

NO. 42977-2-II

COURT OF APPEALS - DIVISION II
OF THE STATE OF WASHINGTON

Jennifer Mueller, *Appellant*

v.

Kenneth Huntington, *Respondent*

BRIEF OF RESPONDENT

William H. Broughton
WSBA# 8858
Broughton Law Group, Inc. P.S.
9057 Washington Avenue NW
Silverdale, WA 98383
(360) 692-4888
Attorney for Kenneth Huntington

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

ORIGINAL

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I. INTRODUCTION

This dispute between plaintiff, a fault free passenger in an automobile accident and defendants was initially decided pursuant to the Clallam County Mandatory Arbitration rules. The arbitrator determined that Mr. Huntington was entitled to damages in the amount of \$50,000.00 and an arbitration award was entered for that amount. CP 101.

The arbitration award assessed 100% of the fault against Defendant Mueller-Lee (“hereinafter the Farmers Insurance Defendant”) who filed a request for a trial *de novo* pursuant to the mandatory arbitration rules and asked that the award be sealed. CP 100.

After trial, the jury returned a verdict in favor of Plaintiff in the amount of \$60,161.35. App. 2. CP 31-33. A joint and several judgment was entered against the Farmers Insurance Defendant and co-defendant Henry¹ for that amount plus costs. App. 2. CP 31-33.

Plaintiff then filed a motion for attorneys fees pursuant to MAR 7.3. CP 67-76. The Farmers Defendant opposed Plaintiff’s request for attorneys fees. The trial court entered a supplemental judgment in favor of Plaintiff awarding attorneys fees. App. 5. CP 29-30.

¹ Henry is not a participant in this appeal

The Farmers Defendant paid the initial judgment in full but has appealed the supplemental judgment for attorneys fees.² CP 6.

II. RESPONSE TO ASSIGNMENT OF ERROR

The trial court correctly awarded Plaintiff his actual attorneys fees under MAR 7.3 and RCW 7.06.060 as the Farmers Defendant did not improve its position as to Plaintiff on its *de novo* appeal from the mandatory arbitration award.

III. ARGUMENT

- a. The trial court did not err in awarding Plaintiff his actual attorneys fees under MAR 7.3 and RCW 7.06.060 as the Farmers Defendant did not improve its position *vis a vis* the Plaintiff on its *de novo* appeal from the mandatory arbitration award.**

Under MAR 7.3, an award of costs and reasonable attorneys fees is mandatory when a party appeals a mandatory arbitration award and fails to improve his position at trial:

The court *shall* assess costs and reasonable attorneys fees against a party who appeals the award and fails to improve the party's position on the trial *de novo*. . . .(emphasis added)

MAR 7.3.

In this case, since the jury verdict and subsequent judgment in the amount of \$60,161.35 as to the Farmers Defendant exceeded the \$50,000 arbitration award in favor of

² While the Farmers Defendant claims to have been reimbursed after the initial judgment was satisfied, the record is silent on this claim. The Farmers Defendant paid the total judgment amount to Plaintiff. App. 4. CP 123-125.

the Plaintiff, the Farmers Defendant is liable for Plaintiff's attorneys fees. App. 2. CP 31-33.

An award of reasonable attorneys fees is also mandatory under RCW 7.06.060:

- (1) The superior court *shall* assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial *de novo*. . .

RCW 7.06.060 (1) (emphasis added).

MAR 7.3 provides that the court shall assess costs and reasonable attorneys fees against a party who appeals the arbitration award and fails to improve the party's position on the trial *de novo*.

Plaintiff Kenneth Huntington was a fault free passenger in a vehicle driven by co-defendant Henry. Pursuant to RCW 4.22.070 (1) (b), the jury correctly decided the co-defendants were jointly and severally liable for Plaintiff's damages. App. 2. CP 31-33. The effect of joint and several liability is that each tortfeasor is liable for the entire harm. See e.g. *Seattle-First Nat'l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 588 P.2d 1308 (1978). Joint and several liability allows a plaintiff to sue one or all of the tortfeasors to obtain full recovery. *Id.* at 234-35.

This statute was one of the many byproducts of the tort reform act of 1986. While the tort reform act significantly altered and restricted

joint and several liability, it continues to exist for Plaintiff in the instant case. *See, for example, Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 840 P.2d 860 (1992).

Here, the sum of the proportional share of the total damages is 100% (50% for each co-defendant). Plaintiff was found to be fault free. He obtained a judgment against both Defendants for the full amount of the jury verdict and collected it all from the Farmers Defendant. App. 4. CP 123-125. In the instant case, the Farmers Defendant appealed the arbitration award and did not improve its position. As the Farmers Defendant is jointly and severally liable, Plaintiff's judgment against it exceeds the MAR award. App. 2. CP 31-33.

The Farmers Defendant argues that it improved its position as the arbitrator determined it was 100% at fault for the accident. The jury determined its insured liability to be 50% with the other 50% attributed to State Farm Defendant Henry. While the Farmers Defendant did improve its position **with regard to the State Farm co-defendant Henry**, its liability to Plaintiff is joint and several. App. 2. CP 31-33. As a result, the judgment against the Farmers Defendant is more than the amount of the arbitration award and Plaintiff is entitled to his fees. App. 2. CP 31-33.

This result is consistent with numerous Washington cases. Witness the language found in *Cormar v. Sauro*, 60 Wn. App. 622, 623, 806 P.2d 253 (1991):

We have found no cases or rulemaking history that would aid in determining the drafter's intent in using the rather unspecific word "position." The choice of words is unique only in that other words, more beloved of arcane legal writers, are not used.

We conclude that the rule was meant to be understood by ordinary people who, if asked whether their position had been improved following a trial de novo, would certainly answer "no" in the face of a superior court judgment against them for more than the arbitrator awarded.

Here, the Farmers co-defendant has a Superior Court judgment against its insured greater than the arbitration award. App. 2. CP 31-33. The entire judgment was paid by the Farmers Defendant. App. 4. CP 123-125. As a result, Plaintiff is entitled to attorneys fees.

Farmers could have settled with Huntington for the arbitration amount and litigated separately with State Farm on the issue of contribution. Instead, it chose to offer a paltry \$15,000 to Plaintiff after the arbitration award. CP 71. Clearly, Farmers was confident the jury would award less than \$50,000 to Plaintiff and chose to take the joint and several risk. The trial court recognized Farmers could have eliminated its risk to Plaintiff in the *de novo* appeal:

While Defendant Mueller was required to file for a trial *de novo* and did in fact prevail as to its codefendant, it was not required to pursue a trial *de novo* to conclusion against the Plaintiff on the issue of damages. It chose to do so and failed to improve its position as to that particular party and issue. The judgment entered against Defendant Mueller is greater than that which would have been entered against it following the arbitration. Accordingly, Mueller, is required to pay Plaintiff's reasonable attorney's fees and costs under the MAR rules and the statute.

App. 3. CP 45.

The record reflects that Farmers routinely files *de novo* appeals of MAR awards in Clallam County. App. 1. CP 64. These appeals amount to a gaming of the system by the insurance industry. Appeals enable the Defendant's insurer to delay payment to the injured party. The increased cost of a jury trial has a coercive effect on the Plaintiff. The only penalty for this conduct is the risk of paying a Plaintiff's fees. That penalty must be enforced to discourage this type of conduct.

Christie-Lambert Van & Storage Co. v. McLeod, 39 Wn. App. 298, 301, 693 P.2d 161 (1984) is a decision providing public policy guidance in the instant case. The facts in *Christie-Lambert* involved an appeal on an arbitration award by Christie-Lambert's attorney. The trial court denied Christie-Lambert's request for attorneys fees pursuant to

MAR 7.3 after trial in Superior Court on the grounds that the appealing defendant had improved its overall position in the trial *de novo*. ***Id.* at 299-300.**

In reversing the denial of the attorney fee award, the court examined the history of MAR 7.3 and also reviewed a similar federal local rule. The court noted that while the defendant had improved its overall position in the trial *de novo*, this was solely because of a new claim brought for the first time at trial. ***Id.* at 304.** The court noted that denial of award of attorneys fees in this situation would be counter to the statutory purpose of deterring meritless appeals from mandatory arbitration awards. ***Id.*** Witness the following language:

Moreover, it is inherently unfair to deny an attorney fee award to a party that has born the cost of mandatory arbitration and a trial *de novo* without a change in results where the denial is based upon the appellants improving his overall position in the trial *de novo* solely because of a new claim brought for the first time on appeal. This is particularly so where, as in this case, the appellant might have brought a separate action on the new claim.

Id.

The court went on to note that the defendant had alternatives to a trial *de novo* as to all issues which would have avoided the duplication of legal efforts where no change in results was likely. For example,

Christie-Lambert indicated willingness to stipulate to a trial *de novo* limited to the legal issues raised by the respondent's cross-claim against the defendant Nolan. *Id.*

Similarly, Plaintiff would gladly have stipulated to a trial *de novo* limited to the legal issues raised by the Farmers Defendant against the State Farm co-defendant Henry. A more limited appeal would have allowed the Plaintiff to avoid the unfairness and expense of a trial *de novo* where the dispute was between co-defendants. Finally, the court in *Christie-Lambert* noted that a denial of attorneys fees in that case would run counter to the general rule that attorneys fees and costs in multi-party cases as well as in certain consolidated cases are awarded to different parties on the basis of the separate judgments obtained, not the overall trial result. *Id. at 305.*

The very able trial court in this case explained its rationale for awarding fees to Plaintiff as follows:

Here, Defendant Mueller was initially deemed severally liable to the Plaintiff. That was an issue which was arbitrated. Defendant Mueller's only recourse was to request a trial *de novo*. Defendant Mueller prevailed on the joint and several liability issue which had been arbitrated and was then tried at the trial *de novo*. Clearly the Defendant Mueller improved its position *vis a vis* Defendant Henry. Accordingly, the request for the trial *de novo* was not meritless. On the other hand, as would

be the case with any trial, Defendant Mueller could have settled with the Plaintiff or stipulated to the \$50,000 damages award granted Plaintiffs. She did not do so. Instead she chose to try the comparative fault issue and to also try the issue of damages suffered by the Plaintiff. On that issue, *vis a vis* the Plaintiff, she did not prevail and now faces a judgment against her greater than that awarded by the arbitrator.

App. 3. CP 43-44.

Sultani v. Leuthy, 86 Wn. App. 753, 943 P.2d 1122 (1997) is instructive on this issue. In that case, Sultani received an arbitration award in the amount of \$38,535.20 against four defendants jointly and severally. *Id.* at 755-756. Following the arbitration, Defendant Pollard filed a request for a trial *de novo* and **managed to avoid joint and several liability at trial**. The appealing party, defendant Pollard reduced its liability from \$38,535.20 to \$3,729.37. *Id.*

Because Sultani had received a total jury verdict in excess of the arbitration award, he sought attorneys fees from Pollard. In denying this request, the court pointed out that Pollard **had eliminated his joint and several liability** on the trial *de novo* and had reduced the amount of his liability despite the fact that the Plaintiff received a total jury verdict in excess of the arbitration award. *Id.* at 758-759.

The reverse is true in the instant case. As the trial court noted:

Unlike *Sultani*, where the decision went from joint and several liability to several liabilities only, here the decision went from several liability of 100% to joint and several liability in a greater amount. As to the increased award granted to the Plaintiff, the Plaintiff is not precluded from having a judgment entered in the full amount against Defendant Mueller. In *Sultani*, the judgment against each of the defendants at issue was in fact reduced by virtue of the finding of several liability.

App. 3. CP 44.

Judgment was entered in favor of Plaintiff against the Farmers Defendant in an amount above and beyond the amount awarded to Plaintiff at the arbitration. App. 2. CP 31-33. While the Farmers Defendant improved its position with regard to co-defendant Henry, it did not improve its position with regard to Plaintiff.

In some circumstances, the court may require the payment of attorneys fees even where the appealing party improved its overall position. *Christie-Lambert*, 39 Wn. App. at 305. For example, the appealing defendant in *Christie-Lambert* prevailed on a cross-claim that he raised for the first time at the trial *de novo*, and thereby improved his overall position. Nonetheless, because he failed to improve his position relative to the plaintiff, the court required him to pay the plaintiff's attorneys fees. *Id.* at 304-05.

The reliance of the Farmers Defendant on *Hutson v. Rehrig*, 119 Wn. App. 332, 80 P.3d 615 (2003) is misplaced. There Costco, a co-defendant, appealed a MAR award and reduced its liability to the injured Plaintiff from \$35,000 to \$15,000. *Id.* at 334. Co-defendant Rehrig was absolved of any liability in both forums and requested fees from Costco on the appeal. In denying the request for fees, the Court noted that Costco reduced its liability to the Plaintiff and had no “position” to improve as to the co-defendant. *Id.* at 336. In the case *sub judice*, the judgment against the Farmers Defendant was higher than the MAR award. While the Farmers Defendant improved its position *vis a vis* the State Farm Defendant, its liability increased as to the Plaintiff. Farmers could use *Hutson* for the proposition that it is not liable to the State Farm Defendant. It is inapplicable here because the Plaintiff’s recovery exceeds the MAR award.³

The trial court stated that whether the Farmers Defendant, “may be entitled to contribution from a co-defendant, which she would not have been entitled to before, is not a relevant issue as to her liability to the plaintiff. That liability is imposed whether or not contribution can ever be recovered against the joint and several defendant as found by the jury.”

³ While Farmers now claims it received reimbursement from State Farm, there is nothing in the record to support this claim.

App. 3. CP 44. Plaintiff obtained a judgment in the full amount of the jury award against the Farmers Defendant and in fact has received the entire amount of the judgment from Farmers. App. 4. CP 123-125.

As explained by the trial court here:

RCW 7.06.050 (1) (a) allows a non-appealing party to serve upon the appealing party a written offer or compromise. That written offer of compromise would then replace the amount of the arbitrator's award predetermining whether any party appealing the arbitrator's award has failed to improve that party's position on the trial *de novo*. Here, even had the Plaintiff submitted an offer for a lesser amount than the \$50,000, Defendant Mueller would argue that nevertheless it would have improved its position following the imposition of joint and several liability even if it had failed to meet the offer of compromise.

App. 3. CP 44. The court labeled this interpretation of the statute as "nonsensical." App. 3. CP 45.

The trial court did not err in the determination that the Farmers Defendant failed to improve its position *vis a vis* Plaintiff Huntington. Therefore, Plaintiff is now entitled to attorneys fees. The arbitrator assessed 100% liability to the Farmers Defendant for a \$50,000 damages award following MAR. CP 101. After filing for a trial *de novo*, the jury delivered a verdict in favor of Plaintiff Huntington for \$60,161.35 and found the Farmers Defendant and the State Farm Defendant jointly and

severally liable for those damages. App. 2. CP 31-33. The Farmers Defendant improved its position *vis a vis* co-defendant Henry. However, this is irrelevant. The Farmers Defendant's liability towards Plaintiff Huntington has increased. The trial court correctly entered a supplemental judgment awarding attorneys fees to Plaintiff. App. 5. CP 29-30.

b. The Plaintiff is entitled to attorneys fees for the appellate proceeding pursuant to RAP 18.1, MAR 7.3 and RCW 7.06.060 as the Farmers Defendant has failed to improve its position *vis a vis* Plaintiff on appeal.

According to MAR 7.3, an award of attorneys fees is required when the appealing party fails to improve their position upon their appeal from the mandatory arbitration award. RCW 7.06.060 also requires that reasonable attorneys fees shall be awarded to the non-appealing party when the appealing party fails to improve their position *vis a vis* the non-appealing party as a result of their appeal. Plaintiff Huntington received an arbitration award of \$50,000 against the Farmers Defendant whom the court found 100% at fault. CP 101. The Farmers Defendant filed a request for a trial *de novo* as available per the mandatory arbitration rules. CP 100.

After the jury trial, the court returned a verdict for Plaintiff Huntington of \$60,161.35. App. 2. CP 31-33. The court entered a joint and several judgment against the Farmers Defendant and the State Farm

Defendant for that amount plus costs. App. 2. CP 31-33. The Farmers Defendant has since paid that amount in full. App. 4. CP 123-125. The court also entered a supplemental judgment awarding attorneys fees to Plaintiff. App. 5. CP 29-30.

The Farmers Defendant has failed to improve its position *vis a vis* the Plaintiff as a result of filing for a trial *de novo*, and now as a result of this appeal. MAR 7.3 and RCW 7.06.060 require that Plaintiff be awarded his fees and expenses on appeal. *Christie-Lambert*, 39 Wn. App. at 309. RAP 18.

c. A lodestar multiplier is fair and reasonable given the contingent nature of recovery and the quality of work performed.

Washington has adopted the lodestar formula developed by the United State Court of Appeals in *Lindy Brothers Builders Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973). *See, Bowers v. Transamerica Title Insurance*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983). Application of the formula requires two steps:

1. Determination of a "lodestar" fee by multiplying a reasonable hourly rate by the number of hours reasonably expended on the litigation.
2. Adjustment of the lodestar up or down to reflect the fact that the case was taken on a contingent fee basis (if applicable) and on the quality of legal

representation which has not already been taken into account in computing the lodestar.

Bowers v. Transamerica Title Insurance, *supra* at 593-94; *Olivine v. United Capital Insurance*, 105 Wn. App. 194, 202, 19 P.3d 1089 (2001) *reversed on other grounds*, 147 W.2d 148 (2002).

Our Courts have made it clear that the Court is not bound by an attorney's "usual fee" and may consider the level of skill required by litigation, time limits imposed by the litigation, the amount of potential recovery, the attorney's reputation and the undesirability of the case. *Bowers v. Transamerica Title Insurance*, *supra* at 599; *McGreevy v. Oregon Mutual Insurance Company*, 90 Wn. App. 283, 293, 951 P.2d 798 (1998).

Skill is required to successfully obtain reasonable damages in a soft tissue injury automobile case. The amount of the potential recovery, at least according to defendants' insurers' evaluation, was limited. Soft tissue cases are generally considered to be "undesirable," particularly those in which the responsible party makes offers that, after attorneys fees and costs, do little more than cover the medical expenses, lost wages and property damage suffered by the Plaintiff. The unfairly and unrealistically low evaluation of defendants' carriers compelled Plaintiff to pursue

Arbitration and (as a result of the defendants' demand for a trial *de novo*) a jury trial. CP 100.

Plaintiff's counsel are well experienced. William Broughton has practiced as a trial attorney for over 31 years. He is respected by his peers, as evidenced by his membership in several trial organizations.

Kenneth Bagwell has been a trial attorney for almost 10 years. He is currently an assistant City Attorney for the City of Bremerton. He is a former Deputy Kitsap County Prosecutor.

It is reasonable to establish an hourly fee that reflects the level of skill required by this litigation, the attorney's reputation and the relative undesirability of the case as a soft tissue injury (Clallam County juries are notoriously stingy in such cases, which is why Farmers regularly appeals arbitration awards). App. 1. CP 64. A reasonable hourly rate that takes into account these factors would be \$300 an hour for William Broughton and Kenneth Bagwell. The consideration of the factors discussed in detail by the Court of Appeals in *McGreavy* supports an hourly fee of no less than \$300 an hour for Plaintiff's lead counsel.

Even though some level of recovery was assured, given that liability was admitted, Plaintiff's counsel were not certain of recovering a fee that even approached what would be reasonable on an hourly basis. In addition, Plaintiff's counsel has advanced costs in this matter since having

been initially retained. Those out-of-pocket costs now total over \$10,000. As is always the case with contingency fee cases, Plaintiff's counsel have received nothing for the time spent on this case over the last 3+ years, nor have they been reimbursed for the out-of-pocket expenses that have been advanced.

The result in this particular case supports the conclusion that the quality of representation was high. Prior to arbitration, Farmers refused to offer more than \$12,000. The Arbitrator awarded \$50,000 to Mr. Huntington. CP 101. Even following the Arbitration award, Farmers only offered \$15,000.

The jury awarded the plaintiff a total of \$60,161.35. CP 31-33. This was neither an accident nor a fluke. Plaintiff's counsel put a tremendous amount of time, effort and skill into this trial. Every trial must be approached as a "big trial," as a client deserves no less. That approach was reflected here in the visual aids, use of other trial technology and trial preparation. Plaintiff's counsels' prior results demonstrate that this approach is reasonably effective. Plaintiff believes that an upward adjustment is warranted for the quality of representation here.

The Plaintiff is entitled to ask for an upward adjustment of a lodestar fee under the holding in *Bowers*, based upon the quality of the representation. *Bowers*, 100 Wn.2d at 594. This multiplier is particularly

justified in a case such as this where Farmers did its usual practice of forcing an injured plaintiff to go to a jury trial. The insurance industry knows that plaintiffs are at a serious economic disadvantage in going to trial in cases like this.

Specifically, it is Farmers' intention to use its superior economic muscle to force the settlement value of soft tissue cases down by routinely appealing mandatory arbitration awards for trial *de novo* in Superior Court. App. 1. CP 64. Practices such as this are directly contrary to the policies underlying the MAR process. Even with an award of attorneys fees and costs in a case like this, Farmers and the insurance industry come out way ahead, as they succeed in scaring off injured plaintiffs in the vast majority of these appeals.

The declaration of Mr. McMenemy establishes that:

1. It is difficult to get a fair jury for soft tissue injury cases in the current climate.
2. Soft tissue injury cases have become increasingly risky for Plaintiff's counsel to take.
3. Compensation to Plaintiff's counsel after a *de novo* appeal by the insurance company does not reimburse counsel for the cost and effort of preparing the case through the arbitration hearing.

App. 1. CP 63-64.

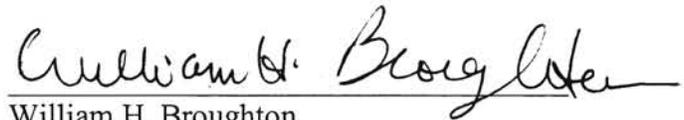
Given the proven facts that led to this *de novo* appeal, a multiplier of twice the amount of Plaintiff's lodestar on appeal is fair and reasonable.

IV. CONCLUSION

The decision of the trial court should be affirmed and attorneys fees for this appeal should be awarded to Plaintiff Huntington.

DATED this 12th day of June, 2012.

BROUGHTON LAW GROUP, INC. P.S.



William H. Broughton
Attorney for Respondent

APPENDIX 1

FILED
 CLALLAM COUNTY
 NOV 10 2011
 J. REBEKAH CHRISTENSEN, Clerk

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

<p>KENNETH HUNTINGTON, Plaintiff, v. JENNIFER A. MUELLER, and "JOHN DOE" MUELLER, wife and husband, and the marital community; and JACQUELINE HENRY and "JOHN DOE" HENRY, wife and husband, and their marital community, Defendants.</p>	<p>NO. 08-2-00996-6 DECLARATION OF PATRICK McMENAMIN</p>
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I, PATRICK MCMENAMIN declare as follows:

1. I am a licensed attorney in the state of Washington specializing in personal injury trial work. In the early years of my career, I practiced law in two Seattle insurance defense firms. I left the insurance defense practice to become a partner in McMenammin and McMenammin in 2002. I currently specialize in plaintiff's personal injury litigation.

2. I have handled hundreds of auto cases, both representing plaintiffs and defendants. I have also done many mandatory arbitration hearings and trials over that time. I also track auto insurance industry trends as a result of my representation of injured plaintiffs.

DECLARATION OF PATRICK McMENAMIN

BROUGHTON LAW GROUP, INC., P.S.
 ATTORNEYS AT LAW

9037 WASHINGTON AVENUE N.W.
 SILVERDALE, WASHINGTON 98383
 (360) 692-4888 • FAX (360) 692-4987
 INTERNET ADDRESS: bbroughtonlaw.com

EXHIBIT 4

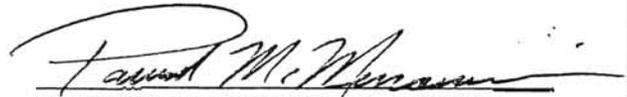
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1 3. Since the mid 2000's, it has become a standard practice of Farmers Insurance
2 Company to routinely file de novo appeals for mandatory arbitration awards in auto
3 collisions. My experience has been that Farmers uniformly offers low settlement values in
4 soft tissue automobile accident cases.

5 4. Soft tissue injury automobile cases have become increasingly risky for
6 plaintiffs' counsel to take. The likelihood of de novo appeals from arbitration awards by
7 Farmers and other insurance companies dramatically increases the costs and risks of
8 representation on a contingent basis in such cases.

9 5. I have known William Broughton for over ten years. Mr. Broughton is an
10 excellent trial attorney. I have reviewed his billings in this matter and believe that his hourly
11 rate of \$300.00 per hour is reasonable. It also appears that the time spent on trying this
12 matter by Mr. Broughton and his law group is reasonable for Clallam County.
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16 EXECUTED in Port Angeles, Washington this 9th day of November 2011.
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21 PATRICK McMENAMIN WSBA#
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APPENDIX 2

SCANNED-3

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FILED
CLALLAM COUNTY
DEC 13 2011
8:50 a.m. - LP
BARBARA CHRISTENSEN, Clerk

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

<p>KENNETH HUNTINGTON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JENNIFER A. MUELLER, and "JOHN DOE" MUELLER, wife and husband, and their marital community; and JACQUELINE HENRY and "JOHN DOE" HENRY, wife and husband, and their marital community,</p> <p style="text-align: center;">Defendants.</p>	<p>NO. 08-2-00996-6</p> <p>JUDGMENT (Joint and Several Liability)</p>
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JUDGMENT SUMMARY

1. Judgment Creditor: Kenneth Huntington
Attorney for Kenneth Huntington
William Broughton
Broughton Law Group, Inc. P.S.
9057 Washington Ave. NW
Silverdale, WA 98383

2. Joint and Several Judgment Debtors: Jennifer Mueller-Lee
Attorney for Jennifer Mueller-Lee
Gregory Wall
1521 Piperberry Way, SE #102
Port Orchard, WA 98366-1203

Jacqueline Henry

Attorney for Henry
Greg Southworth
1411 4th Ave. Ste 1230
Seattle, Wa. 98101-2250

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7 3. Judgment Amount: \$60,161.35
8 Attorneys' Fees Reserved
9 Cost Bill \$1,694.03
10 4. Total Judgment: \$61,855.03
11 5. Post Judgment Interest Rate 12%

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13 **THIS MATTER** having come on for trial for the undersigned judge the above
14 entitled court on October 24, 25, 26 and 27 and the jury having reached a verdict on October
15 28, 2011.

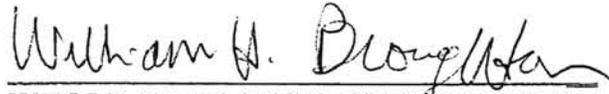
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17 **ORDERED** that a judgment including the principal judgment amount of \$60,161.35
18 and costs in the amount of \$1,694.03 is hereby awarded jointly and severally against
19 Defendant Mueller-Lee and Henry. Plaintiff has the election of collecting its entire judgment
20 amount against one Defendant; and it is

21
22 **ORDERED** that as appealing party, Mueller-Lee is responsible for payment of
23 Plaintiff's attorneys fees as she is liable for the entire amount of the judgment which exceeds
24 the arbitration award.

25 DONE IN OPEN COURT this 18th day of November, 2011.
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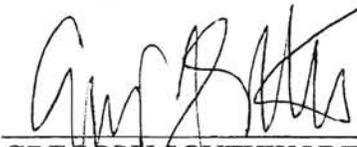
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THE HONORABLE KENNETH WILLIAMS
Superior Court Judge

Presented by:
BROUGHTON & LAW GROUP, INC., P.S.

WILLIAM H. BROUGHTON, WSBA #8858
Attorney for Plaintiff

Copy Received, Approved as to form;

GREGORY WALL, WSBA #8604
Attorney for Defendant Mueller-Lee



GREGORY SOUTHWORTH, WSBA #24773
Attorney for Defendant Henry

APPENDIX 3

RECEIVED

DEC 15 2011

BROUGHTON LAW GROUP
ATTORNEYS AT LAW

FILED
CLALLAM COUNTY
DEC 13 2011
8:50a.m. ef
BARBARA CHRISTENSEN, Clerk

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM**

KENNETH HUNTINGTON,)
Plaintiff,)

vs.)

NO. 08-2-00996-6

JENNIFER A. MUELLER and "JOHN)
DOE" MUELLER, wife and husband, and)
their marital community; and)
JACQUELINE HENRY and "JOHN DOE")
HENRY, wife and husband, and their marital)
community,)
Defendants.)

MEMORANDUM OPINION
ON ATTORNEY'S FEES

I. ISSUE:

Plaintiff, Kenneth Huntington, was a passenger in a motor vehicle driven by Jacqueline Henry. The motor vehicle collided with another motor vehicle driven by Jennifer Mueller. Mr. Huntington was injured. This matter was initially submitted to an arbitrator. The arbitrator found Defendant Mueller liable for damages to the Plaintiff. The damages were assessed at \$50,000. The arbitrator was asked to apportion liability between Ms. Mueller and Ms. Henry. The arbitrator found that 100% of the fault for the accident was due to the negligence of Ms. Mueller.

Defendant Mueller requested a trial de novo. Trial de novo was held before a jury. The jury awarded damages to Mr. Huntington in the amount of \$60,161.35. The jury apportioned fault by finding each of the defendants to be 50% at fault.

SC 11-13

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Plaintiffs now seek attorney's fees and costs from Defendant Mueller, the party who requested the trial de novo.

RCW 7.06.060(1) states in pertinent part:

“The Superior Court shall assess costs and reasonable attorney's fees against a party who appeals the award and fails to improve his or her position on the trial de novo.”

The Plaintiff asserts that Defendant Mueller is now liable for \$60,161 to Plaintiff for damages, whereas previously Defendant Mueller would have been liable only for \$50,000 and, accordingly, Defendant Mueller has not improved her position and attorney's fees and costs should be awarded.

Defendant Mueller states that although the Plaintiff was awarded greater damages at the trial de novo, the apportionment of fault means that Defendant Mueller is ultimately responsible for only one-half of the judgment, \$30,580.67, rather than the \$50,000 found by the arbitrator and, accordingly has improved her position by demanding a trial de novo and is therefore not liable for fees.

II. ANALYSIS:

In Washington, attorney's fees may be recovered only when authorized by the private agreement of the parties, a statute, or a recognized ground of equity. Mellor v. Chamberlin, 100 Wn. 2d 643, 649, 673 P. 2d 610 (1983).

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The mandatory arbitration rules and RCW 7.06 which authorizes mandatory arbitration in certain civil cases is primarily designed to alleviate court congestion and reduce the delay in hearing civil cases. The purpose of the attorney fee award authorized under RCW 7.06.060 and MAR 7.3 serves the purpose of discouraging meritless appeals. Christie-Lambert Van and Storage Company, Inc. v. McLeod, 39 Wn. App. 298, 303, 693 P. 2d 161 (1984).

The general rule in such cases is that the attorney's fees and costs in multiparty cases are awarded to different parties on the basis of the separate judgments obtained, not the overall trial result. (Case cites omitted) Christie-Lambert, *supra*, at page 305.

In Hudson v. Costco Wholesale Corp., 119 Wn. App. 332, 335, 880 P. 3d 615 (2003) the Court noted that the general rule is that a party does not improve its position if a Superior Court judgment is entered against it for more than the arbitration award.

In the case of Sultani v. Leuthy, 86 Wn. App. 753, 943 P. 2d 1122 (1997), which was a case involving four defendants found jointly and severally liable at arbitration, the trial de novo resulted in an increase in the total amount of damages awarded to the Plaintiff. However, fault had been reallocated finding several liability. Two of the defendants actually owed less as a result of the trial de novo. The Court held that the two defendants who owed less were not required to pay attorney's fees to the Plaintiff. Defendant Mueller argues that Sultani is controlling under the circumstances of the present case.

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In Perkins Coie v. Williams, 84 Wn. App. 733, 929 P. 2d 1215 (1997) the initial question raised was whether or not a party who arbitrated claims under the Superior Court mandatory arbitration rules could request a trial de novo of less than all of the issues of fact and law that had been arbitrated. The Court held that a party could not limit a request for a trial de novo in that regard. Specifically the Court stated:

“We hold that a request for a trial de novo may not exclude any issue of law or fact that was arbitrated.” Perkins Coie, *supra*, at page 736.

Here, Defendant Mueller, in requesting a trial de novo, could not unilaterally, request a trial de novo only on the issue of apportionment of fault. In Wiley v. Rehig, 143 Wn. 2d 339, 20 P. 3d 404 (201), the Court noted that “a full trial need not occur and fees may be awarded following a summary judgment or voluntary dismissal, or when the appellant voluntarily withdraws the notice for a trial de novo.” Wiley, *supra*, at page 348.

In Hudson v. Costco a Costco codefendant was held not to be liable at both arbitration and at trial.

In Hudson, *supra*, at page 335, the Court stated:

“The term ‘position’ used in RCW 7.06.060(1) and MAR 7.3 ‘was meant to be understood by ordinary people who, if asked whether their position had been improved following a trial de novo, would certainly answer ‘no’ in the face of a Superior Court judgment against them for more than the arbitrator awarded.” Cormar, Ltd. v. Sauro, 60 Wn. App. 622, 623, 806 P. 2d 253 (1991) (footnote omitted). “Here, Costco would certainly answer ‘yes’ if asked whether it improved its position following the trial de novo, as it is now liable for \$20,000 less in damages.”

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“Rehig’s first argument is that the improvement of a party’s ‘position’ is to be determined relative to the party seeking the fee and not to the overall result of the trial. Costco agrees that the overall trial result is not the relevant consideration. Instead, relying on Christie-Lambert, Costco asserts that ‘attorney’s fees and costs in multiparty cases . . . are awarded to different parties on the basis of the separate judgments obtained[.]’ In discussing Sultani, Hudson, at page 337, notes, “while the overall damage award was greater, the Court found that the defendant requesting the trial de novo improved his position because he was no longer jointly and severally liable for the entire judgment amount. Sultani, 86 Wn. App. at 758-59, 943 P. 2d 1122.”

The Hudson Court at page 337 noted:

“One factor essential to the decision in Christie-Lambert was that McLeod could have brought a separate action against the codefendant to adjudicate his claim. Thus, it was not necessary to force the Plaintiff through the trial de novo process. Here, Costco’s only avenue of relief from the arbitrator’s award was through a trial de novo, and thus, Costco should not be forced to pay attorney’s fees for Rehig when it reduced its reliability to the Plaintiff.”

“Rather, the fact that Costco could not have limited its appeal to the issue of damages supports its argument that attorney’s fees should not be imposed. Costco did not have any control over the number of defendants the Plaintiff decided to sue. Costco could not limit the trial de novo so that Rehig would not be involved. Costco did not have any mechanism available to dismiss Rehig from the trial de novo. The fact that Hudson did not prove her claim against Rehig should not affect Costco’s ability to seek a trial de novo without incurring additional liabilities even if it prevailed.” (emphasis added)

In Christie-Lambert, *supra*, at page 303 the Court noted:

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“The interpretation of RCW 7.06.060 and MAR 7.3 that will give affect to the provision’s purpose to deter meritless appeals and the acts purpose to favor arbitration in certain cases as a means of reducing court congestion is that costs and attorney’s fees shall be assessed against an appellate from a mandatory arbitration award who does not improve his position in the trial de novo as to a party whose claim was arbitrated. (emphasis supplied)”

At page 304 the Christie-Lambert Court noted:

“Moreover, it is inherently unfair to deny an attorney fee award to a party that has borne the cost of mandatory arbitration and a trial de novo without a change in results where the denial is based upon the appellant’s improving his overall position in the trial de novo solely because of a new claim brought for the first time on appeal. This is particularly so where, as in this case, the appellant might have brought a separate action on the new claim. The Respondent argues, however, that because he is entitled to a trial de novo as to all issues and all parties, Christie-Lambert should bear the cost of litigation although it obtained the same results in arbitration and at trial.”

“Nevertheless, alternatives exist to a trial de novo as to all issues and all parties that avoid the duplication of legal efforts where no change in results is likely, with the attended unfairness to the appellee. (emphasis added) Christie-Lambert indicated that it would have been wiling to stipulate to a trial de novo limited to the legal issues raised by the Respondent’s cross claim against the defendant Nolan. (Case site omitted) . . . if on the other hand a party exercises his right to a trial de novo as to all issues and all parties when alternatives exist, as McLeod did in this case, in the interest of ensuring fairness and of giving effect to the provisions and acts purposes, the appellant should be assessed the attorney’s fees and costs of a party whose claim was arbitrated and against whom the appellate does not improve his position in the trial de novo.” (emphasis added)

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“A denial of attorney’s fees to Christie-Lambert in this case would run counter to the general rule that attorney’s fees and costs in multiparty cases as well as in certain consolidated cases are awarded to different parties on the basis of the separate judgments obtained, not the overall trial result.” (Case sites omitted) Christie-Lambert, *supra*.

In Sultani the Court noted that multiple tortfeasors who are jointly and severally liable are each liable for the entire harm caused, and the injured party may pursue one or all to obtain full recovery.

The Court noted that:

“Thus, although the appellants had a right to contribution against each other and against the other defendants as a result of the arbitration award, there still existed the possibility that one or both appellants, rather than all four defendants would have borne the full responsibility of making Sultani whole. Sultani’s argument would force this Court to speculate as to whether the appellants would have been able to obtain a contribution from one another and from the other defendants, and if so, for how much.” Sultani, *supra*, at page 759.

The Court in Sultani noted that an action for contribution would not have been available to some of the defendants. The Court noted that they could not, by that means, have avoided joint and several liability. For that, they had to seek a trial de novo.

“The appellants in this case are thus unlike the attorney in Christie-Lambert, who could have litigated the cross claim against his client separately.” Sultani, page 760.

The Sultani Court noted:

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“An appellee unhappy that a trial de novo resulted in a finding of several liability, rather than joint and several liability, may always appeal that result. Here, although Sultani filed a notice of cross appeal on this very issue, he abandoned the cross appeal by failing to assign error to any of the rulings below and by failing to provide briefing in support of his challenge. The finding of several liability is, accordingly, the law of this case, so that we can only conclude that Pollard had a sound basis for requesting a trial de novo. Thus, this was not a meritless appeal from a mandatory arbitration award. Finally, the Courts have means of dealing with the abuse of court processes on a case basis where such abuse can be demonstrated, so that any potential for circumvention of the mandatory arbitration as a result of our ruling can be dealt with, if, as and when such circumvention might arise.”

“Thus, although Sultani’s overall damage award increased following the trial de novo, each of the appellants nonetheless improved his position with respect to Sultani. Because neither appellant was “a party who . . . fail[ed] to improve [his] position on the trial de novo ‘, we hold that the trial court erred in awarding attorney’s fees under MAR 7.3.” Sultani, supra, at page 760 and 761.

Here, Defendant Mueller was initially deemed severally liable to the Plaintiff. That was an issue which was arbitrated. Defendant Mueller’s only recourse was to request a trial de novo. Defendant Mueller prevailed on the joint and several liability issue which had been arbitrated and was then tried at the trial de novo. Clearly the Defendant Mueller improved its position vis-a-vis Defendant Henry. Accordingly the request for the trial de novo was not meritless. On the other hand, as would be the case with any trial, Defendant Mueller could have settled with the Plaintiff or stipulated to the \$50,000 damage award granted Plaintiffs. She did not do so. Instead she chose to try the

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comparative fault issue and to also try the issue of damages suffered by the Plaintiff. On that issue, vis-à-vis the Plaintiff, she did not prevail and now faces a judgment against her greater than that awarded by the arbitrator. That Defendant Mueller may be entitled to contribution from a codefendant, which she would not have been entitled to before, is not a relevant issue as to her liability to the Plaintiff. That liability is imposed whether or not contribution can ever be recovered against the joint and several defendant as found by the jury.

Unlike Sultani, where the decision went from joint and several liability to several liabilities only, here the decision went from several liability of 100% to joint and several liability in a greater amount. As to the increased award granted to the Plaintiff, the Plaintiff is not precluded from having a judgment entered in the full amount against Defendant Mueller. In Sultani, the judgment against each of the defendants at issue was in fact reduced by virtue of the finding of several ability.

The Court notes that RCW 7.06.050(1)(a) allows a non-appealing party to serve upon the appealing party a written offer of compromise. That written offer of compromise would then replace the amount of the arbitrator's award predetermining whether any party appealing the arbitrator's award has failed to improve that party's position on the trial de novo. Here, even had the Plaintiff submitted an offer to compromise for a lesser amount than the \$50,000, Defendant Mueller would argue that nevertheless it would have improved its position following the imposition of joint and several liability even if it failed to meet the offer of compromise. Such an interpretation

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3 renders the statute nonsensical. The Court is convinced that while Defendant Mueller
4 was required to file for a trial de novo and did in fact prevail as to its codefendant, it was
5 not required to pursue a trial de novo to conclusion against the Plaintiff on the issue of
6 damages. It chose to do so and failed to improve its position as to that particular party
7 and issue. The judgment entered against Defendant Mueller is greater than that which
8 would have been entered against it following the arbitration. Accordingly, Mueller, is
9 required to pay Plaintiff's reasonable attorney's fees and costs under the MAR rules and
10 the statute.
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14 **III. ATTORNEY'S FEES AND COSTS:**

15 Washington courts utilize the Lodestar method to guide the calculation of
16 attorney's fees awards. Scott Fetzer Company v. Weeks, 122 Wn. 2d 141, 149, 859 P. 2d
17 1210, 1215 (1993). Under that method the party who seeks fees has the burden of
18 proving the reasonableness of the fee which is requested. The trial court should not
19 merely rely on billing records, but should instead make an independent decision as to
20 what represents a reasonable amount for attorney's fees under the circumstances of the
21 individual case. Under the Lodestar method, the initial Lodestar amount is determined by
22 multiplying the reasonable hourly rate by the number of hours reasonably expended on
23 the matter. Fetzer Company, *supra*, at pages 149 to 150.
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26 The trial court has broad discretion in determining the amount of attorney's fees
27 that is reasonable. Factors which a trial court should consider in determining the
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reasonableness of a Lodestar fee include: The difficulty of the questions involved, the skill required, customary charges of other attorneys, the amount in controversy, the resulting benefit to the client and whether the fee is fixed or contingent. Fetzer at 150.

The Court in its discretion may use the Lodestar method to adjust the fee upward or downward depending on the circumstances of the particular case.

Here, the attorney's services at trial in many respects were limited to the issue of proving damages. The Plaintiff was a fault-free individual. Nevertheless, some exposition of the nature of the accident was required to be presented by the Plaintiff in that the jury, under a trial de novo, was required to decide issues of liability. Plaintiff was therefore required to prove liability, although not required to prove anything towards the comparative fault of the parties and, the parties clearly told the jurors that the Plaintiff was fault free.

The Court has reviewed the timesheet submitted on behalf of the Plaintiff. The Court notes that approximately 35 hours of billable attorney time was expended in actual trial of the case. This seems reasonable for the trial which the Court observed. Prior to that, Mr. Broughton, the lead attorney, expended approximately 112 hours in preparation time. The Court notes about 1.4 hours of time was expended to receive a CD of the vehicle photos and arranging for large prints of those photos at Kinko's. The Court also notes a paralegal would have been available to accomplish that task.

The Court also notes that in addition to the paralegal time requested that time is requested for another attorney at \$300 per hour. 19.5 hours is requested. 12 hours of that

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time relates to travel with the client to courthouse and attending the trial and working on jury instructions. This was not a case in which two attorneys were required other than for convenience. Accordingly the Court is going to reduce the time of the second attorney by eight hours. The remainder of the time expended seems reasonable for the services which were rendered. All three parties were represented by experienced and very capable counsel. A rate of \$300 per hour is not unreasonable for a Plaintiff attorney having the skill and experience of Mr. Broughton.

The Court notes that if this matter were tried on a contingent fee basis, a reasonable contingent fee might range anywhere from 25% to 50%. Such a contingent fee, even at a 50% rate would result in a fee of \$30,000, which is less than that requested by Mr. Broughton. The Court recognizes, as does Mr. Broughton, that taking such cases on a contingent fee basis is problematic in that the sums involved in such matters are relatively small when compared to the difficulty and expenses of proof. The Court will allow 145 hours of time for Mr. Broughton and 11.5 hours of time for co-counsel for a total of 156.5 hours of attorney time at \$300 per hour. The paralegal time requested will also be allowed. No multiplier is warranted.

The second issue relates to costs. Defendant Mueller objects to the cost of the videographer under the court rules. The Court would note that under the rules for arbitration expert witness costs are broader than those under the statutory cost allowance. The Court will therefore allow the cost of the videographer and the Court finds it was

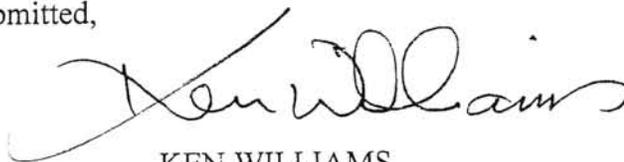
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reasonable to present the testimony of the expert witness by video as was done in this instance in light of the expert witness not being local.

The Court has signed judgments in accordance with this Memorandum Opinion.

DATED this 12th day of Dec, 2011.

Respectfully submitted,



KEN WILLIAMS
JUDGE

APPENDIX 4

*Filed
Feb. 12, 2012
Barbara Christensen
clerk*

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

KENNETH HUNTINGTON, a single man,

Plaintiff,

v.

JENNIFER A. MUELLER, and "JOHN DOE"
MUELLER, wife and husband, and their marital
community; and JACQUELINE HENRY, and "JOHN
DOE" HENRY, wife and husband, and their marital
community;

Defendants.

NO. 08 2 00996 6

STIPULATION AND ORDER DEPOSITING
MONIES AND AUTHORIZING PARTIAL
DISBURSEMENT

Defendant Mueller by and through her undersigned counsel Gregory Wall has transmitted to the Clerk of the Clallam County Superior Court two checks made payable to the Clerk of Clallam County Superior Court. One check is in the amount of \$53,711.00 and the second check is in the amount of \$60,151.35. The parties stipulate and agree that these checks should be deposited into the Registry of the Clallam County Superior Court.

Once these checks have cleared the bank, it is stipulated and agreed that pursuant to the subjoined order, the clerk shall mail a check in the amount of \$63,456.40 to William Broughton at Broughton Law Group, 9057 Washington Ave., Silverdale, WA 98383. Broughton agrees to file a partial satisfaction upon receipt of this check.

1 The balance of the funds after payment to Broughton in the amount of \$50,405.95 shall be placed into an
2 interest bearing account. The parties stipulate and agree that this amount shall be posted as a Supersedeas
3 Bond on behalf of Defendant Mueller for the balance of the judgment against Mueller pending resolution of the
4 appeal in this matter pursuant to RAP 8.1. A Total Satisfaction of Judgment will be filed by Plaintiff with
5 regard to Defendant Henry.

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8 DATED: this 16 day of February, 2012.

9 Signed: William Broughton
10 William H. Broughton, WSBA No. 8858
11 Attorney for Plaintiff

12 DATED: this ____ day of February, 2012.

13 Signed: attached
14 Gregory J. Wall, WSBA No. 8604
15 Attorney for Defendant Mueller

16 DATED: this 15TH day of February, 2012.

17 Signed: Gregory J. Southworth
18 Gregory J. Southworth, WSBA No. 24773
19 Attorney for Defendant Henry

20 **ORDER**

21 Based upon the above referenced stipulation it is

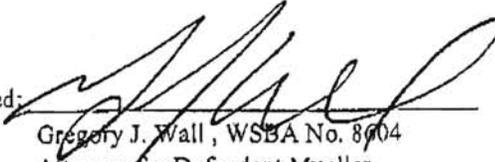
22 **ORDERED** that the clerk shall deposit the two checks referenced above by the Clallam County
23 Superior Court Clerk into the Registry of the Court. Upon those checks clearing the bank, a check will be
24 transmitted to William Broughton at Broughton Law Group, 9057 Washington Avenue, Silverdale, WA 98383
25 on behalf of Kenneth Huntington in the amount of \$63,456.40. And it is further
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1 The balance of the funds after payment to Broughton in the amount of \$50,405.95 shall be placed into an
 2 interest bearing account. The parties stipulate and agree that this amount shall be posted as a Supersedeas
 3 Bond on behalf of Defendant Mueller for the balance of the judgment against Mueller pending resolution of the
 4 appeal in this matter pursuant to RAP 8.1. A Total Satisfaction of Judgment will be filed by Plaintiff with
 5 regard to Defendant Henry.

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 8 DATED: this ____ day of February, 2012.

Signed: _____
 William H. Broughton, WSBA No. 8358
 Attorney for Plaintiff

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 10
 11 DATED: this 15 day of February, 2012.

Signed: 
 Gregory J. Wall, WSBA No. 8004
 Attorney for Defendant Mueller

12
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 15 DATED: this ____ day of February, 2012.

Signed: _____
 Gregory J. Southworth, WSBA No. 24773
 Attorney for Defendant Henry

16
 17
 18
 19 **ORDER**

20
 21 Based upon the above referenced stipulation it is

22 **ORDERED** that the clerk shall deposit the two checks referenced above by the Clallam County
 23 Superior Court Clerk into the Registry of the Court. Upon those checks clearing the bank, a check will be
 24 transmitted to William Broughton at Broughton Law Group, 9057 Washington Avenue, Silverdale, WA 98383
 25 on behalf of Kenneth Huntington in the amount of \$63,456.40. And it is further
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ORDERED that the remaining balance in the amount of \$50,405.95 shall be deposited by the Clerk into an interest bearing account and shall be posted as a Supersedeas Bond on behalf of Defendant Mueller pursuant to RAP 8.1 it is further

ORDERED that Plaintiff shall post a Partial Satisfaction of Judgment with regard to Defendant Mueller and a Full Satisfaction of Judgment with regard to Defendant Henry.

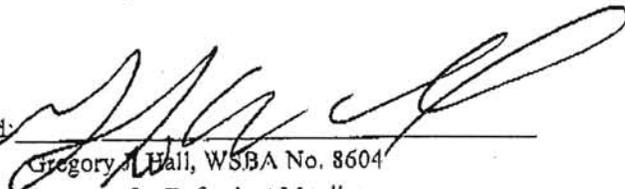
DONE IN OPEN COURT this ____ day of February, 2012.

JUDGE/COURT COMMISSIONER

Presented by:

Signed: _____
William H. Broughton, WSBA No. 8858
Attorney for Plaintiff

Approved for Entry and Notice of Presentation Waived:

Signed: 
Gregory J. Hall, WSBA No. 8604
Attorney for Defendant Mueller

Approved for Entry and Notice of Presentation Waived:

Signed: _____
Gregory J. Southworth, WSBA No. 24773
Attorney for Defendant Henry

APPENDIX 5

FILED
CLALLAM COUNTY
DEC 13 2011
8:50 a.m. - LF
BARBARA CHRISTENSEN, Clerk

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SCANNED-2

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

<p>KENNETH HUNTINGTON, Plaintiff, vs. JENNIFER A. MUELLER, and "JOHN DOE" MUELLER, wife and husband, and their marital community; and JACQUELINE HENRY and "JOHN DOE" HENRY, wife and husband, and their marital community, Defendants.</p>	<p>NO. 08-2-00996-6 SUPPLEMENTAL JUDGMENT</p>
---	--

1. Judgment Creditor: Kenneth Huntington

Attorney for Kenneth Huntington
William Broughton
Broughton Law Group, Inc. P.S.
9057 Washington Ave. NW
Silverdale, WA 98383
2. Joint and Several Judgment Debtors: Jennifer Mueller-Lee

Attorney for Jennifer Mueller-Lee
Gregory Wall
1521 Piperberry Way, SE #102
Port Orchard, WA 98366-1203

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2 3. Supplemental Judgment Amount
For Huntington's Fees and Costs:

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4 4. Post Judgment Interest Rate 12%

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6 **THIS MATTER** having come on for hearing before the undersigned judge the
7 above entitled court and the court having entered an order awarding attorney's fees and costs
8 to Plaintiff Kenneth Huntington against Defendant Mueller-Lee it is
9

10 **ORDERED** that a supplemental judgment is hereby entered against Defendant
11 Mueller-Lee in the amount of \$ 47,814⁵⁰/₁₀₀ This judgment is supplemental and in
12 addition to the joint and several judgment issued in this matter against both defendants.

13 DONE IN OPEN COURT this 12th day of Dec November, 2011.

14
15
16 

17 THE HONORABLE KENNETH WILLIAMS
Superior Court Judge

18 Presented by:

19 BROUGHTON & LAW GROUP, INC., P.S.

20
21 
22 WILLIAM H. BROUGHTON, WSBA #8858
23 Attorney for Plaintiff

FILED
COURT OF APPEALS
DIVISION II

2012 JUN 13 AM 11:26

STATE OF WASHINGTON

BY
DEPUTY

COURT OF APPEALS - DIVISION II
OF THE STATE OF WASHINGTON

Jennifer Mueller,
Appellant

No. 42977-2-II

v.

Declaration of Mailing

Kenneth Huntington.
Respondent

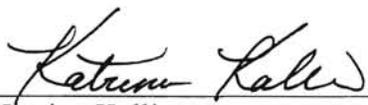
Katrina Kallio, under penalty of perjury under the laws of the State of Washington, hereby declares as follows:

i) That I am over the age of eighteen (18) years, not a party to this action, and am competent to make this declaration;

ii) That on June 12, 2012 I caused the "Brief of Respondent" along with this Declaration of Service to be sent via first class mail to the following:

Gregory J. Wall
Wall Liebert & Lund, P.S.
1521 SE Piperberry Way, Suite 102
Port Orchard, WA 98366

Dated this 12th day of June, 2012.



Katrina Kallio