance to this matter whatsoever.

“Proceeds” are not “net income”. The terms are not synonymous. The terms have entirely different meanings and describe two entirely different things.

As it relates to investment activity, the law is interested only in the total net earnings from investment activities, which is reported on line 13 of page 1 of tax form 1040. Attached at Appendix 29 is a blank copy of the 2005 form “Schedule D”. This is the form used for calculating net earnings from investment losses or gains. The document is being provided as a legal reference only, in order to demonstrate there is no information contained on the form that would have any legal significance, legal application, or factual relevance to this matter whatsoever.

In column (d) the sale price is listed. In column (e) the cost basis is listed. In column (f) the net gain or loss is recorded by subtracting column (e) from column (d). The entries in column (f) are totaled. The total is entered on line 21 of the form, *and line 13 of page 1 of the tax return.* Line 13 on page 1 is “net income from investment activities”, as defined under WAC 246-453-101(17), as defined under 26 USC 1001, and as recognized as proof of “net income from investment activities” pursuant to Jefferson Healthcare’s sliding fee scale contract.

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The record shows Mr. Earl had no income from wages or salary, no income from welfare, no income from Social Security, no strike benefits, no unemployment or disability benefits and, no income from alimony or child support. (Appendix 23-24)

Page 1 of Mr. Earl's 2005 tax return, an undisputed matter of record in this case, is the ONLY relevant evidence proving Mr. Earl's income for 2005, which under the plain letter of the law supports a single legal conclusion: this case should have been dismissed.

2. LEGAL/PROCEDURAL ERRORS

a) The courts below erred in allowing privileged information into evidence. (Assignment of Error 2)

Jefferson Healthcare's Charity Care contract provides that, "This information is only used for determining your eligibility for sliding fee discount and is held in strict confidence." (Appendix 3)

Mr. Earl objected to Audit's use of these documents at trial and on RALJ appeal. At the appeal hearing, the Superior Court stated: "*Audit took an assignment of the hospital's position. Audit has the same right to the information that the hospital did.*" (Appendix 28)

While there is no evidence on the record to support an assumption Audit is the assignee of Jefferson Healthcare claims, the Superior Court is

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essentially correct an assignee has the same legal rights as the assignor. Under Washington law, however, assignment also carries the same obligations and liabilities of the assignor.

Even if proof of assignment was a matter of record in this case, which it is not, in *PSNB v. Dept. of Revenue*, 123 Wn.2d 284 (1994), our Supreme Court ruled as follows: "*assignment carries with it the rights and liabilities as identified in the assigned contract, but also all applicable statutory rights and liabilities*"

The duty of confidentiality owed to Mr. Earl by Jefferson Healthcare's stipulation to strict confidence did not vanish through assignment (if any) to a third party.

In the Superior Court's order remanding the case back to the District Court, on the first RALJ appeal, the District Court was ordered to decide the case based on Jefferson Healthcare's Sliding Fee Scale contract (Appendix 8-9).

In *Senear v. Daily Journal American*, 27 Wn. App. 454 (1980), the court ruled privileged communications are not subject to discovery. In *Randa v. Bear*, 50 Wn.2d 415 (1957), the court ruled privilege may be waived by contract. As this is settled law, it follows that if privilege may be waived by contract, it must be enforced if stipulated by contract.

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CRLJ 26(f) provides as follows: “Any discovery authorized pursuant to this rule shall be conducted in accordance with Superior Court Civil Rules 26 through 37, as governed by CRLJ 26.”

CR 26(b)(1) provides in relevant part that “Parties may obtain discovery regarding any matter, *not privileged*”. (emphasis added)

In *Martinez v. Kitsap Pub. Servs., Inc.*, 94 Wn. App. 935 (1999) the Court ruled: “*Stipulated agreements are interpreted as contracts.*” Jefferson Healthcare’s stipulation of strict confidentiality is binding. None of the documents obtained by Jefferson Healthcare pursuant to its promise of strict confidentiality were subject to discovery or admissible as evidence by Audit.

b) The courts below erred at law in allowing evidence and testimony prohibited by RCW 4.24.250. (Assignment of Error 1)

In addition to the procedural error described in the above section, RCW 4.24.250 mandates that no records, witnesses, or anything related to proceedings conducted as part of a hospital committee's review of a patient’s care is subject to discovery or admissible in civil proceedings. In relevant part, the statute provides as follows:

“The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action”

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In *Coburn v. Seda*, 101 Wn.2d 270, 677 P.2d 173 (1984), and a number of similar cases, our courts have applied a literal interpretation of RCW 4.24.250. Testimony in the District Court shows that its policy review committee was in fact convened in this matter. (Appendix 15-16).

In *Coburn v. Seda*, our Supreme Court ruled in pertinent part as follows:

“The statute, on its face, prohibits discovery of certain records in "ANY civil action" with a single exception: actions arising out of committee recommendations which involve restriction or revocation of staff privileges. In construing this statute, we give the word "any" its ordinary and usual meaning. SEE JOHN H. SELLEN CONSTR. CO. v. DEPARTMENT OF REV., 87 Wn.2d 878, 882, 558 P.2d 1342 (1976). Thus, all civil actions not falling within the specific exception are subject to the statutory provision shielding certain information from discovery”

On its face, the statute recognizes hospital review committees are not quasi judicial authorities, are subject to no rules constituting due process and, have unrestricted access to discovering privileged information. The net effect of RCW 4.24.250 is to prevent plaintiffs from making an end run around the process that is due defendants. It's purpose is to prevent the exact type of extreme prejudice Mr. Earl has suffered in the instant case. The Superior Court's sanctioning of the District Court's allowing hospital committee evidence and witnesses is obvious legal error.

c) The courts below erred at law in interpreting Charity Care legislation. (Assignment of Error 6)

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In 1989, our legislature stated the intent of its charity care legislation in RCW 70.170.010 (2 & 3) as follows:

“(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state's goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.”

In the “Order Denying Defendant’s Motion for Reconsideration” (CP 140-141), the District Court states in relevant part as follows:

“Defendant’s principal argument is that the Court’s determination of whether Defendant qualified for relief under Jefferson Healthcare’s “sliding fee scale” was limited solely to a review of the first page of form 1040 of Defendant’s federal income tax return. That argument must fail as WAC 246-453-010(17) defines “income” as “total cash receipts before taxes derived from wages and salaries, welfare payments, Social Security payments, strike benefits, unemployment or disability benefits, child support, alimony, and net earnings from business and investment activities paid to the individual.” Some of those income sources are not ones that would be disclosed on the first page of a taxpayer’s income tax return, if at all. Therefore, were the Court to accept Defendant’s argument, some portions of the implementing legislative [sic] would be rendered meaningless.

Moreover, Jefferson Healthcare’s Sliding Fee policy specifically identifies the patient’s IRS 1040 form as an *example* of the kinds of documentation required to verify the patient’s income, but does not limit its determination of eligibility to that document only.” (emphasis as in original)

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Contrary to the trial court’s conclusion that Form 1040 is insufficient to establish eligibility under the law, and that doing so would somehow render the statute “meaningless”, that is the law. WAC 246-453-030 provides the documentation requirements for establishing eligibility for charity care and reads in relevant part as follows:

“(1) For the purpose of reaching an initial determination of sponsorship status, hospitals shall rely upon information provided orally by the responsible party. The hospital may require the responsible party to sign a statement attesting to the accuracy of the information provided to the hospital for purposes of the initial determination of sponsorship status.

(2) Any one of the following documents shall be considered sufficient evidence upon which to base the final determination of charity care sponsorship status, when the income information is annualized as may be appropriate...

(c) An income tax return from the most recently filed calendar year”

In *Bostain v. Food Express, Inc.*, 127 Wn. App. 499 (2005), the court ruled interpretation of statutes is reviewed de novo and that the plain, unambiguous language in a statute must govern a court’s decisions. The *Bostain* court ruled in relevant part as follows:

“We do so employing a de novo standard of review. And we seek to carry out the statute’s legislative intent. *If a statute is plain and unambiguous, we derive its meaning from the statutory language.*

¶17 *our Supreme Court directed courts to derive the plain meaning of a statute "from all that the Legislature has said in*

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the statute and related statutes which disclose legislative intent about the provision in question. Such a formulation, the court noted, was more likely to carry out legislative intent."

¶18 *Under the "plain meaning rule" we look to the ordinary meaning of the statutory language, the underlying legislative purposes, and closely related statutes.* By interpreting statutory provisions, courts can achieve a harmonious, total statutory scheme which maintains the integrity of the respective statutes. We read statutes relating to the same subject as complementary and not in conflict. (emphasis added, internal citations and quotation marks omitted)

In *Jane Doe v. Fife Municipal Courts*, 74 Wn. App. 444 (1994), the court ruled in pertinent part as follows:

"Court rules are to be interpreted in the same manner as statutes. A court must interpret a rule as it is written and may not read into it things that it may conceive that the drafters have left out. Our function is to ascertain what the drafters did, not conjecture what they could have done." (internal citations omitted)

In *State v. McIntyre*, 92 Wn.2d 620 (1979), in regard to interpretation of statutes, our Supreme Court, citing various cases, ruled in relevant part as follows:

"One of the rules of statutory construction is that language which is clear upon its face does not require or permit any construction. We have said several times: "Where there is no ambiguity in a statute, there is nothing for this court to interpret.""

In addition to the plain, unambiguous language of WAC 246-453-030 cited on the previous page, the legislative intent is additionally clarified at WAC 246-453-030(5), which reads as follows:

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“Information requests, from the hospital to the responsible party, for the verification of income and family size shall be limited to that which is reasonably necessary and readily available to substantiate the responsible party’s qualification for charity sponsorship, and may not be used to discourage applications for such sponsorship. Only those facts relevant to eligibility may be verified, and duplicate forms of verification shall not be demanded.”

The plain letter and intent of the law makes clear an income tax return alone is sufficient to establish eligibility and evidence of income. The statute goes further to expressly prohibit the kind of unnecessary over disclosure required by Jefferson Healthcare in demanding documents such as bank statements, credit card accounts and other highly personal and sensitive documents.

In relevant part, WAC 246-453-040 provides as follows:

“For the purpose of identifying indigent persons, all hospitals shall use the following criteria:

(1) All responsible parties with family income equal to or below one hundred percent of the federal poverty standard, adjusted for family size, shall be determined to be indigent persons qualifying for charity sponsorship for the full amount of hospital charges related to appropriate hospital-based medical services that are not covered by private or public third-party sponsorship;

RCW 70.170.060 defines and reiterates the WAC language on the standard for charity care eligibility as follows:

“All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges” (emphasis added)

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As noted by the District Court, WAC 246-453-010(17) defines income as follows:

“(17) "Income" means total cash receipts before taxes derived from wages and salaries, welfare payments, Social Security payments, strike benefits, unemployment or disability benefits, child support, alimony, and net earnings from business and investment activities paid to the individual” (emphasis added)

Black’s Law Dictionary defines “*net income*” aka “*net earnings*” as follows:

"Total income from all sources minus deductions, exemptions, and other tax reductions. * Income tax is computed on net income. -- Also termed net earnings." (Seventh Edition (1999) page 767)

The plain language of the statute calculates income on the “net” from business and investment activities, and the gross from all other sources.

Net earnings from investment activity is fully reflected on the first page of Mr. Earl’s income tax return (Appendix 6) as capital losses, which the plain language of the relevant portions of the statute explicitly recognizes as evidence of income.

It is perhaps a source of confusion in this matter that our legislature gives the term "indigent persons" a definition somewhat at odds with its ordinary meaning. Under the relevant portions of WAC 246-453-010(4), "Indigent persons", "*means those patients who have exhausted any third-*

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party sources, including Medicare and Medicaid, and whose income is equal to or below 200% of the federal poverty standards". In 2005, under the law, a family of 8, with an annual income of \$67,500.00, was classified as "indigent". Such a definition contrasts sharply with the ordinary understanding of the word, which conjures images of homeless people, wrapped in newspaper, sleeping in doorways.

A careful reading of WAC 246-453 and its provisions makes clear the legislature's intent, the law's application, and its purpose. The law specifically excludes coverage for the homeless person described above, as such individuals are normally covered under programs such as Medicare and Medicaid. The law does not cover elective procedures. The law only applies to urgent/emergency care provided by a local hospital. It does not cover low income persons who have medical insurance benefits.

What the law does do is provide urgent/emergency care, on a graduated scale, to provide relief for persons who fall into a gray area somewhere between affluent and broke. These are persons whose incomes make it difficult or impossible to afford insurance, yet their financial circumstances are not as dire as those qualifying for other programs. A fair characterization of the charity care laws is they provide a mechanism to avoid circumstances where bankruptcy would be the only viable alternative.

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d) The Superior Court erred in denying Mr. Earl an opportunity to be heard on judicial notice of adjudicative facts. (Assignment of Error 3)

On RALJ appeal, the Superior Court ruled the record supports the District Court’s judgment and denied Mr. Earl an opportunity to be heard on the ruling (Appendix 28).

In *Swak v. The Dept. of Labor and Industries, 40 Wn.2d 51 (1952)*, the court ruled, “*A court of this state will take judicial notice of the record in the cause presently before it or in proceedings engrafted, ancillary, or supplementary to it.*”

In *State v. K.N., 124 Wn. App. 875 (2004)*, the court ruled:

“While not every use of judicial notice is regulated by the rules of evidence, judicial notice of “adjudicative facts” is governed by formalized treatment under ER 201. The tradition “has been one of caution in requiring that the matter be *beyond reasonable controversy.*” FED. R. EVID . 201 advisory committee’s note subdivision (b). Thus, in order for the court to take judicial notice of an adjudicative fact, the fact in question must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” (emphasis added)

In *State v. Duran-Davila, 77 Wn. App. 701 (1995)*, the court ruled:

“A court generally may take judicial notice of court records in the same case.”

Black’s Law defines an “adjudicative fact” as: “*A controlling or*

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operational fact, rather than a background fact; a fact that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties. For example, adjudicative facts include those that the jury weighs.”

Black’s law defines “operative fact” as: “*A fact that affects an existing legal relationship, esp. a legal claim.*”

The relevant portions of Washington's ER 201 are identical to Federal rules. As noted in *State v. K.N.* above, our courts have previously relied on the committee notes in the *Appendix to USC 28, Article II, 201* as guidance governing the taking of judicial notice of adjudicative facts. In pertinent part, the notes provide as follows:

“In view of these considerations, the regulation of judicial notice of facts by the present rule extends only to adjudicative facts. What, then, are “adjudicative” facts? Davis refers to them as those “which relate to the parties,” or more fully: “*When a court or an agency finds facts concerning the immediate parties—who did what, where, when, how, and with what motive or intent—the court or agency is performing an adjudicative function*, and the facts are conveniently called adjudicative facts. * * * “Stated in other terms, the *adjudicative facts are those to which the law is applied in the process of adjudication*. They are the facts that normally go to the jury in a jury case. They relate to the parties, their activities, their properties, their businesses.” 2 Administrative Law Treatise 353.” (emphasis added)

“*Basic considerations of procedural fairness demand an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed*. The rule requires the granting of that opportunity upon request. No formal scheme of giving

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notice is provided. An adversely affected party may learn in advance that judicial notice is in contemplation, either by virtue of being served with a copy of a request by another party under subdivision (d) that judicial notice be taken, or through an advance indication by the judge. **Or he may have no advance notice at all. The likelihood of the latter is enhanced by the frequent failure to recognize judicial notice as such.** (emphasis added)

The Superior Court's ruling the record supported the District Court's judgment was, by definition, judicial notice of adjudicative fact. Not only was the judicial notice in error, Mr. Earl had a due process right to be heard on the propriety of taking judicial notice and the tenor of the matter noticed, which the Superior Court refused to allow.

The circumstances here were further compounded by the fact Audit did not file a response brief and, that RALJ does not provide a mechanism comparable to ER 201, such as a motion for reconsideration. Our courts have previously ruled it is within a court's discretion to raise arguments on an absent litigants behalf. Mr. Earl does not seek to overturn those decisions here, but would nevertheless note for the record, from experience, that this places a litigant in the unenviable position of having to argue issues with the court itself, rather than with an opposing party, where the court's roll is more that of an impartial observer. Mr. Earl would, however, argue that when a court exercises this type of discretion, extra care should be taken to ensure litigants are fairly heard, and not ambushed

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by judicial notice, without warning or an opportunity to respond. To do otherwise is to violate a litigant's right to due process.

3. CONSTITUTIONAL QUESTIONS

e) Due process and the Fourteenth Amendment to the US Constitution

There are aspects of this case and the manner in which decisions have been entered which are deeply disturbing on Constitutional grounds.

The Fourteenth Amendment reads in relevant part as follows:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (emphasis added)

In *State v. Phelan*, 100 Wn. 2d 508 (1983) our Supreme Court ruled: “persons similarly situated with respect to the legitimate purpose of the law receive like treatment”

RCW 70.170.060 provides that: *“All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges”* (emphasis added). WAC 246-453-030 provided that an income tax return *“shall be considered sufficient evidence”* to determine eligibility.

Mr. Earl is similarly situated to all persons with an income below one hundred percent of the poverty level. Mr. Earl has provided his income

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tax return, fully meeting the evidentiary requirement of similarly situated persons under the plain language of the law. Every word and aspect of the law makes clear it was our legislature's intent to keep it just exactly that simple. It truly is that simple. The courts below have no authority to arbitrarily decide on a case by case basis if some persons should be excluded from the law's application based on criteria other than that set forth by our legislature. To do so is in direct violation of Mr. Earl's fundamental right to equal protection under the law.

This is well settled law in an abundance of Supreme Court decisions: "When we are interpreting a statute, we give effect to the plain meaning of the statutory language." (*Higgins v. Stafford*, 123 Wn.2d 160 (1994)). "Consideration of the legislative history of an enactment has long been held to be a legitimate method of determining the legislature's intent." (*State v. Frampton*, 95 Wn.2d 469 (1994)). "Statutes should not be interpreted in such a manner as to render any portion meaningless, superfluous or questionable." (*Avlonitis v. Seattle District Court*, 97 Wn.2d 131 (1982))

In the landmark *McDonald v. City of Chicago*, No. 08-1521, decided on June 28, 2010, the US Supreme Court makes clear courts are not at liberty to apply laws in a less than even handed manner as follows:

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“The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.”

Justice Scalia, concurring separately with the majority had the following to say in regard to the practice commonly referred to as legislating from the bench:

“The notion that the absence of a coherent theory of the Due Process Clause will somehow *curtail* judicial caprice is at war with reason. Indeterminacy means opportunity for courts to impose whatever rule they like; it is the problem, not the solution. The idea that interpretive pluralism would *reduce* courts’ ability to impose their will on the ignorant masses is not merely naïve, but absurd.”

In the final analysis, this is a core issue in this case. Our legislature enacted the Charity Care laws to protect citizens in Washington State against the predatory costs of medical care, when those costs would create an impossible financial burden, with the sole determining factor being income: Net income if derived from “investment activities” and gross income if derived otherwise. The language of the law is not subject to misinterpretation. It is plainly and coherently written. It clearly defines what constitutes income under the law and, identifies what documents constitute proof of income. The standards defined are not based on a temporary ability to pay through borrowing or liquidating assets, but on an applicants overall financial condition based on income alone, as

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demonstrated by a Federal income tax return.

The adverse decisions entered in this case to date are of the legislating from the bench variety prohibited by the Fourteenth Amendment. The essence of these decisions is an arbitrary rejection of the law based on the decision makers' belief that Mr. Earl should, for some unknown reason, be forced to pay medical bills that the plain language of the law, and the evidence in this case, show he does not owe.

The only legally recognizable evidence in this case demonstrating Mr. Earl's income is Mr. Earl's 2005 Federal tax return. That document provides all information under the law that is necessary to reach a legally correct decision in this matter. Mr. Earl is entitled, by right, to equal protection under the law.

b) Audit did not establish standing to maintain an action. The judgment is void. (Assignment of Error 8)

RCW 19.16.270 provides in relevant part as follows:

"In any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint"

RCW 19.16.260 provides as follows:

"No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving

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that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter."

Under the above statutes, Washington laws establishes five elements a collection agency must meet in order to demonstrate standing to bring and maintain an action:

1. A collection agency must allege in its complaint it is licensed.
2. A collection agency must allege it is bonded.
3. Written proof of assignment must be filed with the complaint.
4. Proof of license must be filed with the court.
5. Proof of bonding must be filed with the court.

Of the five elements, the only one met by Audit is its complaint alleges it is licensed. Audit has neither alleged nor proved it is bonded. Audit has not filed proof it is licensed. Audit has not filed proof it is the assignee of Jefferson Healthcare claims.

The issue of a court's jurisdiction and a collection agency's capacity to sue was certified to the Supreme Court by this court in *Trust Fund*

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Servs. v. Aro Glass, 89 Wn.2d 758 (1978). In that case, the Court found the plaintiff was not a collection agency, leaving the issues of jurisdiction and standing to be decided at some future time, as follows:

"Since we determine that Trust Fund's activities are exempted by the provision, we do not decide whether the possession of a license is necessary for the court's jurisdiction over the subject matter or whether it merely involves a party's capacity to sue."

The Petitioner has been unable to locate settled law on these issues since the *Trust Fund Servs.* decision noted above. As Audit does not dispute it is acting in the capacity of a collection agency, and no exceptions apply, it is appropriate this Court consider these issues in the instant case.

In *Hazel v. Van Beek, 135 Wn.2d 45 (1998)*, our Supreme Court ruled: "*a void judgment can be attacked at any time*". The Court also ruled, in reference to acts by our legislature: "*And when it has done this in language clear and unmistakable, as it has in the statute before us, there is no room for construction, and the courts can do nothing else than give the statute effect.*"

In *Treffry v. Taylor, 67 Wn.2d 487 (1965)*, our Supreme Court ruled: "*To require the furnishing of a bond to insure compliance with the law is a reasonable exercise of police power.*"

In *Nicolaysen v. Burgess, 10 Wn. App. 224 (1973)*, the court ruled a plaintiff "*must allege and prove substantial compliance with the act*" to

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establish standing to bring and maintain an action.

In *King County v. Rea*, 21 Wn.2d 593, (1944), our Supreme Court addressed issues related to a failure to establish standing in regard to foreclosure sales, ruling in pertinent part as follows:

"The judgment in the case at bar was void on its face. The assessment rolls were ineffectual to levy a valid tax and hence no tax became justly due and unpaid in the purview of the statute, and none had to be paid or tendered to maintain the proceeding."

As Audit has never established it has any legal right under Washington law that would entitle it to a judgment against Mr. Earl, the judgment is void on its face and must be vacated.

c) Original, exclusive jurisdiction to determine wrongful denial of Charity Care is vested in the Department of Health. The judgment is void. (Assignment of Error 8)

At the first District Court trial in this matter, the trial court ruled Jefferson Healthcare's Charity Care agreement was not legally binding, that the court did not have jurisdiction to consider the merits of Mr. Earl's defense, and entered judgment in favor of Audit.

On RALJ appeal, Mr. Earl argued that the Charity Care agreement has the effect of a unilateral contract under Washington law, or alternately, if it does not, the judgment is necessarily void for want of subject matter jurisdiction.

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In *Corbit v. J. I. Case Co.*, 70 Wn.2d 522 (1967) the court ruled in relevant part as follows:

“A contract is a promise or a set of promises for the breach of which the law gives a remedy, ***or the performance of which the law in some way recognizes as a duty.***” (emphasis added)

In *Multicare Medical Ctr. v. DSHS*, 114 Wn.2d (1990) the court ruled in pertinent part as follows:

“The term “contract” is a well established legal term which, under common law, includes unilateral contracts. In Washington, the term “contract” has long been recognized to include both bilateral and unilateral contracts.... under a unilateral contract, an offer cannot be accepted by promising to perform; rather, the offeree must accept, if at all, by performance, and the contract then becomes executed.... In a unilateral contract, consideration consists of the offeree performing the requisite terms of the offer.”

It was the Superior Court's view that as Jefferson Healthcare's Charity Care/Sliding Fee Scale agreement essentially reflects Washington law, thus having the effect of a unilateral contract, the District Court erred in not considering Mr. Earl's defense that by the terms of the Charity Care agreement, no debt is owed.

The Superior Court ordered, *“This matter is remanded for trial on the issue of whether Mr. Earl qualified for relief under the “sliding fee scale”. (Appendix 9)*

On remand, the District Court ruled, *“The sole issue for determination by this court is whether Defendant's application for charity*

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care was wrongfully denied.” (CP 138)

Clearly, this is not what the District Court was ordered to do. The difference is subtle, but legally substantial.

It is conceivable, but not certain, the provisions of RCW 3.66.020(1), which gives District Courts jurisdiction over, “*Actions arising on contract for the recovery of money.*”, may apply if the Charity Care/Sliding Fee Scale agreement is construed as being contractual in nature. However, under the provisions of WAC 246-453-020(9)(d), the Department of Health is vested with exclusive, original jurisdiction to determine wrongful denials of charity care. The statutory language is as follows:

“The department will review the instances of denials of charity care. In the event of an inappropriate denial of charity care, the department may seek penalties as provided in RCW 70.170.070.”

No reasonable person would fail to be disturbed by the tactics and testimony by Jefferson Healthcare representatives in the instant case. At the first trial, Ms. Bachelor testified Jefferson Healthcare cherry picked what documents it sent to the Dept. of Health and specifically stated Mr. Earl’s form 1040 was withheld. At the second trial, Ms. Sharko-Taylor first testified Jefferson Healthcare provided the Dept. of Health with the document, then recanted her testimony when the perjury was brought to

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her attention on cross examination. Both witnesses sought to imply Jefferson Healthcare's actions met with the Department of Health's approval, then subsequently admitted they had no knowledge if the Dept. of Health was even aware of the nature of the dispute.

Burgin v. Universal Credit Co., 2 Wn.2d 364 (1940), is instructive in how a court should treat such circumstances. When a party fails to produce a witness it would reasonably be expected to produce, and testimony is inconsistent with that previously given, it creates a presumption the party's "cause lacks honesty and truth". In *Ulberg v. Seattle Bonded, Inc., 28 Wn. App. 762 (1981)*, the court ruled that "the trial court is charged with determining the credibility of the witnesses".

There is much in the record in this case that supports a presumption that Jefferson Healthcare and Audit are using courts of limited jurisdiction as a mechanism to run an end play around Department of Health original jurisdiction over wrongful denials of charity care claims.

RCW 70.170.070 provides in relevant part:

"(1) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.070(5)... or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a

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separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section....

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health"

It is unfortunate that our legislature did not provide a clear path to resolving disputes between patients and hospitals when wrongful denial of charity care is at issue. RCW 34.05.240 would appear to be the most obvious course of action, which provides in part as follows: *"(1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency."*

In the instant case, the record is clear the District Court conducted a review of Jefferson Healthcare's actions, without the legal authority to do so. The judgment is void as a result. Mr. Earl would also pursue the argument to the next level to assert that unless, and until, a hospital obtains a declaratory order from the Department of Health, no court in Washington state would have jurisdiction to adjudicate civil actions where the subject matter includes wrongful denial of charity care applications. In the absence of a declaratory order, pled and proved by a plaintiff, a court is without authority to consider underlying contracts, thus any judgment entered is

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void on its face.

Such a construction of the law would avoid many of the issues and conflicts that have arisen in this matter. As the Dept. of Health is vested with the authority to oversee the Charity Care laws, the Department is certain to be far more competent and well versed in the law's application than would be a court of limited jurisdiction. A ruling by the Department would eliminate any questions about the actions taken by hospital review committees and/or the admission of privileged documents, hospital witnesses, etc.. Requiring hospitals to obtain a declaratory order as a prerequisite to civil action ensures hospitals will comply with the Charity Care law, closing any potential loophole that would allow a hospital to otherwise avoid scrutiny by the Department. With a declaratory order a matter of record, the court's burden would then be vastly simplified. At that point, the issues become ones our courts are well qualified to adjudicate as routine matters.

In *Dike v. Dike*, 75 Wn 2d 1 448 P.2d 490 (1968), the court ruled:

"A judgment is void if the court lacks jurisdiction of the parties or of the subject matter, or lacks the inherent power to make or enter the particular order involved."

In *John Hancock Mutual Life Ins. Co. v. Gooley*, 196 Wash. 357 (1938) the court ruled:

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"If a judgment is void, it must be from one or more of the following causes: (1) Want of jurisdiction over the subject-matter; (2) Want of jurisdiction over the parties to the action, or some of them; or (3) Want of power to grant the relief contained in the judgment. In pronouncing judgments of the first and second classes, the court acts without jurisdiction, while in those of the third class it acts in excess of jurisdiction. If the want of jurisdiction over either the subject-matter or the person appears by the record, or by any other admissible evidence, there is no doubt that the judgment is void."

Two things are clear from the record in the instant case. One, Jefferson Healthcare withheld from the Department of Health copies of Mr. Earl's form 1040. Had the Department received that document, it seems certain the Department would have questioned why Jefferson Healthcare denied coverage to a patient who had less than zero income. Two, Jefferson Healthcare neither sought a decision from the Department of Health, nor was a ruling by the Department made.

The District Court has no authority to step into the Department of Health's shoes or to usurp adjudicative powers vested exclusively in the Department. In the absence of an order from the Department of Health, the judgment is void on its face.

4. REQUEST FOR COSTS AND FEES

Pursuant to RAP 14.2, RAP 18.1 and RCW 4.84 Mr. Earl requests costs and fees in the event Mr. Earl is the prevailing party. Mr. Earl would more specifically pray this honorable Court find Audit's suit was a frivolous

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action within the meaning of RCW 4.84.185.

On receipt of Audit's Complaint, Mr. Earl wrote Audit a letter, dated December 31, 2007, with copies of Jefferson Healthcare's Charity Care/Sliding Fee Scale agreement, and, Mr. Earl's form 1040 attached. Citing *Biggs v. Vail, 124 Wn.2d 193 (1994)*, Mr. Earl informed Audit the action is frivolous based on the documents provided, and that he would ultimately pursue sanctions if the lawsuit were not withdrawn. Audit did not respond to the letter. Mr. Earl has incurred considerable out of pocket expense in the course of defending against this action and, to date, has spent well over 300 hours on the case. Mr. Earl should be made whole to the fullest extent allowed by rule and law.

VI. CONCLUSION

For the above reasons, the Petitioner/Defendant, Donald R. Earl, respectfully prays this honorable Court reverse or vacate judgments entered by the courts below, find the Plaintiff's action is frivolous, and, award costs and fees as allowed by rule and law.

Dated November 1, 2010.
Respectfully submitted by:



Donald R. Earl (pro se)
3090 Discovery Road
Port Townsend, WA 98368
(360) 379-6604

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VII. APPENDIX

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Charity Care denial letter (Volume II, exhibit 4) p. 7

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Verbatim Report of Proceedings from
February 5, 2010 (RP 7-9) p. 26-28

Blank 2005 Schedule D as legal reference p. 29

<p style="text-align: right;">Page 14</p> <p>1 THE COURT: -- is that correct? 2 MR. SHIELDS: Yes. 3 THE COURT: Okay. And you're stipulating to 4 that? 5 MR. EARL: Correct. 6 THE COURT: Okay. So I'm going to go ahead and 7 grant leave of court for him to amend his complaint. So 8 the amount now at issue is 14,256.18, correct? 9 MR. SHIELDS: That's correct, Your Honor. 10 THE COURT: Okay. So what is your response 11 to -- 12 MR. EARL: Okay. Were we going to do his side 13 completely first, or are we -- 14 THE COURT: Well, some of what he just said, 15 frankly, is in response to what he anticipates you 16 saying. So why don't you tell me what you're going to 17 say, and then I'll let him respond. 18 MR. EARL: Okay. I -- I accepted treatment on 19 the basis of the agreement that they supplied. And that 20 says that if my income is a certain level, that I 21 qualify for the sliding T scale. The house that I sold, 22 that was something that took place nine months before 23 the medical emergency arose. You know, the money was 24 basically in my checking account for a couple of days 25 while it went into the new house.</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. EARL: Okay. 2 THE COURT: Do you swear or affirm that the 3 testimony you're about to give is the truth, the whole 4 truth and nothing but the truth? 5 MR. EARL: Yes. 6 THE COURT: Okay. So go -- keep going. 7 MR. EARL: Okay. Everything I said was the 8 truth, too. 9 THE COURT: Yeah. 10 MR. EARL: Make it retroactive. 11 THE COURT: I'll note that. Okay. 12 MR. EARL: And, you know, it -- the -- all what 13 I had was -- it wasn't income. It was the equity. It 14 was part of the -- the part of the house that I didn't 15 owe to the bank when I sold it. It's not taxable 16 income. It's not anything that any type of accounting 17 period would call income, you know? It was a sale of an 18 asset that immediately went back into basically an 19 identical type asset. 20 If -- it's not considered even -- and I don't 21 know what it's -- for a personal residence, it's -- it's 22 not even considered capital gains. If it was capital 23 gains, you know, then I'd have some documentation on 24 that. And I had capital losses that would have carried 25 over and wiped that out anyway.</p>
<p style="text-align: right;">Page 15</p> <p>1 And, you know, this -- I don't know where 2 they're getting this theory that I was paying myself an 3 income. There was nothing along those lines. They -- 4 they made an issue of mingling funds. But there was -- 5 there was no funds to mingle. I was doing this as a 6 owner-builder. It was my house, my property. You know, 7 I am not a licensed contractor. I am not doing this for 8 resale. It's for a house that I, you know, intended to 9 occupy. 10 THE COURT: Okay. 11 MR. EARL: Basically, I -- you know, I hurt my 12 back several years ago while driving -- 13 THE COURT: Yeah, Mr. Earl -- 14 MR. EARL: -- driving to work. 15 THE COURT: Well, hang on for a minute. Let me 16 stop you for a minute. 17 MR. EARL: Okay. 18 THE COURT: I should have done this at the 19 beginning, but I'm going to do it now because I'm going 20 to ask you some questions. Why don't you raise your 21 right hand, because you're -- 22 MR. EARL: Pardon me? 23 THE COURT: Why don't you raise your right hand 24 because the testimony -- you're essentially giving 25 testimony, okay?</p>	<p style="text-align: right;">Page 17</p> <p>1 And, you know, I'm basically in the position 2 right now where my back is hurt. I -- I can stand up 3 for about 10 or 15 minutes, 20 minutes before it starts 4 causing me enough pain to where I, you know, have to sit 5 down. I can sit for about two hours. I've been to two 6 doctors that said there isn't anything they can do for 7 me except give me pain pills, which I don't want. And 8 basically, what I have right now is a bad back and a 9 house. And I don't have an income. You know, I hadn't 10 had an income for some time. 11 You know, kind of at the time these 12 transactions were taking place, the idea was that, you 13 know, once I got the house built, you know, that maybe 14 I'd be able to work, but it just didn't -- didn't quite 15 come out that way. The back's got worse. 16 And, you know, there's -- you know, and when 17 I -- you know, I appealed the original decision to deny 18 it. From what I understand, they're supposed to send 19 their decision to a state agency where there is like a 20 further decision on how these things are supposed to be 21 taking place. 22 I requested in writing that they turn this over 23 to the state so that it could be discussed, you know, 24 whether their decision was fair and appropriate. They 25 never responded to it. I never received any kind of</p>

Jefferson Healthcare
 Hospital, Clinics, Home Health and Hospice, Diagnostic and Rehabilitation Services
 834 Sheridan
 Port Townsend, WA 98368

CREDIT POLICY

Dear Patient:

It is our policy to provide quality medical care to any individual regardless of their financial status. The following credit policy was developed to provide financial assistance.

- **Prompt Pay Discount:** A 10% discount will be provided to self-pay patients for payment in full within 14 days of the postmark on your initial itemized bill.
- **Payment Arrangements:** Patients may make monthly payments on accounts paying the balance in full within three months. If this is not financially possible, formal arrangements must be made with the Financial Services Representative for hospital services or the Clinic Billing Manager for clinic services.
- **Medicaid / DSHS:** Patients who have no insurance or whose insurance does not cover the full balance of the bill, and are unable to pay the bill, are encouraged to contact the Financial Services Representative or the Clinic Billing Manager who will use the Medicaid Eligibility Worksheet to determine whether you must apply for Medicaid / DSHS and provide you with the Medicaid application.
- **Charity Care / Sliding Fee Scale:** This program is offered to patients who have no health insurance or a limited plan. Determination of eligibility for this program is based on verification of household income and family size. (Guidelines for program included in informational packet)



If you decide to choose one of the options above, please contact the Financial Service Representative's office at (360) 385-2200, extension 2267 or the Clinic Billing Manager at extension 4804.

Jefferson Healthcare accepts payment by cash, check, debit card or Visa, Master Card, Discover Card, or American Express credit cards. Payment may be made by telephone, mail or in person at the Financial Services Office (2nd floor) or at the Clinic Billing Manager's Office in the Main Lobby (water side of building). The form below is provided for the convenience of those who wish to mail authorization to Jefferson Healthcare to charge their credit card.

 I hereby authorize Jefferson Healthcare to charge my balance to the credit card indicated below:

Patient Name: _____ Account #: _____

Card Holder's Name: _____

Card Holder's Address including zip code: _____

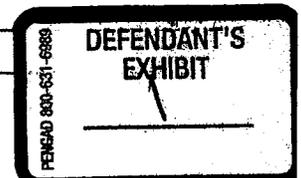
Circle: Visa Master Card Discover American Express Debit Card

Charge Card Number: _____

Visa Card Users please enter the 3 digit number located in the signature block on the back of your credit card: _____

Expiration Date: _____ Amount \$ _____

Signature: _____ Date: _____



Jefferson Healthcare
 Hospital, Clinics, Home Health and Hospice, Diagnostic and Rehabilitation Services
 Port Townsend, WA 98368
 360-385-2200 X 2267

SLIDING FEE SCALE

What is a sliding fee?

Sliding fee refers to the reduction (i.e. slide) of our normal charge to a lower charge for services provided at Jefferson Healthcare.

How is a reduction in fee determined?

Sliding fee is determined based on your income level and the number of members in your household. Using this information, our staff computes the amount of sliding fee reduction based on Federal poverty guidelines. Jefferson Healthcare will reduce the amount of your patient responsibility on any outstanding balances owed by you or a named dependent in this application for basic health service, elective service will not be discounted.

How can I qualify for a sliding fee?

To qualify for sliding fee, you will need to provide us with three pieces of information. We will need to document your level of income, the number of members in your household, and proof of residency (you must reside more than 50% of the year in Jefferson County).

What type of documentation do I need to provide?

We will need a copy of page 1 of your most recent federal income tax return (Form 1040 or 1040A) and a copy of recent wage statements, unemployment or pay stubs a statement from your employer showing year to date earnings can be substituted for pay stubs if one is not available. Copies of birth certificates, social security cards, etc. may be substituted for members of household verification. A copy of your current WA State driver's license or current utility bill with your name and street address is also required. This information is only used for determining your eligibility for sliding fee discount and is held in strict confidence. Once approved the sliding fee reduction will be good for 6 months, if you continue to receive services, you may be asked to re-apply.

What happens if I don't provide the documentation?

We will accept your word of your income level and number of household members to calculate your **FIRST** visit only. We will compute your sliding fee discount based on your information provided. You will be asked to send in the required documents. Without this documentation, you will receive a bill for the full amount of the charges, which are due within 30 days from the date of service.

If you need a return visit to our clinics in the future, we will require that documentation be on file to continue qualifying for the sliding fee discount. If the required documentation is not on file, you will be charged our usual charges for the services provided. **Qualifying must be updated on a semi-annual basis.**

Sliding Fee Scale Guidelines on Back of the Page

Jefferson Healthcare
 Hospital, Clinics, Home Health and Hospice, Diagnostic and Rehabilitation Services
 Port Townsend, WA 98368
 360-385-2200 X 2267

ABOUT THE JEFFERSON HEALTHCARE SLIDING FEE SCALE

We offer a sliding fee scale for patients who have no health insurance or a limited plan and whose family income is below 200% of the federal poverty level.

If you might be eligible for Medicaid or Basic Health Plan coverage, our staff will assist you in obtaining those applications. Medicaid ineligibility and/or Basic Health waiting list sign-up must be established before you will be eligible for our sliding fee. Our receptionist or financial services representative will ask you a few questions to determine whether you might be eligible for these plans.

If you are eligible for our sliding fee, charges for your services will be discounted. Full fee will be charged until an assessment qualifying you for our sliding fee scale is completed.

INCOME VERIFICATION

In order to qualify for our sliding fee, income for each person supported by the income must be verified. Please provide written verification for yourself and each applicable family member within 14 days.

Below are examples of the kinds of documentation required to verify your household's income:

- Last years IRS 1040 form and
- A copy of last two month's pay stubs
- If unemployed, a copy of last two month's unemployment check stubs, or current pay stub from most recent employer (for the last 3 months)
- Copy of driver's license or document showing current WA street address
- Verification of disability income
- Award letter for public assistance, military allotments, scholarships, etc
- Court order or Support Enforcement receipt for child or spousal support
- If no income whatsoever, and you are being provided room and board by someone else, a letter stating this from the people providing your room and board.
- If you have none of the above, some written documentation of your income from savings or checking account records, journals of jobs and receipts etc. must be provided.

Jefferson Healthcare
834 Sheridan, Port Townsend, WA 98368-2499

DETERMINATION OF ELIGIBILITY FOR CHARITY CARE/SLIDING FEE SCALE

Date Application Received: _____ Date Application Approved/Denied: _____

Income Verified: Y / N Type of Verification: _____

Family Size Verified: Y / N Type of Verification: _____

Third Party Status: Y / N Type of Verification: _____

The applicant is approved with _____ % reduction in allowable charges. The amount provided as

Sliding Fee Scale is: \$ _____

Patient's share: \$ _____

Date of Service: _____ Amount: \$ _____ Patient Bal. \$ _____

_____ The applicant's request is denied for the following reason(s):

Date Applicant Notified: _____ Approved/Denied by: _____

YOUR APPEAL RIGHTS

You have thirty days from the date of this notice to appeal any charity determination. You may challenge the level of charity granted as well as complete denials. You must contact your Financial Services Representative who will schedule the appeal with the hospital Chief Financial Officer. Be prepared to substantiate facts previously submitted that were excluded from the determination due to lack of verification. If you have new, updated information to support your claim, bring it to the hearing.

* The charity guidelines are straightforward, and determinations are made based upon the facts you submit. Special consideration may be granted when unusual circumstances of hardship exist. Be prepared to explain and substantiate unusual circumstances that may apply to your case.

The Chief Financial Officer will decide the appeal and notify you of his decision within 7 calendar days. The Chief Financial Officer's decision is final. If he decides against you, he is required to notify the State of his decision. The State will review the facts of the case.

1040

Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return 2005

OMB Use Only—Do not write or stamp in this space.

Label (See instructions on page 10.) Use the IRS label. Otherwise, please print or type.

For the year Jan. 1-Dec. 31, 2005, or other tax year beginning 2005, ending 20

Label
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Your first name and initial: Donald R. Last name: Earl

If a joint return, spouse's first name and initial: Last name:

Home address (number and street). If you have a P.O. box, see page 34: 3090 Discovery Rd Apt. no. Port Townsend, WA 98368

City, town or post office, state, and ZIP code. If you have a foreign address, see page 16.

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 10) You Spouse

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 10) You Spouse

Filing Status Check only one box.

1 Single

2 Married filing jointly (even if only one had income)

3 Married filing separately. Enter spouse's SSN above and full name here. ▶

4 Head of household (with qualifying person). (See page 17.) If the qualifying person is a child but not your dependent, enter the child's name here. ▶

5 Qualifying widow(er) with dependent child (see page 17)

Exemptions

6a Yourself. If someone can claim you as a dependent, do not check box 6a

b Spouse

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) If qualifying child for child tax credit (see page 13)

d Total number of exemptions claimed: 1

INCOME

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	153.77
8a	Taxable interest. Attach Schedule B if required	8a	
b	Tax-exempt interest. Do not include on line 8a	8b	
9a	Ordinary dividends. Attach Schedule B if required	9a	
b	Qualified dividends (see page 23)	9b	
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 23)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>	13	(3000)
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions	15a	
b	Taxable amount (see page 25)	15b	
16a	Pensions and annuities	16a	
b	Taxable amount (see page 25)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits	20a	
b	Taxable amount (see page 27)	20b	
21	Other income. List type and amount (see page 26)	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income ▶	22	(2896.00)

Adjusted Gross Income

23	Educator expenses (see page 28)	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction (see page 30)	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▶	31a	
32	IRA deduction (see page 31)	32	
33	Student loan interest deduction (see page 33)	33	
34	Tuition and fees deduction (see page 34)	34	
35	Domestic production activities deduction. Attach Form 8805	35	
36	Add lines 23 through 31a and 32 through 35	36	
37	Subtract line 36 from line 22. This is your adjusted gross income ▶	37	(2896.00)

DEFENDANT'S EXHIBIT
ENGAD 800-631-6899
return
1/24/06

DEFENDANT'S EXHIBIT
8869-1C9-04

December 21, 2006

Donald R. Earl
3090 Discovery Road
Port Townsend, WA 98368

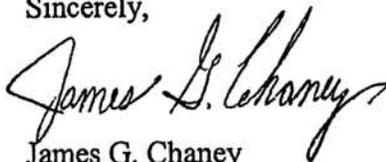
Dear Mr. Earl:

This letter is a follow up to your appeal meeting with: Vic Dirksen, Administrator; Chuck Russell, Hospital Commissioner; Kim Bachelor, Director of Patient Financial Services; and me regarding your charity care appeal and writing off to charity care the balance on four of your accounts for dates of service in May, June and July of 2006 totaling \$14,256.18. After careful consideration, we have determined that the proceeds from the sale of your home should be considered in the determination of whether or not you qualify for charity care. As a result of that decision, we have determined that you do not qualify for charity care and are responsible for the payment of those accounts in total.

Payment for those services may be made by cash, check, or credit card at the facility or through the mail. If a payment arrangement plan better meets your requirements, please contact Donna Valentine, Patient Financial Services Representative at 385-2200 ext. 2267 in order to set up a payment plan.

Thank you for taking the time to meet with us regarding your financial responsibility for services provided by Jefferson Healthcare.

Sincerely,



James G. Chaney
Chief Financial Officer

Hospital

Home Health and
Hospice

Physical Therapy
& Rehabilitation

Clinics:

- Jefferson Medical
Group

- Port Townsend
Family Physicians

- South County
Medical Clinic

- Olympic Primary Care

- Richard Lynn, MD



834 Sheridan
Port Townsend, Washington 98368
360-385-2200
www.jeffersonhealthcare.org

FILED
 IN SUPERIOR COURT
 2008 SEP 23 A 10:49
 Jefferson County
 Clerk's Office

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

AUDIT & ADJUSTMENT COMPANY, INC., a
 Washington corporation,

Plaintiff,

v.

DONALD EARL,

Defendant.

NO. 08-2-00148-1

MEMORANDUM DECISION REMANDING
 CASE FOR ADDITIONAL TRIAL

Plaintiff, Audit & Adjustment Company, Inc., took assignment from Jefferson Health Care of a \$14,000 account receivable claimed against Defendant Donald Earl. Audit and Adjustment filed this action in Jefferson County District Court, under case #11758, seeking to reduce the claimed debt to judgment. Defendant Earl appeared and answered, contending no debt was owed under his contractual relationship with the hospital.

At trial, Mr. Earl produced a document titled "Sliding Fee Scale" which he testified was delivered to him by the hospital when he was admitted to receive services. The document purports to provide for adjustment from regularly scheduled fees based on income eligibility. It says, among other things, "If you are eligible for our sliding fee, charges for your services will be discounted."

MEMORANDUM DECISION REMANDING CASE FOR
 ADDITIONAL TRIAL . . . 1

HONORABLE RUSSELL W. HARTMAN
 KITSAP COUNTY SUPERIOR COURT
 614 Division Street
 Port Orchard, WA 98366
 (360) 337-7140

1 In District Court Mr. Earl sought to prove that the hospital wrongfully denied his
2 application for a fee adjustment at the time services were rendered. The Court took
3 some testimony, and received into evidence some documents on this issue.
4 Ultimately, however, the trial judge concluded the "sliding fee scale", was not part
5 of the contractual relationship between the hospital and Mr. Earl, and further that
6 the District Court was without subject matter jurisdiction to address the issue.
7 Accordingly, the trial court declined to adjudicate whether Mr. Earl qualified for
8 relief under the hospital's stated policy. As the reviewing Court, I respectfully submit
9 this was an error of law.
10

11
12 Mr. Earl's defense is that he does not owe the money claimed because he was
13 charged more than what the hospital promised he would be charged at the time
14 services were rendered. This is well within the general denial that he owes any
15 money under the contract as stated in the answer to the complaint. It is not greatly
16 different than arguing the hospital charged him twice for the same service, or that
17 the hospital charged him for a service that was not rendered, or that the hospital
18 charged more than a scheduled amount. The hospital promised in its written "sliding
19 fee scale" that "If you are eligible for our sliding fee, charges for your services will be
20 discounted." This matter is remanded for trial on the issue of whether Mr. Earl
21 qualified for relief under the "sliding fee scale."
22

23
24 DATED this 19th day of September, 2008.
25

26
27
28
29 
HONORABLE RUSSELL W. HARTMAN

30
MEMORANDUM DECISION REMANDING CASE FOR
ADDITIONAL TRIAL . . 2

HONORABLE RUSSELL W. HARTMAN
KITSAP COUNTY SUPERIOR COURT
614 Division Street
Port Orchard, WA 98366
(360) 337-7140

1 Q. Okay. So this would be part of the packet when
2 they have received their charity care application?

3 A. Yep.

4 MR. SHIELDS: Okay. Do you have any objection
5 to that? Move to admit 2.

6 THE COURT: There's no objection?

7 MR. EARL: No objection.

8 THE COURT: Okay. Exhibit 2 will be admitted.

9 BY MR. SHIELDS:

10 Q. Now, subsequently, did Mr. Earl then apply for
11 charity care?

12 A. Yes.

13 Q. Okay. Showing what's been marked as
14 Plaintiff's Exhibit No. 3, could you identify that for
15 me, please?

16 A. This is a letter from Mr. Earl to the -- it was
17 our financial counselor at the time, stating what his
18 income and so on and forth (unintelligible).

19 Q. Okay. So you handled this as an appeal to be
20 qualified for charity care; is that correct?

21 A. Right.

22 MR. SHIELDS: Showing you what's been marked as
23 Plaintiff's Exhibit 3. Do you have any objection to
24 that, Mr. Earl?

25 MR. EARL: Yes, I do. This is privileged

1 information that they have no authority or right
2 whatsoever to make a matter of record. It's -- it was
3 provided to them in strictest confidence. And this --
4 you know, it unconditionally told them that they were
5 not to disclose this information to anybody under any
6 circumstances.

7 THE COURT: But, Mr. Earl, this goes to the
8 heart of your application for charity care. And by
9 virtue of asserting the position that you are asserting,
10 you've waived that confidentiality.

11 Let me see the document. "The information made
12 available to anyone except on the most limited
13 need-to-know basis necessary to facilitate this sliding
14 scale application," we're here -- I mean, we're here
15 today to determine whether or not you were appropriately
16 denied -- properly denied charity care. I mean, this is
17 a need-to-know necessary to facilitate your application.
18 So do you have any other objections to the admissibility
19 of this document?

20 MR. EARL: That's my objection.

21 THE COURT: Okay.

22 MR. EARL: And if any part of this case is
23 decided on that document, well, I'll have to appeal it
24 again because that -- that document does not discuss
25 income. Jefferson Healthcare asked for a whole bunch of

1 Therefore, I had to look at the full \$71,000 as
2 your income for that year. And the original denial was
3 based on that. The administration of the hospital
4 upheld my denial. Department of Health, I'm not sure
5 what their role is.

6 BY MR. SHIELDS:

7 Q. You have not heard anything back from the
8 Department of Health saying that --

9 A. No, I have not.

10 Q. -- your denial of charity care was erroneous?

11 A. Or that I needed to look at it again or that
12 they -- no. And they are -- actually, our charity care
13 policy and procedure is approved by the Department of
14 Health annually. We must turn it in annually. And they
15 approve it. Ours was approved, so I do know that they
16 do communicate with us. And I turn in my denials
17 annually as well.

18 MR. SHIELDS: I have nothing further, Your
19 Honor.

20 MR. EARL: I would have a couple questions.

21

22

CROSS-EXAMINATION

23

BY MR. EARL:

24

25

Q. Basically, all the denials that you have for
the year, you just basically turn them in in bulk,

1 something like that, so they can --

2 A. Well, see, with Harbor View, it would look like
3 bulk. We're not. We're Jefferson Healthcare. And so
4 the two that I had for last year got turned in.

5 Q. Okay.

6 A. I denied two applications last year.

7 Q. And do they provide any kind of an approval or
8 disapproval?

9 A. No, they do not. And I am not aware that they
10 would. All I know is that the Washington State
11 regulation states that hospitals will turn over their
12 denied charity care cases and sliding PCL cases to the
13 Department of Health.

14 Q. So basically, there's no way to tell whether
15 they -- if they knew that this was something that
16 somebody actively questioned, whether they were given --

17 A. I turned over -- I turned over --

18 Q. -- a thumbs up or thumbs down.

19 A. -- your entire packet, including all of your
20 letters, including all of the appeals, including my
21 letter to you.

22 Q. Yeah.

23 A. The only thing they did not get was any
24 financial information. That was not included. It was
25 not disputed in the letters, so I just -- I didn't give

1 your tax return. I didn't give your bank statements or
2 your electric bill or some of the things that we asked
3 for. I did not include that. But other than that, I
4 think -- no, I won't presume to know what they think
5 so --

6 Q. So basically, when you said that we denied him
7 this claim --

8 A. Mm-hmm.

9 Q. -- you didn't say, "This is his tax return for
10 that year. This was his income, and we decided not to
11 use that as the basis for making the decision." So
12 they --

13 A. Actually, I didn't -- I didn't have to include
14 all that because your letter was so -- so detailed about
15 what your income was and what your debt was that I
16 didn't think it would be pertinent to turn in that kind
17 of financial information. Plus, I did not have your
18 permission to turn your bank statements or your credit
19 card debt --

20 Q. And you didn't ask for the permission or make
21 any --

22 A. You know, I mean --

23 Q. -- any type of notice to me to let me know --

24 A. -- this is a decision --

25 Q. -- that this was --

1 the sliding fee schedule that's exhibit No. 2?

2 A. Yes.

3 Q. And so would it be fair, then, to say that
4 Mr. Earl's initial request for a reduction down to
5 possibly free medical care was then denied based on his
6 acknowledgment of this income?

7 A. Yes.

8 Q. Okay. When --

9 MR. EARL: I object to the characterization
10 (unintelligible) income. It was a sale -- it was a
11 liquidation of an asset.

12 THE COURT: And I understand that that's sort
13 of the heart of your case. And you'll have an
14 opportunity, both in your own testimony and then in
15 closing argument, to make that. But, you know, her
16 testimony is her testimony.

17 BY MR. SHIELDS:

18 Q. Now, at -- at the time that his decision was
19 appealed, when Mr. Earl appealed that initial denial,
20 what is the process? Who does this decision then go to
21 for further review?

22 A. We have a board that is comprised of our CFO.
23 We have one of our county commissioners, the business
24 office director, and I think there was one other person
25 on the board.

1 Q. Okay. So, in fact, this review committee is
2 not even entirely composed of members of the hospital;
3 is that correct?

4 A. Correct.

5 Q. Okay. And did that review committee review all
6 of the documents, to the best of your knowledge? In
7 other words, did your office supply all of these
8 documents to the review committee for their assessment?

9 A. To the best of my knowledge.

10 Q. And what was their decision?

11 A. They denied his charity care.

12 Q. Okay.

13 A. (Unintelligible.)

14 Q. Showing you what's been marked as Plaintiff's
15 Exhibit No. 4, could you identify that for me, please?

16 A. This is the letter that -- by Washington State
17 law that we have to send in any time there is an appeal.
18 And it shows all the people that were on the board and
19 the reason why he was denied for his charity care.

20 Q. Okay.

21 MR. EARL: Do you have an extra copy of this?

22 THE COURT: The clerk will --

23 FEMALE SPEAKER: Yeah, I have one.

24 THE COURT: Oh, never mind. Never mind.

25 MR. SHIELDS: Luckily she brought plenty.

1 THE COURT: Yeah.

2 MR. SHIELDS: Yeah.

3 THE WITNESS: -- on that page.

4 THE CLERK: It's 45 (unintelligible).

5 MR. SHIELDS: Okay. (Unintelligible.)

6 MR. EARL: And again, what --

7 THE COURT: (Unintelligible.)

8 MR. EARL: What authority does this -- what
9 authority is this based on?

10 MR. SHIELDS: Well, we can ask the witness,
11 Your Honor.

12 THE COURT: Yeah, you can -- Mr. Earl, really,
13 what we're -- are you objecting to the authenticity of
14 the document, relevancy of the document, you know,
15 some --

16 MR. EARL: Well, he's representing that this is
17 state law. And I studied the statutes in detail, and --

18 THE COURT: Okay.

19 MR. EARL: -- I don't see anything along these
20 lines. So again, what I'm basically asking is, what is
21 the legal authority. Why would this be, in any way, a
22 basis for entering a decision?

23 THE COURT: Good. You're arguing whether it's
24 relevant. And if that's your objection, it's overruled
25 because she's explaining to the Court the basis upon

1 which your application for charity care was denied. And
2 she's saying this is one of the things that she relied
3 on.

4 And so that -- so it should be admitted for
5 that purpose. It's not being admitted because that
6 necessarily makes their denial correct or anything.
7 She's just explaining, why did they make the decision
8 that she made -- that they made. And they, in part,
9 relied on this, so --

10 MR. SHIELDS: And, Your Honor, in that regard,
11 maybe we should mark the whole packet as 5 instead of
12 just the one page.

13 THE COURT: Correct. And then --

14 MR. SHIELDS: And I have a couple of other
15 questions I can ask her in that regard.

16 THE COURT: Correct.

17 BY MR. SHIELDS:

18 Q. Let's go back just briefly now to what's been
19 marked as Plaintiff's Exhibit No. 5. You've identified
20 one of the pages out of there. But this whole pamphlet,
21 where did you obtain that pamphlet from?

22 A. The Washington State Department of Health, who
23 made (unintelligible).

24 Q. Okay. Does this come off a website?

25 A. This actually came off their website.

1 state; that is correct?

2 A. Correct.

3 Q. Okay. And did you ever receive anything from
4 the state regarding your final determination on appeal
5 of Mr. Earl's application?

6 A. No, we didn't.

7 Q. Okay. Now, are you aware of whether or not
8 Mr. Earl then decided to take this administrative
9 decision to another level?

10 A. I am aware, yes.

11 Q. And where did he go with that?

12 A. From what I understand, he came to the courts.

13 Q. Well, no, no.

14 A. Oh, I'm sorry.

15 Q. We, the plaintiff, have --

16 A. Oh, yes. Oh, yeah.

17 Q. -- brought it to court.

18 A. Oh, I'm sorry.

19 Q. But, I mean, Mr. Earl, has he taken any other
20 decisions that has forced the hospital to come in and
21 justify their decision?

22 A. (No audible response.)

23 Q. Okay. And so is it your testimony, then, that
24 given the amount of money that Mr. Earl disclosed as
25 having in 2006, he didn't meet the criteria set out in

1 the sliding scale for income?

2 A. Correct.

3 Q. And that's why his appeal was denied?

4 A. Right.

5 MR. SHIELDS: You may inquire, Mr. Earl.

6 BY MR. EARL:

7 Q. Okay. First of all, now, this came up in the
8 previous hearing. Did Jefferson Healthcare provide the
9 Department of Health with a copy of my income tax
10 statement showing that my income was substantially below
11 the federal guidelines?

12 A. To the best of my knowledge, we sent in --
13 well, when we send in an application, we send in the
14 whole application. Your tax return was in there, and we
15 did send it in.

16 Q. Okay. I didn't (unintelligible) the
17 (unintelligible). That is contrary to what Kimberly
18 Bachelor testified to at the previous hearing. At the
19 previous hearing, Kimberly Bachelor testified that that
20 was not --

21 MR. SHIELDS: Your Honor, I'm going to object.
22 This is argumentative.

23 THE COURT: Right.

24 MR. SHIELDS: The witness wasn't even present.

25 THE COURT: Oh, she was not at the last

1 hearing?

2 MR. SHIELDS: She was not at the last trial.

3 THE COURT: Okay. You -- there's a way to ask
4 this question, just not the way you're asking it. I
5 mean, you can't engage in an argument, you know, with
6 her. I mean, there's a way to ask this question, but
7 I -- not the way you're asking it.

8 MR. EARL: Okay. Well --

9 THE COURT: And I can't give anybody the --

10 MR. EARL: I'll try and rephrase it a little
11 bit differently.

12 Q. Can you show any documentation whatsoever that
13 my income tax statement, which I provided to the
14 hospital at the meeting, was provided to the Department
15 of Health and so forth?

16 A. What I have -- and I have your file here, is I
17 have what your taxes is and what your charity care --
18 the whole packet that you sent in. Your -- your income
19 statements -- or the income -- your different, um --
20 your taxes. You sent in the letter and things like
21 that. I did not personally send off the letter, so I
22 don't know what was sent to the Department of Health. I
23 didn't do it myself.

24 Q. Okay. In other words, you don't know if that
25 was actually sent?

1 A. No. I know the letter was sent. I don't know
2 if your --

3 Q. No, I'm asking about the income tax.

4 A. I don't know what was sent in there.

5 Q. So you do not know that it was sent in; is that
6 correct?

7 A. Because I did not send it in, no, I do not know
8 if that was sent.

9 Q. Okay. So you have no personal knowledge of
10 that being sent in. So you don't know.

11 A. I have knowledge that the -- your charity care
12 application, which includes your tax return, was sent
13 in. Do I know personally if that piece of paper was
14 sent in? No, I do not.

15 MR. EARL: And now, I -- would it be possible
16 for me to have that income definition --

17 THE COURT: Oh, sure.

18 MR. EARL: -- in front of me while --

19 THE COURT: Sure, you could --

20 MR. EARL: -- while I ask her questions?

21 THE COURT: Actually, you could have access to
22 all of the exhibits while you're examining.

23 THE CLERK: I put them all away. I have one --

24 THE COURT: There you go.

25 MR. SHIELDS: Just a little (unintelligible).

1 THE CLERK: Okay.

2 THE COURT: And I'm going -- the clerk's going
3 to put the exhibits right there so you can look at any
4 of them at any time.

5 MR. SHIELDS: I've given him another one, Your
6 Honor.

7 THE COURT: Okay.

8 MR. EARL: Okay.

9 Q. Okay. Now, according to this, it says
10 "Income," quote, "means total cash receipts before taxes
11 derived from wages and salaries." Did -- did Jefferson
12 Healthcare find that I had had any wage or salaries?

13 A. Not from the information you -- not wages and
14 salaries, no.

15 Q. Okay. And it goes on and says "welfare
16 payments"?

17 A. I'm sorry?

18 Q. Welfare payments?

19 A. No.

20 Q. Does Jefferson Healthcare have any information
21 that I received welfare payments?

22 A. Not that you had given us.

23 Q. Okay. And this says "Social security
24 payments." Was there --

25 A. Not that you have given us.

1 Q. No social security payments. How about strike
2 benefits?

3 A. Again, not that you had indicated.

4 Q. No strike benefits. Unemployment or disability
5 benefits?

6 A. Not that was in the packet, no.

7 Q. Okay. How about child support?

8 A. Not that you gave us.

9 Q. How about alimony?

10 A. Not that you gave us.

11 Q. Okay. How about net earnings from business
12 investment activities paid to an individual?

13 A. Yes, we did.

14 Q. Okay. Now -- now explain that.

15 A. In your letter, you --

16 Q. Net -- net earnings. What is net earnings?

17 A. That would be earnings above like capital
18 gains. That would be --

19 Q. Okay.

20 A. -- like sale for a home, sale -- anything that
21 you used as -- from a business. It says "Net earnings
22 from a business and investment activities." So to us,
23 that was the money that you had stated that you had
24 gotten from your sale of your home that you used for
25 your personal --

1 MR. EARL: Okay.

2 THE COURT: -- speaks for itself. If -- in
3 argument, you can certainly point out --

4 MR. EARL: Okay.

5 THE COURT: -- that line doesn't have anything.

6 MR. EARL: Well, she's just testified that they
7 based their decision based on capital gains. This
8 document shows the capital gains was minus \$3,000 for
9 the year.

10 THE COURT: Right. And that's --

11 MR. EARL: So I'm asking -- I basically want to
12 ask her again, if Jefferson Healthcare was making this
13 determination based on capital gains, what -- what is
14 there in this document that would support their belief
15 that capital gains was more --

16 THE COURT: Mr. Earl, she's already testified
17 that they didn't rely on your tax return to make this
18 determination. And --

19 MR. EARL: She --

20 THE COURT: And I'll tell you that --

21 MR. EARL: She's testified that they relied on
22 it. Let me rephrase the question then.

23 Q. Did Jefferson Healthcare rely on capital gains
24 in making their decision on this matter?

25 A. What they relied on was your statement that you

1 ex parte. It- It never should have even been part of the
2 record.

3 THE COURT: Well, I dis-

4 MR. EARL: And the -

5 THE COURT: I disagree -

6 MR. EARL: - precedent -

7 THE COURT: - with you, sir. As a matter of law, I
8 think that was appropriately part of the record. And so I- I
9 think that the hospital is- is- I remanded the case for trial
10 because Judge Bierbaum had concluded at the first trial that
11 she lacked authority to address the issue of whether you
12 qualified as a matter of law for- for the charity
13 consideration, and hence she didn't consider the evidence that
14 was introduced on that issue at the first trial or make a
15 choice about that issue. So I sent it back for a trial on the
16 issue. And she- she has the information that's referred to in
17 her memorandum decision, including the stuff that- the
18 specific exhibits that are actually referred to in here, and
19 it- and she says- and she says you had this income from the
20 sale of this house and that disqualifies you from- from the
21 charitable qualification.

22 MR. EARL: Well, in- in going back to my brief at
23 page nine, it says first ex parte [inaudible] might be- result
24 in the disclosure of irrelevant, privileged medical

1 information. The harm from disclosure of this confidential
2 information cannot be fully remedied by court sanctions. The
3 precedent on that is- is absolutely clear that- that Audit had
4 no right to obtain those documents under any circumstances,
5 let alone without my knowledge. And introducing them by
6 surprise at trial -

7 THE COURT: I disagree with that analysis. In
8 fact, I've been through this- this very issue with another pro
9 se litigant down in Kitsap County in the very recent past.
10 You waive the privilege claims when you're asserting the right
11 to the benefit. You waive the right to- to any privilege to
12 the information. You have to make- If you say 'I qualify for
13 this charitable benefit,' then the information that can be
14 used to weight that- that determination is no longer
15 privileged.

16 MR. EARL: Well, at- at the very least, it- it
17 should be subject to discovery prior to- I mean, this- this
18 is something that- that Audit should have legally tried to
19 obtain, not just have the hospital turn it over to them
20 without my knowledge and having no- no idea that this would be
21 something that I had to deal with -

22 THE COURT: Audit -

23 MR. EARL: - at trial.

24

1 THE COURT: Audit took an assignment of the
2 hospital's position. Audit has the same right to the
3 information that the hospital did. I- I understand all of
4 your arguments, Mr. Earl. I disagree with your conclusion.
5 And I've made my ruling, that Judge Bierbaum has made findings
6 from the record, from the evidence that was presented to her
7 that are sustained by substantial evidence that you had enough
8 income so you did not qualify for the claimed charitable
9 benefit under the definition in the statute and the
10 administrative code. And the primary disqualifier were the-
11 the sale proceeds from the residence.

12 MR. EARL: May I respond to that, or?

13 THE COURT: No, -

14 MR. EARL: We're done -

15 THE COURT: - that's my decision.

16 MR. EARL: - okay.

17 THE COURT: Thank you.

18 MR. EARL: Thank you, Your Honor.

19 THE COURT: Now, just a second. I'm going to need-
20 I'm going to need to enter an order on that. Do you have a
21 blank order form?

22 CLERK: I do.

23 THE COURT: [Prepares order] Okay. The order that
24 I have prepared and signed provides simply, it says, "This

**SCHEDULE D
(Form 1040)**

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on Form 1040

Capital Gains and Losses

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2005

Attachment
Sequence No. **12**

Your social security number

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6 of the instructions)	(e) Cost or other basis (see page D-6 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
1					
2 Enter your short-term totals, if any, from Schedule D-1, line 2					
3 Total short-term sales price amounts. Add lines 1 and 2 in column (d)					
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824					4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet on page D-6 of the instructions					6 ()
7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f)					7

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6 of the instructions)	(e) Cost or other basis (see page D-6 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
8					
9 Enter your long-term totals, if any, from Schedule D-1, line 9					
10 Total long-term sales price amounts. Add lines 8 and 9 in column (d)					
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824					11
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					12
13 Capital gain distributions. See page D-1 of the instructions					13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet on page D-6 of the instructions					14 ()
15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on the back					15

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

Case No. 40416-8-II

**WASHINGTON STATE COURT OF APPEALS
DIVISION II**

Audit & Adjustment Company, Inc.)
(Respondent/Plaintiff))
)
v.) CERTIFICATE OF SERVICE RE:
)
Donald Earl) BRIEF OF PETITIONER, and,
(Petitioner/Defendant)) VERBATIM REPORT OF PROCEEDINGS

CERTIFICATE OF MAILING

I certify that on November 1, 2010, I placed by Certified mail, return receipt requested, a copy of "Brief of Petitioner", and, "Verbatim Report of Proceedings" addressed to Audit & Adjustment Company's attorney of record, Kimberlee Walker Olsen, at:

Luke, Casteel & Olsen, PSC
3400 188th St. SW, # 484
Lynnwood, WA 98037-4708

Mail receipt number: 7009 0820 0001 0854 5935

Dated November 1, 2010, respectfully submitted by:


Donald R. Earl (pro se)
3090 Discovery Road
Port Townsend, WA 98368
(360) 379-6604