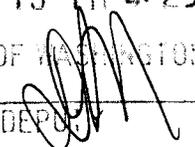


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DIVISION II

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

STATE OF WASHINGTON
BY 
DEPUTY

ALLEN METTLER AND MAY METTLER, D/B/A
ARM CONSTRUCTION,

Appellant,

vs.

GRAY LUMBER COMPANY,

Respondent

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Comes now ARM Construction, Plaintiff below, and requests this court reverse the trial court's dismissal of its case on summary judgment. On the record that was before the trial court, there were disputes of material fact that made summary judgment improper.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in deciding as a matter of law that Mac Gray's statements did not constitute a waiver of any disclaimers and exclusions that may have been in the contract.

2. The trial court erred in denying ARM's motion to strike the declaration of Gray's attorney, Gordon Hauschild, for lack of foundation and failure to authenticate documents, holding that any infirmities had been cured by Mr. Hauschild's later declaration.

3. The trial court erred in granting Gray Lumber's motion for summary judgment.

Issues Pertaining to Assignments of Error

Does an uncontroverted statement by a seller that it will be responsible for the consequences of its admitted breach of warranty constitute a waiver of any contractual disclaimers of warranties and exclusions of incidental and consequential damages? (Assignments of

Error 1, 3)

Does an uncontroverted statement by a seller that it will be responsible for the consequences of its admitted breach of warranty create an issue of material fact as to whether there was a waiver of any contractual disclaimers of warranties and exclusions of incidental and consequential damages, precluding summary judgment? (Assignments of Error 1, 3)

Are documents offered as evidence through the declaration of a party's attorney inadmissible when the attorney has no personal knowledge from which to authenticate the documents? (Assignment of Error 2)

Do documents offered as evidence through the declaration of a party's attorney have to be authenticated under ER 901 in order to be admissible, when the offering party had previously produced the documents in discovery? (Assignment of Error 2)

Is summary judgment improper when the moving party fails to produce any admissible evidence of the terms of a contract on which the party claims it is entitled to judgment? (Assignments of Error 2, 3)

Is summary judgment improper when the moving party's evidence of the terms of a contract on which the party claims it is entitled to judgment is ambiguous on its face and there is no other evidence to

explain the ambiguity? (Assignment of Error 3)

III. STATEMENT OF THE CASE

In May of 2006, ARM Construction (“ARM”) purchased lumber from Gray Lumber Company (“Gray”) to build falsework for a bridge project located at the Military Road overpass at 228th and Military Road. (CP at 2, 74.) ARM placed the order over the phone. (CP at 74.) Gray’s salesperson said nothing about disclaimers of warranties or exclusions of remedies. *Id.*

ARM ordered “#2 or better” grade Douglas Fir 4x4s, but Gray delivered “standard”, which is a lower grade. (CP at 2, 74.) Unaware of the defect, ARM’s work crew used the lumber to build the falsework. *Id.* Within hours, the lumber failed, injuring two of ARM’s employees. *Id.* Mr. Mac Gray, president of Gray Lumber, came to the site, saw the results of the failure, and declared that Gray would “be responsible for the consequences,” would replace the lumber with the proper grade, and would “make ARM whole.” (CP at 74.)

As a result of Gray’s admitted breach, ARM suffered consequential damages that included lost management and workforce time, L&I penalties and increased premiums, engineering expenses, insurance deductible, and legal fees incurred in seeking relief. (CP at 2.) ARM sued

Gray to recover these damages. (CP at 1-3.)

Gray moved for summary judgment, arguing that the contract governing the purchase disclaimed warranties, assigned risk for use of the lumber to ARM, and limited ARM's remedies to the purchase price of the lumber. (CP at 8-18.) Gray's motion was supported by the Declaration of Gordon Hauschild, Gray's attorney. (CP at 19-56.) The declaration presented a number of exhibits, purporting to be: the invoice for the May, 2006, purchase of lumber (CP at 45); the bill of lading for the lumber delivery (CP at 47); the printed terms on the reverse of the invoice and bill of lading (CP at 49); the credit agreement governing the purchase (CP at 51-52); and photos of the lumber at issue (CP at 54-56).

In response, ARM argued, among other things, that Gray had failed to meet its burden on summary judgment. (CP at 57-72.) Gray failed to prove the terms of the contract, there were disputed issues of material fact, and Mac Gray's statements at the work site modified or waived any disclaimers or exclusions of remedies. *Id.* ARM was unable to locate the original invoice from the lumber purchase at issue, but presented two Gray Lumber invoices received for another job site, dated March 21, 2006, and October 31, 2006 (both before and after the purchase at issue). (CP at 81-

84.)¹ The terms on those invoices differed from the terms Gray presented in the declaration of Mr. Hauschild. (CP at 63.)

ARM filed a motion to strike the declaration of Mr. Hauschild, arguing that Mr. Hauschild was not a competent witness to present the documents and photos that accompanied his declaration. In response to that motion, Gray attempted to cure the infirmity by filing a new declaration by Mr. Hauschild, in which he presented a copy of a discovery response from Gray prepared just one day before this new declaration, containing the same documents and photos. (CP at 139-59.)

At oral argument, ARM argued that even if Gray's evidence was accepted, there remained ambiguities and disputes of fact that precluded summary judgment. (RP at 8-10.)

The court denied the motion to strike, holding that any infirmity was cured by the later declaration of Mr. Hauschild. (RP at 15.) The court found that the terms of the credit agreement presented by Gray were the terms that applied to the lumber purchase. (RP at 24.) The court found that Mac Gray's statement that Gray would be responsible for the

¹ The originals were printed with greyed-out text. (CP at 74.) Copies filed with the court and served on Gray were difficult to read. (RP at 12-13.) The copies in the Clerk's Papers are faded to the point of being illegible. (CP at 81-84.) Pertinent sections were quoted in ARM's response brief. (CP at 59; *see also* CP at 63 (noting absence of a term).) New copies can be provided at the Court's request.

consequences and make ARM whole was not an unequivocal modification or waiver of the contract terms excluding consequential damages. (RP at 27.) The court granted Gray's motion for summary judgment. *Id.*

IV. SUMMARY OF ARGUMENT

This court should reverse the trial court's summary judgment dismissal of ARM's claim because Mac Gray expressly waived any disclaimers and exclusions by declaring that Gray would be responsible for the consequences of its breach and would make ARM whole. Mr. Gray was fully aware of those consequences, having visited the work site right after the accident. He clearly declared Gray's intent to take responsibility for those consequences, contrary to any exclusions of remedies that may have been in the contract. Because of this express waiver, Gray is liable for ARM's consequential damages and was not entitled to judgment as a matter of law. At the very least, Mr. Gray's statements created an issue of material fact as to whether there was a waiver.

Even if Mr. Gray's statement was not a waiver, this court should reverse summary judgment dismissal of ARM's claim because Gray failed to meet its burden of showing undisputed facts on which it would be entitled to judgment as a matter of law. Gray's argument in favor of summary judgment relied entirely upon disclaimers of warranties and

exclusions of remedies. Gray failed to present competent evidence that the disclaimers and exclusions were part of the contract. ARM disputed whether any such terms applied. Gray's only evidence was presented by its attorney, who had no personal knowledge and was incompetent to authenticate the documents and photos presented. Gray's evidence was inadmissible and should have been stricken. Without this supporting evidence, Gray's motion for summary judgment should have been denied.

Even if Gray's evidence offered by its attorney could be considered, there remained ambiguities in the evidence and disputes of fact as to the terms of the contract, which made summary judgment improper. Without any supporting testimony, the documents had to speak for themselves. The purported credit agreement was ambiguous on its face as to whether its terms applied to the May, 2006, lumber purchase. The purported invoice terms presented by Gray were different from the terms on actual invoices presented by ARM. Since Gray's motion relied on the terms of the credit agreement and the invoice, these disputed issues of fact were material and summary judgment was improper. This court should reverse the erroneous summary judgment dismissal of ARM's claim.

V. ARGUMENT

Appellate courts review summary judgment de novo. *Michael v.*

Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). Summary judgment is only proper where there is no genuine issue as to any material fact and the issues can be resolved as a matter of law. CR 56(c); *Harden v. City of Spokane*, 135 Wn. App. 742, 746, 145 P.3d 1244 (2006). A material fact is one that affects the outcome of the litigation. *Morgan v. Kingen*, 166 Wn.2d 526, 533, 210 P.3d 995 (2009). In determining the existence of an issue of material fact, the court views all facts and inferences in favor of the nonmoving party. *Michael*, 165 Wn.2d at 601.

“The moving party has the burden of showing that there is no genuine issue as to any material fact.” *Fitzpatrick v. Okanogan County*, 169 Wn.2d 598, 605, 238 P.3d 1129 (2010). If the moving party meets that burden, the burden shifts to the nonmoving party to rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact. *Michael*, 165 Wn.2d at 601. “If the moving party does *not* sustain its burden, summary judgment should not be granted.” *Hash by Hash v. Children's Orthopedic Hospital*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988) (emphasis added).

This court should reverse the trial court's erroneous summary judgment dismissal of ARM's claim. At the work site after the accident, Mac Gray expressly waived any disclaimers and exclusions that may have

been in the contract. This evidence was uncontroverted. Even if this was not waiver, summary judgment was improper because Gray failed to meet its burden of showing undisputed facts on which it would be entitled to judgment as a matter of law. Gray failed to present competent evidence that the disclaimers and exclusions were part of the contract. Even if Gray's evidence could be considered, there remained ambiguities in the evidence and disputes of fact as to the terms of the contract, which made summary judgment improper.

A. **This Court Should Reverse Summary Judgment Dismissal Because Gray Expressly Waived Any Disclaimers and Exclusions and Assumed Responsibility for the Consequences of Its Admitted Breach.**

It is "elementary" that a party to a contract may waive any provision made for its benefit. *Mike M. Johnson, Inc. v. County of Spokane*, 150 Wn.2d 375, 391, 78 P.3d 161 (2003); *Reynolds Metals Co. v. Elec. Smith Const. & Equip. Co.*, 4 Wn. App. 695, 700, 483 P.2d 880 (1971). Waiver can be proved by the *express declaration* of a party or implied through conduct inconsistent with an intent to maintain the right. *Reynolds*, 4 Wn. App. at 700-01. Express waiver is an intentional relinquishment of a known right. *Birkeland v. Corbett*, 51 Wn.2d 554, 565, 320 P.2d 635 (1958). Only waiver implied from conduct requires

proof of “unequivocal acts”. *Mike M. Johnson*, 150 Wn.2d at 386. Waiver is a question of fact. *Alaska Pac. Trading Co. v. Eagon Forest Products, Inc.*, 85 Wn. App. 354, 361, 933 P.2d 417 (1997).

Immediately after the accident, Mr. Mac Gray, President of Gray Lumber, came to the work site. (CP at 74.) Mr. Gray saw the results of the accident. *Id.* Mr. Mettler and Mr. Gray recognized that the lumber was the wrong grade. *Id.* ARM rejected the whole delivery as non-conforming goods. *Id.* Mr. Gray accepted the rejection and said, “We sent the wrong stuff. We’ll be responsible for the consequences.” *Id.* He told ARM that Gray would replace the goods and would make ARM whole. *Id.*

These express declarations by Gray’s chief speaking agent have not been disputed. Gray has not denied the statements. Gray has not offered any testimony that Mr. Gray had any intent other than to waive the disclaimers and exclusions and “be responsible for the consequences” of the accident. Mr. Gray’s statements must be accepted as fact.

Mr. Gray’s declarations are clearly inconsistent with an intent to exercise any disclaimers of warranties or exclusions of remedies that may have been a part of the contract. If the disclaimers were effective, they would have barred ARM from making any claim other than breach of the express warranty that the lumber would be “#2 or better” grade (which

Gray admits it breached). If the exclusions were effective, ARM's remedies for the breach would have been limited to the purchase price of the lumber, and Gray would not have been liable for any incidental or consequential damages. Mr. Gray's declaration that Gray would not only replace the lumber but also "be responsible for the consequences" and "make ARM whole" is clearly inconsistent with the written disclaimers and exclusions. The clear import of his express declaration is that Gray would assume responsibility for ARM's incidental and consequential damages in spite of any disclaimers or exclusions that may have been in the contract. RP 18-19.

Mr. Gray's express declaration of waiver was knowing and voluntary. He saw the work site and the results of the accident. He could assess the amount of liability that Gray would take on by waiving the exclusions and taking responsibility for consequential damages. There is no evidence that his declaration was anything other than voluntary.

Even if Mr. Gray's statements were not an express waiver, they unequivocally evidenced Gray's intent to waive the disclaimers and exclusions, meeting the requirements for implied waiver. Gray's stated intent to "be responsible for the consequences" and "make ARM whole" was unambiguously inconsistent with an intent to exercise an exclusion of

consequential damages.

There was no reasonable interpretation of Mr. Gray's statements that would make them consistent with an intent to simply cure the defect and then hide behind the exclusions. Mr. Gray had seen the consequences of the accident. He clearly would have known that merely curing the defect was a far cry from "mak[ing] ARM whole." He would have known that it was impossible to "be responsible for the consequences" while refusing liability for incidental and consequential damages under the shield of alleged contractual exclusions. The undisputed fact that he made those unequivocal statements is clear evidence of Gray's intent to waive.

Gray intended to and did expressly or impliedly waive any disclaimers and exclusions that may have been in the contract. Gray knowingly and voluntarily assumed responsibility for ARM's incidental and consequential damages. It would not only replace the lumber, but would "be responsible for the consequences" and "make ARM whole." Mr. Gray did not deny or qualify these statements. He offered no testimony. His unequivocal statements must be accepted as fact.

On these undisputed facts, Gray was not entitled to judgment as a matter of law. Rather, ARM was entitled to recover its incidental and consequential damages from Gray. At the very least, Mr. Gray's

statements raise an issue of material fact as to whether there was a waiver, precluding summary judgment. This court should reverse the trial court's erroneous summary judgment dismissal of ARM's claim.

B. Even if Mr. Gray's Statement Was Not a Waiver, This Court Should Reverse Summary Judgment Dismissal Because Gray Failed to Show Undisputed Facts on Which It Would Be Entitled to Judgment.

"The moving party has the burden of showing that there is no genuine issue as to any material fact." *Fitzpatrick v. Okanogan County*, 169 Wn.2d 598, 605, 238 P.3d 1129 (2010). "If the moving party does *not* sustain its burden, summary judgment should not be granted." *Hash by Hash v. Children's Orthopedic Hospital*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988) (emphasis added).

Gray's argument in favor of summary judgment relied entirely upon written disclaimers of warranties and exclusions of remedies, but Gray failed to present competent evidence that the disclaimers and exclusions were part of the contract that governed the May, 2006, lumber sale. ARM offered evidence that the terms were those agreed over the phone. Without undisputed evidence of the material terms urged by Gray, the trial court should not have granted Gray's motion. This court should reverse.

Gray's only evidence was presented through the declaration of its attorney, who had no personal knowledge and was incompetent to authenticate or otherwise testify regarding the documents and photos presented. Gray's evidence was inadmissible and should have been stricken. Even if Gray's evidence could be considered, there remained ambiguities in the evidence and disputes of fact as to the terms of the contract, which made summary judgment improper.

1. Gray's only evidence of the terms of the contract was inadmissible and should have been stricken.

Declarations offered in support of a motion for summary judgment must present facts such as would be admissible in evidence. CR 56(e). Documents offered as evidence through a declaration must be authenticated in accordance with ER 901 in order to be admissible. *Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 745-46, 87 P.3d 774 (2004). An attorney's declaration can authenticate a document only if the attorney has personal knowledge that the document is what it purports to be. *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 366-67, 966 P.2d 921 (1998).

Mr. Hauschild was the attorney for Gray Lumber. He did not have any personal knowledge of the authenticity of the documents and photos

offered in paragraphs 3-7 and exhibits 3-7 of his first declaration. He did not testify that he drafted the documents or saw them used in the claimed context. He did not testify that they were documents created in the ordinary course of business or otherwise excepted from the hearsay rule. He did not testify that he took the photos. The only foundation he offered for the documents was “reliance on the case files maintained by our office in this matter.” (CP at 19.) This is not a recognized foundation for the authentication and admissibility of business records. Mr. Hauschild was not competent to authenticate the documents and photos because he did not have personal knowledge that the documents were what they purported to be. Paragraphs 3-7 and exhibits 3-7 of Mr. Hauschild’s declaration should have been stricken.

Gray attempted to cure this infirmity in response to the motion to strike, one week before the summary judgment hearing. Gray served ARM with “Supplemental Response #2 to Requests for Production”, verified by the signature of Mac Gray on April 21, 2011, containing the same documents and photos that had been exhibits 3-7 of Mr. Hauschild’s original declaration. (CP at 143-160.) Gray then filed the “2nd Supplemental Declaration of Gordon Hauschild” on April 22, in which Mr. Hauschild offered, as exhibit 1, the supplemental discovery response.

(CP at 139.) Gray claimed that this cured any previous infirmity because an attorney was competent to authenticate documents provided in discovery under *Int'l Ultimate*. (CP at 136.)

Gray misstated the rule. Under *Int'l Ultimate*, documents *received from the opposing party* in discovery are deemed authenticated and can be offered through the declaration of an attorney. *Int'l Ultimate*, 122 Wn. App. at 745-48. Documents produced in discovery *by the proponent*, such as those presented by Gray, must still be authenticated in accordance with ER 901. *Id.* If the rule operated in the way Gray proposed, a party could authenticate any document it desired by simply producing it in discovery prior to a summary judgment motion, effectively circumventing ER 901.

The fact that the documents and photos were produced by Gray in discovery did not authenticate them for purposes of Gray's own motion for summary judgment. Gray failed to offer any competent testimony to authenticate the documents and photos. The trial court abused its discretion by holding, contrary to law, that the documents were properly authenticated. The documents and photos offered in the declarations of Mr. Hauschild were inadmissible.

In addition, the moving party must raise all issues and supporting facts on which it believes it is entitled to summary judgment with its

original moving papers, so the late declaration of Mr. Hauschild should not even have been considered. *White v. Kent Med. Ctr., Inc., P.S.*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991).

“A court may not consider inadmissible evidence when ruling on a motion for summary judgment.” *King County Fire Prot. Districts No. 16, No. 36 & No. 40 v. Hous. Auth. of King County*, 123 Wn.2d 819, 826, 872 P.2d 516 (1994). Without the inadmissible documents and photos in Mr. Hauschild’s declarations, Gray could not establish the terms of the contract on which it claimed to be entitled to judgment. Thus it failed to carry its burden and summary judgment should be reversed.

2. Even if Gray’s evidence was admissible, there remained genuine issues of material fact.

Even assuming that the documents and photos offered by Mr. Hauschild were properly admitted, this court should still reverse dismissal because there were ambiguous and disputed facts that made summary judgment improper. In order to sustain its burden, Gray had to show undisputed facts establishing the terms of the contract governing the lumber purchase, particularly the waivers and exclusions upon which its argument for summary judgment relied.

Gray failed to meet its burden. The purported credit agreement was

ambiguous on its face as to whether its terms even applied to the May, 2006, lumber purchase. The purported invoice terms offered by Gray were different from the terms on actual invoices offered by ARM. Since Gray's motion relied on the terms of the credit agreement and the invoice, these issues of fact were material and summary judgment was improper.

ARM acknowledged that it had a credit agreement with Gray for many years. (CP at 2, 73.) The terms in effect on the date of this sale remained disputed. ARM presented evidence that the terms of the sale were those agreed to over the phone, which did not include any disclaimers or exclusions. (CP at 74.) Gray offered as evidence a document it claims is the credit agreement in effect at the time of the May, 2006, lumber purchase. (CP at 20, 51-52.) The document appears to have been signed by ARM on September 29, 2003. (CP at 51-52.) ARM did not dispute that this agreement became effective at that time. ARM *did* dispute whether the terms of this agreement applied to the May, 2006, lumber purchase. The agreement is ambiguous on its face as to whether it remained in effect in May of 2006. For purposes of summary judgment, the document and any inferences therefrom must be viewed in a light favorable to ARM. RP 7-15.

The agreement states it had expired, in which case its terms would

not have applied to the May, 2006, lumber purchase. In the middle of the left side of the page is a handwritten notation: “exp 7/05”. (CP at 51.) If the credit agreement expired in July, 2005, it could not apply to the May, 2006, lumber purchase. It could not be used to prove the terms that applied to that purchase. It could not be used to controvert ARM’s testimony that the terms of the purchase were those agreed to over the phone.

In the upper left corner of the document is another handwritten notation: “renew”. *Id.* Was the agreement renewed in its entirety? If so, when? Was it renewed with different terms? Was it even renewed at all? There was no evidence to explain this notation. “Renew” could reasonably have been merely a directive to a Gray employee to renew the agreement with ARM. There was no evidence of whether that was done or when or what terms were contained in any such renewal. There was no new signature by ARM agreeing to any terms of renewal. Gray failed to prove the terms of the credit agreement. The trial court explicitly recognized this: “Therefore, there was an issue of fact raised as to whether this credit agreement was in fact in place at the time that these events took place in 2006.” RP 24, lines 4-6.

It was reasonable to infer from the document itself, since there was no other evidence to explain it, that this credit agreement had expired and

its terms did not apply. This reasonable inference, taken in a light favorable to ARM, the nonmoving party, should have defeated summary judgment. Gray offered no other evidence of the terms of the credit agreement in effect at the time of the May, 2006, lumber purchase. Summary judgment is not proper if all of the facts necessary to determine the issues are not present. *Schwindt v. Underwriters at Lloyd's of London*, 81 Wn. App. 293, 297-98, 914 P.2d 119 (1996).

The trial court erroneously concluded that ARM's acknowledgment that it had a credit agreement with Gray was a "clear indication" that the terms of the September, 2003, agreement offered by Gray applied to the May, 2006, lumber purchase. (RP at 24.) In doing so, the trial court rejected its own earlier correct conclusion there were issues of disputed fact. The court impermissibly drew an inference against ARM. It improperly weighed the evidence.

Even if the trial Court's inference was reasonable, it was not the *only* reasonable inference that could have been drawn from the facts before the court. Summary judgment is improper when reasonable minds could draw different conclusions from the facts. *Schwindt*, 81 Wn. App. at 297-98.

It was reasonable to infer from all of the evidence before the court

that the September, 2003, credit agreement had expired and some other agreement, the terms of which were not before the court, was in place in May, 2006. This reasonable inference should have defeated summary judgment. The trial court erred by drawing an inference against ARM, the nonmoving party, when there was a reasonable inference that could be drawn in ARM's favor. This court should reverse the trial court's erroneous summary judgment dismissal of ARM's claim.

VI. CONCLUSION

The trial court erred in dismissing ARM's claim on summary judgment because there were issues of material fact and Gray was not entitled to judgment as a matter of law. Gray expressly waived any disclaimers and exclusions by declaring that Gray would be responsible for the consequences of its breach and would make ARM whole. Even if there was no waiver, Gray failed to meet its burden on summary judgment. Gray's only evidence was inadmissible for lack of foundation and authentication. Even if admissible, there were ambiguities and disputes of fact as to the terms of the contract.

This court should reverse the trial court's erroneous summary judgment dismissal of ARM's claims and remand for further proceedings.

Respectfully Submitted this 15th day of July, 2011. 11 JUL 15 PM 4: 29

CUSHMAN LAW OFFICES, P.S. STATE OF WASHINGTON
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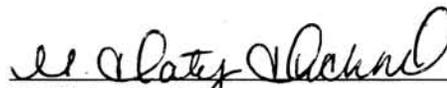
Kevin Hochhalter, WSBA #43124
Attorney for Appellant Arm Construction

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on July 15th, 2011, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

original:	Court of Appeals Division II 950 Broadway, #300 Tacoma, WA 998402 253-593-2806	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail
copy:	Gordon G. Hauschild Wood Smith Henning & Berman, LLP 520 Pike Street, Suite 1205 Seattle, WA 98101-4001	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail

DATED this 15th day of July, 2011 in Olympia, Washington.



M. Katy Kuchro
Paralegal to Kevin Hochhalter